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Community Empowerment and Common Good Property: Analysis of Responses to the Consultation on Draft Guidance



PUBLIC SERVICES AND GOVERNMENT



Community Empowerment and Common Good Property: Analysis of Responses to the Consultation on Draft Guidance

Scottish Government Social Research
November 2017

Contents

Executive summary	1
1 Introduction	5
2 Common Good registers	6
3 Identifying and contacting community bodies	10
4 Dealing with Representations	12
5 Publishing the Common Good register	13
6 Consultation when planning to dispose or change the use of Common Good property	15
7 Consulting the Community	16
8 Additional Comments	20
Annex 1: Consultation respondents	22

Executive summary

Introduction

1. Between 30 June and 29 September 2017, the Scottish Government undertook a public consultation¹ on statutory guidance for local authorities on how to fulfil the requirements of Part 8 of the Community Empowerment (Scotland) Act 2015 in relation to Common Good property². Part 8 places new duties on local authorities in relation to Common Good property. The consultation asked for views on issues such as timescales, information about assets, local consultation and publicising proposals. This report presents an analysis of the responses.

2. The consultation received 44 submissions. Most of the responses (33) were submitted by organisational respondents; 11 were from individuals. Organisational respondents comprised 13 Community Councils, 12 local authorities and 8 other organisations.

3. Note that in consultations such as this, respondents are self-selecting and, therefore, the views expressed cannot be taken to be indicative of wider opinion.

Key Findings

Views on publicising information and contacting community bodies/members

4. Several of the consultation questions were about where to publicise information and how to get in contact with community bodies and community members and make sure that, as much as possible, relevant stakeholders are made aware of the register, representations, responses and proposals to give them a chance to comment and respond.

- Q1 - Where or how else should the draft register be published as a minimum requirement?
- Q4 - What, if any, further ways should local authorities use to identify and contact relevant community bodies?
- Q9 - Where or how else, should details of a proposed disposal or change of use be published as a minimum requirement?

5. There were many similarities in the responses across this range of questions and, although a few respondents were generally content with the recommendations set out in the draft guidance, many suggestions were offered for places to publicise and methods to contact including advertising:

- in all libraries (including mobile vans) with information, be it register or proposals, to be made available in paper format
- at central and local Council offices

¹ Scottish Government (2017) [Community Empowerment and Common Good Property: Consultation on Draft Guidance](#)

² Common Good property is owned by local authorities and has been passed down, through local government reorganisation, from former burghs.

- at sports centres, job centres, community centres, churches and schools, local supermarket, local garage
- via social media; local newspapers and via local news groups
- at the Registers of Scotland (land and property only) and in GIS format

6. Other suggestions included:

- to actively send out information, primarily to Community Councils; burgh Councils and Parishes; and all council tax payers.
- to use Community Councils to help identify relevant groups to contact, but also use other relevant networks and officials e.g. Children and Families services; Development Trusts; local councillors; local ward/neighbourhood/community worker posts
- to put on a programme of events and local meetings

7. The range of methods was intended to assist those who may not have access to or be comfortable using computers; those who may find travel difficult, such as those in rural areas, and to ensure awareness amongst those who may not engage with any specific community group.

Views on timescales for the different processes

8. A second key theme in the consultation was asking about views on the suggested amount of time recommended for a range of processes associated with generating the Common Good register and dealing with Common Good items on the register. These were:

- Q2 – What are your views on eight weeks for people to comment on the draft list of Common Good property?
- Q5 – What are your views on eight weeks for the local authority to investigate representations in respect of the register?
- Q6 – What are your views on the timescale for publishing the Common Good register? (as soon as is practicable after the initial eight week consultation period has ended and within six months)
- Q10 – What are your views on 20 days for people to make a representation on a proposed change or disposal of a Common Good asset?
- Q11 – What are your views on 20 days for local authorities to respond to representations on a proposed change or disposal of a Common Good asset?

9. Although these questions were referring to different processes, the themes raised again were very similar across the questions, especially when taking account of whether the question was asking about time for people to respond or time for local authorities to act or respond.

Time for people to respond

10. For Q2, whilst many respondents felt the timescale of eight weeks was about right for people to comment on the draft list of Common Good property, there were also a considerable number who thought that it should be longer. No justification was provided by those who thought it was about right. For those that thought it should be longer, this was because Common Good assets are important to communities; time is required to ensure

there is awareness of the draft list in the first instance and then time is needed to allow people to digest the information, conduct any research and consult members of groups or the community. It was highlighted that Community Councils may not meet within the suggested timescale and account needs to be taken in general of holidays.

11. These same arguments about awareness, time to digest, research, consult and respond and consideration of meeting frequency and holidays, were also used by those who thought that 20 working days was too short to allow people to make representations regarding a proposal to dispose of or change a Common Good asset (Q10). The feeling was even stronger in this instance with 34 respondents feeling the timescale should be longer and seven that it was about right. Even the latter felt there should be flexibility in the timescale to account for more complex cases.

Time for local authorities to respond

12. For Q5, 17 thought eight weeks was about right for local authorities to investigate representations regarding the draft register and 23 thought it should be longer. Those that thought it was about right felt that any longer and this would lead to delay and the authorities should already have the information ready to hand. There was also a sense that the current wording in the draft guidance allows for flexibility where that is required.

13. For those that felt that a longer period of time should be given, this was because of the potential volume of representations; complexity of some cases; possible difficulty in accessing necessary records and information; and concern about availability of resources to tackle the workload.

14. For Q6, 26 felt that publishing the 'final' register as soon as is practicable after the initial eight week consultation period has ended and within six months was about right; six felt it should be longer and seven that it should be shorter. A key concern for those that thought it should be longer was again around availability of resources. Those that thought it should be shorter again felt the authorities should already have the lists and it would help with transparency and with communities to plan their actions.

15. For Q11, views were mixed, 20 responded that 20 working days was about right for local authorities to respond to representations on a proposed change or disposal of a Common Good asset. Twenty thought it should be longer. For those that thought it was about right, the sentiment was that local authorities should already have the information to hand. For those that thought it should be longer, the main concern was again around the issue of complexity and to take due care and consideration around the decisions made.

Views on content of the register, plans to review it and requirement for further consultation on amendments to proposals to dispose or change assets

16. Q3 asked "What, if any, further information about Common Good property should be provided?". About a third suggested the recommendations in the draft guidance were sufficient. The remaining respondents offered a large range of suggestions, most of which fell into several broad themes:

- Information which clearly identified the item as Common Good and provided details of ownership and control

- Financial information, including value, income from properties, rents, costs for maintenance and more
- Attributes of assets such as boundary details, grid references, physical plan of properties, photograph of items, size and condition, state of repair etc.
- Historical information including history or rights and ownership, dates of donation or change of hands, boundary changes
- Use (including any plans for disposal or change). There was a call to include current use and any restrictions or conditions of use.

17. Q7 asked “Do you agree or disagree with the proposals to publish the register even when some items on it are not yet confirmed?”. There was almost unanimous agreement with this. The main view was that it was better to have partial information available than none at all.

18. Q8 asked for views on whether the register should be reviewed annually. Most agreed with this (25), with seven who thought it should be longer and five who thought it should be shorter. However, the main view expressed by all groups was that it is a ‘living’ document and that it should be updated on an ongoing basis as changes occur, with new items added as and when they are identified and items confirmed when possible.

19. Finally, Q12 asked “If the proposals are amended, should the guidance recommend consulting again on the revised proposal?”. The majority responded yes (32) citing the following reasons:

- Because the amendments may lead to a different conclusion from the initial one
- A fear that Councils may make only small changes that don’t reflect the representations and with the potential to create loopholes in the system
- It would be in the true spirit of participation and community empowerment

20. A key theme was the consideration that re-consulting should really only apply to amendments that made a material change and there should be a limit to the number of consultations to prevent this going on ad infinitum.

21. Those that disagreed with further consultation were concerned that the process would become onerous, overly delayed and never ending and that consensus may never be possible in connection with Common Goods.

1 Introduction

- 1.1 This report presents the findings of an analysis of written responses to a Scottish Government consultation on statutory guidance for local authorities on how to fulfil the requirements of Part 8 of the Community Empowerment (Scotland) Act 2015 in relation to Common Good property. The consultation was published on 30 June 2017 and ran until 29 September 2017.³
- 1.2 Common Good property is owned by local authorities and has been passed down, through local government reorganisation, from former burghs. Those burghs would have received it as a gift or purchased it. It includes land and buildings, moveable items such as furniture, art and cash funds. There may be restrictions on how certain items of Common Good property are allowed to be used, and whether the local authority can dispose of them. In some cases this has to be decided by the courts. It is also worth noting that, due to the time which has passed, it is sometimes difficult to know whether property forms part of the Common Good.
- 1.3 Part 8 of the Community Empowerment (Scotland) Act 2015 places new duties on local authorities in relation to Common Good property. The consultation was in relation to the statutory guidance related to these processes and asked for views on issues such as timescales, information about assets, local consultation and publicising proposals.

Section 102 places a duty on local authorities to “establish and maintain a register of property which is held by the authority as part of the Common Good.”

Section 104 places a duty on local authorities “Before taking any decision to dispose of, or change the use of, such [Common Good] property the local authority must publish details about the proposed disposal or, as the case may be, the use to which the authority proposes to put the property.”

Sections 103 and 105 require local authorities “to have regard to any guidance issued by the Scottish Ministers” in relation to these duties.

- 1.4 Part 8 does not define or redefine Common Good or remove or alter any restrictions on the use or disposal of Common Good property.
- 1.5 The consultation contained 12 main questions (with additional opportunities to provide explanations). The analysis was largely qualitative due to the nature of the questions and focussed on exploring the range of views of respondents.
- 1.6 The analysis in this report is based on the 44 responses submitted to the consultation. It is important to note that, given the self-selected nature of the respondents, the views presented here should not be seen as representative of the views of the wider population.

³ Scottish Government (2017) [Community Empowerment and Common Good Property: Consultation on Draft Guidance](#)

1.7 Most of the responses were submitted by organisational respondents (33); 11 were from individuals. Organisational respondents comprised 13 Community Councils, 12 local authorities and 8 other organisations. See Annex 1 for a complete list of respondents.

2 Common Good registers

- 2.1 The consultation document explained that section 102 of the Community Empowerment (Scotland) Act 2015 requires local authorities to develop and publish Common Good registers. Before publishing the final version of the register, each local authority must publish a list of property which it proposes to include on its Common Good register and consult on this list.
- 2.2 The draft guidance includes recommendations that the public should be able to view the draft list free of charge; be able to access it electronically (preferably on the local authority's own website); and be able to request the list in alternative languages and formats. It should be available for comment for at least eight weeks and presents a range of information that should be included. Question 1 asked respondents for their views on any further suggested recommendations for where and how to publish the list, with accompanying rationale. Question 2 asked for thoughts on the time available for comment and Question 3 asked about whether any further information should be provided about the Common Good property listed.

**Question 1: If applicable, where or how else should this information be published as a minimum requirement?
Why is this needed in addition?**

- 2.3 Forty two answered this question. A range of additional options were suggested, although several respondents felt the suggestions already made in the draft guidance were sufficient. The additional options included making the draft list available:
- in all libraries (including mobile vans)
 - at central and local Council offices
 - in all public sector buildings
 - at sports centres, job centres, community centres
 - in the same venue as the electoral register
 - at the Registers of Scotland (land and property only) and in GIS format
- 2.4 Respondents also made the suggestion that the list should be actively sent out, primarily to Community Councils, but other suggestions included all registered community groups; burgh Councils and Parishes; and all council tax payers. The suggestion to send to all council tax payers was around a concern that not all individuals have connections with community groups.
- 2.5 There were calls for the list to be made available on various websites: Registers of Scotland; all local authority websites (including via their consultation portals), clearly signposted; Scottish Government website and Tell Me Scotland.

- 2.6 Other suggested routes for publication included via: social media; in local newspapers and via local news groups; billboard advertising; programme of engagement events and meetings. Social media was supported due to its potential to get the message out more widely and because it was viewed as the future of communication.
- 2.7 A particular concern was that copies should be made widely available in paper format, such as at libraries and local offices, for those who do not have access to or who are not comfortable with using computers. Libraries and mobile vans were also seen as important locations for those for whom travel may be an issue, such as rural residents.
- 2.8 Further comments included the recommendation that the list should be published digitally to high 'Open Data' standards to enable open access and collaboration; that a map based list is insufficient alone because Common Good includes items that are moveable and funds; Councils should list Common Good as one of their services on their websites to help with awareness raising as well as conduct an advertising campaign to alert people to the publication of the list. Finally, that the register of Common Good should form part of a register of all local authority assets so that the information is in one readily accessible location.

Question 2: What are your views on the timescale of eight weeks for people to comment on the list of Common Good property?

- 2.9 Forty two answered this question. Opinions were mixed with 24 responding they thought it was about right and 18 that it should be longer. No-one suggested it should be shorter.
- 2.10 Amongst those who thought it should be longer, suggestions ranged from three months up to six months with the following arguments proffered for why the time should be longer:
- Common Good properties are important to communities. The importance may not be apparent immediately (or awareness of the list) and more time is appropriate to fully understand and allow more people to be able to comment.
 - Eight weeks could fall during school or festive holiday time and this needs to be taken into account, even if a longer period is in place.
 - Community Councils may only meet every couple of months or so and may have recess periods. Time is required to allow the Community Councils to properly consult on and consider their response.
 - Time is required to perhaps investigate certain items on the list with possible historical research, site visits, meetings and local consultation involved. There may be many items on a single list to consider in this way and some will be more complex than others.
 - To give time for legal action.
 - A longer time is required to allow community groups time to consult with their members.

2.11 It was certainly felt by many that decisions should not be rushed and that enough time should be given to consideration of the items on the list. In addition, a concern was raised that there should be more of a focus on the quality of consultation and not just the time period, with inclusion in the guidance of more details on what local authorities are expected to do, ideally with reference to standards for community engagement.

Question 3: What, if any, further information about Common Good property should be provided?

2.12 The draft guidance recommends that the list of Common Good property should include as a minimum: the name of the asset, a brief description of what the asset is, the location of the asset, the name of the burgh to which the asset formerly belonged and any additional information about the asset which may be of use to a reader. However, there is no requirement on local authorities to make checks or confirm title before including assets on the list.

2.13 There were 41 responses to this question. About a third indicated that the information suggested in the draft guidance would be sufficient, with a view expressed that this would be consistent with other parts of the Act e.g. Asset Transfer Requests. Also, the historical nature of many heritable property assets can make it difficult to identify anything more. One respondent did make the suggestion that a review of what is included may be warranted once it is clearer what the various types of assets are across Scotland.

2.14 A large number of suggestions were put forward of what else could be included in a register, ranging from “all information” or “as full a description as possible” to a variety of content that fell largely within the following broad themes:

Identification as Common Good – There was a call for the guidance to request that it is made clear in the register what and how items are verified as Common Good and what are under investigation; also to make it clear where only part of an asset is Common Good in instances (e.g. with respect to land assets) where the asset is made up of more than one title. It was suggested to include why and how the asset has been identified as Common Good and consider the detail required to be clear. The example was given of the instance of a park where there are monuments within it.

Linked to this issue was that of ownership/control. There was a desire expressed to see information included on proof of ownership and title; who currently owns/rents/leases the asset, along with the length of lease and when it is up for review; and the date the asset was acquired (whether bought, leased or gifted). There was concern expressed about the idea of including an asset on the register where proof of ownership or title was not clear and how, without this, the asset could be considered as Common Good.

“The majority of the work to determine the Common Good aspects of local authority assets will fall to the legal services of local authorities and it is recognised that given the historical nature of these assets it is difficult to ascertain the extent of the titles. It should be noted that it would be considered poor professional legal practice to consider adding heritable properties to the list of Common Good assets without noting the titles first. The

titles, being the recorded acquisition of the assets, are the starting point of any review of Common Good assets and often forms the main evidence when determining whether such asset forms part of the Common Good or not.”
(SOLAR & Aberdeenshire Council)

There was also a plea for the guidance to provide greater clarification for authorities on what to do in situations where records or background information are limited or not available to inform an assessment of whether an item should be included in the Common Good register or not. This is in order to prevent excess burden associated with challenges and potentially resource intensive research expectations.

Financial Information – There was a desire to see information included in the register on value, income from properties, rents, costs for maintenance and upkeep; timescales for reviews of rent and information on how derived funds will be spent. There was also a call in general for clearer financial accounts, although it is not clear if this was expected to be part of what should be included in a register.

A concern was raised around blanket publication of the value of assets (particularly moveable ones), suggesting that making it widely known that a high value item existed, with details of its location, could present a security risk with respect to the items themselves and anything else that may be stored at the same location but was not considered a Common Good. It was suggested this should be reflected in the guidance.

Attributes of assets – Where applicable, it was suggested by a number of respondents to include details of the boundaries and a grid reference or Ordinance Survey parcel number. The latter was considered more relevant as they were used on map editions closest to the date of the 1975 local government reorganisation. One respondent thought it would be good to represent the location of Common Good items on a map. Another suggested including a photograph of items. Other suggested additional information included; address or postal code; a physical plan of properties; information on size and condition, particularly any problems such as state of repair, anything missing etc; also whether the asset is alienable or inalienable and why⁴.

Historical Information – The desire here was to have information on any general history of the assets included; any history of rights; prior ownership with date of donation to public use or change of hands; and previous boundary changes. It was suggested that including historical content may help to prompt others who have knowledge on the asset in question to provide further information.

Use, including plans for any change or disposal – It was suggested that current or established use should be included in the register; also any plans to dispose of an asset or forward plans for those assets where a change of use is already planned. There should also be information on any restrictions, or conditions attached to gifted items (asset burdens), around what the asset can be used for and, in the case of public parks, any byelaws should be included.

⁴ Alienable refers to Common Goods that are able to be transferred or sold. Inalienable refers to Common Goods that cannot be transferred or sold without referral to Court for a decision.

Miscellaneous – Other suggested information to include that do not fall under any of the above broad headings include:

- All the information in the land register (if registered)
- Impact assessment on flora, fauna and local people of proposed change/sale
- Whether being rented or leased
- How the asset can be accessed, viewed or made available to the public
- Name of person responsible for asset register

2.15 Some suggestions were made as to the format and structure of the register. Again, this was in part to help reduce burden and the risk of authorities receiving lots of requests for further information. The suggestions included:

- Splitting registers by former burgh
- Using sub-headings for the different types of assets e.g. buildings/land, funds, paintings, robes, other items etc.
- Ensuring the register is clear and searchable and not just a random list

3 Identifying and contacting community bodies

3.1 The draft guidance, as set out in the consultation document, recognises the difficulty in identifying community bodies due to the broad definition in section 106 of the Act. It recommends that local authorities work with community planning partners and organisations, such as Voluntary Action Scotland, to help identify relevant groups in the local area. Although no specific methods are suggested in the draft guidance, the expectation is that a variety of methods will be used to reach community bodies with the recommendation to consult the National Standards for Community Engagement. Question 4 of the consultation asked if there were any other ways to identify or contact community bodies.

Question 4: What, if any, further ways should local authorities use to identify and contact relevant community bodies?

3.2 Forty one respondents answered this question. A small number felt the recommendations were fine as stated, however, a range of suggestions were made regarding how to identify and contact relevant community bodies:

Identify

- Make use of the local media (this was about raising awareness and asking for notes of interest)
- Posting notices at the land/property and multi-media advertising campaign and encouraging community groups to get in touch
- Use Community Councils to identify community bodies, with the view expressed that this should be used to give the Community Council role more relevance as the overarching community group that has regard for wider community concerns

compared to perhaps many other types of more specialist community groups that exist

- Use existing local networks across all sectors which are in the plan e.g. Children and Families services; Health and Social Care Partnership; Development Trust Association members; Social Enterprise networks; business/social/civic society networks; Third Sector networks and heritage networks
- All local authorities should post their Common Good property on a central database managed by one agency in Scotland, i.e. the Registers of Scotland. This can then be used as preliminary information for registering in the Land Register.
- Consult lists/registers e.g. those held at Council libraries of community organisations; list of the registered tenant groups; Office of the Scottish Charity regulator (OSCR) database of registered charities
- Via village halls, community centres; adverts in libraries, churches and schools – it is not always known what community bodies exist and these are ways of getting in touch with community members in general.
- Via local councillors; also Ward / Neighbourhood / Community Worker posts in local authorities
- Via Development Trusts Association Scotland to identify Development Trusts
- Include list of known relevant community bodies in Common Good register associated with the former burgh which would then enable any bodies not listed to get in touch

Make contact

- Email, including all known community email lists
 - Social media (this is about advertising via Council social media channels as well as contacting via community group media channels)
 - Direct contact to council tax payers
 - Organise a meeting in local area where no suitable community representative body exists
 - Take advice from key organisations known in local areas
 - Attend groups e.g. older people lunch clubs
- 3.3 A point was made that the guidance should make clear that the legislation allows for a wide definition of what constitutes a community body.
- 3.4 Edinburgh Council expressed concern that it was not clear what the expectation is in terms of what the local authority should do. SOLAR and Aberdeenshire Council echoed this to a degree and suggested the guidance should make it clear that, provided local authorities have taken the required steps to publicise the list in accordance with the guidance, and taken all reasonable steps to ascertain if there are any community groups, then this should suffice.
- 3.5 Edinburgh Council also made the point that consideration should be given as to whether links could/need to be made with the “Guidance on Engaging Communities

in Decisions Relating to Land” under Part 4 of the Land Reform (Scotland) Act 2016 in terms of community consultation and engagement”.

4 Dealing with Representations

4.1 Before it is published, individuals, Community Councils and other community bodies have an opportunity to make a case (make representations) for property to be included in or excluded from the register. The draft guidance, as set out in the consultation document, states “Local authorities should aim to investigate and respond to representations within eight weeks.” Question 5 of the consultation asked for views on this timescale.

Question 5: What are your views on the timescale of eight weeks to investigate representations in respect of the register?

4.2 Seventeen responded that eight weeks was about right and 23 that it should be longer. One respondent felt they did not know, and the required timescale is likely to be dependent on what the local assets are and the level of dispute attached to each, such that timescales perhaps should be considered case by case.

4.3 Those that felt it should be longer were primarily concerned about allowing enough time to take account of potential volume of representations, including conflicting comments; potential complexity of some cases; time to formulate an agreed Council opinion; access to records and the availability of resources to handle the potential workload.

4.4 More than one local authority described how, although the aim to produce a list of Common Good was a reasonable aim, in practice this could be very costly and time consuming requiring a considerable amount of legal and other resources to review facts and circumstance and investigate records etc. As such, there should be no fixed timescale with progress subject to available resources. Any timescale should be a target or guide but not mandatory.

4.5 A common recommendation was to extend the time to three months, although this should not stop local authorities from aiming to investigate within eight weeks where this proves adequate. Also, an interim response could be made informing where extensions are required and the rationale with a new estimated timeframe for a final response. This flexibility was also mentioned by several of the respondents who thought the eight week timeframe was about right.

4.6 For those others that thought the length of time was about right, the rationales offered were:

- The current wording already allows for flexibility “Local authorities should aim to investigate and respond to representations within eight weeks”. In such cases, those who make representations would be notified about the delay.
- Local authorities should already have most of the information to hand.

5 Publishing the Common Good register

- 5.1 The draft guidance recommends that Local authorities should aim to publish the first version of their Common Good register as soon as practicable after the initial consultation period has closed, and certainly within six months of the end of the consultation, noting any cases that are still under investigation due to their complexity. Question 6 asked for views on this timescale; Question 7 asked for views on publishing even when some cases are unresolved.
- 5.2 The draft guidance also sets out that the register should be reviewed on a regular basis, suggested to be annually, to capture changes that take place with assets either coming onto the register or being disposed of. Question 8 asked for views on a review process.

Question 6: What are your views on the timescale for publishing the Common Good register?

- 5.3 A majority (26) responded that the timescale for publication after consultation was about right; seven thought it should be shorter and six felt it should be longer.
- 5.4 Amongst those that considered the timescale to be about right, there was a suggestion that a separate register is published for those assets still under investigation. Museums Galleries Scotland (MGS) raised the point that quality of consultation was more important than absolute timescales.
- 5.5 For those that suggested it should be longer, there was concern around the resources available to complete the register within the current timescales, with the experience of one local authority suggesting that 12 to 18 months would be more realistic. Another suggestion was to publish at the end of the 24 week period with a final publication date of nine months. It was mentioned that the deadline should start from the date that representations are received rather than when the consultation ends and there should be recognition in the guidance that assets requiring investigation will be dealt with as and when resources are available.
- 5.6 Those who felt the timescale should be shorter, explained that local authorities should already have Common Good lists. The bulk of the work has already been done in compiling the list, hence six months is too long and communities need answers quickly to help with planning their actions. A key concern appeared to be about transparency and having access to the information at all stages, from draft list, representations, disputed items to a final agreed register. In addition, a respondent highlighted that the register is not a fixed document and that it is more important that it is kept up to date, therefore, it should be published at the earliest point possible to allow others to consult it.
- 5.7 More than one respondent, coming from differing viewpoints on timescales, raised the issue that ideally the register should be as complete as possible before it is

published for the sake of clarity, with concern around the potential number of notes on the register about ongoing investigations.

**Question 7: Do you agree or disagree with the proposals to publish the register even when some items on it are not yet confirmed?
Please give reasons for your answer.**

5.8 The vast majority (38) agreed with the proposal to publish the register even when some items are not yet confirmed. The main sentiment was that it was better to have partial information in the public domain at the earliest possible time, rather than no information at all. Other thoughts included:

- A desire to stop local authorities from unnecessarily holding up publication due to complex cases. The nature of Common Good property could mean a completed register never gets published unless there is an allowance to include items still to be confirmed.
- Promotes transparency
- It allows for communities and citizens to contribute information that may help complete the register
- It is a living document

“Better to state that some items are still being investigated and provide information about the rest, than to provide no information about any.”
(Individual)

5.9 Further comments included that additional assets should be added as and when identified. Items to be confirmed should be listed separately and there should be more in the guidance to indicate that investigations will be completed as resources allow.

5.10 For the two that did not agree, they were keen that enough time was given in the first instance to ensure as complete a register as possible and to provide the certainty needed for communities who may be interested in entries on the register. Also, it was felt that to even be considered for the register there must be some grounds for the decision.

Question 8: What are your views on reviewing the Common Good register annually?

5.11 Most respondents (25) agreed with an annual review, seven thought it should be longer and five thought it should be shorter.

5.12 Amongst those who agreed it should be annual, there were still suggestions that the register should/would be updated as and when new items are identified or sold, indicating the desire/expectation amongst some of a more ongoing process. There was also the issue of those items to be confirmed, where one respondent felt these should be updated according to a shorter timescale. Also, local authorities should be allowed the flexibility to set a review date that aligned with its own reporting timescales.

- 5.13 Additionally, the opinion was expressed that more regular reviews should take place, particularly in the early stages of establishing a register to avoid a tick box exercise and enable meaningful engagement with communities.
- 5.14 For those advocating that the review period should be longer, the recommendation ranged from two to three years but with the proviso that the register is a living document and should be updated as changes occur. It was felt that, due to the historic nature of the register, there would be limited changes such that annual was excessive. A concern was also expressed that an annual review could potentially place excessive burden on Councils.
- 5.15 For those suggesting a shorter timescale, they essentially made the same argument as those that agreed with the annual review timescale, that the register should be a live document, updated as changes occurred.

6 Consultation when planning to dispose or change the use of Common Good property

- 6.1 Section 104 requires local authorities to consult with the local community when they are planning to dispose of Common Good property, or change its use. Each local authority must publish details of the proposed disposal or change of use.
- 6.2 The draft guidance sets out the information that should be included about the property so it can be readily identified and located and should use the same information as included in the Common Good register. Also, it recommends how the details should be published including on the local authority website, widely publicised and a notice placed at the site of the building or land or nearby. Question 9 of the consultation asked for any further suggestions around how or where else to publish proposed disposal or changes to use information.

**Question 9: If applicable, where or how else, should details of a proposed disposal or change of use be published as a minimum requirement?
Why is this (are these) needed in addition? - Please give reasons for your answer.**

- 6.3 There were 42 responses to this question. Several respondents, largely local authorities, were content with the current recommendations. The remaining respondents made suggestions for additional ways of publishing that were similar to those made in response to questions one and four. The main suggestions were:
- Local press
 - Community Council and via their channels of communication
 - Libraries
 - Social media
 - Public meetings and drop in sessions that are well advertised

- Leave it to local authority or community as best placed to decide most appropriate range of methods over and above what is stated in the Act.
- 6.4 A range of other suggestions were made: direct contact to community groups that the Council knows or suspects may have an interest; direct mailing to residents if it is a major asset or high impact change; send to local area committees/partnerships; place a notice in any commonly used space e.g. all public buildings, Council Offices for public use, sports centres, schools, churches, village shop, post office; direct mailing to all council tax payers; adverts in a local supermarket or garage; use of ScotLis (Registers of Scotland online information system – still in development).
- 6.5 A couple of respondents highlighted the potential to digitally create alerts for those items of Common Good that are of interest to them, seen as being in keeping with the process for planning applications and Asset Transfer Requests.
- 6.6 Several respondents commented on the nature of the guidance as written with respect to this issue. One local authority respondent felt that the phrase “ensure is publicised widely” is too open ended and that either the guidance should state specific minimum expectations or make it clear that it is for the local authority to decide what is appropriate in their local area.
- 6.7 Museums Galleries Scotland (MGS) called for greater transparency in the guidance to ensure communities are meaningfully involved - with the suggestion that communities are engaged proactively, directly, specifically and at the appropriate local level. Also, there should be a presumption that assets are Common Good unless proved otherwise.
- 6.8 One respondent suggested that this requirement to consult about the disposal of an asset should only apply to land or property that is inalienable.
- 6.9 There was a call for the guidance to extend the provisions of section 104 to include situations where an Asset Transfer Request is made for a Common Good property for which the Local Authority has not initiated proposal to dispose of or change use. Also, further clarification is required with respect to what happens around inalienable Common Good and further guidance on what stage the proposal should be advertised.
- 6.10 Although the question did not ask for comment on the information contained in the proposal, a respondent took the opportunity to request that the information should include cost-benefit analysis of the proposals for change.

7 Consulting the Community

- 7.1 Local authorities are required to notify Community Councils and community bodies when a proposal is published and invite representations to be made which will also be published. The draft guidance suggests a timescale of 20 working days from publication of the proposal to receive a representation; then 20 working days for local

authorities to respond to such representations (with responses published alongside the original representations).

7.2 The draft guidance also sets out that local authorities should ensure they publish the final decision about the proposal, notifying community bodies and all who made a representation.

7.3 Question 10 asked for views on the timescale of 20 working days in which to make a representation; question 11 about the 20 days in which to respond to a representation and the final question asked whether further consultation should be required if the proposal is amended in any way.

Question 10: What are your views on the timescale of 20 days to make a representation on a proposed change or disposal of a Common Good asset?

7.4 A large majority (34) felt the timescale should be longer with only seven considering it was about right.

7.5 For those that thought it was about right, one respondent suggested a caveat around more complex cases that may need research where a longer timescale may be required.

7.6 For those that felt it should be longer, the two key concerns were to ensure enough time for people to even become aware of a proposal and then allowing sufficient time to consider it and draft a representation.

“Effective community empowerment means giving people time and space to organise, collaborate and participate” (Co-operatives UK)

7.7 It was pointed out by many that 20 working days is too short for the frequency that Community Councils meet and there is a need to take account of common holidays such as school summer and Christmas holiday periods when many community groups may be inactive.

7.8 Suggestions for what the timescale should be ranged from around a month to six months with a period of two to three months most frequently called for. One respondent suggested it should be dependent of the complexity of each case.

Question 11: What are your views on the timescale of 20 days to respond to representations?

7.9 There were mixed views on this. Twenty thought this was about right; 20 thought it should be longer, but only one thought it should be shorter.

7.10 Those that thought it was about right felt the local authority should already have the details to hand to be able to respond relatively quickly and there was a sense that they should not take too long. However, it was widely suggested by this group to include in the guidelines an allowance for extensions as required for more complex cases. It was highlighted that this was to some extent addressed by the wording that an authority should “aim to consider and respond to any representation

within 20 working days”, however, the responses here suggest that this perhaps needs to be made clearer.

7.11 Those that considered it should be longer again raised the issue that complex cases may take longer; volume of representations may place high demand on resources and such decisions should not be taken lightly so time is required for due consideration. Timescale suggestions ranged from 28 to 60 days, also with the suggestion these should be advisory or flexible.

7.12 A view was expressed that the same time should be allowed for a response as is given to making a representation, hence, if altered, they should be in line with each other.

**Question 12: If the proposals are amended, should the guidance recommend consulting again on the revised proposal?
Please explain your response.**

7.13 Eight responded no, but the majority (32) responded yes with only one who thought this would depend on the level of change or amendment.

7.14 For those that thought there should be further consultation on a revised proposal, the reasons given included:

- Because the amendments may lead to a different conclusion from the initial one
- Fear that councils may make only minor changes to controversial proposals to placate critics
- There should be transparency about what the amendments are and ability to comment on whether you agree or not
- It would be in the true spirit of participation and community empowerment
- There is a potential to create loopholes and for Councils to make unsatisfactory amendments that do not address representations with no further ability to comment.

7.15 Numerous respondents in this group did suggest that further consultation should only be if there were major amendments which led to the proposals being materially different. Minor (or non-material) amendments should not need to be further consulted on and could be prejudicial to project planning and obtaining best value from disposing of the asset. It was also suggested that the consultation process should not go on ad infinitum with perhaps a limit of three consultations, the last being a public meeting if there are still controversial issues to address. These follow up consultations could be carried out within a shorter timescale due to the action already in progress related to the proposals.

7.16 Amongst those that felt that there should be no further consultation, the sentiment was that it could delay the process unnecessarily, become onerous and never ending and there should be recognition that issues relating to Common Good property are often contentious and consensus may never be achievable. Also, that

given sufficient timescales to ensure proper due process, there should be no need for further consultation.

7.17 There were some in this group who responded no to further consultation but did say there should be in the case of any major amendments.

8 Additional Comments

8.1 The following outline a range of further comments that were made during the consultation but that do not particularly match the questions asked. Several relate to calls for additions to the guidance or further clarifications that are felt to be required.

- A view was expressed that there should be clear guidance on the expectations of the extent of the register and the onus on local authorities to make it as complete as possible, although with a balance to be had between thoroughness and getting a register published.
- There was a call for clear guidelines on the level of evidence expected for adding an asset to the register.
- Museums Galleries Scotland (MGS) suggests that communities are provided with information on items that are not considered to be Common Good as well as those that do make it onto the register to allow for consideration of what has been excluded as well as included.
- MGS also raised a concern that some museum collections could be regarded as Common Good assets due to the nature of their acquisition and could potentially lead to undue burden being placed on museums in fulfilling the duties under the Act. The concern was primarily about ensuring there was clear acknowledgement of the scale of the task of assessing collections re Common Good status and a desire that the guidance be more explicit about the 'live' nature of the register, and that it provides more explicit guidance for museum professionals.
- It was suggested that the guidance include how moveable property and cash funds should be accounted for and dealt with in terms of the register – i.e. information to be presented and how to consult on such items. Indeed it was questioned whether the register should include moveable property at all and perhaps should be restricted to land and property, with discretion on how to deal with moveable items residing with Councils who have legal and ethical duties that should sufficiently protect these types of assets.
- Development Trusts Association Scotland (DTAS) welcomed the guidance but suggest it should cover more than just procedural issues and provide some direction on the management and use of Common Good property more widely. They would like to see more clarification in this guidance on the law surrounding Common Good property, particularly with regard to what can and cannot be done with it to encourage appropriate use of assets and clarity around the issue of alienable and inalienable assets.
- DTAS also comments that they think greater clarity is required in the guidance about the time by which local authorities are expected to publish their registers.

8.2 Further comments were made in relation to other commitments sought and further aspects of procedure that should be put in place.

- It was suggested that, where an item is not placed on the Common Good register, there should be a period of six months before the local authority can dispose of it to allow for thorough research of provenance.
- Museums Galleries Scotland (MGS) would welcome a commitment by the Scottish Government to put a review process in place around the establishment of Common Good registers to assess how consistently the guidance is being applied across local authorities and identify any potential improvements that could be made. It is suggested that an initial review take place after a period of five years.
- MGS also suggest that the Scottish Government should commit additional resources to establish an online portal or database to facilitate quality and consistent records management processes and systems being put in place as a result of the duty to create a Common Good register.

8.3 Finally, MGS raised the concern about the costs over an extended period of time for local authorities to resource research of the full extent of a Council's Common Good property, in line with several comments made by others throughout the consultation. However, they also suggest there is an opportunity to work with citizens to develop a citizen research programme which could help address some of the resourcing issues.

Annex 1: Consultation respondents

Organisations (33 total)

Individuals (11 total)

Community Councils (13)

- Dalbeattie Community Council
- Kincardine Community Council
- Kingseat Community Council
- Livingston Village Community Council
- New Cumnock Community Council
- Pollokshaws & Eastwood Community Council
- Royal Burgh of Crail and District Community Council
- St. John's Town of Dalry Community Council
- The Royal Burgh of Kinghorn Community Council
- The Royal Burgh of Wigtown & District Community Council
- Whiteinch Community Council
- Two responses submitted as not for publication

Local Authorities (12)

- Aberdeen City Council
- Aberdeenshire Council
- Dumfries & Galloway Council
- Glasgow City Council
- Highland Council
- Inverclyde Council, Legal and Property Services
- North Ayrshire Council (Place Directorate)
- North Lanarkshire Council

- Renfrewshire Council
- Scottish Borders Council
- South Lanarkshire Council
- The City of Edinburgh Council

Other (8 organisations and 11 individuals)

- Know Edge Ltd
- Co-operatives UK
- SOLAR (Society of Local Authority Lawyers & Administrators in Scotland)
- Royal Burgh of New Galloway and Kells Parish Council Trust
- Law Society of Scotland – Property and Law Reform Subcommittee
- Museums Galleries Scotland
- Nairn Residents Concern Group
- Development Trust Association Scotland
- 11 individuals



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This document is also available from our website at www.gov.scot.
ISBN: 978-1-78851-415-6

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

Produced for
the Scottish Government
by APS Group Scotland
PPDAS325446 (11/17)
Published by
the Scottish Government,
November 2017



Social Research series
ISSN 2045-6964
ISBN 978-1-78851-415-6

Web and Print Publication
www.gov.scot/socialresearch

PPDAS325446 (11/17)