

The Sustainable Communities Bill

The Bill

1. The sustainability of local communities

- (1) The following provisions of this Act shall apply for the purpose of promoting the sustainability of local communities.
- (2) The sustainability of local communities means
 - (a) protecting or renewing local economic activity including shops, services, facilities and jobs and locally based industry;
 - (b) protecting the local environment;
 - (c) increasing social inclusion and decreasing social exclusion;
 - (d) increasing participation in democratic, civic and political activity.

2. Duty of Secretary of State to assist principal councils

- (1) It shall be the duty of the Secretary of State to assist principal councils in promoting the sustainability of local communities in the ways specified by this Act and according to the indicators specified pursuant to this Act.
- (2) The indicators specified by this Act are
 - (a) the initial listed in schedule 1 and
 - (b) any other indicator added by a principal council pursuant to section 3 below.

3. Rights of Principal Councils

- (1) The Secretary of State shall within six months of the passing of this Act invite every principal council to submit to him/her a report indicating the ways in which s/he can help promote the sustainability of local communities according to
 - (a) the indicators in Schedule 1; and
 - (b) any other indicators that in the opinion of the principal council will help assist the purposes of this Act
 - (c) and any such report may include objectives or targets for any or all of the indicators as the principal council thinks fit.
- (2) Two or more principal councils may submit a joint report.
- (3) A report or joint report shall be available for inspection and copying by members of the public at all reasonable hours.
- (4) If a principal council does not submit a report under this section it shall state in writing the reasons and that statement of reasons shall be available for inspection and copying by members of the public at all reasonable hours.

4. Participation by Parish Councils and other persons

- (1) Before submitting a report or a joint report a principal council shall carry out a participation exercise, which shall include
 - (a) taking into account any guidance issued pursuant to subsection 5 below; and
 - (b) taking reasonable steps to obtain the views of all parish councils in its area; and
 - (c) taking into account the content of any parish plan; and
 - (d) taking reasonable steps to obtain the views of other persons in its area.
- (2) Where a parish council or a parish plan or any other persons
 - (a) suggest objectives or targets in respect of the indicators; or
 - (b) suggest other indicators that would assist with the purposes of this Actthe principal council shall, subject to subsection (3) below, include such matters in its report if
 - (c) they would assist with promoting the purposes of this Act; and
 - (d) they are reasonably practicable.
- (3) The principal council need not include any such suggestion if
 - (a) it conflicts with another suggestion which in the opinion of the principal council would better promote the purpose of this Act in which case the reason for that opinion shall be stated; or
 - (b) in the opinion of the principal council the cost of inclusion is out of all proportion to the benefit as regards the purpose of this Act.
- (4) A report or joint report submitted under this section may indicate what further powers, in the opinion of the principal council or councils making the report or joint report should be given to principal councils to enable them to promote the purpose of the Act.
- (5) The Secretary of State may publish guidance to assist councils in carrying out a participation exercise pursuant to this section.
- (6) For the avoidance of doubt it is hereby stated that section 10 (*financial provisions*) applies to this section.

5. Plan by Secretary of State

- (1) Within two years of the passing of this Act the Secretary of State shall publish a plan ("the plan") which shall specify the ways in which s/he proposes to discharge his/her duty pursuant to section 2 above and which shall include a programme for action by the Secretary of State.
- (2) The plan shall include any objectives or targets specified by a principal council unless
 - (a) any such objective or target set by a principal council would significantly and measurably hamper a national policy in which case the policy and the reason must be specified; or
 - (b) any such objective or target set by a principal council would hamper the achievement of objectives or targets set by another principal council pursuant to this Act in which case the plan shall specify the reason or reasons why the plan has included one objective or target rather than another having regard to the purpose of this Act; or
 - (c) the cost of achieving the objective or target is out of all measurable proportion to the benefit as regards the purposes of this Act in which case that cost shall be specified.
- (3) A plan may include different sections for different parts of the country or for different authorities or for different types of authority

Explanation

Aim

Subsection (1) states the statutory purpose of the Bill. This is important because it specifies the Bill's purpose and this purpose will be referred to in subsequent clauses.

Subsection (2) explains what we mean by sustainable communities: local economies (shops, services, facilities, jobs); protection of local environments; social inclusion; and civic and democratic involvement. We emphasize that we regard citizen involvement as one of the factors of sustainability. In short: communities that do not involve people are not sustainable.

No one has THE foolproof answer as to how to achieve this: what we CAN do, however, is make procedures 'participator-friendly' and empowering, so making 'involvement' worth the effort. The Bill seeks to achieve this.

This makes it clear that the duty to help councils promote sustainable communities is placed on the government. Councils are fed up with too many government-imposed duties being placed on them. The Bill accepts this and so it paces the duty to help councils on the government – but in ways driven by councils themselves, not dictated by Whitehall. Thus, *this is not a 'one-size' fits all approach: it is an approach based on local knowledge having top priority.*

Subsection (2) introduces the Bill's indicators for local sustainability but is not prescriptive. Subsequent clauses allow councils to set local objectives or targets for the indicators (this can include dis-applying any indicator), and to *add new indicators*. The list in schedule 1 (at the end of the Bill) is a starting point. It is in effect government saying to councils 'here's some ways we might be able to help promote local sustainability. Let us know to what extent – and tell us of any other ways.'

Aim: to establish the 'bottom-up' procedure so councils can drive government actions

Within 6 months of the Bill becoming law the Secretary of State (SoS) must invite all principal councils (i.e. District/Borough/City Councils or Unitary Authorities) to submit a report indicating the ways in which s/he can help them promote local sustainability according to the indicators in Schedule 1 or **any new ones added by them**. The council's report may include local targets or objectives for the indicators that the council thinks fit.

Sub-clause (4) gives councils the right to decline to submit a report as to how they need help in promoting local sustainability. However, if they do decline to do so, they must let their electorate know why and so be answerable at the ballot box. This is the only duty the Bill places on principal councils however this is in accord with councils' own arguments that they want to be answerable locally not to government.

Section 5 below then spells out exactly how the reports by councils will drive government policy – i.e. *this is not a mere consultation process*: it is a serious attempt to ensure proper 'bottom-up' influence on central government actions.

Aim: to continue the 'bottom-up' procedure so that communities can influence councils' policies and responses

So far we have established the rights of principal councils. This clause **establishes the rights of communities**.

Before submitting its report to the SoS a council is required (sub-clause (1)) to take reasonable steps to

- obtain the view of all its parish councils and take into account the contents of parish plans and
- obtain the view of other persons ('persons' includes local community or business organisations etc.)

Sub-clause (2) goes further: it states that where the above process suggests objectives or targets in respect of the indicators, or suggests other indicators, then the council shall include these points in its report 'in its opinion' they would assist with promoting local sustainability and they are reasonably practicable. In this way communities can directly influence councils' reports to government.

We accept that the words 'if in its opinion' do not confer upon parish councils and citizens absolute rights to drive the report from the council. But neither do they convey no rights. The term 'if in its opinion' means that that opinion must be reasonably held and reached in good faith. So a council that simply rejected suggestions on spurious grounds would be challengeable in law and **could also be held accountable at election time**.

Sub-clause (3): suggestions from citizens need not be included where they clash with other suggestions – in which case the reason for the decision to favour certain suggestions must be stated; or the cost would be out of all proportion to the benefit.

(5) Enables the SoS to publish 'good practice' guidance regarding a participation process and requires councils only to have regard to it – note therefore it is **not a central duty imposed on councils**.

(6) It will cost money for councils to engage in the participation process. This sub-clause states that this shall be paid out of central funds. We say that for the following reasons:

- access to democracy (which this is) should, like access to justice, be the right of every citizen. That should be a national priority as important as access to justice. Thus, like legal aid, this should be centrally funded, especially in view of concerns about 'disengagement' expressed by politicians. This gives them a solution.
- councils are hard-up and this would work against a proper bottom-up process
- citizens' rights would be dependant upon the money available locally, thus creating a potential postcode lottery for access to democracy. This must be unacceptable.

Aim: to finalise the 'bottom-up' procedure so that councils and communities can drive government actions to promote local sustainability

So far we have established the rights of principal councils to submit reports specifying the ways in which they think government should help promote local sustainability (section 3). We have also established the rights of communities in that process (section 4). This clause finalises that process and **spells this out not as the usual consultation process (all decisions left to the government) but as a process in which (with certain caveats) government action to reverse Ghost Town Britain and promote local sustainability is driven (not just influenced) from the bottom up**. This is because of the philosophy behind this Bill – *that councils and communities are the experts on their own problems and the solutions to them* – not Whitehall.

(2) specifies that the plan drawn up by the SoS as to how the government should help local sustainability 'shall (i.e. a duty) include any objectives or targets specified by a council.' So councils can set targets, dis-apply any stated indicator (by setting a nil target) or add new indicators as they deem appropriate.

Thus, there is a legal presumption in favour of government action being driven from the 'below', with the exceptions being spelt out. The government need **not** include objectives or targets specified by councils if: (a) they would significantly and measurably hamper a specific national policy – in which case the policy and the reason must be stated. This enables government to discharge its national responsibilities; (b) any objective or target would conflict with objectives or targets set by other councils. In such a case someone has to arbitrate: we have given that role to elected government; (c) The cost would be prohibitive bearing in mind the purposes of the Act. For instance it may be untenable to give the SoS a duty to save one post office if the cost ran into £millions.

But with those caveats this is bottom-up government.

(3) is needed because as the measures are driven from 'below' it is unlikely that there will be a single national plan. One size will not fit all. (3) reflects this allowing for different sections for different authorities or regions as appropriate according to councils' responses.

6. Approval and Implementation of the Plan

- (1) As soon as is practicable after the publication of the plan the Secretary of State shall lay it before both Houses of Parliament.
- (2) It shall be the duty of the Secretary of State as soon as is practicable to make a motion for a resolution approving the plan in both Houses of Parliament.
- (3) Subject to 7 below it shall be the duty of the Secretary of State to implement the plan.

The SoS must lay the plan (including a timetable for action) before Parliament for approval.

There is a strong procedural reason for this provision. When Parliament 'wills' something it has to 'will' the resources (i.e. the public money) to do it – see clause 10 below – otherwise the 'willing' becomes meaningless. So, to enable MPs to know how much public money they are spending, a financial assessment is made on most Bills. **But in this case this is impossible:** because of the bottom-up process and the objectives and targets being set locally, and new indicators being added. Any MP opposed to this Bill could (and would!) ridicule it on those grounds alone ("we're being asked to sign a blank cheque!"). By adding this requirement for Parliamentary approval of the final plan, we have overcome that.

Thus, in passing the Act, Parliament has only agreed to the principle of the Act, the funding of the participation procedure described (which is easily measurable) but left for its final approval the final amount of public money involved – after the plan has been drawn up and the amount can be assessed. This allows for proper Parliamentary oversight of public money.

(3) gives the SoS is the under a duty (subject to 7 below) to implement the plan.

7. Rights of challenge by Principal Councils and electors

- (1) Subject to subsection (2) below the Secretary of State shall not implement any measures or seek to achieve any objectives or targets in any region if a majority of principal councils in that region have stated in writing their opposition to those measures or targets and in such case any such statement by a principal council shall be available for inspection and copying by members of the public at all reasonable hours.
- (2) Subsection (1) shall not apply if in the opinion of the Secretary of State that any opposition to any measures or objectives or targets by principal councils does not have the support of the majority of electors in the region and in such cases the Secretary of State shall publish his reasons for reaching that opinion.

Further Rights for councils and electors

We have built in a bottom-up process already. But here councils and electors are given further powers.

(1) If a majority of councils in any one region object to any part of the final plan they can by resolution of that majority of councils prevent it being implemented.

(2) However, if a majority of electors support the implementation of the plan they can have councils' objections overturned. The Bill does not, as yet, specify how that majority will be assessed but it could be via a referendum, a succession of polls etc. **What is certain, however, as a matter of law, is that if the SoS simply used this section to ignore a resolution by a majority of councils, that would be unlawful as 'the opinion' of the SoS would not be reasonably held or based on evidence. An 'opinion' must, in law, be justifiable.**

8. Implementation by principal councils

A principal council may take such steps as it deems appropriate to

- (a) implement any measures that are within its power
- (b) assist with the achievement as far as is reasonably practicable of any objectives or targets that are contained in the plan.

A council **may** (once again this is an enabling power for councils not a duty) implement any parts of the plan that are within its powers. If it does decide to do so the costs must be met by government – see clause 10(b) – and would form part of the costs assessment mentioned above.

9. Wales

It shall be the duty of the National Assembly for Wales as regards matters that are its responsibility to assist Welsh councils in promoting the sustainability of local communities as specified by this Act and according to the indicators specified pursuant to this Act and the provisions of this Act shall be construed as if they applied to this section save that under section 6 above the final plan shall be laid before the National Assembly for Wales.

This requires the National Assembly for Wales to assist councils in Wales to promote community sustainability – and applies the above procedures to that process.

10. Financial Provisions

There shall be paid out of money provided by Parliament

- (a) any expenses incurred by the Secretary of State in consequence of this Act; and
- (b) a reasonable allowance for any expenditure required to be incurred by a principal council in consequence of this Act
- (c) any increases attributable to this Act in sums payable out of money so provided by virtue of any other Act.

11. Short title and extent

- (1) This Act may be cited as the Sustainable Communities Act.
- (2) Subject to (3) below this Act applies to England and Wales only
- (3) This Act extends to Scotland and Northern Ireland as regards measures taken by the Secretary of State that are reserved matters pursuant to the Scotland Act or the Northern Ireland Act.
- (4) Where the Secretary of State proposes to implement any measures in Scotland or Northern Ireland that are reserved matters then sections 3-8 of this Act shall apply to local authorities and electors in Scotland and Northern Ireland.

Application to Scotland

Clearly the Bill cannot propose the devolvement of power as it does, but then undermine devolution to Scotland and Northern Ireland. The wording of the Bill therefore avoids this and in fact increases the rights of councils and communities in Scotland as follows:-

- (i) As regards a government plan to reverse Ghost Town Britain and promote local sustainability, this is a matter for legislation by the Scottish parliament or NI Assembly.
- (ii) But supposing, as a result of the participation process required by this Bill, it becomes clear that there are some necessary measures to be taken that are reserved matters - i.e. not matters devolved to the Scottish parliament or NI Assembly.
- (iii) The current legal situation is that the (Westminster) government could simply implement such reserved matters.
- (iv) But implementation of policies (even on reserved matters) without the input of councils and communities would be against the whole philosophy of the Bill. It could not happen in England or Wales. So how do we avoid it in Scotland and NI regarding reserved matters?
- (v) The answer is in clause 11 (4) of the Bill which says that if there are reserved matters on which the government has to act as a result of the participation process spelt out in the Bill, then, as regards their implementation in Scotland and NI, the participation procedure in the Bill must be gone through in those countries first.
- (vi) In this way, Scottish and Northern Ireland councils and communities are given powers re reserved matters that they did not previously have.

Schedule 1

1. The initial indicators referred to in section 2 are:

- (a) the provision of local services and local public services,
- (b) the extent to which the volume and value of goods and services that are
(i) offered for sale and (ii) procured by public bodies
and that are grown or produced within 30 miles (or any such lesser distance as may be specified by a principal councils as regards its area) of their place of sale or of the boundary of the public body,
- (c) the rate of increase in the growth and marketing of organic forms of food production and the local food economy,
- (d) the number of local jobs,
- (e) measures to conserve energy and to increase energy efficiency and the quantity of energy supplies which are produced from sustainable sources within a 50 mile radius of the region in which they are consumed,
- (f) measures taken to reduce the level of road traffic including but not restricted to local public transport provision; measures to promote walking and cycling; and measures to decrease the amount of product miles,
- (g) the increase in social inclusion, including an increase in involvement in local democracy,
- (h) measures to increase mutual aid and other community projects,
- (i) measures designed to decrease emissions of greenhouse gases,
- (j) measures designed to increase community health and well being.

2. In this Schedule the following terms shall have the following meanings:

'local services' includes but is not restricted to retail outlets, public houses, banks, health facilities including hospitals and pharmacies, social housing, post offices, schools, eating places, leisure facilities and open spaces and the local use of waste materials for the benefit of the community
'local public services' includes any services or facilities provided by or on behalf of statutory bodies or any agencies of such bodies

These are the initial indicators mentioned above – but remember councils and communities can set the local objectives or targets; they can dis-apply any indicator if it is not locally appropriate by setting a nil target; and they can add new indicators.

As stated above – this is not a one-size fits all approach. The flexibility of this Bill is what is required to reverse Ghost Town Britain and create truly sustainable communities.

Schedule 1 (contd)

2. (contd)

'local food economy' means a system of producing, processing and trading, primarily of organic forms of food production, where the activity is largely contained in the area or region where it was produced and which delivers health, economic, environmental and social benefits to the communities in those areas

'local jobs' means

- (a) jobs in companies that will spend a significant proportion of their turnover in the locality of the place of operation;
- (b) jobs which are taken by people living within 10 miles (or any such lesser distance a may be specified by a principal council as regards its area) of that job

'mutual aid' means actions or initiatives by people in the community to improve services or provisions for themselves and other persons in the community

'product miles' means the total distance travelled by produce from the place of growth or production to the place of consumption

'local democracy' means the ability to participate in, by means of voting at elections or otherwise, decision making that is as local as practicable to people's place of residence.

'community health and well being' means the degree to which persons resident in an area identify with that area and receive an increased quality of life as a result of the nature and the environment of the area.