

# Consultation on the Community Empowerment (Scotland) Bill

## Response Questionnaire

### Chapter 4 - Detailed Policy Proposals

Please read the draft Bill provisions before you answer these questions. You do not need to answer all the questions in this questionnaire, only answer the questions that you have an interest in. Separate questionnaires are provided for each chapter of the consultation paper.

Please make sure you also return the Respondent Information Form with your response, so that we know how to handle it.

#### 4.1 Improve and extend Community Right to Buy

Q17 The Scottish Government proposes to extend right to buy to communities in all parts of Scotland, where the Scottish Government is satisfied that it is in the public interest. Do you agree with this proposal?

Yes  No

Are there any additional measures that would help our proposals for a streamlined community right to buy to apply across Scotland?

There should be consideration given to the “absolute right to buy” for community organisations in certain circumstances. This would result in a greater uptake of community ownership and better social/environmental outcomes for people across Scotland.

There should be a consideration to remove the criteria that it is the decision of The Scottish Government in terms of what is “the public interest” and perhaps replace this with the local authority or an independent third party being empowered to make this decision.

Q18 Do you think that Ministers should have the power to extend “registrable” land” to cover land that is currently not included as “registrable land”?

Yes  No

What other land should also be considered as being “registrable”?

All types of land should be considered as “registrable”, where it is in the public interest and where it can be evidenced to result in community empowerment and positive social/environmental outcomes.

Q19 Do you think that there should be a compulsory power for communities to buy neglected or abandoned land in certain circumstances?

Yes  No

What should these circumstances be?

Q20 If the land has been neglected or abandoned for a certain time period, perhaps one year. All landowners should be notified in advance of their new responsibility regarding land ownership and the new community rights regarding this issue.

do you think this should work in practice? How do you think that the terms “neglected” and “abandoned” should be defined?

A procedure could be a simple majority vote in favour by members of the community in question.

A definition could be: If there has been no significant development or regeneration activity, no evidence for immediate significant planned development or there is evidence of neglect (e.g. dangerous or defective buildings) for a period of one year, in terms of recognised categories such as: farming, forestry, construction, recreation, conservation, allotments, energy generation etc. This may be less than one year in certain circumstances.

Q21 Do you think that the criteria to be met by a community body in section 38(1) of the Act are appropriate?

Yes  No

Do you think that there should be additional criteria? Please set out what changes or additions should be made to the criteria.

Community Interest Companies (CICs) are an example of a legal entity that needs to be recognised.

Clarity also needed where a community body may be taking part in more than one of: Request to Participate in Processes to Improve Outcomes of Service Delivery, Asset Transfer and Community Right to Buy. Is a single definition needed to cover these instances?

Q22 Do you think that the information that is included in the Register of Community Interests in Land is appropriate?

Yes  No

If not, what should that information include?

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Q23 How could the application form to register a community interest in land be altered to make it easier to complete (eg, should there be a word limit on the answers to particular questions)?

All forms should be designed in full partnership with those community organisations that have gone through the process, as well as those who are considering going through the process.

Should the questions be more specifically directed to the requirements of sections 36(2) and 38(1) of the Act?

Yes  No

Do you have any other suggestions?

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Q24 Do you agree that communities should be able to apply to register an interest in land in cases where land unexpectedly comes on the market and they have not considered using the community right to buy?

Yes  No

If so, what changes should be made to section 39 to ensure that such communities can apply to register a community interest in land?

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Q25 Do you agree that the process to re-register a community interest should be a re-confirmation of a community interest in land?

Yes  No

Q26 Do you think that the community body should be asked to show that its application is (1) still relevant, (2) has the support of its “community”, and that (3) granting it is in the public interest?

Yes  No

Q27 What do you think should be the length of the statutory period for completing the right to buy, taking into account both the interests of the landowner and the community body? Please explain the reasons for your proposal.

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Q28 Do you think that some of the tasks within the right to buy (such as valuation, ballot etc) should be rearranged and the timescales for their completion changed in order to make the best use of the time available within the right to buy? Please set out what changes you think should be made and why.

Yes. More time should be given for community organisations to organise what can be a complex process. In terms of exact timescales, then surveying those community organisations that have previously conducted ballots, valuations etc would be the most appropriate mechanism.

Q29 Do you agree that Scottish Ministers should organise the undertaking of a community body's ballot and pay its costs.?

Yes  No

If you disagree, please provide your reasons.

Q30 Should Scottish Ministers notify the ballot result to the landowner?

Yes  No

Please explain your reasons.

Ballot results should be widely publicly available and it would be appropriate for The Scottish Government to pro-actively notify the landowner.

Q31 Do you think Ministers should develop a pro-forma for community bodies to set out their plans for the sustainable development of land and community?

Yes  No

Please give reasons for your view.

Yes, this could streamline and simplify the process for community organisations considering the process.

Any "application form" should be developed in equal partnership with community organisations that have already gone through the process and those considering Right to Buy, as well as organisations representing community organisations such as development trusts.

Q32 Do you agree that community bodies should be able to define their “community” in a more flexible way by the use of either postcodes, settlement areas, localities of settlements, and electoral wards, or a mixture of these, as appropriate?

Yes.

Q33 Are there any other ways that a “community” could be defined?

Community Council areas are a possible addition, though this may generally be defined within a “settlement” areas definition.

Q34 Do you agree that other legal entities in addition to the company limited by guarantee should be able to apply to use the community right to buy provisions?

Yes  No

Q35 Do you agree that SCIOs should be able to apply under the provisions?

Yes  No

Q36 What other legal entities should be able to apply under the community right to buy provisions – and why?

There are a range of legal entities that can be legitimately utilised by community groups in this context. An addition to Company Limited by Guarantee and SCIOs, Community Interest Companies (CICs) should also be included.

Q37 Do you agree that Ministers should only have to “approve” the changes to Articles of Association for community bodies that are actively seeking to use or are using the community right to buy?

Yes  No

Q38 Do you think that the length of a registered interest in land should remain as five years or be changed? If it should be changed, how long should it be – and what are your reasons for making that change?

Yes but re-registration should be less in-depth and simpler.

Q39 Do you agree that the valuation procedure should include counter representations by the landowner and community body?

Yes  No

If you disagree, please give your reasons for your decision.

An independent, impartial, new or existing body should make the final decision.

Q40 Do you think that there should be a provision to deter landowners from taking the land off the market after they have triggered the right to buy?

Yes  No

Please explain your reasons.

When a community organisation has dedicated time and resources to an application and started to build community support for a proposal, then landowners should be prevented from wasting community resources by withdrawing land from sale. With the introduction of counter representations in the valuation procedure then there would be a greater degree of fairness for the landowner.

Q41 Do you think that there should there be greater flexibility in a community body's level of support for a right to buy in the ballot result than is currently permitted?

Yes  No

Q42 Do you think that the ballot result should focus on a sufficient amount of support to justify the community support to proceed with the right to buy the land?

Yes  No

If yes, please explain how secured community support should be measured

There does not need to be a minimum turnout. A result to proceed with the proposal could be decided by a simple majority of votes in favour.

This should only be in the context of appropriate and adequate publicity, with a reasonable timescale for community awareness to develop from all sides of the debate.

Q43 Do you agree that community bodies should be able to submit evidence to Ministers in support of their ballot result where they believe that their ballot has been affected by circumstances outwith their control?

Yes  No

Q44 Do you think that Scottish Ministers should be able to ask community bodies for additional information relating to their right to buy "application" which Ministers would then take into account in considering their right to buy "application"?

Yes  No

Please explain your reasons.

Community support, in terms of voters voting in favour in a simple majority, should be used as a basis for a decision but it's acceptable that external factors are also taken into account. Additional information being taken into account is also fair as it gives a more complete picture of the proposal and the practical impacts it will have on the community.

Q45 Do you think that Ministers should be able to accept an application to register a community interest in land which is subject to an option agreement (on part or all of the land)?

Yes  No

Q46 If there is an option agreement in place, do you think that the landowner should be able to transfer the land as an exempt transfer while there is a registered interest over that land?

Yes  No

Please explain your answer.

This issue is due to a flaw in the original legislation.

Q47 Do you think that the prohibition on the landowner from taking steps to market or transfer the land to another party should apply from the day after the day on which Ministers issue the prohibition letter rather than the day when the owner/heritable creditor receives the notice?

Yes  No

Please explain your answer.

This would standardise the process and ensure every landowner is treated equally in that process.

Q48 Do you agree that public holidays should be excluded from the statutory timescales to register a community interest in land and the right to buy?

Yes  No

Q49 Do you agree that where a landowner makes an “exempt” transfer, this should be notified to Scottish Ministers?

Yes  No

If you disagree, please provide reasons for your decision.

Q50 Do you agree that community bodies and landowners should notify Scottish Ministers of any changes to their contact details (including any registered office)?

Yes  No

Q51 Do you think that Ministers should monitor the impact of the community right to buy?

Yes  No

How do you think that monitoring should be undertaken and what information should Ministers seek?

The number, scale, scope, all related costs and geographical location of community right to buy, along with level of community support. In addition the increase in positive social/environmental impact.

Should the monitoring process be a statutory requirement, including provisions for reporting?

Yes  No

## 4.2 Strengthening Community Planning

Q52 What are your views on our proposals for requiring a CPP to be established in each local authority area, and for amending the core statutory underpinning for community planning to place stronger emphasis on delivering better outcomes??

It is crucial that CPP's respond to the needs of communities. Issues of housing, health, employability, environmental sustainability etc. are similar across geographies, however, the solutions required in a rural community are often very different from an urban community. Therefore the establishment of a CPP in each local authority area is credible.

Delivering better outcomes is an absolute requirement of community planning. Outcomes should follow purpose and be supported by a comprehensive monitoring and evaluation framework. Service design should be driven by the achievement of the outcome. Current practice appears to favour outcomes designed to maintain existing service provision, protect structures and justify budget allocations.

Q53 What are your views on the core duties for CPPs set out above, and in particular the proposal that CPPs must develop and ensure delivery of a shared plan for outcomes (i.e., something similar to a Single Outcome Agreement) in the CPP area?

The option to develop and deliver a shared plan for the delivery of CPP outcomes should be included in the legislation. It is important that the legislation drives better integration of resources. For example, despite the statutory nature of community planning, the failure in the integration of health and social care at a local authority level suggests existing structures either fail to understand the authority they already have or that they self-select not to use this.

Q54 Do the proposed duties of the CPP support effective community engagement and the involvement of the third and business sectors?

Yes  No

What other changes may be required to make this more effective?

The business sector remains disconnected with the community planning process. This is problematic particularly in areas of thematic activity such as employability. The establishment and maturing nature of Third Sector Interfaces has significantly improved the connectedness of the Third Sector however, there is still a lack of parity of esteem in decision-making.

Q55 How can we ensure that all relevant partners play a full role in community planning and the delivery of improved outcomes in each CPP area? Do the proposed core duties achieve that?

Yes  No

What else might be required?

While recognising the importance of establishing core duties and the benefits of augmenting these with the flexibility for Strategic Boards or CPP's to take on local priorities, there remains a gap in data regarding the community-based assets available to CPP's outwith the control of public bodies. It would be advantageous to consider legislating for a requirement within the duties to undertake an assessment of the third sector asset base.

Q56 What are the respective roles of local elected politicians, non-executive board members and officers in community planning and should this be clarified through the legislation?

There should be no requirement for legislation to prescribe the roles of elected members, non executive directors or officers. Their role is to represent the interests and, meet the needs, of individual communities through more effective planning and use of resources. Communities come first and everything else flows from that.

Q57 Should the duty on individual bodies apply to a defined list of public bodies – if so, which ones? Or should we seek to take a more expansive approach which covers the public sector more generally?

Form should follow function. It is important that structures should be driven by purpose and the achievement of outcomes. To prescribe a defined list of public bodies on whom duties might fall would potentially constrain service design. There should be an expansive approach more generally e.g. community planning still fails to recognise fully the role and contribution of certain anchor organisations like Housing Associations and Credit Unions, in a way which would significantly improve engagement with individual communities and the achievement of outcomes.

Q58 Local authorities are currently responsible for initiating, facilitating and maintaining community planning. How might the legislation best capture the community leadership role of Councils without the CPP being perceived as an extension of the local authority?

It is important for the legislation to restate the difference between the statutory responsibility of a local authority to initiate, facilitate and maintain community planning and the perception of the local authority having ultimate control of community planning. The legislation achieves some of this by focusing on community planning as a process rather than a structure.

Q59 How can the external scrutiny regime and the roles of organisations such as the Accounts Commission and Auditor General support the proposed changes? Does this require changes to their powers or functions?

The role of Audit Scotland in the scrutiny of community planning is important. The emergence of Arms Length External Organisations (ALEO's) is of particular concern to third sector and social enterprise organisations who are involved in the delivery of public services. The role of ALEO's is not clear within Community Planning, however the perception is of unfair competition with the third sector because of their association with individual council's.

Q60 What other legislative changes are needed to strengthen community planning?

The legislative changes to community planning are welcome, however it is important to note that much of this appears to be required because of a

failure to engage effectively with previous community planning arrangements. New legislation is a step that should only be considered when existing power has been exhausted and is unlikely to deliver lasting change. Much of the proposed legislation merely reclassifies existing responsibilities and it is our view that it is incumbent on us all to invest time to make existing legislation work before introducing new measures.

### 4.3 Allotments

Q61 Do you agree with the proposed definition of an allotment site and allotment plot?

Yes  No

How else would you suggest they be defined?

The inclusion of “non-commercial use” would prevent community organisations and groups and other social enterprises from using allotments to sell produce, to raise money for social and/or environmental purposes.

There should be a clause that states that commercial use is fully acceptable where profits are reinvested into the community/social/environmental purposes.

There also need to be measures in place to protect and enhance provision of allotments from closure.

Q62 In order to include all existing allotments in the new legislation they must fit within the size range. What is the minimum and maximum size of one allotment plot in your area/site?

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Q63 Do you agree with the proposed duty to provide allotments?

Yes  No

Are there any changes you would make?

An independent appeals process regarding any failure of adequate provision by a local authority.

Do you agree with the level of the trigger point, i.e. that a local authority must make provision for allotments once the waiting list reaches 15 people?

Yes  No

Q64 Do you prefer the target Option A, B or C and why? Are there any other target options you wish to be considered here? Do you agree with the level of the targets?

Option (A) but waiting lists should aim to be 1 year in length wherever possible.

Q65 Do you agree with the proposed list of local authority duties and powers? Yes  No

Would you make any changes to the list?

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Q66 Do you think the areas regarding termination of allotment tenancies listed should be set out in legislation or determined by the local authority at a local level?

Legislation

Determined by local authority

Q67 Are there any other areas you feel should apply to private allotments?

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Q68 Do you agree that surplus produce may be sold? Yes  No

If you disagree, what are your reasons?

The selling of produce should be permitted by default and pro-actively encouraged (only where proceeds are reinvested into the community/social/environmental purposes). Please see answer to Q61.

Q69 Do you agree with the proposed list of subjects to be governed by Regulations?

Yes  No

Would you make any changes to the lists?

There may be scope to specifically include noise levels, such as music etc.