

Consultation on the Community Empowerment (Scotland) Bill

Response Questionnaire

Chapter 3 - Proposals with draft legislation

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.

3.1 Community Right to Request Rights in Relation to Property

Please read Part 1 of the draft Bill (Annex C pages 1 to 9) before you answer these questions:

Q1 Do you agree with the definition of community body at section 1?
Yes No

Do you have any changes to suggest?

We object to the use of the word 'company' at Section 1 (1) (b), and throughout, and consider the definition must have scope to encompass Industrial Provident Societies, Community Interest Companies, Scottish Charitable Incorporated Organisations and other organisations whose legal structure allows them to take on assets.

Section 1(5)(b) states "that the majority of the members of the company is to consist of members of the community". In the context of community energy, a geographically situated community, particularly one that is small in size, might not be able to raise sufficient funds from within. If set up as a cooperative, the local community could therefore decide to raise funds through a share offer that extends to a wider community of interest. Whilst cooperatives generally favour the local community, the majority in such an instance could come from outside the geographically defined parameters of 'local'.

Q2 Do you agree with the list of public bodies to be covered in this Part at Schedule 1 (Annex C page 21)?

Yes No

What other bodies should be added, or removed?

Q3 What do you think would be reasonable timescales for dealing with requests, making an offer and concluding a contract, in relation to sections 5(6), 6(2)(c) and 6(6)?

Q4 Do you agree that community bodies should have a right of appeal to Ministers as set out in section 8?

Yes No

Are there other appeal or review procedures that you feel would be more appropriate?

We consider that community bodies should have a right of appeal against decisions made by public bodies, including those made by local authorities and Ministers. The ongoing review of civil and administrative justice and the creation of a new tribunals system presents an opportunity to consider how appeals such as these are appropriately and consistently dealt with, and review existing appeals. For example a new environmental tribunal – as considered under the Regulatory Reform Bill – or an extension of the Lands Tribunal could be the best place to deal with appeals such as these.

Q5 What form of appeal or review processes, internal or external, would be appropriate in relation to decisions made by local authorities and by Scottish Ministers?

See response to Q4

Q6 Do you have any other comments about the wording of the draft provisions?

Q7 What costs and savings do you think would come about as a result of these draft provisions? Please be as specific as you can.

This Bill should not be driven by a desire to cut costs, but to empower communities.

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Chapter 4 - Detailed Policy Proposals

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4.1 Improve and extend Community Right to Buy

Q8 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?

We support the proposed extension of the right to buy to cover communities in all parts of Scotland, including communities of interest where this is appropriate. We note the importance of this right being extended to urban areas, however high market values are likely to limit the exercise of this right, and while the extension of the Land Fund is welcome, action is required to tackle this issue systemically.

Q9 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”?

Q10 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?

We support a compulsory power for communities to buy neglected or abandoned land, and consider this is an important step in challenging concepts of ownerships. However communities must be able to demonstrate they have a good understanding of the responsibilities of taking on the land, and the exercise of this right must be a last resort.

We recognise that in the context of developing community energy projects, which are essential for remote communities to thrive, access to land is a major barrier. The consultation mentions the buy-out of the Isle of Eigg, which enabled the local community to switch off their noisy, dirty, expensive generators and develop an almost entirely renewable electricity system. Similarly, community owned micro hydro projects remain currently underdeveloped although a 2010 Scottish Government report on Scotland's hydro potential illustrates significant potential.

Q11 How do you think this should work in practice? How do you think that the terms "neglected" and "abandoned" should be defined?

To begin to respond to this question we can offer inspiration from countries with less rigid ownership models: If there is evidence that for a specific period of time, e.g. 5 years, land has been continually cared for by someone other than the official owner and the owner themselves (and associated sub-contractors), has not cared for the land, the transfer of ownership could be requested.

In addition land that is not cared for by the owner but of significant potential benefit to a local community could be considered under a compulsory power for communities to buy land. This would require evidence by the community to demonstrate capability to care for the land if ownership is indeed transferred.

However, the role of existing agreements between owners and users needs to be carefully considered, and there needs to be a clear differentiation between 'not caring for land' and conserving land to promote biodiversity.

Q12 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.

Q13 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?

Q14 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)?

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?

Q15 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?

Q16 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

Q17 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

Q18 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.

Q19 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.

Q20 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.

Q21 Should Scottish Ministers notify the ballot result to the landowner?

Yes No

Please explain your reasons.

Q22 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.

Q23 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?

We would like to see a wider definition of the term community, which includes communities of interest.

Q24 Are there any other ways that a “community” could be defined?

In the context of community energy we support the inclusion of communities of interest, for example Community Benefit co-operatives.

Q25 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

Q26 Do you agree that SCIOs should be able to apply under the provisions?

Yes No

Q27 What other legal entities should be able to apply under the community right to buy provisions – and why?

See response at Q1. We support the inclusion of Industrial and Provident Societies, Community Interest Companies, Scottish Charitable Incorporated Organisations and other organisations whose legal structure allows them to take on assets. I&PS for example play an increasingly important role for the development of community energy projects in Scotland. The much wider definition of community body in regard to asset transfer requests could be adopted to enable as many community energy groups as possible to take advantage of this.

Q28 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

Q29 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?

Q30 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.

Q31 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.

Q32 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

Q33 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

Q34 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

Q35 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.

Q36 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

Q37 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.

Q38 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.

Q39 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

Q40 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.

Q41 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

Q42 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?

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

Yes No