

# **Guidance on Engaging Communities in Decisions Relating to Land**

## **Consultation Analysis**

**November 2017**

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# 1. Executive Summary

1.1 Under Part 4 of the Land Reform (Scotland) Act 2016<sup>1</sup> (“the Act”), Scottish Ministers have a duty to issue “guidance about engaging communities in decisions relating to land which may affect communities” (“the Guidance”). The purpose of the Guidance required by the Act is to encourage land owners and land managers to develop co-operative and positive working relationships with local communities. The Guidance aims to support good working practices that can lead to mutually beneficial solutions to land-related problems and better local outcomes for economic, environmental, social or cultural issues.

1.2 Scottish Ministers published a public consultation on the draft Guidance<sup>2</sup> on 24 March 2017 with views invited by 16 June 2017 on the Guidance and the approach taken to drafting it. 43 responses<sup>3</sup> were submitted, 40 from organisations and 3 from individuals. A summary of the views of respondents follows.

## Views on the remit, scope and approach of the draft Guidance

1.3 Of the 28 respondents who provided a view, 20 agreed that the draft Guidance responds appropriately to the considerations of Section 44(2) of the Act; eight respondents disagreed, largely on the grounds that they perceived the Guidance to lack due consideration of: human rights; tackling inequality; and furthering the achievement of sustainable development.

1.4 Several respondents suggested that the Guidance be explicit on how it has taken Section 44(2) into account, and what its provisions mean in practice, perhaps by means of case studies.

1.5 Of the 27 respondents who commented, 18 stated that they agreed with the proposed scope for the Guidance; nine respondents disagreed. Many respondents requested further clarity around terms such as “communities” (geographical and/or interest), and “significantly impact”. Others asked that the Guidance makes clear that communities can initiate engagement; that all land owners and managers are encompassed and not just those in the private sector; that the Guidance applies to urban as well as rural areas; and buildings as well as land.

1.6 All but one of the 25 respondents who provided a view agreed with the approach taken to the relationship with existing statutory requirements. The remaining respondent considered that reference to access rights had been omitted. Those agreeing considered that the Guidance appropriately linked engaging communities in decisions relating to land with statutory consultation; supported supplementary engagement which could add value to statutory consultation; avoided duplication of effort; and presented a proportionate approach which would not deter owners from carrying out property developments.

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<sup>1</sup> <http://www.legislation.gov.uk/asp/2016/18>

<sup>2</sup> <http://www.gov.scot/Publications/2017/03/9042>

<sup>3</sup> [https://consult.gov.scot/land-reform-and-tenancy-unit/engaging-communities-in-decisions-relating-to-land/consultation/published\\_select\\_respondent](https://consult.gov.scot/land-reform-and-tenancy-unit/engaging-communities-in-decisions-relating-to-land/consultation/published_select_respondent)

1.7 All 27 respondents who provided a view agreed with the approach taken to using the National Standards for Community Engagement to inform the Guidance. This was perceived to be logical, appropriate, and likely to promote consistency in practice.

### **Views on section 1 of the draft Guidance: Using the Guidance**

1.8 18 of the 22 respondents who provided a view considered that section 1 of the draft Guidance identified appropriate uses for the Guidance. A recurring comment was that the section could be strengthened with more detail to add to clarity and reduce scope for different interpretations.

### **Views on section 2 of the draft Guidance: Why should I engage with Communities?**

1.9 20 of the 22 respondents who provided a view agreed that this section identified appropriate reasons why community engagement should take place.

1.10 A repeated comment was that the bulleted paragraph on the benefits of community engagement could be made more useful by adding further positive and negative impacts of community engagement, by means of either a chart or case studies. Some respondents considered that the section should provide more explicit links to broader guidance and relevant legislation.

### **Views on section 3 of the draft Guidance: Best practice principles for fair engagement**

1.11 17 of the 20 respondents who commented agreed that appropriate best practice principles are identified in section 3 of the draft Guidance. Section 3 was welcomed as easy to understand; appropriate; and balanced.

1.12 Further resources were identified as required: for capacity-building for community engagement; and ensuring engagement is effective, for example, by deploying skilled external facilitators. A few respondents suggested that this section should acknowledge the importance of engaging with local organisations which have a democratic base or legitimacy.

### **Views on section 4 of the draft Guidance: When should I engage?**

1.13 16 of the 24 respondents who provided a view stated that they agreed that appropriate solutions for when engagement should or should not take place had been identified in this section of the Guidance.

1.14 The flow chart in this section was welcomed as helpful in distinguishing between routine engagement; statutory engagement; non-statutory engagement; and supplementary engagement.

1.15 There were repeated calls for greater clarity on the circumstances in which engagement should take place, and the form this should take. Many respondents called for examples to enhance clarity.

1.16 A recurring view was that the term “significant impact” required clearer definition.

### **Views on section 5 of the draft Guidance: How should I engage?**

1.17 15 of the 19 respondents who provided a view considered that the appropriate methods for engaging with communities are identified in this section.

1.18 The section was welcomed as useful, clear and informative; well thought out; with helpful illustrative examples. Some respondents commented that the section provides guidance without over-specifying.

1.19 The “How to Engage” column attracted most comment, with respondents divided between those advocating more detail on methods, and those who welcomed the broad outline presented.

### **Views on section 6 of the draft Guidance: Who should I engage with?**

1.20 14 of the 20 respondents who provided a response considered that appropriate ways of identifying who to engage with are identified in this section.

1.21 A few respondents suggested that the section should contain information on engaging with “hard to reach” sectors of the community; others emphasised their view that communities of interest should be included, as appropriate, in addition to local communities.

1.22 An emerging theme was that time should be allocated to establishing who to engage with, using approaches such as participatory methods; networking; getting advice; and researching local groups in the area.

1.23 The statement “it is not always necessary to engage everybody within a community” was considered as giving too much lee-way for land owners and managers to select who they engage with.

### **General views on the draft Guidance**

1.24 Of the 21 respondents who commented, 16 considered that the draft Guidance, as a whole, has proportionate and reasonable expectations of land owners, land managers, and communities. Several respondents suggested that further definition and clarity in places would help to ensure intentions of the Guidance are explicit, and all parties have appropriate expectations.

1.25 12 of the 22 respondents who provided a view agreed that, as a whole, the draft Guidance balances the need to provide sufficient certainty whilst allowing for different local contexts.

1.26 Key emerging themes were: the broad approach required to accommodate different local contexts could be supported with case studies and other relevant guidance; details are required of how to record engagement practice, evidence of engagement, and concerns regarding inadequate engagement; and details are

required on who will monitor engagement performance and what redress will be forthcoming should shortcomings be found.

1.27 Respondents provided examples of when they considered that formal engagement is necessary, informal engagement is adequate, and no engagement is required. One respondent considered that on-going communication between land owners/managers and communities should underpin all decisions relating to land and there are no situations where engagement is not necessary.

### **Any other comments**

1.28 Several themes emerged: additional sources of support are available and should be referenced in the Guidance; greater specificity and definition is required throughout the Guidance in order to enable actions to stand up to any legal challenge; engagement should supplement wider land policies rather than provide an alternative; and the promotion of the Guidance will be important in awareness-raising and influencing.

### **Impact assessment**

1.29 Very few respondents addressed the questions on impact.

1.30 There was acknowledgement of the potential for people with disabilities and older people to be excluded from some forms of engagement due to access challenges. However, it was noted that the draft Guidance refers to the need to use a range of methods of engagement and accessible meeting venues.

1.31 It was generally agreed that there will be additional costs to land owners/managers and communities associated with engagement activities, although costs were not envisaged as being overly onerous.

1.32 There was a general consensus that the proposals had the potential to impact positively on the environment, by raising awareness of environmental issues and enabling different stakeholders to understand different perspectives.

## 2. Introduction

2.1 Under Part 4 of the Land Reform (Scotland) Act 2016<sup>4</sup> (“the Act”), Scottish Ministers have a duty to issue “guidance about engaging communities in decisions relating to land which may affect communities” (“the Guidance”).

2.2 The tone and emphasis of debate around land reform has been positive over recent years, with benefits emerging as a result of land owners and land managers engaging with local communities in decisions relating to land. Many land owners and land managers have supported their local communities by allowing the sale, lease or use of land for a wide range of purposes.

2.3 The purpose of the Guidance required by the Act is to encourage land owners and land managers to develop co-operative and positive working relationships with local communities. The Guidance aims to support good working practices that can lead to mutually beneficial solutions to land-related problems and better local outcomes for economic, environmental, social or cultural issues. It will not replace or duplicate statutory requirements for community consultation and engagement where these exist.

2.4 The Guidance will respond to seven of the Scottish Government’s National Outcomes:

- We live in a Scotland that is the most attractive place for doing business in Europe.
- We have tackled the significant inequalities in Scottish society.
- We live in well-designed sustainable places where we are able to access the amenities and services we need.
- We have strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others.
- We value and enjoy our built and natural environment and protect and enhance it for future generations.
- We reduce the local and global environmental impact of our consumption and production.
- Our public services are high quality, continually improving, efficient and responsive to local needs.

2.5 The Guidance will also relate to a range of land-related policies, such as the Land Use Strategy and the Scottish Land Rights and Responsibilities Statement.

2.6 Scottish Ministers published a public consultation on the draft Guidance<sup>5</sup> on 24 March 2017 with views invited by 16 June 2016, on the approach taken to drafting the Guidance and on the draft Guidance itself.

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<sup>4</sup> <http://www.legislation.gov.uk/asp/2016/18>

<sup>5</sup> <http://www.gov.scot/Publications/2017/03/9042>

2.7 Responses to the consultation were encouraged via Citizen Space, which around half of respondents used; the remaining respondents submitted their responses by email. All responses were combined by the analyst onto one comprehensive Excel database, in order to undertake the analysis.

## Consultation responses

2.8 The Scottish Government received 43 responses to the consultation. Table 2.1 shows the distribution of responses by category of respondent. A full list of respondents is in Annex 1. The respondent category applied to each response was agreed with the Scottish Government policy team.

**Table 2.1 Distribution of responses by category of respondent**

Category	No. of respondents	% of all respondents*
National Non-Governmental Organisations (NNGOs)	14	33
Private Sector and Professional Bodies	9	21
Community Organisations and their Representative Bodies	8	19
Government and National Non-Departmental Public Bodies (NDPBs)	5	12
Local Authorities	3	7
Academic	1	2
<b>Total Organisations</b>	<b>40</b>	<b>93</b>
<b>Total Individuals</b>	<b>3</b>	<b>7</b>
<b>Grand total</b>	<b>43</b>	<b>100</b>

\*Percentages may not add to 100% exactly due to rounding.

2.9 93% of responses were submitted by organisations; three responses were submitted on an individual basis. The largest category of respondent amongst the organisations was NNGOs comprising 33% of all respondents.

## Analysis of responses

2.10 The analysis of responses is presented in the following four chapters which follow the order of topics raised in the consultation document. The consultation posed 17 key questions, most containing both closed and open elements.

2.11 The analysis is based on the views of those who responded to the consultation and is not necessarily representative of the wider population.

### 3. Key Considerations: Remit; Scope; and Approach of the Guidance

#### Remit

Section 44(2) of the Act states that in preparing the Guidance, the Scottish Ministers must have regard to the desirability of:

- a) Promoting respect for and observance of human rights.
- b) Promoting respect for relevant internationally accepted principles and standards in relation to land.
- c) Encouraging equal opportunities.
- d) Furthering the reduction of inequalities of outcome due to socio-economic disadvantage.
- e) Furthering the achievement of sustainable development in relation to land.

#### **Question 1: Does the draft Guidance respond appropriately to the considerations of Section 44(2) of the Act? Please explain your answer.**

3.1 28 (65%) respondents answered the closed aspect of this question; 34 (79%) answered the open aspect. Of the 28, 20 agreed that the draft Guidance responds appropriately to the considerations of Section 44(2) of the Act; eight respondents disagreed. Table 3.1 overleaf summarises views by category of respondent.

3.2 Almost all of the private sector and professional bodies and community organisations and their representative bodies were in agreement that the draft Guidance reflects Section 44(2) considerations. In contrast, two of the three NDPBs who responded disagreed.

3.3 Amongst those who considered that the draft Guidance responds to Section 44(2) of the Act, mention was made specifically of the Guidance encouraging equal opportunities; sustainable development achievement; and reduction of inequalities.

3.4 Amongst those who viewed the draft Guidance as not responding to Section 44(2) of the Act, specific mention was made of lack of due consideration of human rights; tackling inequality; and achievement of sustainable development.

**Table 3.1 Views on whether the draft Guidance responds appropriately to the considerations of Section 44(2) of the Act**

Category	Agree	Disagree	No. of respondents providing a view
NNGOs	5	3	8
Private Sector and Professional Bodies	5	0	5
Community Organisations and their Representative Bodies	6	1	7
NDPBs	1	2	3
Local Authorities	1	1	2
Academic	1	0	1
<b>Total Organisations</b>	<b>19</b>	<b>7</b>	<b>26</b>
<b>Total Individuals</b>	<b>1</b>	<b>1</b>	<b>2</b>
<b>Grand total</b>	<b>20</b>	<b>8</b>	<b>28</b>

### Views on how the draft Guidance can respond further to Section 44(2) of the Act

3.5 Four respondents considered that the Guidance, as currently drafted, was too brief and/or “light touch” to be effective. One community organisation suggested that statutory underpinning would strengthen the Guidance.

3.6 A recurring theme (seven mentions), particularly amongst NDPBs, was for the Guidance to be more explicit on how it has taken Section 44(2) into account, and what its provisions mean in practice:

“While we recognise the high-level nature of the guidance there would be benefit in extrapolating on some of these considerations. In light of this you may wish to consider more specifically addressing the key considerations listed in Section 44(2) of the Land Reform (Scotland) Act 2016. This could be done by listing these considerations in Chapter 2 of the guidance and more explicitly defining how these have been taken into account through showing connections and links between these considerations and how the guidance gives due regard to them” (Historic Environment Scotland).

3.7 Several respondents, from across a range of sectors, considered that the Guidance would benefit from additional detail in places. For example, two community organisations and one NNGO recommended an additional section be inserted, perhaps entitled, “Best practice basic principles and considerations”, in which explicit reference is made to Section 44(2), and which poses questions for

land owners and managers to help them to identify whether they are reflecting Section 44(2) in their engagement with communities. This was seen as a potentially useful discipline, particularly in relation to larger and more formal engagement, and if linked to the Scottish Land Rights and Responsibilities Statement.

3.8 One NNGO suggested that the guidance should promote taking a human rights-based approach to participation, using the PANEL<sup>6</sup> principles to help to show what this means in practice.

3.9 A few private sector and professional bodies considered that case studies and/or examples of engagement which reflect Section 44(2) would be helpful in the Guidance. One NNGO envisaged the inclusion of practical examples of how engagement could facilitate the participation of those in poverty.

3.10 A few respondents emphasised that the Guidance should make clear that communities have the right to request that engagement takes place. One NNGO called for stronger messages about the positive impact on inequality of communities being engaged in decisions on places and services.

3.11 One community organisation and one NNGO shared the view that “sustainable development” requires a formal definition. One professional body requested definition of “community”, remarking that different forms of community will require different forms and levels of engagement.

### **Other comments**

3.12 One NNGO suggested that the Guidance will need to be supported by a wider framework of policy action in order to be effective, such as community land ownership grant programmes, and community capacity-building initiatives.

3.13 An individual considered that more directed support and associated training will be required for land owners, managers and the communities they engage with, in order to enhance the effectiveness of the Guidance.

3.14 A private sector respondent suggested that the Guidance should make it clearer from the start that it is voluntary; it applies to urban as well as rural land; failure to comply with the Guidance could be taken into account in connection with community right to buy applications; and if the land owner is undergoing statutory consultation, there may be no need to carry out additional engagement under the terms of the Guidance.

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<sup>6</sup> Participation; Accountability; Non-Discrimination; Equality and Empowerment; and Legality.

## Scope

It is proposed that the Guidance should apply to all land in Scotland, including buildings and structures on the land, and watercourses. The Guidance is relevant to all land owners and managers taking decisions which could impact on a local community, including private, public or third sector organisations, or individuals. The Guidance should be considered in relation to decisions to land which could impact on a local community and its economic, environmental, social or cultural opportunities. The Guidance will apply when a decision is to be made on land use or land management, where this has the potential to significantly impact on a local community. This includes situations where the decision being taken is to continue with existing practices in relation to land, as this continuation may also have the potential to significantly impact on a local community.

It is not intended that all decisions relating to land will require engagement. The draft Guidance advocates a proportionate and reasonable approach, meaning that engagement will not be required for many decisions with very little or no impact on a community.

## Question 2: Do you agree with our proposed scope for the Guidance? Please explain your answer.

3.15 27 (63%) respondents answered the closed aspect of this question; 32 (74%) answered the open aspect. Of the 27, 18 stated that they agreed with the proposed scope for the Guidance; nine respondents disagreed. Table 3.2 summarises views by category of respondent.

**Table 3.2 Views on the proposed scope for the Guidance**

Category	Agree	Disagree	No. of respondents providing a view
NNGOs	5	2	7
Private Sector and Professional Bodies	4	1	5
Community Organisations and their Representative Bodies	4	3	7
NDPBs	2	1	3
Local Authorities	1	1	2
Academic	1	0	1
<b>Total Organisations</b>	<b>17</b>	<b>8</b>	<b>25</b>
<b>Total Individuals</b>	<b>1</b>	<b>1</b>	<b>2</b>
<b>Grand total</b>	<b>18</b>	<b>9</b>	<b>27</b>

## General views

3.16 The proposed scope for the Guidance, set out in paragraphs 16 – 22 of the draft, was welcomed as being “admirably wide” (Scotland’s Regeneration Forum); striking a good balance between the rights and responsibilities of communities and owners/managers (community organisation); and not overly prescriptive (NDPB), although this latter respondent suggested that some illustrations of what might constitute a proportionate demonstration of community engagement would help to clarify the expectation of when engagement should be carried out.

3.17 The principle of proportionality was identified as helpful by nine respondents, including five NNGOs.

3.18 A few respondents suggested that a framework of training and support should be developed in conjunction with the Guidance, so that engagement becomes “natural” and not prescribed (Academic); public bodies and other individuals/organisations can provide timely advice (Individual); and use can be made of bodies such as the Local Environmental Quality Networks (NNGO).

3.19 Specific mention was made of needing to put in place support to help parties deal with tensions which may arise during engagement, in order to avoid leaving negative impacts should there be diverging views, as suggested in paragraph 20 of the Guidance.

3.20 In contrast, two respondents, one a professional body, the other a community organisation, clearly considered the scope of the draft Guidance to be overly broad and lack the specificity required for effective use. It was suggested that without more prescription, the Guidance could be open to misuse and/or raise community expectations which land owners and managers cannot meet.

## Views on where greater clarity is required

3.21 Many respondents requested further clarity around terms and concepts used in the draft Guidance. These are summarised in Table 3.3 below.

**Table 3.3 Summary of terms and concepts where greater clarification was requested**

Term or concept to be clarified	Comments
Communities	11 respondents from a range of sectors requested clarity. A recurring view was that the draft Guidance placed too much emphasis on communities of geography and not enough on communities of interest. A few agreed that local communities were the primary focus, but interest communities should also be acknowledged.

Communities initiating engagement	Four respondents from different sectors considered that the Guidance should make it clearer that communities can be proactive in initiating engagement.
Community engagement and “Community Plan”	Three respondents from two sectors emphasised what they perceived to be the need to distinguish in the Guidance between consulting with the community (e.g. regarding an estate plan), and developing a “community plan”.
Involvement of all land owners	Three respondents from two different sectors suggested the Guidance should state clearly that it covers all land owners and managers, and not just private land owners.
Involvement of owners and managers of buildings	Two respondents from different sectors suggested the Guidance should be more explicit in stating that its scope covers buildings in addition to land.
Involvement of urban areas	Two respondents from different sectors considered that clarity is required on how the Guidance applies in urban areas.
Involvement of long-term lease holders	One professional body suggested that some commercial occupational lease holders should be considered for inclusion within the scope of the Guidance, where the lease is long-standing.
Short-term and long-term decision-making	One NDPB considered that the Guidance should make more distinction between the concept of decisions relating to short-term disruption which may require informal engagement, and decisions relating to longer-term change, where formal engagement may be more appropriate.

## Views on terms requiring definition

3.22 Two terms were identified by respondents as requiring definition:

- Paragraph 17: “The Guidance will apply when a decision is to be made on land use or land management, where this has the potential to significantly impact on a local community.” Definition was requested on “significantly impact” by four respondents across different sectors.
- Engagement. The James Hutton Institute suggested that there would be merit in clarifying what is meant by “engagement”, in view of the various

typologies of engagement existing relating to both formal and informal approaches.

### **Views on potential additions to the draft Guidance**

3.23 Three potential additions were suggested:

- Mention of the role of local authorities, who may have a key relationship with land owners, managers or developers.
- Reference to accountability issues, and in particular some form of complaints and redress mechanism.
- Mention of links to broader planning frameworks and policy.

### **Specific comments relating to individual paragraphs**

#### Paragraph 16

3.24 A few community organisations and a NNGO considered there to be undue focus on “constraints”, without acknowledging that personal preferences also play a part in decision-making.

3.25 One NNGO suggested that the paragraph should emphasise that, by engaging with communities, land owners and managers will benefit from having a better understanding of community perspectives.

#### Paragraph 17

3.26 Four respondents across different sectors called for engagement to be advocated not just when decisions are made, but also at the stage of developing strategy which underpins those decisions.

3.27 Four respondents, three of them NNGOs, cautioned that requiring engagement over existing practices and prior decision-making would, in their view, be overly onerous and perhaps at odds with paragraph 18 which states that engagement will not be required for decisions with very little or no impact on a community.

3.28 One NNGO suggested that the wording of a sentence in paragraph 17 is ambiguous: “The Guidance is relevant to all land owners and managers taking decisions which could impact on a local community, including private, public or third sector organisations, or individuals.” They expressed confusion over whether the definition of all land owners and managers includes private, public or third sector organisations or individuals, or, whether the wording relates to the definition of “local community” in which case this would infer a much wider scope of engagement.

#### Paragraph 19

3.29 One NNGO suggested that this paragraph should make clear that the Guidance sets out a minimum standard of engagement.

## Paragraph 22

3.30 Two NNGOs considered that the Guidance should set out clear expectations relating to community engagement for communities, land owners and managers.

### **Relationship with existing statutory requirements to consult**

Community consultation can be a statutory requirement, for example, under town and country planning legislation, environmental regulations and forestry licensing. The Guidance does not require separate engagement to be carried out in addition to these statutory requirements. However, it may help inform how statutory consultations are conducted, and land owners and managers may wish to consider the benefits of supplementary engagement in relation to any decisions which are not subject to statutory engagement.

### **Question 3: Do you agree with our approach to the relationship with existing statutory requirements? Please explain your answer.**

3.31 25 (58%) respondents, representing all sectors, answered the closed aspect of this question; 27 (63%) answered the open aspect. Of the 25, all but one individual respondent agreed with the approach taken to the relationships with existing statutory requirements. The reason for disagreeing was given as the omission of reference to the access rights enshrined in the Land Reform (Scotland) Act 2016.

### **Views in support of the approach taken**

3.32 Some respondents were explicit in why they supported the approach taken. The key reasons given were:

- It is appropriate to link engaging communities in decisions relating to land, with statutory consultation, and make it clear that the former is not intended to replace or replicate the latter.
- Supplementary engagement could add value to statutory consultation.
- Avoids duplication of effort.
- Good to mention the benefits of supplementary engagement.
- Avoids deterring owners from carrying out property developments.
- Proportionate.
- The Guidance has no statutory basis, therefore a pragmatic approach to supplementary engagement is appropriate.

### **Views on where further clarification is required**

3.33 Five respondents from four different sectors called for further detail and clarity on the circumstances in which statutory consultation is required. One local authority described how there may be debate and confusion on this particularly at the “statutory margins” such as the procedures around Agricultural Notification, Prior Approval and Permitted Development.

3.34 Four respondents across different sectors requested further clarification on what is meant by “supplementary engagement”.

3.35 The James Hutton Institute and one individual respondent remarked on what they considered to be the interchangeable use of “consultation” and “engagement” in this section of the Guidance, and suggested that this required further distinction.

### Further view

3.36 One community organisation cautioned that the way in which the approach is communicated is important in avoiding devaluing non-statutory engagement.

### Relationship with the National Standards for Community Engagement<sup>7</sup>

The National Standards for Community Engagement are good-practice principles designed to support and inform the process of community engagement, and improve what happens as a result. They provide detailed performance statements that everyone involved can use to achieve the highest quality results and the greatest impact. They are designed to help the public, private and community sectors to involve and work with communities in planning services and developments.

The Scottish Government considers that the National Standards for Community Engagement should inform the Guidance on engaging communities in relation to land. The best-practice principles set out in the National Standards can be used in a proportionate way for both formal and information engagement.

### Question 4: Do you agree with our approach to using the National Standards for Community Engagement to inform the Guidance? Please comment if you have ideas on how we could better integrate these Standards.

3.37 27 (63%) respondents, representing all sectors, answered the closed aspect of this question, with all agreeing with the proposed approach to using the National Standards for Community Engagement to inform the Guidance. 28 (65%) answered the open aspect.

3.38 Recurring comments were that that this approach was logical, appropriate, would promote consistency in practice, and that the Standards were only recently updated and user-friendly. A few respondents considered that the Standards would provide a benchmark against which to assess the degree to which appropriate engagement is being undertaken, with the need for a process to record dissatisfaction, should this result.

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<sup>7</sup> <http://www.voicescotland.org.uk>

3.39 A common view across a range of sectors was for the National Standards for Community Engagement to become integral to the Guidance, perhaps replacing some aspects of draft Sections 3 and 5.

3.40 Three respondents, two of them NNGOs and the other a private company, emphasised the need for the Standards to be communicated in a way which could be readily understood by all parties, with the perception that at present they are in “public sector” language and may need re-wording.

3.41 Three respondents, across different sectors, suggested that the Standards should be proofed for suitability in remote rural areas, where there may be additional challenges in achieving aspects of them.

3.42 A few respondents identified further texts which they considered could inform the Guidance:

- McKee, A. and Roberts, D. 2016. ‘Good practice in overcoming barriers to community land-based activities’. Report for the Scottish Government, June 2016. Published online: <http://www.gov.scot/Publications/2016/07/7298>
- Good Practice Guide to Public Engagement in Development Schemes. Planning Aid Scotland. <http://www.rtpi.org.uk/media/6312/Good-Practice-Guide-to-Public-Engagement-in-Development-Scheme-High-Res.pdf>
- United Nations Guiding Principles on Business and Human Rights.

## 4. Views on the Draft Guidance: Sections

4.1 The draft Guidance is in Annex 2. The consultation sought views on each section of the Guidance.

### **Question 5: Have we identified appropriate uses for the Guidance in section 1 of the draft Guidance? Please explain your answer.**

4.2 22 (51%) respondents, representing all sectors, answered the closed aspect of this question, with 18 agreeing that appropriate uses for the Guidance are identified in section 1 of the draft Guidance, and four respondents (two community organisations and two NDPBs) disagreeing. 25 (58%) respondents answered the open aspect of the question.

4.3 Six respondents, across several sectors, considered this section to be relatively lightweight and open to interpretation and requiring further clarity and definition.

4.4 Four respondents requested more detail specifically on what constituted “opportunities” at the end of paragraph 1. Two suggested that the inclusion of examples could promote better understanding.

4.5 The second sentence of paragraph 1 was highlighted as lacking in clarity, with a suggestion for alternative text:

“The guidance is for all land owners and managers, including private, public, third sector organisations or individuals, when taking decisions which could impact on a neighbouring community” (Highlands and Islands Enterprise).

4.6 A community organisation and a NNGO remarked that there may be instances where communities are not on neighbouring land but sit wholly within the boundaries of an owner’s land, and this should be acknowledged.

4.7 A NNGO and an individual suggested that the distinction between statutory consultation and engagement should be made clearer in this section.

4.8 Many respondents, across a range of sectors, referred to their earlier comments relating to the proposed scope of the Guidance (e.g. in relation to decisions and involvement in longer term planning; definition of community; inclusion of existing or historic decisions; meaning of “significant” impact; voluntary status of the Guidance; and more emphasis on communities initiating engagement).

### **Question 6: Have we identified appropriate reasons for why community engagement should take place in section 2 of the draft Guidance? Please explain your answer.**

4.9 22 (51%) respondents, representing all sectors, answered the closed aspect of this question, with 20 agreeing that appropriate reasons for why community

engagement should take place are identified in section 2 of the draft Guidance, and two respondents (community organisation and a NNGO) disagreeing. 28 (65%) respondents answered the open aspect of the question.

4.10 The most frequently occurring comment was that the bulleted paragraph on the benefits of community engagement should be strengthened and “brought to life” by adding further positive and negative impacts of community engagement; adding a chart or diagram; or providing case studies.

4.11 Several respondents suggested that the section should provide more explicit links to broader contexts of relevance such as the Scottish Land Rights and Responsibilities Statement; Land Use Strategy; National Standards for Community Engagement; best practice principles of the Aarhus Convention; the consideration for Ministers under section 44(2) of the Act; and sustainable development goals.

4.12 Five respondents, across three different sectors, sought clarification that the reference to people who “spend time in the area” in paragraph 2, should not result in tourists outnumbering and overriding the interests of local people in decision-making on land.

4.13 Five respondents, three of them NNGOs, acknowledged the relationship of the Guidance to the Scottish Government’s National Outcomes but questioned whether this should be outlined so explicitly in a “public-facing” document. In contrast, one community organisation welcomed the inclusion of this element in section 2.

4.14 Three respondents, two of them NNGOs, called for the section to make clear that local land owners and managers are part of the local community too, with shared buy-in to issues over local land and buildings.

4.15 A community organisation and a local authority suggested that the role which communities are expected to play in engagement should be set out more clearly.

### **Question 7: Have we identified appropriate best practice principles in section 3 of the draft Guidance? Please explain your answer.**

4.16 20 (47%) respondents, representing all sectors, answered the closed aspect of this question, with 17 agreeing that appropriate best practice principles are identified in section 3 of the draft Guidance, and three respondents (community organisation, a NNGO and a local authority) disagreeing. 26 (60%) respondents answered the open aspect of this question.

#### **General comments**

4.17 A few respondents welcomed section 3 as easy to understand; appropriate; and balanced.

4.18 Five respondents from a range of sectors cautioned that further resources will be required to support communities, land owners and managers in building their

capacity for engagement, and ensuring engagement is effective (for example, by deploying skilled external facilitators).

4.19 Four respondents from a range of sectors suggested that this section should acknowledge the importance of engaging with local organisations which have a democratic base or legitimacy. Examples given included Community Councils; local Development Trusts; and Community Associations.

4.20 Two NDPBs and one private company considered that reference should be made to the National Standards of Community Engagement in this section; the Scottish Human Rights Commission recommended that the relevant parts of the Maastricht Recommendations on Promoting Effective Participation in Decision-Making in Environmental Matters be referenced in this section of the draft Guidance.

4.21 Several respondents referred to the need for transparency in decision-making to be made explicit. One local authority suggested that an emphasis should be placed on maintaining appropriate records (e.g. numbers attending meetings; dates; etc), for use as evidence in any subsequent decisions; a community organisation considered that an open review should be specified following engagement, to assess what has been achieved and the challenges faced.

### **Views on the introductory paragraph of section 3**

4.22 Five respondents (three of them NNGOs) were of the view that, rather than what they perceived to be an emphasis on land owners and land managers choosing the means of engagement, the National Standards for Community Engagement should be adhered to, with owners and managers seeking endorsement of the method of engagement from key community institutions, prior to engagement.

4.23 One NNGO sought more guidance on what “most appropriate” means in this context, so as to avoid confusion or discontentment over the approach taken.

### **Views on the paragraph headed “Proportionate”**

4.24 One private company welcomed the “holistic” approach to understanding impact.

4.25 An academic and an individual shared the view that, as drafted, the onus is on the land owner or land manager to assess whether engagement is necessary, whereas they may not have a full understanding of the impact of the land management decision on local communities, and cannot therefore assess whether engagement is proportionate to this.

### **Views on the paragraph headed “Collaborative”**

4.26 There was a general sense amongst those who commented that this paragraph presented a “top down” engagement approach, rather than one based on co-production. One community organisation suggested that the involvement of

an “honest broker” or facilitator to support engagement should be highlighted; another welcomed the reference to “two-directional” communication.

4.27 The Scottish Human Rights Association considered that a human rights-based approach would strengthen this section, for example, outlining that the engagement process will be developed alongside communities; communities will be clear at the start on their scope of influence; and time will be allocated to building trust. They also noted that providing a variety of forms of communication would most likely boost engagement levels.

4.28 Two NNGOs suggested that adding a bullet point relating to inclusive engagement could be helpful, to ensure engagement is not centred on the vocal minority.

### **Views on the paragraph headed “On-going”**

4.29 Three respondents, including two NNGOs and a community organisation, considered it unrealistic to expect blanket, on-going communication and updates, suggesting instead that this section be viewed alongside that headed “Proportionate” and both be regarded as “Outcome sharing”.

4.30 The Crown Estate Scotland called for this section to be expanded to reference the value of establishing relationships and lines of communication with local communities as part of the general stewardship duties of responsible land owners/managers, arguing that this should make engagement about specific significant decisions easier.

### **Question 8: Have we identified appropriate solutions for when engagement should or should not take place in section 4 of the draft Guidance? Please explain your answer.**

4.31 24 (56%) respondents answered the closed aspect of this question; 30 (70%) answered the open aspect. Of the 24, 16 stated that they agreed that appropriate solutions for when engagement should or should not take place had been identified in section 4 of the draft Guidance; eight respondents disagreed. Table 4.1 overleaf summarises views by category of respondent.

### **General views**

4.32 A few respondents, across a range of sectors, welcomed the flow chart in this section as helpful in distinguishing between routine engagement; statutory engagement; non-statutory engagement; and supplementary engagement.

4.33 Overarching comments referred repeatedly to the need for greater clarity on the circumstances in which engagement should take place, and the form this should take, particularly where low-level, informal engagement is appropriate. Many respondents called for illustrative examples to enhance clarity.

## Specific views

4.34 Ten respondents across a range of sectors considered that a clearer definition of “significant impact” is required, particularly as a judgement on this is the trigger for engagement. Previous comments regarding cumulative impacts over time and lack of awareness of land owners and managers on local impact were repeated, with calls made for decisions on impact to be informed by the local community. A few respondents considered that the section under-played the impact which routine activities may have.

**Table 4.1 Views on whether appropriate solutions for engagement have been identified in section 4 of the draft Guidance**

Category	Agree	Disagree	No. of respondents providing a view
NNGOs	4	2	6
Private Sector and Professional Bodies	3	1	4
Community Organisations and their Representative Bodies	4	3	7
NDPBs	1	1	2
Local Authorities	2	0	2
Academic	1	0	1
<b>Total Organisations</b>	<b>15</b>	<b>7</b>	<b>22</b>
<b>Total Individuals</b>	<b>1</b>	<b>1</b>	<b>2</b>
<b>Grand total</b>	<b>16</b>	<b>8</b>	<b>24</b>

4.35 Other specific views included:

- Community-initiated engagement has been omitted (3 mentions).
- No mention made of communities of interest (2 mentions).
- Greater clarity required on whether there is a statutory requirement for engagement (2 mentions).
- Missing is a sense of on-going engagement and good relations between land owners/managers and the community (2 mentions).
- The flow-chart would benefit from using different fonts to emphasise key topics (2 mentions).
- Should be reference to timescales and allowing sufficient time for appropriate engagement (1 mention).

- Could be a need for confidentiality, including commercial confidentiality, and this should be reflected in this section (1 mention).
- The first box should differentiate between specific decision-making and broader policy planning (1 mention).
- Language should be consistent: there is reference to “potential” significant impact in the “Carry out Engagement” box, but just “significant impact” elsewhere (1 mention).
- The flow-chart is text-heavy and could be more concise (1 mention).
- What is the significance of the solid-line and the broken-line boxes (1 mention)?
- The text-box could be improved aesthetically (1 mention).
- An on-line version of the flow-chart could include hyperlinks to relevant legislation and guidance (1 mention).
- The flow-chart could be improved by adding an initial question on whether community development has already taken place (e.g. through the development planning process) or whether there are existing measures for community engagement that will be followed before a decision is made (e.g. through the planning application process) (1 mention).

**Question 9: Have we identified appropriate methods for engaging with communities in section 5 of the draft Guidance? Please explain your answer.**

4.36 19 (44%) respondents answered the closed aspect of this question, and 31 (72%) answered the open part. Of the 19 respondents, 15 considered that the appropriate methods for engaging with communities have been identified in section 5 of the draft Guidance; four respondents (two community organisations, one NNGO and one professional body) disagreed.

**General views**

4.37 A few respondents welcomed section 5 as being useful, clear and informative; helpful and well thought out; providing examples which help to clarify when to engage and the scale of engagement. One NNGO perceived the table to be a good starting point which could be amended over time, informed by experiences.

4.38 A few respondents from different sectors were appreciative of what they perceived to be the lack of prescription, with a useful balance struck between providing a guiding framework, but not over-specifying approaches. However, one NDPB and one NNGO cautioned that there was potentially too much room for subjectivity and different interpretations of some terms.

4.39 Three respondents from different sectors shared the view that section 5 related largely to informing, communication and consultation, rather than engagement. One community organisation described their perception of a “one-way process” rather than one focused on listening to the community.

4.40 A NNGO considered that co-design as a key aspect of engagement is missing from the table.

4.41 The “How to engage” column attracted most comment, with respondents divided between those who advocated more detail on methods, and those who welcomed the broad outline presented, albeit strengthened with links to further support and methods. A few respondents specified the National Standards for Community Engagement as an appropriate key link. Three NNGOs were of the view that whilst there are clearly other methods which could be included in the final column, overriding factors are the capacity, financial and otherwise, of land owners/managers and communities to engage.

4.42 Two community organisations suggested that more could be made of online engagement, taking into consideration local broadband and mobile signal availability and also the format of documents posted online, in terms of suitability for sending and accessing.

4.43 Several suggestions were made for adding to the table and/or guidance:

- Recognition of the time dimension in terms of ensuring time is scheduled for forward planning, co-design and collaborative working (James Hutton Institute and an individual).
- Recognition of the time dimension in terms of when to engage, to ensure it is meaningful and not perceived as a “tick box” exercise (James Hutton Institute and an individual).
- The process of all parties agreeing in advance the timetable and the format of engagement needs to be recognised as a key stage (Community organisation).
- The recognition of the distinction between short-term disruption and longer-term activities, presented in the table should be introduced earlier in the Guidance (NDPB).
- The distinction between “significant decisions” requiring informal engagement and “very significant decisions” requiring formal engagement appears for the first time in the table and should be introduced earlier in the Guidance (Professional body).
- Guidance on engagement for borderline cases/activities falling into both “informal” and “formal” engagement categories is required (NNGO).
- Need to include reference to recording the results of engagement (NNGO).

#### **Specific views on Good Neighbour row**

4.44 One respondent (NDPB) commented that the concept of “good neighbour” had not been referred to earlier in the draft Guidance, and should perhaps be replaced with the heading “No requirement to engage”, with the good neighbour concept introduced in the “How to engage” column.

#### **Specific views on Informal Engagement row**

4.45 Two respondents (NNGO and a Professional body) considered that, rather than informal engagement, this row referred largely to informing and perhaps could be re-titled as such.

4.46 A NDPB suggested that the row should be more explicit in referring to “temporary” impacts.

4.47 One community organisation suggested the inclusion of public meetings in the “How to engage” column.

### **Specific views on Formal Engagement row**

4.48 Two community organisations and one NNGO considered that the decision not to make a change in response to a community request should be included in the “Description” column.

4.49 A community organisation suggested the insertion of “new or expanded to existing” prior to the third bullet under “Description” column.

4.50 A NNGO called for examples of what could be termed disruptive activities, and what is day-to-day activity, in relation to farming, forestry and estate management.

4.51 A community organisation requested the insertion of “or around” before “a community is controlled” under the “Examples” column, second bullet.

4.52 One NNGO considered that second bullet in the “Examples” column to be ambiguous and questioned whether the day-to-day estate management by a land owner or manager holding a significant proportion of land always required formal engagement, or whether this applied only when there was significant change?

4.53 A community organisation recommended that use of online/social media be included in the column “How to engage”, with the likelihood of large/controversial developments having their own website, kept up-to-date as proposals are refined, and posting recordings of meetings and presentations for those unable to attend in person.

### **Question 10: Have we identified appropriate ways of identifying who to engage with in section 6 of the draft Guidance? Please explain your answer.**

4.54 20 (47%) respondents answered the closed aspect of this question, and 30 (70%) answered the open part. Of the 20 respondents, 14 considered that appropriate ways of identifying who to engage with have been identified in section 6 of the draft Guidance; six respondents (four community organisations, one NNGO and one private company) disagreed.

4.55 There was a general acknowledgement that ensuring that the correct people are identified and engaged with by land owners and managers, can be challenging. Representativeness of those engaged with was highlighted as a particular issue,

with more guidance sought on how to handle competing views amongst communities.

4.56 A few respondents suggested linking the section to the National Standards for Community Engagement; others considered that land owners and managers may need more formal training and external support to ensure effective engagement.

4.57 A NDPB and an individual were of the view that the section required a greater level of detail, possibly including case studies as examples of well-targeted engagement with positive outcomes.

4.58 Four respondents (three NNGOs and the James Hutton Institute) considered that the section could be stronger on engaging “hard to reach” sectors of the community:

“We are concerned that those communities, groups and individuals least able to engage (particularly in areas of multiple deprivation) can often be those most impacted by decisions in relation to land – it is important that this is taken into account as part of the finalised Guidance” (Keep Scotland Beautiful).

4.59 Five respondents, including community organisations and NNGOs, repeated their view that communities of interest should be engaged with, as appropriate, in addition to local communities.

4.60 Several respondents agreed that local community organisations with a democratic base and legitimacy, such as Community Councils, could provide direction as to who to engage with. However, a Professional Body and an individual considered that, on occasion, the Community Council may not be best placed to advise; local authorities and others may offer better guidance.

4.61 An emerging theme was that time should be allocated to establishing who to engage with, using approaches such as participatory methods; networking; getting advice e.g. Maastricht Recommendations<sup>8</sup>; researching, using websites such as the Office of the Scottish Charity Regulator for details of charitable organisations including community bodies; asking NNGOs who may have local groups in the area; and seeking advice in schools and places of worship.

4.62 Two NNGOs highlighted that Charitable Trusts may be bound by their own Guidance as to who they need to engage with.

4.63 One NNGO commented that other factors such as the capacity of communities to engage, when they potentially could be dealing with many different engagement exercises, could influence whether engagement with them will be possible.

4.64 The statement, “It is not always necessary to engage everybody within a community”, attracted concern from a range of respondents, that this opened up possibilities of selective engagement or “cherry picking” who to engage with:

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<sup>8</sup> [https://www.unece.org/fileadmin/DAM/env/pp/Publications/2015/1514364\\_E\\_web.pdf](https://www.unece.org/fileadmin/DAM/env/pp/Publications/2015/1514364_E_web.pdf)

“While we understand that the intention here is good, and that it will never be possible to engage every individual within a community, this sentence gives too much leeway to landowners in terms of who they engage” (Scottish Council for Voluntary Organisations).

## 5. Views on the Draft Guidance: General

**Question 11: Considering the draft Guidance as a whole, do you agree that it has proportionate and reasonable expectations of land owners, land managers and communities. How could we improve the Guidance in this respect?**

5.1 21 (49%) respondents answered the closed aspect of this question, and 29 (67%) answered the open part. Of the 21 respondents, 16 considered that the draft Guidance as a whole has proportionate and reasonable expectations of land owners, land managers and communities. Five respondents (two community organisations, one individual, one local authority and one private company) disagreed.

5.2 Several respondents commented that whilst they acknowledged the intentions of the draft Guidance to establish a reasonable and proportionate framework for engagement, the document required further definition and clarity in places to ensure the intentions are explicit and all parties have appropriate expectations.

5.3 Four respondents from different sectors advocated the inclusion of case studies to provide a clear picture of when engagement should take place and the level and nature of this in different circumstances. Four respondents from across three sectors suggested that references and links to training and guidance material could help land owners/managers and communities in ensuring proportionality and effectiveness in engagement.

5.4 Areas identified for further clarity in the draft Guidance, which respondents considered would impact on proportionality were:

- What is meant by “significant impact”.
- When supplementary engagement is appropriate.

5.5 Two respondents called for more emphasis on engagement at the planning stages (NDPB); and how best practice in community engagement can be demonstrated (James Hutton Institute).

5.6 Referring specifically to land owners and managers, it was suggested that the scale of engagement could be managed better if owners and managers were encouraged to collaborate with each other in their engagement with local communities (NDPB); and if Guidance is available to support them on how to respond to requests from communities (NDPB).

5.7 Referring specifically to communities, improvements emerged from six respondents across a range of sectors:

- More emphasis and clarity are required on communities being able to instigate engagement.

- More emphasis is needed on what are reasonable expectations for communities.
- Greater consideration should be given to imbalances in engagement capacity, expertise and financial constraints between land owners/managers and communities.

5.8 Several respondents made suggestions for additional content to the Guidance which they considered would contribute to ensuring expectations are proportionate and reasonable:

- Information on how to manage disagreement and tension.
- One community organisation suggested the Guidance recognises the particular challenges faced in remote and rural areas, and potential challenges associated with engaging with people with disabilities.
- Two respondents (NDPB and NNGO) recommended more explicit guidance for managers in managing community expectations. They remarked that this had been referred to in the consultation document but not carried through to the draft Guidance.

**Question 12: In relation to Part 5 of the Land Reform (Scotland) Act 2016, we consider the Guidance should contain sufficient certainty so that land owners and land managers can demonstrate that they are fulfilling the expectations of the Guidance, or so that communities can demonstrate that this is not the case. This must be balanced against being overly prescriptive and failing to account for the specific local contexts in which the decision is taken.**

**Do you agree that, as a whole, the draft Guidance balances these concerns? How could we improve the Guidance in this respect?**

5.9 22 (51%) respondents answered the closed aspect of this question. Of these, 12 stated that they agreed that, as a whole, the draft Guidance balances the need to provide sufficient certainty whilst allowing for local contexts; ten respondents disagreed. Table 5.1 overleaf summarises views by category of respondent. Whilst six of the seven community organisations who provided a view agreed that a balance has been achieved by the draft Guidance, in contrast, four of the five NNGOs did not agree.

**Table 5.1 Views on whether the draft Guidance balances providing certainty with allowing for local contexts**

Category	Agree	Disagree	No. of respondents providing a view
NNGOs	1	4	5
Private Sector and Professional Bodies	1	1	2
Community Organisations and their Representative Bodies	6	1	7
NDPBs	1	2	3
Local Authorities	1	1	2
Academic	1	0	1
<b>Total Organisations</b>	<b>11</b>	<b>9</b>	<b>20</b>
<b>Total Individuals</b>	<b>1</b>	<b>1</b>	<b>2</b>
<b>Grand total</b>	<b>12</b>	<b>10</b>	<b>22</b>

5.10 29 (67%) respondents answered the open part of the question. Three main themes emerged from their responses:

- The lack of specificity required to accommodate different local contexts can be supported with case studies and other relevant further guidance which can be accessed, as appropriate, to provide further steer. (6 mentions)
- The Guidance will require details of how to record engagement practice, evidence of engagement, and any concerns regarding inadequate engagement, in order to be able to hold those responsible to account for any failure to fulfil expectations. (6 mentions)

“More detailed guidance on recording engagement and outcomes of engagement would be beneficial. We have many examples where community groups and land managers have met but have then a different recollection of what was discussed and in some circumstances the parties have been unable to agree on the minute of the discussion. This is not conducive to effective on-going engagement. Support on this issue is required for communities as well as land managers” (Scottish Land and Estates).

- Details are required of who will monitor engagement performance; in what timescale; and what redress will be forthcoming if shortcomings are identified. (5 mentions)

5.11 A few NNGOs considered that the draft Guidance was not sufficiently clear on when land owners and managers should engage with communities; a few respondents from different sectors suggested that subjectivity around terms such as “community” and “significant impact” hindered establishing certainty, and meanings should be clearer before “sufficient certainty” can be achieved.

**Question 13: In the final published Guidance we would like to include examples of when engagement should be carried out. Can you provide examples of situations in which you think that engagement either is, or is not, necessary?**

5.12 Nine (21%) respondents provided examples in response to this question. A few other respondents agreed on the importance of including examples.

5.13 The James Hutton Institute re-iterated their view that on-going communication between land owners/managers and communities should underpin all decisions relating to land, and therefore there are no situations where engagement is not necessary.

**Suggestions for examples of when formal engagement is necessary**

5.14 Two respondents (a community organisation and a NDPB) provided the following suggestions for when formal engagement is necessary:

- Significant changes to a landscape that will impact upon people.
- Changes of use from sports facilities to agricultural use.
- Major impacts on access.
- The proposed closure or relocation of an island business where the business activity helps to sustain a regular ferry service.
- The development of long-term strategic land management plans that will drive and inform future land use activities in later years.
- Proposed closure of a visitor attraction or amenity that will affect future visitor numbers and consequently will impact on local jobs and supply chain.

5.15 One local authority highlighted strategic asset reviews being undertaken, which might present future issues concerning land use or transactions.

**Suggestions for examples of when informal engagement is necessary**

5.16 A NDPB respondent provided the following suggestions for when informal engagement is necessary:

- The temporary closing of footpaths or access routes to enable another activity to take place.
- Short-term disruptive activities that will not constitute an unreasonable impact on the community, such as large or high-volume deliveries, on-going noise arising from land management or building work operations, light pollution arising from temporary floodlights or security lights.

- The installation of bollards or other restrictions to prevent vehicular access or parking on private land.

### Suggestions for examples of when no engagement is necessary

5.17 Four respondents across three different sectors provided suggestions for when no engagement is necessary:

- Anything which is at an individual business or household level which doesn't impact upon the community.
- Where there is not much impact from a change or no real change.
- The sale of a residential property or business unit.
- Regular and routine land management operations and activities such as ploughing, crop harvesting, low impact tree-thinning or sporting activity.
- Repairs, maintenance or building work that will not impact on neighbouring properties or the local community.
- From an historic house point of view, changes to opening hours/days of historic properties or timings of normal business activity.
- Any changes to terms of residential, commercial or agricultural tenancies.

### Example of when there could be a case for and against engagement

5.18 One community organisation provided an example which they considered could have a case for engagement argued for or against: impact of crops such as oil-seed rape which could have a detrimental impact on some people's health.

### Examples of previous engagement

5.19 Two respondents provided examples of effective previous engagement:

**Tomintoul & Glenlivet Regeneration Project (2016 SURF Award Winner, Community Led Regeneration Category):** This wide-ranging initiative supported the socio-economic recovery of the remote Moray town of Tomintoul. The local Development Trust engaged widely with more than 300 local resident members and other stakeholders to take the local youth hostel, visitor information centre and museum into community ownership, and to establish new footpaths and mountain bike trails to enhance local tourism.

**Laurieston's 'Open Spaces' – 2015 SURF Award Winner, Creative Regeneration Category:** This initiative complemented a new housing development in south Glasgow by giving local arts and community groups the opportunity to make use of a diverse set of buildings and public spaces in the area, including railway arches, an Alexander 'Greek' Thomson church, and an adaptable open space on the site of a former high-rise building.

**Stromness Townscape Heritage Initiative – 2013 SURF Award Winner, Town Centre Regeneration Category:** Planned investments in the Orkney town's built environment were improved by an extensive consultation exercise, which engaged businesses, residents, schools, the local college, and a number of third sector

groups. The project's legacy is an attractive and successful town centre, with more than 50 restored properties and vacant buildings brought back into use for a wide range of social and economic purposes.

**The National Trust for Scotland's Mar Lodge Estate:** The estate extends over 29,000 hectares, and the Trust engages regularly with the community as the estate has a significant economic and social impact on the local community and, has the potential to deliver even greater benefits for the Braemar area. There is an obvious mutual dependency. Open, honest engagement provides a host of opportunities for Mar Lodge Estate to consult interested parties about its ambitions and plans, as well as to update the community on progress and any initiatives being undertaken, such as in woodland restoration.

Actions currently undertaken to better engage with the community include meeting with the Braemar Community Council and neighbouring estates, publicised open days to encourage the involvement of the community and volunteering in estate management, regular newsletters providing updates on the work of the estate and contributions to the local community newsletter, the Braemar Buzzard.

**St Kilda:** The archipelago of St Kilda, the remotest part of the British Isles, lies 41 miles (66 kilometres) west of Benbecula in Scotland's Outer Hebrides and its exceptional cliffs and sea stacks form the most important seabird breeding station in north-west Europe as well as being of huge cultural importance to Scotland. Due to this, the Trust implements a policy of minimal intervention which can take the form of recording, consolidation and at times repair of the relict structures. Little if any management of the natural heritage is undertaken, natural processes normally being allowed to take their course without intervention, unless they threaten an element considered to be of greater heritage significance.

The National Trust for Scotland cares for St Kilda, however it is not the only organisation with an interest in how the islands are managed. As a dual World Heritage Site; as an integral part of the Western Isles, its culture, identity and economy; and as the site of a unique test and evaluation facility for the Ministry of Defence, collaborative working and engagement is crucial to its on-going conservation. Though there is no immediately resident community, the Trust produces a five-year plan after consultation with interested parties, including communities of place and communities of interest.

## Question 14: Do you have any other comments?

5.20 23 (53%) respondents had further comments. Their comments can be grouped under the following themes:

**Additional support is available.** Several respondents, across a range of sectors, referred to further sources of support for land owners, managers and communities, in undertaking engagement. Included were: tools in the VOICE ([www.voicescotland.org.uk](http://www.voicescotland.org.uk)); the "Working Together for Sustainable Estate

Communities”<sup>9</sup> booklet; the Land Reform (Scotland) Act 2016 information and links to wider human rights, principles and standards; the Place Standard tool (<https://placestandard.scot/>); and local Third Sector Interfaces (TSIs). A few NNGOs suggested that over time, local videos and case studies could be shared as further illustration and support. A local authority suggested that land owners/managers and communities may need their local authority, or another independent public body, to facilitate engagement where they need help working towards a consensus.

**Greater specificity and definition is required**, particularly if there is any link made between failure to engage and communities’ application of the Land Reform Act 2016 in relation to Right to Buy. Actions will require to stand up to legal challenge and the Guidance will therefore need to be explicit on who should consult, on what issues and in what manner. A few respondents highlighted areas which they considered required greater clarity: the inclusion of urban as well as rural land and buildings; communities of interest as well as those of geography; the option of communities instigating engagement; the situation regarding charities, whose legal obligation of trustees is to act in the interests of the charity, which could create tension, in some cases, between the wishes of the local community and the purpose of the charity.

**Relationship with wider land and planning policy.** A few respondents emphasised their view that engagement with communities should supplement wider land policies, rather than provide an alternative. The need to achieve greater diversity in ownership of land was highlighted as fundamental, with engagement with communities standing alongside this. A professional body recommended that a co-ordinated approach be adopted, with the Scottish Government considering how the Guidance relating to land use decisions that sit outwith the planning system can be developed to fit with the suite of statutory consultation and engagement that already exists in relation to land use.

**Promotion of the Guidance.** Two respondents (LA and NNGO) considered that promotion of the Guidance will be important in raising awareness and influence, and this will require careful planning.

5.20 Other relevant comments made were:

- The Guidance should promote transparency in practices. Greater involvement of communities in land use decisions will depend on improving transparency and accountability of information about how these decisions are made (Professional body).
- A framework for monitoring and evaluating the Guidance should be put in place (NNGO and LA).
- The Guidance should not be made compulsory by, for example, enshrining it in pre-application planning procedures. The possibility of this should be addressed by the Scottish Government in the final version of the Guidance.

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<sup>9</sup> <https://www.perth.uhi.ac.uk/subject-areas/centre-for-mountain-studies/courses/documents/working-together-for-sustainable-estate-communities>

- There is potential for watchdogs or enforcers to emerge and the implications of this should be considered (Private company).

## 6. Impact Assessment

### Equality

The Scottish Government is committed to promoting equality and removing or minimising disadvantage which may be experienced by different groups of people. The Scottish Government has a legal duty to consider the impact of policies on people who may be differently affected in relation to the “protected characteristics” under the Equality Act 2010<sup>10</sup>. The protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

**Question 15: Please tell us about any potential impacts, either positive or negative, that you consider the proposals in this consultation may have on people who may be differently affected in relation to the protected characteristics.**

6.1 Five respondents made substantive comments in response to this question.

6.2 There was acknowledgement of the potential for people with disabilities and older people in particular to be excluded from some forms of engagement due to access challenges. However, it was noted that the draft Guidance refers to the need to use a range of methods of engagement and accessible meeting venues, with one professional body suggesting a balance should be struck between land owners/managers being able to demonstrate they have made an effort to engage in an accessible manner, without being placed under undue burden to ensure access.

6.3 A few respondents considered that the Guidance should be more explicit in stating that inclusive principles for engagement should be followed. A NDPB referred to the examples of how to accommodate a range of support needs in the National Standards for Community Engagement as providing relevant information.

### Business and regulation

The Guidance on engaging communities on decisions relating to land is advisory, and will not directly impose new regulatory burdens on businesses, charities or the voluntary sector.

**Question 16: Please tell us about any potential impacts, either positive or negative, costs and burdens that you think may arise as a result of the proposals within this consultation.**

6.4 Seven respondents answered the question with substantive, relevant comments. Most commonly they suggested that there will be additional costs to the land owners/managers and to communities, associated with engagement activities.

<sup>10</sup> <http://www.legislation.gov.uk/ukpga/2010/15/contents>

A few respondents suggested that the impact of additional costs to land owners/managers will depend on the size of their business, with costs not envisaged as overly onerous, unless the business is small.

6.5 A local authority cautioned that money could be wasted where views are not taken on board following engagement, and this is not adequately explained. A professional body suggested that money could be saved by early engagement and fostering of on-going good relationships between land owner/manager and communities.

6.6 A private company expressed concern that investors may be deterred from investing in Scotland due to what they perceived to be the increased financial burden on land owners.

### **Environmental**

The Environmental Assessment (Scotland) Act 2005<sup>11</sup> ensures those public plans that are likely to have a significant impact on the environment are assessed and measures to prevent or reduce adverse impacts are sought, where possible, prior to implementation of the plan in question.

### **Question 17: Please tell us about any potential environmental impacts, either positive or negative, that you consider any of the proposals in this consultation may have.**

6.7 Eight respondents answered this question with substantive, relevant comments.

6.8 There was general agreement that the proposals had the potential to impact positively on the environment, by raising awareness of environmental issues and enabling different stakeholders to understand different perspectives.

6.9 An Academic and a local authority suggested that environmental impacts may emerge where local community views and opposition to various proposals create outcomes such as greater use of green and brownfield sites for economic and housing development; decreased game management; heightened sensitivity to perceived impacts of windfarms; and so on.

### **Privacy**

The Scottish Government is mindful that proposals which require people to share information are likely to have impacts in respect of privacy. The Guidance on engaging communities on decisions relating to land is voluntary, and will not directly require any individual or organisation to disclose personal or commercially sensitive information if they are not content to do so.

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<sup>11</sup> <http://www.legislation.gov.uk/asp/2005/15/contents>

**Question 18: Please tell us about any potential impacts on privacy, either positive or negative, that you consider may arise as a result of the Guidance. Please be as specific as possible.**

6.10 Two respondents considered that there may be negative impacts on privacy as a result of the Guidance.

6.11 A private company suggested that there may be a negative impact on the privacy of land owners if they are required to disclose commercially sensitive proposals.

6.12 A local authority considered that some people may be reluctant to be involved with local issues/neighbourhood debates, particularly where people are in tenanted farms or properties, or the like. In addition, they suggested that the land owner may be reluctant to raise issues if there is likely to be a local backlash.

# Annex 1: Respondents to the Consultation

## **Academics = 1**

The James Hutton Institute

## **Community Organisations and their Representative Bodies = 8**

Central Scotland Green Network Trust

Community Land Scotland

Community Woodlands Association

Falkland Estate Trust

Newcastleton & District Community Trust

North East Mountain Trust

Scottish Borders Community Development Company (t/a The Bridge)

Woodland Trust Scotland

## **Government and NDPBs = 5**

Crown Estate Scotland

Highlands and Islands Enterprise

Historic Environment Scotland

Scottish Land Commission

Scottish Natural Heritage

## **Local Authorities = 3**

Community Greenspace, Environmental Services Department, Perth & Kinross Council

Falkirk Council

Highland Council

## **National Non-Governmental Organisations = 14**

Association of Deer Management Groups

Built Environment Forum Scotland

Historic Houses Association Scotland

John Muir Trust

Keep Scotland Beautiful

National Farmers' Union Scotland

Office of the Scottish Charity Regulator

Planning Aid for Scotland

Scottish Council of Voluntary Organisations

Scottish Human Rights Commission

Scottish Land & Estates

SURF – Scotland's Regeneration Forum

Scottish Rural Action

The National Trust for Scotland

## **Private Sector and Professional Bodies = 9**

Ardtornish Estate Company

Buccleuch Estates

Chartered Institute of Housing Scotland

Homes for Scotland

Law Society of Scotland

Pinsent Masons LLP

Royal Institution of Chartered Surveyors

Royal Town Planning Institute Scotland

Scottish Property Federation

**Individuals = 3**



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