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Consultation on the Community Empowerment (Scotland) Bill Analysis of Responses



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**CONSULTATION ON THE COMMUNITY
EMPOWERMENT (SCOTLAND) BILL
ANALYSIS OF RESPONSES**

Linda Nicholson, The Research Shop

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1. EXECUTIVE SUMMARY

Introduction

1.1 The Scottish Government's Programme for Scotland 2013-14 placed community empowerment and public service reform at the heart of the Government's agenda. A consultation paper was published on 6 November 2013 seeking views on draft legislation for inclusion in the Community Empowerment (Scotland) Bill and other related policy questions. The consultation closed on 24 January 2014.

1.2 424 responses to the consultation were submitted, 79% from organisations and 21% from individuals. The highest proportion of responses from organisations came from the third sector.

1.3 The consultation was structured in three main parts:

- Proposals on which draft legislation was provided for comment.
- Detailed policy questions on issues which had not yet reached the stage of draft legislation.
- New policy ideas on wider issues about the organisation of central and local government and how ambitions for creating a successful Scotland should be expressed.

1.4 75 questions were included in the consultation document, most containing both closed and open elements. A summary of respondents' views follows.

PART ONE: PROPOSALS WITH DRAFT LEGISLATION

Community right to request rights in relation to property

1.5 There was considerable support for the definition of community body as set out in the draft Bill at s.1, although some confusion over the different meaning of community body provided at s.11 of the draft. Much support was also expressed for the proposed list of public bodies to be covered in Part 1, Schedule 1 of the draft Bill. Many respondents suggested that the Crown Estate, Forestry Commission, Arms length organisations (ALEOs) and Regional Transport Authorities should also be included.

1.6 Respondents welcomed the introduction of timescales for the stages involved in handling requests for rights in relation to property, with most recommending six months for each stage in the process.

1.7 A common view was that a formal appeals process should be established to ensure appeals are dealt with in a consistent and fair manner across Scotland, including in relation to appeals against local authorities and Scottish Ministers.

1.8 Potential costs of the draft Bill provisions were identified by respondents. Those most frequently highlighted were costs to authorities of staffing the new procedures and undertaking community development support; and costs to communities in carrying out consultation and seeking expert assistance/professional fees. Potential savings were also identified, most frequently relating to reductions in maintenance costs (e.g. relating to previously derelict buildings/land) for local authorities; and for communities, benefits relating to under-utilised buildings being brought back into community use, and possibly more employment opportunities.

Community right to request to participate in processes to improve outcomes of service delivery

1.9 Community organisations in particular were very supportive of the proposed definition of community body at s.11 of the draft Bill, with other sectors also generally agreeing that it was clear, easy to understand, flexible and inclusive. As before, much support was also provided for the proposed list of public bodies to be covered in this Part at Schedule 2. On this occasion, the most frequently mentioned possible additions were the Crown Estate, Forestry Commission, ALEOs, Regional Transport Authorities and Scottish Water.

1.10 Most of those who responded agreed with the description at s.13 of the draft Bill of what a participation request by a community body to a public service authority should cover, although it was felt that supporting guidance in plain English should be provided.

1.11 There was much support for the proposed list of criteria that a public service authority should use when deciding whether to agree or refuse a participation request (s.15 of the draft Bill), although many respondents also proposed additions and amendments to the list.

General comments on the draft provisions

1.12 Some individuals and community and third sector respondents perceived the draft provisions to be weak in their reflection of the ethos of community participation. Aspects of the language of the Bill also attracted some criticism, being perceived as lacking precision in places and containing terminology which some communities may find difficult to comprehend.

1.13 Overall, key benefits to authorities of the provisions were envisaged in terms of more efficiently run services, which focus on prevention and early intervention, and which utilise the expertise of local communities. Main benefits to communities were identified as more effective and efficient local services, more aligned with their needs, which promote wider social, health, economic and environmental benefits.

Increasing transparency about common good

1.14 Three-quarters of the respondents who provided a view considered that the draft provisions will meet the goals of increasing transparency about the existence, use and disposal of common good assets and increasing community involvement in decisions taken about their identification, use and disposal. However, local government representatives were particularly concerned about the resource implications of establishing and maintaining a register of common good assets.

Defective and dangerous buildings – recovery of expenses

1.15 Part 4 of the draft Bill inserts new sections into the Building (Scotland) Act 2003, allowing for a “notice of liability for expenses” to be registered in the appropriate property of register in relation to a building on which work has been done. There was almost universal support from respondents for the provisions in the draft Bill which set out the procedures to be followed when such a building is sold.

PART TWO: DETAILED POLICY QUESTIONS ON ISSUES NOT YET SUBJECT TO DRAFT LEGISLATION

Improving and extending the community right to buy

Extension of the community right to buy

1.16 93% of respondents who provided a view agreed with the proposal to extend the right to buy to communities in all parts of Scotland, where the Scottish Government is satisfied that it is in the public interest. A key reason was that this provided people living in urban areas with similar rights to those in rural areas.

1.17 Clarity was sought over the definition of “communities” in this regard, with many respondents calling for a broad interpretation to encompass communities of interest in addition to communities of place.

1.18 There was much support for extending the scope of “registrable land” as widely as possible, with respondents recommending that land is excluded only where there is good reason.

Compulsory right for communities to purchase land which is neglected or abandoned

1.19 83% of respondents who provided a view considered that there should be a compulsory power for communities to buy neglected or abandoned land in certain circumstances. The prevailing view was that the power should be used where the public benefit is clearly justifiable and reasonable efforts have been made to contact the landlord, but to no avail.

1.20 Despite offering their support to the proposal, many respondents acknowledged that defining “neglected” and “abandoned” would be challenging. Some attempted to provide definitions based on visual and

safety criteria and duration of apparent neglect/abandonment; others recommended assessment on a case-by-case basis.

Streamlining the community right to buy

Application form to register a community interest in land

1.21 Much support (82% of those who provided a view) was expressed for the proposed criteria that a community body has to meet in order for Ministers to consent to register a community interest in land (s.38(1) of the Act).

1.22 91% of respondents who commented agreed that the information included in the Register of Community Interests in Land is appropriate.

1.23 In general, respondents perceived the application form to register a community interest in land to be onerous for community volunteers to complete, with calls made for the form to be simplified and shortened.

Communities responding where land unexpectedly comes on the market

1.24 88% of those who provided a view considered that where land comes onto the market unexpectedly, and communities have not previously expressed interest in the land, they should nonetheless be able to register an interest in community right to buy. However, this support was tempered by a general concern that the interests of the landlord and wider commercial bodies should also be taken into account in these circumstances.

Re-registration of a community interest in land

1.25 There was much agreement (92% of those who addressed the issue) that re-registration by communities before their current registration expires, should be simply a re-confirmation of a community interest in the land. However, 89% of those who provided a view considered that the community body should be asked to show that its application is still relevant, has the support of its community and granting the request will be in the public interest.

Timescale to complete the “right to buy”

1.26 Overall there was an appreciation of the need to balance the rights of different parties involved in the “right to buy” when establishing timescales, whilst keeping the period to a minimum. The majority view was for extending the statutory period of seven months, possibly up to one year or even more, depending on the nature of the case.

Ballot issues

1.27 The majority view (84% of those providing a view) was for Scottish Ministers to organise the undertaking of a community body’s ballot and pay its costs. This was seen as a fair and transparent way of proceeding which eases the administrative burden on communities. With few exceptions, respondents recommended that Scottish Ministers should notify the ballot result to the landowner.

Right to buy “application” pro forma

1.28 There was 90% agreement amongst those who responded that Scottish Ministers should develop a pro-forma for community bodies to set out their plans for the sustainable development of land and community. This was viewed as ensuring consistency of approach, simplifying the process for inexperienced community bodies and aiding with a consistent and fairer assessment process.

Improving the process of the right to buy

Written definition of “community”

1.29 Views were mixed on whether community bodies should define themselves in terms of postcodes, settlement areas, localities of settlements, electoral wards or a mixture of these, as appropriate. Overall, flexibility in definition was endorsed to allow for variations between communities, with a dominant view that communities should be able to define themselves according to interest as well as place.

“Community body”: appropriate legal entities

1.30 Most (81%) of respondents who provided a view agreed that legal entities other than companies limited by guarantee should be able to apply to use the community right to buy provisions. It was commonly agreed that Scottish Charitable Incorporated Organisations (SCIOs) should also be able to apply under the Act. Other prominent inclusions recommended by respondents were: community groups with robust constitutions; Industrial and Provident Societies; and Co-operative Societies.

“Forever conditions”

1.31 The proposal that Ministers should only have to “approve” the changes to Articles of Association for community bodies that are actively seeking to use or are using the community right to buy received significant support (91% of those providing a view).

Length of the period of registration

1.32 The majority view (67% of those responding) was for the length of registered interest in land to remain at five years. Some called for flexibility to extend this period depending on local circumstances. Five years was perceived to offer a compromise between maintaining robustness and rigour in the application process, without overburdening communities with bureaucracy.

Valuation of the land – counter representations

1.33 The proposal to include counter representations by the landowner and community body within the valuation procedure was well received (97% of those providing a view). The main benefits were identified as promoting transparency and fairness and greater confidence that the final valuation is appropriate.

Landowner withdrawing land from sale

1.34 It was generally accepted that although the situation whereby a landowner takes land off the market after triggering the right to buy is

unfortunate, there may be valid and exceptional circumstances for this. However, the majority (72%) of those who provided a view considered that there should be a provision to deter landowners from doing this, particularly as communities will have vested much time, effort and costs in the right to buy process.

1.35 Contrasting views from a significant minority of respondents were that as with any commercial transaction, the seller should retain the right to withdraw from the market if they wish, and that preventing this may breach European Human Rights legislation.

Level of support to be secured for the ballot

1.36 Respondents generally favoured greater flexibility in a community body's level of support for a right to buy as demonstrated in the ballot result. 89% of those providing a view thought that the ballot result should focus on a sufficient level of support to justify the community support to proceed with the right to buy the land. However, flexibility was advocated in setting thresholds, in order to take account of local circumstances.

Option agreements and the community right to buy

1.37 The majority view (88% of those who commented) was in favour of Ministers being able to accept an application to register a community interest in land which is already subject to an option agreement between the landowner and another party to purchase the land.

1.38 Most (59%) of those who provided a view considered that the landowner should be prevented from transferring the land as an exempt transfer while there is a registered interest over the land. A general concern was that transfer exemptions appeared to be in conflict with the very ethos of community empowerment and their right to buy.

Date of the prohibition notice coming into effect for the owner/heritable creditor

1.39 Three-quarters (74%) of respondents who provided a view considered that the prohibition on the landowner from taking steps to market or transfer land (which is subject to an application to register a community interest in the land) to another person should apply from the day after the day on which Ministers issued the letter, rather than the day when it was received by the owner/heritable creditor.

1.40 Repeated calls were made by respondents for hard copy letters to be backed up by electronic communication such as emails.

Monitoring the community right to buy

1.41 Of those who provided a view, 96% agreed that Ministers should monitor the impact of the right to buy. There was considerable variation in views on how this should be accomplished, what information should be collected and how frequently it should take place. Calls were made for monitoring to be meaningful and not create additional burdens for communities. Local tailoring of monitoring to suit context was recommended.

Strengthening community planning

1.42 Many respondents across a wide range of sectors expressed support for the proposal that Community Planning Partnerships (CPPs) should be established in each local authority area, although several remarked that this was already in place.

1.43 Placing the establishment of CPPs in local authority areas on a statutory footing was seen to be beneficial in giving effect to the Statement of Ambition and single outcome agreements, and signalling the importance of CPPs in this.

1.44 A recurring theme was that in order to maximise the effectiveness of CPPs, it will be important to deploy mechanisms which empower communities to play a central part.

1.45 There was much support for the proposed core duties for CPPs set out in the consultation document, with these being perceived as moving in the right direction and consistent with practice already existing across Scotland. However, a common concern was that the role of communities in community planning is not made sufficiently explicit in the list of duties.

1.46 A recurring perception was that the language of the Bill and its focus reinforced top-down approaches, at strategic levels, at the expense of local, community approaches.

1.47 A common theme across a range of sectors was that all public bodies need to do more to support community capacity-building and development.

Role and contribution of relevant partners

1.48 Respondents were evenly split over whether they considered that the proposed core duties ensured that all relevant partners play a full role in community planning and the delivery of improved outcomes in each CPP area. Some felt that whilst the core duties provided a framework for participation, they did not go far enough to ensure an obligation to play a full role.

1.49 The predominant view was that the respective roles of local elected politicians, non-executive board members and officers in community planning should be clarified, but respondents differed in their view on whether this should be done through legislation, guidance or other means. The balance of view was in favour of legislation although it was emphasised that local flexibility should remain.

Organisations to which the duties should apply

1.50 The majority view (69% of those who commented) was in favour of the duty on individual bodies to apply to the public sector more generally than be confined to a set list of public bodies. This was seen as being inclusive in

approach and offering flexibility for local contexts and changes to circumstances.

Role of the local authority

1.51 The predominant view amongst respondents was that local authorities should retain their statutory duty to initiate, facilitate and maintain community planning on account of their democratic mandate, but structural and cultural changes are needed to shift perceptions away from CPPs being perceived as extensions of local authorities.

1.52 It was suggested that robust accountability frameworks, in which individual CPP partners are held to account for their contributions, coupled with statutory duties on different public bodies, supported by guidance on their roles, will help to address perceptions of council dominance.

External scrutiny

1.53 Respondents generally considered that the current powers and functions of the Accounts Commission and Auditor General were sufficient for them to be able to support the proposed changes.

1.54 Many local government representatives and CPPs envisaged a supportive role for the external scrutiny bodies in which lessons from audits are shared with them and good practice identified.

Allotments

1.55 Third sector and community councils in particular were supportive of the broad definitions of “allotment site” and “allotment plot”, proposed by the consultation. However, many respondents raised further queries about the legitimate uses of plot, particularly in relation to types of cultivation, erection of structures such as polytunnels and potential for keeping livestock.

1.56 Where respondents provided information on the size of existing allotments in their area/site, the most common minimum size was 60 metres squared, with 250 metres squared being the most commonly mentioned maximum size of plot.

Local authority duty to provide allotments

1.57 Most (84%) of those who responded agreed with the duty on local authorities to provide allotments where there is demand in their area. However, it was acknowledged by some that in practical terms this duty should be viewed within the context of overall local authority strategy, budget and priorities. Ideas for innovative ways to help to meet the duty were suggested, such as community gardens, providing smaller, “taster” plots and raised beds, in order to make most effective use of available areas for allotments.

1.58 The proposed “trigger” of 15 people on the waiting list, when it is suggested that a local authority must make provision for allotments, was supported by around two-thirds (63%) of those who provided a view.

1.59 The issue of accessibility of allotment was raised repeatedly, with many respondents emphasising the importance of ensuring allotment provision takes account of distance for users to travel, and that allotments are accessible to people with disabilities. Clarity was requested on what should count as entries on waiting lists, for example, individuals, households, organisations, individuals within organisations?

1.60 The requirement for local authorities to acquire land for allotments was questioned by some local government representatives who considered that this could have significant cost implications in some urban areas, and be very challenging in rural locations where land may already be tenanted and regulated by the Crofting Commission.

1.61 The new provisions will set a target below which local authorities will be required to keep their allotment waiting lists. However, there was no overall consensus on a preferred target option amongst those tabled in the consultation.

Local authority duties and powers to manage allotments

1.62 Whilst most respondents supported the proposed duties and powers, local government representatives in particular considered that their execution would depend on available resources.

1.63 One duty which attracted a body of opposition related to the temporary provision of allotments using land not immediately required. Some respondents cautioned that this duty should not be used in place of efforts to provide permanent allotments. Others expressed concern over what they perceived to be the wasted input from an allotment holder of a temporary plot, when the plot is subsequently acquired for another purpose.

1.64 Additional duties and powers were suggested by respondents and included a requirement for councils to inform enquirers of the need to put their application in writing; for new housing developments to be required to make provision for allotment land or community garden space; and for councils to provide basic facilities at allotment sites such as toilets, water access and security.

1.65 Respondents were almost evenly split between those in favour of areas regarding termination of allotment tenancies to be set out in legislation, and those supporting local authority determination at a local level. Most of the local government representatives who addressed this issue favoured local level determination.

Surplus produce

1.66 The majority (89%) of those who provided a view agreed that surplus produce may be sold with most agreeing that this should require the permission of the local authority, be non-commercial, with all proceeds reinvested back into the site and/or local community and charities.

1.67 Amongst opponents to the proposal to sell surplus produce were those who considered that this amounted to commercial activity which they felt was against the ethos of running allotments, and could lead to pressure to intensify production, possibly in competition with local businesses.

Local authority regulations

1.68 The consultation provided a list of proposed local regulations relating to the letting of allotments, dividing individual regulations into those which must be included, and those which may be included. Most (87%) of the respondents who provided a view agreed with the proposed regulations in principle, although several suggested amendments.

1.69 Key additions to the list recommended by respondents related to the promotion of bio-diversity; vehicle access and parking; acceptable noise levels; composting; maintenance; and waste disposal.

PART THREE: NEW POLICY IDEAS

Scotland Performs – embedding the outcomes approach in legislation

1.70 Views were invited on the proposals that Scottish Ministers be required to develop, consult on and publish a set of outcomes that describe their long term, strategic objectives for Scotland and report regularly and publicly on progress towards achieving these outcomes.

1.71 The proposals receive general support from across a wide range of sectors. They were viewed as supporting and strengthening the alignment between local, regional and national policy, promoting strategic thinking and enabling communities to understand where their contribution fits into the overall landscape. It was considered that the framework would allow for longer term outcomes to be supported, thereby enabling persistent, challenging issues to be tackled over time.

1.72 The proposals for consulting on the set of National Outcomes was welcomed with recommendations that consultation should be genuine and meaningful. Likewise, the proposed duty to report on progress was supported, with this seen as a means to promoting transparency.

1.73 Concerns were raised that the proposals should not result in the loss of flexibility at local level to set strategy to reflect local priorities.

Subsidiarity and local decision-making

1.74 There was much support for the thrust of the proposals in the consultation which many felt would contribute to subsidiarity and local decision-making.

1.75 A key theme to emerge was that enhancing the role of community councils, with devolved budgets and decision-making, will strengthen local democracy.

1.76 Another dominant emerging theme was that more emphasis on community capacity-building will be required, supported by resources, if local democracy is to be enhanced.

ASSESSING IMPACT

Equality

1.77 A prevailing view was that the Bill has great potential to impact positively on groups of people within the “protected characteristics” list under the Equality Act 2010, but that this will require determined, pro-active efforts to promote inclusivity throughout the community empowerment framework. Without such efforts many felt that ironically, the Bill could marginalise some groups rather than empower them.

1.78 Many respondents agreed that adequately resourced, robust and comprehensive community capacity-building will be needed to ensure that all communities can benefit from the proposals in the Bill.

1.79 Some respondents perceived the consultation document to lack explicit reference to equality issues.

1.80 A recurring theme was that there needs to be pro-active effort to raise awareness of the provisions amongst deprived communities.

Business and regulation

1.81 It was generally considered that the provisions will result in added costs, particularly to local authorities, in the early days of implementation, but no respondents provided figures. However, potential exists for direct and indirect savings over time.

1.82 The anticipated costs to local authorities were identified as relating largely to administration (including staff training); those associated with community capacity-building; and costs related to allotment duties.

1.83 Savings over time were identified as emerging from greater local economic activity, efficiencies in service delivery; improvements in physical and mental health due to preventative spend; capital and revenue savings to local authorities; and the “free” expertise of local volunteers and community bodies.

Environmental impact

1.84 The general view was that the proposals present significant potential for positive impacts on the natural and built environments, but this would be achieved only where communities are able to sustain good standards of management of assets over time.

1.85 Recurring views were that the asset transfer proposals have the potential to return neglected land back into managed stewardship, resulting in positive improvements to the environment such as: increased biodiversity; reduction in waste and pollution; reduction in carbon emissions; and decreases in fly tipping and vandalism. Allotments were identified by many as particularly beneficial to the environment and wellbeing of communities, especially in built-up areas.

2. INTRODUCTION

2.1 In 2008 the Scottish Government and the Convention of Scottish Local Authorities (COSLA) announced a joint commitment to community empowerment, followed in 2009 by their Community Empowerment Action Plan. The Government's Programme for Scotland 2013-14 placed community empowerment and public service reform at the heart of the Government's agenda, building on a commitment in the Scottish National Party's 2011 Manifesto to produce a Community Empowerment and Renewal Bill.

2.2 An initial consultation in 2012 sought views on a variety of proposals under three key themes: strengthening participation; unlocking enterprising community development; and renewing our communities. Further discussions were held with public, private and voluntary sector stakeholders to help to shape the topics to be included in the draft Community Empowerment (Scotland) Bill.

2.3 A second consultation paper was published on 6 November 2013 and closed on 24 January 2014. It sought views on draft legislation and detailed proposals for the Bill, in addition to two new policy ideas. The responses to the consultation will inform the drafting of the Community Empowerment (Scotland) Bill which is expected to be introduced to the Scottish Parliament in summer 2014.

2.4 This report presents the analysis of views contained in the responses. These responses have been made publicly available on the Scottish Government website¹ unless the respondent has specifically requested otherwise.

Consultation responses

2.5 The Scottish Government received 424 responses to the consultation from organisations and individuals. Table 2.1 overleaf shows the distribution of responses by category of respondent. A full list of the organisations which responded is in Annex 1.

¹ The non-confidential responses to the consultation can be viewed at <http://www.scotland.gov.uk/Publications/2014/02/2073> . Although the confidential responses have not been published, their contents have been taken into account in the numerical analysis in this report.

2.6 Individuals formed the largest category of respondent, accounting for 21% of responses. Third sector and community organisations (including community councils) comprised 48% of the total response.

2.7 151 of the responses were submitted using the online software Citizen Space. The remaining 273 responses were submitted using email or in hard copy. The views contained in all of these were amalgamated into one electronic database to aid analysis. The consultation paper consisted of 75 questions. 32 asked for a yes/no answer with an additional box for further comments; 31 questions were open and 12 were closed. Most respondents did not address every question but selected the topics of most interest to them.

Table 2.1: Distribution of responses by category of respondent

| Category | No. | % |
|---|------------|------------|
| Individuals | 88 | 21 |
| Third sector/equality organisations | 77 | 18 |
| Community organisations | 65 | 15 |
| Community Councils | 60 | 14 |
| Public Body, including Executive Agencies, NDPBs, NHS etc | 37 | 9 |
| Local government | 36 | 8 |
| Other | 21 | 5 |
| Community Planning Partnerships | 13 | 3 |
| Representative bodies for professionals | 13 | 3 |
| Private sector organisations | 9 | 2 |
| Academic or Research Institutes | 5 | 1 |
| Total | 424 | 100 |

NB Percentages may not total 100% exactly due to rounding.

Report of findings

2.8 The following 10 chapters document the analysis of responses. Chapters 3 – 6 refer to proposals on which draft legislation is provided for comment. Chapter 3 analyses responses to the consultation questions 1 – 7 on community right to request rights in relation to property. Chapter 4 covers consultation questions 8 – 13 which relate to community right to request to participate in processes to improve outcomes of service delivery. Responses to consultation question 14 on increasing transparency about common good are analysed in Chapter 5. Views on defective and dangerous buildings – recovery of expenses (consultation questions 15 and 16) are presented in Chapter 6.

2.9 Chapters 7 - 9 focus on detailed policy questions on issues which had been discussed in more general terms elsewhere, but had not yet reached the stage of draft legislation. In Chapter 7 views on proposals to improve and extend community right to buy are analysed (consultation questions 17 – 51). Chapter 8 presents an analysis of views on proposals to strengthen community planning (consultation questions 52 – 60). A summary of responses to consultation questions 61 – 69 on proposed policy related to

allotments is presented in Chapter 9.

2.10 Chapters 10 and 11 relate to wider policy proposals. In Chapter 10, the responses to consultation question 70, on embedding the outcomes approach in legislation, are analysed. Chapter 11 presents an analysis of responses to consultation question 71 relating to subsidiarity and local decision-making.

Chapter 12 collates views on the impact of the proposals on equality, business and regulation and the environment (consultation questions 72 – 75 respectively).

2.11 Respondent categories have been abbreviated in the report as follows:

| | |
|---------------------------------------|-------|
| Individuals | Ind |
| Third sector/equality organisation | Third |
| Community organisation | Com |
| Community Council | CC |
| Public Body | PB |
| Local Government | LG |
| Community Planning Partnership | CPP |
| Representative body for professionals | Rep |
| Private sector organisation | Priv |
| Academic or Research Institute | Acad |
| Other organisation | Oth |

3. COMMUNITY RIGHT TO REQUEST RIGHTS IN RELATION TO PROPERTY

3.1 Part 1 of the draft Community Empowerment (Scotland) Bill (“The Bill”) relates to asset transfer requests. The draft provisions have been designed to give community bodies a more proactive role in identifying public sector land and buildings that they would be interested in owning or using. It is intended that the community body will be able to submit a request setting out its plans for the property. Under the proposed legislation, the public sector body (“the authority”) will be required to respond to any such requests in a transparent and rational way, basing its decision on an assessment of the best public benefit which can be gained from a particular ownership or use of an asset.

Question 1: Do you agree with the definition of community body at s.1 of the draft Bill? Do you have any changes to suggest?

3.2 245 respondents (58% of all respondents) stated clearly whether they agreed or disagreed with the definition of community body. A few other respondents provided relevant commentary only.

Table 3.1: Responses to Question 1

| Category | Yes | | No | | Total |
|------------------------|------------|-----------|-----------|-----------|------------|
| | No. | % | No. | % | No. |
| Individuals | 35 | 83 | 7 | 17 | 42 |
| Third sector | 26 | 58 | 19 | 42 | 45 |
| Community organisation | 32 | 78 | 9 | 22 | 41 |
| Community Council | 30 | 77 | 9 | 23 | 39 |
| Public Body | 16 | 84 | 3 | 16 | 19 |
| Local government | 14 | 52 | 13 | 48 | 27 |
| Other | 7 | 50 | 7 | 50 | 14 |
| CPP | 2 | 50 | 2 | 50 | 4 |
| Representative body | 5 | 71 | 2 | 29 | 7 |
| Private sector | 2 | 40 | 3 | 60 | 5 |
| Academic | 1 | 50 | 1 | 50 | 2 |
| Total | 170 | 69 | 75 | 31 | 245 |

3.3 Of those who responded, most (69%) agreed with the definition of community body. Individuals, community organisations, community councils and public bodies were most likely to agree to the definition.

Suggestions for changes

3.4 Many of those disagreeing with the definition provided suggestions for changes. A view emerging from respondents across most sectors was that the definition of community body was too vague with the different definitions of community body at s.1 and s.11 of the draft Bill creating confusion.

3.5 There was some confusion over the role of Scottish Ministers in designating organisations as community bodies, with several respondents suggesting criteria or seeking examples of the types of organisations which would be eligible to be designated, rather than proposing amendments to the core definition. A recurring query was whether community councils would be designated as community bodies. One key concern was that lack of clarity in the definition might risk assets being transferred inappropriately (for example not subsequently benefitting the wider community).

3.6 Three respondents requested that the language used in this particular section of the legislation be made plainer in order to assist community organisations in identifying whether or not they comply with the definition of community body in this context.

3.7 Many respondents from a range of sectors argued for the definition of community body to be tighter and more rigorous, particularly if unincorporated bodies will be granted rights in relation to owning property. Suggestions for achieving this included inserting various criteria:

- majority of membership must be from the local community
- organisation must be of suitable size (minimum of 20 members was suggested as being consistent with the Land Reform (Scotland) Act 2003)
- governing documents should have an asset lock
- must be affiliated to a national body such as a Development Trust Association
- must have been in existence for a minimum period of time
- members must be democratically elected and must rotate regularly.

3.8 Some respondents (largely local government) expressed caution about unincorporated bodies being granted rights in relation to owning property, particularly as this would expose individual members to liability.

3.9 Four respondents argued against community councils being recognised as community bodies, perceiving some to be unaccountable and not always representative of their wider community.

3.10 Many other respondents, across different sectors, argued for the definition of community body to be broader and less prescriptive. One key concern was that prescribing community body too narrowly may inadvertently marginalise some community groups with non-conventional structures.

3.11 Several third sector and community respondents argued for other forms of incorporated body to be included, in addition to companies. Suggestions were made for other specific types of bodies to be encompassed by the definition:

- Scottish Charitable Incorporated Organisations (SCIOs)
- community councils
- Industrial and Provident Societies
- collective groups; Co-Operative groups
- Registered Tenant Organisations

- sports clubs
- conservation bodies

3.12 Two respondents urged that flexibility in the definition should be maintained in order to encompass newly developing bodies which have emerged over recent years.

3.13 One prominent theme, largely amongst community respondents, was that both communities of interest and communities of place should be permitted within the definition of community body.

3.14 Further specific points were raised:

- Should there be an “or” or an “and” inbetween s.1(1)(a) and (b)?
- Information is needed on the circumstances in which Scottish Ministers may determine that a community body is to cease being a community body (s.1 (4)).
- Following the winding up of a company, more thought is required as to the recipient of its property and its liabilities. The role of Scottish Ministers in approving the destination of these was questioned in the interests of accountability and transparency.

Question 2: Do you agree with the list of public bodies to be covered in this Part at Schedule 1? What other bodies should be added or removed?

3.15 217 respondents (51% of all respondents) stated whether they agreed or disagreed with the list of public bodies to be covered in this Part at Schedule 1 (see Table 3.2 overleaf).

3.16 All or the majority of all respondents across every sector provided explicit support for the proposed list of public bodies.

Table 3.2: Responses to Question 2

| Category | Yes | | No | | Total |
|------------------------|------------|-----------|-----------|-----------|------------|
| | No. | % | No. | % | No. |
| Individuals | 34 | 89 | 4 | 11 | 38 |
| Third sector | 22 | 79 | 6 | 21 | 28 |
| Community organisation | 29 | 78 | 8 | 22 | 37 |
| Community Council | 29 | 71 | 12 | 29 | 41 |
| Public Body | 15 | 83 | 3 | 17 | 18 |
| Local government | 22 | 85 | 4 | 15 | 26 |
| Other | 7 | 58 | 5 | 42 | 12 |
| CPP | 4 | 100 | - | | 4 |
| Representative body | 6 | 86 | 1 | 14 | 7 |
| Private sector | 4 | 100 | - | | 4 |
| Academic | 2 | 100 | - | | 2 |
| Total | 174 | 80 | 43 | 20 | 217 |

Suggestions for bodies to be added

3.17 Many suggestions were made for additions to the list of bodies:

Table 3.3: Suggestions for additions to the list of public bodies

| Mentioned by 10 or more respondents | | |
|--|---|--|
| Arms length organisations (ALEOs) | Crown Estate | Forestry Commission |
| Regional Transport Authorities | | |
| Mentioned by 5 – 9 respondents | | |
| Historic Scotland | Ministry of Defence | Railtrack/owners of rail land |
| Scottish Canals | Scottish Prison Service | |
| Mentioned by fewer than 5 respondents | | |
| Post Office | Inshore Fisheries Group | Harbour Authorities |
| Scottish Ports Authority | Forth Ports | National Trust |
| All public bodies | Royal Society for the Protection of Birds | Church |
| Co-operative Society | Owners of mining land | Scottish Ambulance |
| Historic Environment Scotland | Visit Scotland | Scottish Environmental Protection Agency |
| Caledonian Maritime Assets Ltd | Highland and Island Airports | National Museums of Scotland |
| National Galleries of Scotland | CalMac Ferries | Local licensing forums |
| Social Housing landlords | Housing Associations | Criminal Justice Partnerships |
| Community Planning Partnerships and their partners | Police Service | Health and Community Care Partnerships |
| Forestry Enterprise | Further Education | Universities |

| | | |
|--------------------|-------------------|---------------|
| Scotland | Colleges | |
| Education Scotland | Creative Scotland | Sportscotland |

NB It should be noted that some of these bodies are not public bodies and some are already included under the umbrella of “Scottish Ministers” or under other names, for example the British Waterways Board operates as “Scottish Canals”.

3.18 A prominent emerging theme was that perhaps it is too difficult to list all public bodies to be covered, and instead a more comprehensive list should be used in line with that contained in the Freedom of Information (Scotland) Act 2002. A recurring comment was that “one cap does not fit all” circumstances. A few respondents urged that flexibility should be maintained in order to incorporate additional bodies over time.

Question 3: What do you think would be reasonable timescales for dealing with requests, making an offer and concluding a contract, in relation to sections 5(6), 6(2)(c) and 6(6)?

3.19 179 respondents (42% of all respondents) addressed this question.

3.20 There was a general consensus that a guiding framework of timescales is useful in order for both community bodies and relevant authorities to maintain focus and momentum, but flexibility should be retained to accommodate requests of differing complexity and scale. The draft legislation was welcomed for permitting this flexibility, for example, enabling both parties to agree extensions to timescales as appropriate to allow for issues such as extended negotiation over price; complications over title deeds; issues over condition of property; community fund raising; accessing advocacy and independent advice; community consultation and fact-finding to take place.

3.21 A few respondents recommended that a clear starting point for timing the different stages should be an acknowledgement of request letter from the relevant authority to the community body. Community organisations and third sector respondents suggested this correspondence should be issued within 5 – 7 days of receipt of request. A few local government representatives and Community Planning Partnerships (CPPs) suggested a period of up to one month for the acknowledgement to be issued.

3.22 Most of those who responded provided their view on appropriate timescales for each stage in the process, as a guide for standard requests with no complications. These are summarised in Table 3.4 overleaf.

Table 3.4: Views on appropriate timescales for dealing with requests, making an offer and concluding a contract

| | Up to and including 3 months | Over 3 and up to and including 6 months | Over 6 and up to and including 1 year | Between 1 and 2 years |
|-------------------------------------|------------------------------|---|---------------------------------------|-----------------------|
| | No. of respondents | No. of respondents | No. of respondents | No. of respondents |
| Dealing with requests: S5(6) | 20 | 32 | 2 | |
| Making an offer: S6(2)(c) | 9 | 33 | 18 | 1 |
| Concluding a contract: S6(6) | 1 | 36 | 22 | |

3.23 The majority view was that for standard cases, each stage of the process from request to concluding the contract should take up to six months to complete.

3.24 Others preferred to provide a broad estimate of a guiding timescale for the entire process from request to contract, rather than breaking this down into stages. Their views are summarised in Table 3.5.

Table 3.5 Estimates of timescale from dealing with request to concluding a contract

| | Up to and including 3 months | Over 3 and up to and including 6 months | Over 6 and up to and including 1 year | Between 1 and 2 years |
|--------------------|------------------------------|---|---------------------------------------|-----------------------|
| No. of respondents | 12 | 23 | 19 | 11 |

Question 4: Do you think that community bodies should have a right of appeal to Ministers as set out in s.8? Are there any other appeal or review procedures that you feel would be more appropriate?

3.25 226 respondents (53% of all respondents) addressed the question of whether community bodies should have a right of appeal to Ministers over decisions made by national public bodies. Of these, 199 (88%) agreed that community bodies should have a right of appeal to Ministers as set out in s.8. Twenty seven respondents disagreed, one-third of them (nine respondents) being local government representatives.

3.26 A recurring comment across a variety of sectors was that a formal appeals process is necessary as this will ensure appeal decisions are made in a fair and consistent manner across Scotland. Several community councils, third sector and community bodies identified what they perceived to be essential features of an appeals procedure: independent; inexpensive;

transparent; accessible; swift; and simple. Two public bodies and a professional representative organisation recommended further guidance be issued on grounds for appeal to prevent unfounded appeals being made.

3.27 Two broad and overlapping themes emerged from responses. Firstly, many saw benefits in a two-stage appeal process, whereby appeals are dealt with by an independent body in the first instance, and directed to Ministers only if a resolution is not reached. Secondly, the benefits of dealing with appeals locally were highlighted, with some arguing that this will ensure local context is taken into account and appeals will be dealt with more quickly and economically.

3.28 Forty five respondents from a range of sectors argued that an appeals process against local authorities is required; 14 considered appeals against Scottish Ministers should be accommodated. (It should be noted, however, that question 5 sought views on a form of appeal against decisions by Scottish Ministers and local authorities.)

3.29 Suggestions were made (each by ten or fewer respondents) for alternative appeal or review procedures that respondents felt may be more appropriate than those prescribed in the draft Bill:

- independent panel or review body
- panel which includes representatives from local community
- peer review which includes people from a volunteer/community background
- tribunal along the lines of the current Land Court
- judiciary (e.g. sheriff court or local magistrate)
- internal public authority review (as a first stage measure)
- Ombudsman
- appeal directly to local authority
- European Union
- to a newly created “Poverty Commissioner” (who would recognise challenges facing deprived communities).

| |
|--|
| Question 5: What form of appeal or review processes, internal or external, would be appropriate in relation to decisions made by local authorities and by Scottish Ministers? |
|--|

3.30 182 respondents (43% of all respondents) addressed this question. To some extent respondents’ comments overlapped with the previous question, with some respondents referring to their previous remarks. General comments included:

- Whatever process is used, it should be open and transparent.
- Timescales should be put in place.
- There may be existing mechanisms (such as judicial review and the public sector Ombudsman) which could be deployed.
- Should one overarching appeals process be deployed for decisions made by local authorities and those by Scottish Ministers, or should there be two different mechanisms?

3.31 Sixteen respondents (6 of them local government representatives) extolled what they perceived to be the virtues of internal review processes, at least for the first stage of investigation. One commented:

“It would not be appropriate nor practical to have an external body review a decision taken by a Local Authority regarding a decision about a Local Authority asset. It would be challenging to see how this could be approached whilst ensuring local democracy is maintained” (The Highland Council).

3.32 In contrast, seven respondents (mix of community councils and community bodies) argued that external review processes would be more appropriate.

3.33 Specific recommendations for appeal or review processes were proposed by respondents, with the four most frequently mentioned being:

- independent external appeal panel/commission/evaluator (possibly with an element of peer review if representatives from other local authorities are on the panel) (41 mentions)
- Ombudsman (24 mentions)
- Scottish Ministers (in the case of decisions made by local authorities (15 mentions)
- Land Commission (10 mentions)

| |
|--|
| Question 6: Do you have any other comments about the wording of the draft provisions? |
|--|

3.34 156 respondents (37% of all respondents) provided further commentary about aspects of the wording of the draft provisions. Both general and very specific comments were provided, with the main themes summarised below.

Clarity of drafting

3.35 15 respondents (seven of them community councils) criticised the draft as lacking clarity. Complaints were that there was an absence of plain English, with clumsy and opaque language creating barriers to understanding. A prevailing view was community empowerment would not be promoted by complex drafting, with two third sector respondents recommending that the principles of inclusive communication be incorporated into the draft. The view of one individual respondent was:

“Whilst I understand that the wording of the draft provision is required to meet legal requirements I am of the opinion that the wording of this document will discourage many people who otherwise may have been interested in following up some of the provisions with the document.”

3.36 Two respondents (Oth, PB) suggested an easy-read version of the draft be published.

3.37 A few respondents highlighted what they perceived to be inconsistencies or ambiguities in the draft:

- use of “community body” and “public body” is confusing
- “public authority” becomes “public body” later in the draft
- inconsistent use of “ors” and “ands” throughout
- “land” refers to both land and buildings but this is not always clear
- timescales are not set out clearly
- do “assets” refer to empty/unwanted land and buildings and/or viable, commercial entities (e.g. swimming pool)?
- confusion over systems for acquiring public land and acquiring privately owned assets.

Lack of explicit community empowerment

3.38 A repeated view (29 mentions) was that the draft provisions were weighted too much in favour of public bodies maintaining control over assets and did not provide enough explicit support to communities in requesting rights, and in the longer-term, running assets. Several reported their impression that the Bill presented a “top down” model of requesting rights in relation to asset transfer requests. A typical view was:

“The UCT believe that the wording should be strengthened to underline that this is a community right to buy or lease. As such, it is significantly stronger than an offer to buy or an expression of interest in buying. There should be an assumption that the right to buy would be granted unless very good reason is shown to the contrary” (Ullapool Community Trust) (Com).

3.39 A recurring theme (11 respondents largely community bodies) was that the default position should be for a transfer request to be granted “unless there are reasonable grounds for refusing it”. Another common view (14 respondents, again largely community bodies) was that any terms imposed by the relevant authority under s.6(2)(a) should be “reasonable and proportionate” with room provided for negotiation between community and relevant authority.

3.40 Several respondents from a range of sectors including community, local government and public bodies considered that the Bill did not provide for support for community bodies in preparing their request, particularly in terms of valuing assets. Some considered that in the absence of adequate community support the provisions may serve to exclude some groups who do not have the expertise to progress requests. One respondent stated:

“There should also be a clear duty on public services to provide both technical and community development support to communities that choose to explore community ownership options” (Scottish Community Development Network) (Third).

3.41 Further written guidance for communities on asset transfer requests was called for (CPP) with one respondent (Third) suggesting a legal requirement for local authorities to provide targeted support to disadvantaged communities. Five respondents (including four community bodies) requested

that the principles of co-production be more evident, for example, in guidance material to accompany the Act.

Transparency

3.42 Six respondents recommended that decisions on asset transfer requests be adequately publicised. Five respondents requested that registers of assets should be maintained and published.

Robustness of provisions

3.43 Twelve respondents from a range of sectors felt that the provisions required to be tightened in places to ensure that community bodies acquiring assets were in a position to maintain the assets responsibly and under the conditions agreed prior to transfer. One respondent (Rep) cautioned that changes in community bodies' format and personnel could affect sustainability; one community council called for local authorities to retain a right of scrutiny over "buy outs". Two public bodies highlighted what they saw as a lack of clarity in termination procedures should the proposed benefits of the transfer not materialise.

Valuation issues

3.44 The key issues raised were:

- How should transfers at below market value be handled?
- How do the provisions interact with best value requirements?
- How should differences in opinion on the value of assets be addressed expediently?

3.45 Further guidance to relevant authorities on these issues was requested. Three local government respondents referred to the provisions of the Disposal of Land by Local Authorities (Scotland) Regulations as helpful in suggesting a way forward in relation to transferring assets below the market value. One public body also noted the requirement for public bodies to obtain Ministerial consent for the disposal of any asset at less than the best price on an open market.

Appeals

3.46 A few issues were raised in relation to the provisions on appeals:

- There do not appear to be provisions preventing an authority from disposing of assets pending an appeal against initial refusal (2 mentions).
- Community bodies should have the right to formally address issues raised in refusal notices (1 mention).
- There is no clear definition of what constitutes grounds for appeal (1 mention).

Leasing issues

3.47 Several respondents (8 mentions) expressed their support for community bodies to enter into a leasing arrangement with a relevant authority rather than a purchase of land (particularly in the interim period whilst funds are being sourced). Two local government representatives called for s.9(5) to be amended to transfer the lease obligations to the community body. One view (Com) was that community bodies who have been leasing/managing an asset for a period of time, should have the right to seek to buy the asset. Three respondents (Priv, Oth, PB) requested that provisions be inserted to address the situation where a request covers land that is being leased by one public sector body from another.

| |
|---|
| <p>Question 7: What costs and savings do you think would come about as a result of these draft provisions?</p> |
|---|

3.48 164 respondents (39% of all respondents) addressed this question, although many provided general commentary only, rather than specific details. A few overarching themes emerged:

- The provisions should not be viewed as aiming to cut costs. Instead they are a means by which public sector assets can be better utilised by communities.
- Costs may dominate in the shorter term with savings accruing over time.
- To some extent, costs and savings will depend on how well assets are managed and the nature of the assets.
- Costs can be minimised by ensuring processes are streamlined, guidance is provided, decisions on transfers are sound and communities receive appropriate training and support.
- The new right should not be used by the public sector to pass on liabilities to communities.
- Some benefits are difficult to quantify, but it is important to include non-quantifiable and non-financial benefits in any evaluation of costs and benefits. One respondent commented:
“Increasing community access to land will have social, environmental, health and community benefits. These are hard to quantify in purely monetary terms. We are concerned that you should not focus too narrowly on just the economic savings as a result of these provisions (Woodlands Community Development Trust) (Com).

3.49 The vast majority of responses to this question referred only to relevant authority costs and savings, with just a minority of respondents identifying potential costs and savings for communities. Potential costs incurred by third sector interface organisations were identified by a few respondents, with a local government representative also highlighting the costs associated with assisting communities, such as deploying community support workers.

3.50 Table 3.6 summarises areas in which potential costs and savings were identified by respondents.

Table 3.6 Costs and savings identified by respondents

| |
|---|
| <p>Potential costs (in order of mentions from most to least)</p> |
|---|

| Relevant authority | Community |
|---|---|
| <ul style="list-style-type: none"> • staffing of new procedures • supporting communities/community development support • selling at less than market price/holding onto assets whilst request is proceeding • managing the appeals process • making good sub-standard assets prior to transfer • seeking expert assistance (e.g. legal fees) • taking up maintenance again if communities fail to manage • enforcement • drop in income from fee-generating activities • loss of capital assets and the sale revenue they may generate • redundancy/unemployment amongst local authority employees | <ul style="list-style-type: none"> • community consultation • seeking expert assistance (e.g. legal fees) • volunteer time and energy • running/maintenance costs of asset • potential loss of amenity if transfer fails • preparation of request • general procedures |
| Potential savings (in order of mentions from most to least) | |
| Relevant authority | Community |
| <ul style="list-style-type: none"> • reduction in maintenance costs • empowered communities being more autonomous and resilient • reduction in calls on public funds • services delivered locally in way that focuses on early intervention and prevention • reduction in management of underused and loss-making assets • finance from the sale of the asset • local authority management fees | <ul style="list-style-type: none"> • under-utilised buildings brought back into community use • socio-economic benefits such as employment opportunities • social benefits such as well being and confidence • grant funding/income stream access • environmental benefits • health benefits • responsive to local needs • generation of revenue from asset |

4. COMMUNITY RIGHT TO REQUEST TO PARTICIPATE IN PROCESSES TO IMPROVE OUTCOMES OF SERVICE DELIVERY

4.1 Part 2 of the draft Bill is aimed at strengthening participatory democracy in a way which it is intended will increase opportunities for communities to be directly involved in improving public services by promoting dialogue between the public sector and communities. Under the proposals, a community body will be able to make a request to the public body or bodies which deliver a service, asking to take part in a process to improve the outcome of that service. It is proposed that the community body will be required to explain and provide evidence of how it could contribute to improvement. The public body will have to agree to the request unless it considers that there are reasonable grounds for refusing it, and in these circumstances it must give reasons for refusing the request.

Question 8: Do you agree with the definition of community body at s.11? Do you have any changes to suggest?

4.2 215 respondents (51% of all respondents) stated clearly whether they agreed or disagreed with the definition of community body. A few further respondents provided relevant commentary only.

Table 4.1: Responses to Question 8

| Category | Yes | | No | | Total |
|------------------------|------------|-----------|-----------|-----------|------------|
| | No. | % | No. | % | No. |
| Individuals | 33 | 89 | 4 | 11 | 37 |
| Third sector | 27 | 77 | 8 | 23 | 35 |
| Community organisation | 33 | 92 | 3 | 8 | 36 |
| Community Council | 30 | 77 | 9 | 23 | 39 |
| Public Body | 13 | 100 | - | - | 13 |
| Local government | 17 | 65 | 9 | 35 | 26 |
| Other | 10 | 83 | 2 | 17 | 12 |
| CPP | 4 | 100 | - | - | 4 |
| Representative body | 6 | 86 | 1 | 14 | 7 |
| Private sector | 4 | 100 | - | - | 4 |
| Academic | 1 | 50 | 1 | 50 | 2 |
| Total | 178 | 83 | 37 | 17 | 215 |

4.3 Of those who responded, the vast majority (83%) agreed with the definition of community body. This was higher than the 69% agreement rate for the definition of “community body” in Part 1 of the draft Bill. Community organisations in particular were very supportive of the definition, only three of the 36 who responded disagreeing. Around two-thirds (65%) of local government representatives agreed with the definition. Amongst those agreeing with the definition, recurring views were that it was clear, easy to understand, flexible and inclusive.

Suggestions for changes

4.4 Many respondents from a variety of sectors acknowledged the need for different definitions of community body in Part 1 and Part 2 of the draft Bill respectively, and recommended that different wording be used to reduce confusion between the two definitions. Suggestions included amending “community body” in Part 2 to “community participation body” or “local community organisation”. However, three local government representatives and two “other” bodies requested the same definition be used for both Parts of the Bill in order to be consistent.

4.5 The explicit inclusion of community councils at s.11(1)(a) was commented upon by 12 respondents. Whilst some respondents across public and community sectors welcomed their inclusion, others, largely local government representatives, questioned whether their governance and their representation were sound enough to warrant this specified role. One suggestion was for community councils to feature simply as an example at s.11(1)(b).

4.6 A common query (16 respondents from a range of sectors) was whether the provisions encompassed communities of interest in addition to communities of place. However, others (Acad, Third) considered this already implicit in the draft.

4.7 Section 11(2)(d) attracted attention with repeated calls for a clear definition of “public benefit”. Concern was expressed by some community organisations that public benefit may not ordinarily feature as part of community bodies’ constitutions. Others described how groups such as sports clubs may exist for the benefit of their members rather than for a wider audience, but should still be included within the definition of community body.

4.8 The issue of how a community group could demonstrate they represented wider community views was raised largely by local government representatives, with one professional representative body suggesting that a minimum membership of the body could be stipulated. Two community organisations emphasised the need for community bodies to demonstrate that they have made appropriate efforts to consult with others.

4.9 There was a balance of view across those who considered the provisions to be too prescriptive and those who recommended a tighter definition. In the former camp were respondents across a variety of sectors who argued that too formal a definition could present a barrier to informal community groups with little expertise. A local government representative commented:

“Formality does not always equate to meaningful and effective community participation. This could be particularly relevant around the co-creation of services in terms of health and social care integration” (South Ayrshire Council).

4.10 One public body questioned how an individual who did not want to be part of a formal, constituted group could request to participate. A community

council described how some volunteers worked across several constituted groups, without being part of any one group.

4.11 Questions arose over whether the definition applied to already constituted groups, or whether new bodies could form for the purpose of meeting the criteria.

4.12 In contrast, others argued for a more prescriptive definition which included:

- incorporated bodies only to take on service delivery contracts
- members of the community body to be permanent residents in the area
- body should have democratic elections and be affiliated to a national body
- requirement that they should consult, engage and involve young people
- requirement that they should work in partnership with other stakeholders and experts.

4.13 Queries were raised over whether certain bodies could be specifically identified as was the case for community councils in s.11(1)(a). Those cited were: social enterprise bodies; SCIOs; industrial and provident societies; worker or service co-operatives; social housing providers; and registered tenant organisations.

4.14 Ten respondents from a range of sectors recommended that in order for the proposals to be fully inclusive, community bodies should be supported in their request for and on-going participation. One third sector organisation recommended that community bodies should be permitted to seek the right to participate through intermediary organisations.

4.15 Four respondents, three of them third sector organisations called for a review process to be built into the provisions to allow for later changes to the definition of community body.

4.16 One local government representative and one community planning partnership called for public service authorities to retain some local discretion over the meaning of community body to fit with local context.

4.17 Further detailed drafting points were:

- 11(2) should include either “some of the following” or “all of the following” (CC)
- 11(2)(b) should include provision for dissolution of the body (LG)
- 11(2)(b) should state that the rules should be fair, representative of the community and in line with equality standards (LG).

4.18 A few more general comments about the policy itself were submitted. It was commented that the policy reflected effective existing dialogue mechanisms between public bodies with communities. Some emphasised that the new provisions should not prevent existing community engagement practices from continuing. Some concern was expressed that public service

authorities could be burdened with numerous requests and that “hi-jacking” of the rights by political/lobby groups should be prevented.

Question 9: Do you agree with the list of public bodies to be covered in this Part at Schedule 2? What other bodies should be added or removed?

4.19 199 respondents (47% of all respondents) stated whether they agreed or disagreed with the list of public bodies to be covered in this Part at Schedule 2.

Table 4.2: Responses to Question 9

| Category | Yes | | No | | Total |
|------------------------|------------|-----------|-----------|-----------|------------|
| | No. | % | No. | % | No. |
| Individuals | 28 | 85 | 5 | 15 | 33 |
| Third sector | 22 | 76 | 7 | 24 | 29 |
| Community organisation | 28 | 82 | 6 | 18 | 34 |
| Community Council | 32 | 84 | 6 | 16 | 38 |
| Public Body | 11 | 73 | 4 | 27 | 15 |
| Local government | 19 | 73 | 7 | 27 | 26 |
| Other | 8 | 73 | 3 | 27 | 11 |
| CPP | 3 | 75 | 1 | 25 | 4 |
| Representative body | 3 | 60 | 2 | 40 | 5 |
| Private sector | 3 | 100 | - | | 3 |
| Academic | 1 | 100 | - | | 1 |
| Total | 158 | 79 | 41 | 21 | 199 |

4.20 All or the majority of all respondents across all sectors provided explicit support for the list of public bodies at Schedule 2. Many of them made suggestions for additional bodies to be included in the list.

Suggestions for bodies to be added

4.21 Many suggestions were made for additions to the list of bodies and are presented below.

Table 4.3: Suggestions for bodies to be added

| Mentioned by 10 or more respondents | | |
|---|----------------------|----------------------------|
| ALEOs | Crown Estate | Forestry Commission |
| Regional Transport Authorities | Scottish Water | |
| Mentioned by between 5 and 9 respondents | | |
| Scottish Ministers | | |
| Mentioned by fewer than 5 respondents | | |
| All public bodies | Ministry of Defence | Scottish Housing Regulator |
| Crofting Commission | Harbour Authorities | National Trust |
| Marine Scotland | Co-operative Society | Transport Scotland |

| | | |
|--|----------------------------------|--|
| Historic Environment Scotland | Visit Scotland | Scottish Canals |
| Caledonian Maritime Assets Ltd | Highland and Island Airports | National Museums of Scotland |
| National Galleries of Scotland | CalMac Ferries | Department for Environment, Food and Rural Affairs |
| Historic Scotland | Housing Associations | Social Care and Social Work Improvement Scotland |
| Community Planning Partnerships and their partners | Prison Service | Health and Community Care Partnerships |
| Skills Development Scotland | Scottish Human Rights Commission | Children's Commissioner |
| Education Scotland | Creative Scotland | Sportscotland |
| Fisheries Bodies | Community Justice Authority | Job Centre Plus |
| Victim Support | Audit Scotland | Ombudsman |
| Mental Welfare Commission | Scottish Social Services Council | Care Inspectorate |
| Tayside and Central Scotland Transport Partnership | Third sector Interface | |

NB It should be noted that some of these bodies are not public bodies and some are already included under the umbrella of "Scottish Ministers" or under other names, for example the British Waterways Board operates as "Scottish Canals".

4.22 Two third sector respondents suggested that the list be modelled on that contained in the Freedom of Information (Scotland) Act 2002. Two community organisations and one community council considered that Schedule 2 should replicate the relevant authorities listed in Schedule 1. One private respondent sought clarification of the grounds for s.12(2) which gives powers to Scottish Ministers to modify schedule 2.

Question 10: Do you agree with the description at s.13 of what a participation request by a community body to a public service authority should cover? Is there anything you would add or remove?

4.23 204 respondents (48% of all respondents) stated whether they agreed or disagreed with the description at s.13 of what a participation request should cover. Of these, 82% agreed, 17% disagreed and 1% agreed with some aspects of the proposal but not others. A further 20 respondents provided relevant commentary.

Table 4.4: Responses to Question 10

| Category | Yes | | No | | Yes and No | | Total |
|--------------|-----|----|-----|----|------------|---|-------|
| | No. | % | No. | % | No. | % | No. |
| Individuals | 28 | 82 | 5 | 15 | 1 | 3 | 34 |
| Third sector | 23 | 70 | 9 | 27 | 1 | 3 | 33 |

| | | | | | | | |
|------------------------|------------|-----------|-----------|-----------|----------|----------|------------|
| Community organisation | 35 | 92 | 3 | 8 | | | 38 |
| Community Council | 32 | 94 | 2 | 6 | | | 34 |
| Public Body | 11 | 73 | 3 | 20 | 1 | 7 | 15 |
| Local government | 14 | 61 | 9 | 39 | | | 23 |
| Other | 10 | 91 | 1 | 9 | | | 11 |
| CPP | 4 | 100 | - | - | | | 4 |
| Representative body | 6 | 75 | 2 | 25 | | | 8 |
| Private sector | 2 | 100 | - | - | | | 2 |
| Academic | 2 | 100 | - | - | | | 2 |
| Total | 167 | 82 | 34 | 17 | 3 | 1 | 204 |

4.24 Local government representatives provided less support for the description than did other categories of respondent, with 9 of their 23 respondents to this question (39%) disagreeing with the description.

4.25 An overarching comment from respondents from a range of sectors (although a predominance of third sector) was that plainer English is required in order to empower communities to understand what is required and fulfil the obligations. One community organisation remarked:

“...while the language of ‘outcome improvement’ will be very familiar to civil servants it is unrealistic and potentially unfair to expect all communities to be able to articulate their request in this form. A more inclusive approach might be to ask community bodies to articulate what they would like to do and how this would make things better for the local community” (Carnegie UK Trust) (Third).

A recurring comment was that supporting guidance will be required to accompany the provisions.

4.26 The term “outcome improvement process” attracted much comment. The predominant theme was that clarity is required on what services this relates to. Specific comments included:

- These need not be restricted to those identified within single outcome agreements.
- They could include wider thematic objectives in addition to single focus outcomes.
- They could refer to very small, local concerns.
- They encompass services which communities could deliver themselves.
- It is not made clear that the request can trigger a new improvement process and not just one already established.
- It is not made clear that the request can refer to the design, delivery and/or evaluation of services.

4.27 Several respondents considered that overall the requirements of community bodies at s.13(2) were too demanding. Terms such as “too high a bar” and “too high a hurdle” were used. Comments included:

“We consider that the requirements for a participation request make too heavy a demand for the community body to provide a technical specification of the change it is seeking. For example, public service providers have often found it difficult to identify outcomes and distinguish these from the outputs of their activities. In particular in those situations where improvements are most urgently required, community bodies are likely to be seeking change in processes that they have had little previous opportunity to have knowledge of” (The Community Learning and Development Standards Council for Scotland) (Rep).

“Although perfectly reasonable, there is a possibility that in practice the requirement to specify an outcome, rationale, credentials, etc. could become a quasi tendering process with the kind of hoops, hurdles and barriers which currently make it difficult for community groups to contribute to the improvement of local services” (Community Resources Network Scotland) (Com).

4.28 Ten respondents commented specifically on s.13(2)(c) which stipulates that community bodies should provide details of any knowledge, expertise and experience they have in relation to the specified outcome. Overall, they perceived this requirement to be too restrictive and possibly redundant if community bodies’ first-hand experience of services delivered within their communities is recognised.

4.29 In relation to s.13(2)(d) which requires an explanation of the improvement in the specified outcome which the body anticipates may arise, the view of three respondents (from different sectors) was that a broad prediction of improvement should suffice rather than trying to be too specific.

4.30 Several respondents, from a cross-section of categories, argued that community bodies will be restricted in the information they can include in their requests as they will not have detailed background information on services and projects.

Suggested additions

4.31 A number of suggestions were made for additions to the provisions:

- Requirement for reference to funding to support proposed improvements and the timescale for these.
- Requirement for community bodies to demonstrate they have the wider support of their community in making the request.
- Declaration of any personal interest.
- Demonstration that request is relevant to the authority to whom it is made.

- The introduction of an earlier stage into the process during which relevant data is sourced and gathered by the community probably through a Freedom of Information request.
- Details of the extent and basis of any financial benefits which may accrue.
- Details of any other community bodies or public agencies that should be asked to be involved.
- Declaration of whether the community body was involved previously in engagement activity regarding the specified outcome.
- Details of the sustainability of the service provision.
- Demonstration of value for money.

General comments

4.32 A recurring theme was that community engagement is ongoing and successful already in many local authority areas, and care should be taken that routine engagement through established processes should not be overlooked at the expense of what some saw as the overly complex and bureaucratic procedures set out in the Bill. One third sector respondent suggested that the provisions be deployed only as a back-up when routine channels of engagement are not working.

4.33 A few respondents (largely third sector) perceived the requirement to request to participate to be contrary to the ethos of the Bill, with two respondents (LG, Third) recommending that the starting point should be the automatic right to participate. Three third sector respondents perceived the tone of the provisions to be unnecessarily adversarial in nature.

4.34 Questions were asked:

- How do the provisions link with the Equality and Human Rights Assessment practice?
- What happens if the request conflicts with the public service authority's strategic plan?
- Where do Community Planning Partnerships fit in relation to the request?
- What provision will be made for people who are unable to put their request in writing?

Question 11: Do you agree with the criteria at s.15 that a public service authority should use when deciding whether to agree or refuse a participation request?

4.35 202 respondents (48% of all respondents) stated whether they agreed or disagreed with the criteria at s.15. Of these, 80% agreed, 20% disagreed and one respondent agreed with some aspects of the proposal but not others. A further 30 respondents provided relevant commentary.

Table 4.5: Responses to Question 11

| Category | Yes | No | Yes and No | Total |
|----------|-----|----|------------|-------|
|----------|-----|----|------------|-------|

| | No. | % | No. | % | No. | % | No. |
|------------------------|------------|-----------|-----------|-----------|----------|-----------|------------|
| Individuals | 29 | 88 | 4 | 12 | | | 33 |
| Third sector | 23 | 70 | 10 | 27 | | | 33 |
| Community organisation | 29 | 76 | 9 | 24 | | | 38 |
| Community Council | 34 | 94 | 2 | 6 | | | 36 |
| Public Body | 11 | 73 | 3 | 20 | 1 | 7 | 15 |
| Local government | 16 | 73 | 6 | 27 | | | 22 |
| Other | 9 | 75 | 3 | 25 | | | 12 |
| CPP | 4 | 100 | - | - | | | 4 |
| Representative body | 4 | 80 | 1 | 20 | | | 5 |
| Private sector | 1 | 33 | 2 | 67 | | | 3 |
| Academic | 1 | 100 | - | - | | | 1 |
| Total | 161 | 80 | 40 | 20 | 1 | .. | 202 |

4.36 All or the majority of all respondents, across all sectors except the private sector, provided explicit support for the criteria at s.15.

Comments about s.15(3)(c)

4.37 This sub-section of the provisions attracted the most comment. The sub-section stated that in reaching a decision on whether to agree or to refuse a participation request, the authority must take into consideration whether agreeing to the request would be likely to promote or improve: economic development; regeneration; public health; social wellbeing; or environmental wellbeing. Seven respondents (including three local government bodies) simply agreed to the list. The majority of other commentators proposed additions or amendments to the list, with the most frequently mentioned being “other community benefit (viewed as a “catch-all”) (17 mentions), “equality” (6 mentions) and more efficient delivery of services to the community (5 mentions). A small number of respondents proposed specific amendments:

- change “economic development” to “sustainable economic development” (2 mentions)
- add “including social housing” to “regeneration” (1 mention)
- change “social wellbeing” to “wellbeing” (1 mention)
- change “environmental wellbeing” to “local and global environmental and ecological wellbeing” (1 mention)
- change “environmental wellbeing” to “protection of the environment and human health” (1 mention).

Other comments about s.15(3)(c)

4.38 Four respondents, including three third sector respondents, considered the items in the list to be too subjective and advocated the provision of accompanying guidance.

4.39 Several respondents queried whether the list was hierarchical. and if so, how relative value is assigned to each item. Two respondents (Third, Com) requested clarity on whether requests had to demonstrate the promotion of all items on the list.

4.40 Two local government representatives argued for local authorities to be able to identify their own criteria, perhaps based upon those outlined in s.15, but tailored to local context and developed with community input.

Comments about s.15(4)

4.41 This provision also attracted much comment. It stated that the authority must agree to the participation request unless there are reasonable grounds for refusing it. Four respondents, representing different sectors, generally agreed with this provision and requested it be given more prominence. However, others (Third, Rep) argued that the provision allowed authorities too much lee-way to reject any request.

4.42 A common view (18 respondents, largely third sector and community organisations) recommended further explanation of what constitutes “reasonable grounds”.

4.43 Some respondents (largely local government representatives and public bodies) suggested reasons why requests should be refused: if they impact negatively on other services; are not in keeping with strategic plans; are frivolous or vexatious; likely to create a breach of a statutory duty; create an exceptional cost burden for a public authority; or involve persons deemed unsuitable.

4.44 A recurring comment particularly amongst third sector respondents was that the presumption should be clearly in favour of agreeing participation requests.

4.45 Eleven respondents (including six community organisations) recommended that an appeals procedure be established for communities whose requests have been refused.

| |
|---|
| Q12: Do you have any other comments about the wording of the draft provisions? |
|---|

4.46 113 respondents (27% of all respondents) provided further comments about the wording of the draft provisions. The main themes are summarised below.

Participation ethos

4.47 A recurring perception amongst several individuals, community councils, community organisations and third sector bodies was that the draft provisions do not reflect adequately an ethos of community participation. For some this required a shift in public body mindset:

“...it will be vital that officials who are dealing with participation requests recognise the need to think differently about engagement and participation. There will need to be structural change within public body decision-making processes so that they are open to participation requests” (Electoral Reform Society Scotland) (Third).

4.48 Seven respondents (including four local government representatives) considered the provisions to be overly complex and “top heavy” for processes which were working well across public bodies already. One commented:

“The idea of community bodies participating in outcome improvement processes is potentially an interesting development. The general aims are admirable, but the legislative processes suggested look complicated” (West Dunbartonshire Council).

4.49 One CPP felt that the provisions resulted in too much focus on process rather than outcomes. Another view was that the provisions could create an unnecessary tension between communities and public authorities (LG).

4.50 It was commented that the provisions made it too easy for requests to be rejected. Even if requests are accepted, some felt that participatory mechanisms were not sufficiently reflected in the formal participation process outlined

4.51 In contrast, a few respondents considered the provisions to be a good starting point (CC); leaving flexibility to develop further in future (CC); and promoting greater trust amongst communities that their right to participate is protected (CC, Third). Three respondents (two LG, one PB) however, cautioned that the formal provisions may inadvertently serve to marginalise certain groups who had previously approached and engaged with public bodies in ways much more suited to their needs and expertise.

Clarity of drafting

4.52 Once again, a common theme was that the draft lacked precision in some places, leaving aspects open to interpretation. Three local government representatives recommended tighter drafting around key words and terms such as “output” and “outcome” and “outcome improvement process”.

4.53 A recurring view was that the legal provisions should be accompanied by supporting guidance in plain English. One recommendation (LG) was for a plain English summary version that is easier for community members to understand.

Safeguards

4.54 Six respondents, three of them third sector, argued for an appeals process to be established for communities.

4.55 Three respondents, two of them representative professional bodies, highlighted what they saw as a need for a provision to prevent repeat participation requests.

4.56 One public body suggested the introduction of a clause (similar to s.14 of the Freedom of Information (Scotland) Act 2003), which allows for non-compliance by the public body if a request is vexatious. A few local government and community planning partnerships also raised the possibility of public bodies having to deal with large numbers of requests. One remarked:

“The number of requests that could be submitted from communities of special interest, self-help groups, geographical communities, over individual diseases, conditions or disabilities or over general distribution of services and access is too great to estimate”
(Community Planning Aberdeen) (CPP).

One suggestion was for public bodies to publicise requests in order to minimise similar requests whilst possibly bringing together community members with a common interest (LG).

4.57 A few respondents from different sectors recommended formal reviews be built into the provisions in order for unintended unwelcome consequences of the policy to be identified and addressed.

4.58 It was felt that provision should be made for the end of an outcome process to be delineated, possibly with a final report (Com), or some form of guillotine measure (LG). One CPP remarked, however, that some outcome improvements are long term in nature (such as health inequality) and short term results may not be evident.

Interfaces

4.59 Another dominant theme was how these provisions interfaced with others, such as statutory engagement processes and the strategic plans of other services bodies. Recommendations were made for clear articulation of the roles of respective stakeholders in the community participation process:

- CPPs
- third sector interface bodies
- voice of young people

Transparency

4.60 Third sector bodies called for information about requests to be published and a possible duty on public bodies to promote the existence of the provisions to communities.

Support

4.61 Two local government representatives recommended that public bodies be required to provide support to communities using the provisions. One

“other body” proposed the establishment of a national support service for this purpose.

Question 13: What costs and savings do you think would come about as a result of these draft provisions?

4.62 121 respondents (29% of all respondents) addressed this question, although many provided general commentary only, rather than specific details. A few overarching themes emerged:

- Whilst most costs are tangible, savings may be longer term and/or qualitative and difficult to quantify.
- Detailed costs and saving will depend on the nature of the request and the services involved.
- The provisions should not be viewed as aiming to cut costs. Instead they are a means by which public sector assets can be better utilised by communities.

4.63 Table 4.6 overleaf summarises the areas in which potential costs and savings were identified by respondents.

Table 4.6 Costs and savings identified by respondents

| Potential costs (in order of mentions from most to least) | |
|---|--|
| Relevant authority | Community |
| <ul style="list-style-type: none"> • staffing to deal with processing of requests • supporting communities/community development support • direct engagement costs such as hire of halls • legal costs • recovering projects which are failing • publicity • monitoring service provision • unemployment/redundancies in relevant authority staff • buying in expertise | <ul style="list-style-type: none"> • engaging in participatory process • running services • seeking expert assistance (e.g. legal fees) • volunteer time and energy • training volunteers • publicity |
| Potential savings (in order of mentions from most to least) | |
| Relevant authority | Community |
| <ul style="list-style-type: none"> • more efficiently run services • expertise brought in from communities • services delivered locally in way that focuses on early intervention and prevention • fewer public inquiries • empowered communities being more autonomous and resilient • better decision-making; fewer costly errors • community volunteers input to running services • less bureaucracy | <ul style="list-style-type: none"> • better services more aligned to need of communities • social benefits such as well being and confidence • better focusing of resources • grant funding/income stream access • health benefits • sustainable communities • environmental benefits |

5. INCREASING TRANSPARENCY ABOUT COMMON GOOD

5.1 Assets held for the common good are owned by local authorities, having been passed down from former burghs under successive rounds of local government re-organisation. While local authorities should already have details of their common good assets, these are not always readily available to the public, and disputes have occurred over what is included. Provisions in the Bill have been drafted with the aim of increasing transparency about the existence, use and disposal of common good assets, and also to increase community involvement in decisions taken about their identification, use and disposal.

Question 14: Do you think the draft provisions will meet our goal to increase transparency about the existence, use and disposal of common good assets and to increase community involvement in decisions taken about their identification, use and disposal?

5.2 204 respondents (48% of all respondents) stated clearly whether they agreed or disagreed that the draft provisions will meet the goal outlined. Many others also provided relevant commentary.

Table 5.1: Responses to Question 14

| Category | Yes | | No | | Total |
|------------------------|------------|-----------|-----------|-----------|------------|
| | No. | % | No. | % | No. |
| Individuals | 27 | 84 | 5 | 16 | 32 |
| Third sector | 25 | 71 | 10 | 29 | 35 |
| Community organisation | 31 | 84 | 6 | 16 | 37 |
| Community Council | 28 | 70 | 12 | 30 | 40 |
| Public Body | 10 | 77 | 3 | 23 | 13 |
| Local government | 13 | 52 | 12 | 48 | 25 |
| Other | 9 | 100 | - | - | 9 |
| CPP | 4 | 100 | - | - | 4 |
| Representative body | 3 | 100 | - | - | 3 |
| Private sector | 2 | 50 | 2 | 50 | 4 |
| Academic | 2 | 100 | - | - | 2 |
| Total | 154 | 75 | 50 | 25 | 204 |

5.3 Three-quarters of respondents who provided a view agreed that the draft provisions will meet the goal of increased transparency. Of the different respondent categories, local government and private sector respondents provided the least support for the provisions, with around half of those providing a view disagreeing that the provisions will increase transparency.

Definition of common good

5.4 Respondents across most sectors (including nine local government respondents) called for clarity of definition of “common good”. Of particular concern was the need to distinguish between alienable and inalienable common good assets. A few respondents urged that the need to include “moveables” should be emphasised in legislation.

5.5 One respondent (Priv) highlighted that some common good assets are held by bodies, such as trusts, which are on the Scottish Charity Register and these should also be recorded.

Common good registers

5.6 The provisions relating to establishing and maintaining a register of common good attracted much comment. A recurring comment amongst local government respondents was that the provision to establish such a register would have considerable resource implications. Many reported already having some form of register, with one respondent (LG) asking if the new requirement would replace or add to the existing Local Authority (Scotland) Accounts Advisory Committee requirement.

5.7 A general comment was that a clear definition of common good would aid the compilation of the register and reduce disputes around its content.

5.8 Suggestions made for the content of the register (put forward largely by community councils) included:

- reason for inclusion
- documentation “trail” for each item
- valuation of each item
- projected costs and income
- lease terms
- any burdens/restrictions

5.9 Many respondents from a range of sectors expressed concern at s.22(3) which permits the list to be published “in such a way as the local authority may determine”. This was viewed as too vague, with recommendations made that the list should be:

- easily accessible
- on the internet
- in local press and other media
- publicised in public spaces
- available in booklet form
- in libraries
- well circulated to the local population.

5.10 Section 24(3) which enables local authorities to publish details of disposal of assets in such a way as they may determine was viewed as giving councils too much discretion by many community councils and individuals.

One local government representative considered the provision too broad, and recommended narrowing it to include only community councils. Another considered it preferable for Scottish Ministers to determine how details of disposal should be published in order to prevent local arguments. One community body considered that all representations should be published. It was argued that those with relevant expertise should be notified in the case of disposal of historic assets (Rep).

5.11 The provisions relating to notifying bodies of the publication of the list (s.22(4) and s.22(5)) and having regard to any representation (s.22(6)), received comment. Several local government representatives queried how they could determine that they had fulfilled these obligations if they were not fully aware of all community bodies in their jurisdiction. Guidance on this was requested, with one suggesting that perhaps groups with an interest should be required to register with the local authority to be involved in any consultation. Two respondents (Com, Private) recommended restricting s.22(5) by removing (b), thus requiring local authorities to notify only community councils, as representatives of the local community. One public body suggested amending s.22(5)(b) to “any network or group of community bodies” of which the authority is aware.

Disputes over the register

5.12 Ten respondents from a range of sectors requested guidance on how disputes over the register content should be addressed.

Upkeep of the register

5.13 Six respondents from a range of sectors suggested regular review (e.g. annually, three yearly, rolling) of the register to enable amendments to be made.

Disposal of assets

5.14 There were calls from six respondents from a range of sectors for a clearly defined timescale in which representations could be made.

Other comments

5.15 A recurring query from a range of sectors was whether the requirement for the sheriff court to approve disposal of common good assets will still apply to all disposals.

6. DEFECTIVE AND DANGEROUS BUILDINGS – RECOVERY OF EXPENSES

6.1 Part 4 of the draft Bill inserts new sections into the Building (Scotland) Act 2003 which allow for a “notice of liability for expenses” to be registered in the appropriate property register in relation to a building on which work has been done. Where such a notice is registered, if the building is sold, the previous owner and the new owner will become severally liable for the debt. The provisions in the draft Bill set out the procedures to be followed and the administrative expenses and interest which can be charged.

Question 15: Do you agree that cost recovery powers in relation to dangerous and defective buildings should be improved as set out in the draft Bill?

6.2 149 respondents (35% of all respondents) stated clearly whether they agreed or disagreed that cost recovery powers in relation to dangerous and defective buildings should be improved as set out in the draft Bill. The vast majority (98%) of those who provided a view agreed.

Table 6.1: Responses to Question 15

| Category | Yes | | No | | Total |
|------------------------|------------|-----------|----------|----------|------------|
| | No. | % | No. | % | No. |
| Individuals | 16 | 94 | 1 | 6 | 17 |
| Third sector | 16 | 100 | - | - | 16 |
| Community organisation | 21 | 100 | - | - | 21 |
| Community Council | 34 | 97 | 1 | 3 | 35 |
| Public Body | 11 | 100 | - | - | 11 |
| Local government | 30 | 100 | - | - | 30 |
| Other | 9 | 100 | - | - | 9 |
| CPP | 4 | 100 | - | - | 4 |
| Representative body | 4 | 100 | - | - | 4 |
| Private sector | 1 | 50 | 1 | 50 | 2 |
| Academic | - | - | - | - | - |
| Total | 146 | 98 | 3 | 2 | 149 |

Question 16: Do you agree that the same improvements should apply to sections 25, 26 and 27 of the Building (Scotland) Act 2003?

6.3 138 respondents (33% of all respondents) stated clearly whether they agreed or disagreed that the same improvements should apply to s.25, s.26 and s.27 of the Building (Scotland) Act 2003 (see Table 6.2 overleaf). Again, the vast majority (98%) of respondents who provided a view agreed.

Table 6.2: Responses to Question 16

| Category | Yes | | No | | Total |
|-------------|-----|-----|-----|---|-------|
| | No. | % | No. | % | No. |
| Individuals | 16 | 100 | | - | 16 |

| | | | | | |
|------------------------|------------|-----------|----------|----------|------------|
| Third sector | 13 | 100 | - | - | 13 |
| Community organisation | 19 | 100 | - | - | 19 |
| Community Council | 28 | 97 | 1 | 3 | 29 |
| Public Body | 11 | 100 | - | - | 11 |
| Local government | 29 | 97 | 1 | 3 | 30 |
| Other | 9 | 100 | - | - | 9 |
| CPP | 4 | 100 | - | - | 4 |
| Representative body | 5 | 100 | - | - | 5 |
| Private sector | 1 | 50 | 1 | 50 | 2 |
| Academic | - | - | - | - | - |
| Total | 135 | 98 | 3 | 2 | 138 |

7. IMPROVE AND EXTEND COMMUNITY RIGHT TO BUY

Background

7.1 The Scottish Government places importance in community ownership of land. In June 2013 the First Minister announced a target of one million acres in community land ownership by 2020. The Scottish Government has four priorities for taking forward the community right to buy as part of the agenda for land reform in Scotland:

- The extension of the community right to buy to all of Scotland, including urban areas and settlements with a population of 10,000 or more, which are currently excluded from the provisions, where Scottish Government is satisfied that it is in the public interest.
- Considering whether there should be a compulsory right to buy for communities, and the circumstances in which it could be used.
- The streamlining of the legislation after the first decade of its use.
- Improving the process of the community right to buy in order to remove barriers and increase opportunities.

Question 17: The Scottish Government proposes to extend right to buy to communities in all parts of Scotland, where the Scottish Government is satisfied that it is in the public interest. Do you agree with this proposal, and are there any additional measures that would help our proposals for a streamlined community right to buy to apply across Scotland?

7.2 229 respondents (54% of all respondents) stated clearly whether or not they agreed with the proposal to extend the right to buy to communities in all parts of Scotland, where the Scottish Government is satisfied that it is in the public interest. The vast majority (93%) agreed with the proposal (see Table 7.1 overleaf).

7.3 Many of these respondents and others provided relevant commentary, the key themes from which are summarised below.

7.4 One main reason for supporting the proposal was that this provided people living in urban areas with similar rights to those in rural areas. Some respondents urged that the rights of communities should be balanced with those of the landowners. Several respondents simply supported the idea of ensuring the process is as streamlined as possible, with sufficient time allocated to communities in preparing their requests. One local government representative emphasised the importance of an early review of the provisions in order to identify and address any unintended consequences.

Table 7.1: Responses to Question 17

| Category | Yes | | No | | Total |
|------------------------|------------|-----------|------------|----------|--------------|
| | No. | % | No. | % | No. |
| Individuals | 36 | 100 | 7 | - | 43 |
| Third sector | 39 | 100 | - | - | 39 |
| Community organisation | 41 | 100 | - | - | 41 |
| Community Council | 35 | 88 | 5 | 12 | 40 |
| Public Body | 11 | 85 | 2 | 15 | 13 |
| Local government | 21 | 91 | 2 | 9 | 23 |
| Other | 13 | 100 | - | - | 13 |
| CPP | 5 | 100 | - | - | 5 |
| Representative body | 8 | 100 | - | - | 8 |
| Private sector | 2 | 67 | 1 | 33 | 3 |
| Academic | 1 | 100 | - | - | 1 |
| Total | 212 | 93 | 17 | 7 | 229 |

Definitions

7.5 Clarity was requested from respondents across a range of sectors over what constituted “community”. It was remarked that communities of interest in addition to those of place may wish to take up this right, and the provisions should make clear that both are permitted.

7.6 Clarity on what constitutes “public interest” was also called for by eight respondents, with a few suggesting that an independent party should adjudicate on such matters.

7.7 Five respondents suggested that it may reduce confusion if the difference between this right and that relating to asset transfer provisions is made clear.

Safeguards

7.8 Many respondents identified safeguards which they felt were needed to ensure smooth running of the proposal. These included:

- Community must provide a strong business case with evidence of long-term viability.
- Organisations using the provisions should have a robust constitution and governance.
- Communities should demonstrate wider community support in executing their right.
- The rights of communities should be assessed within the context of wider strategic plans for the area.
- Contingency arrangements should be in place for purchases of land which subsequently fail.

Equalities issues

7.9 There was a general concern across a range of sectors that the provisions should be accessible to communities, whatever their levels of expertise. A common theme was for support to be in place for communities who are planning for and exercising their rights to own land, perhaps in simplified guidance, a dedicated website, a central body to consult, or via local authority staff.

7.10 Several respondents identified costs associated with preparing applications, and costs of purchasing the land itself, as potentially prohibitive.

7.11 Five respondents from community and third sector bodies recommended that a further right to use land as opposed to own land should be provided for, as this would meet the needs of many communities who simply wish to use the land for growing.

Extending “registrable land”

7.12 Land in which a community interest can be registered is called “registrable land” while land in which a community interest cannot be registered is called “excluded land”. The definition of “registrable land” includes clarification of the position of certain rights over land, such as mineral rights. There could be situations in the future where Ministers would want to amend what is “registrable land” in relation to Part 2 of the 2003 Act, to include, for example, the interests of the tenant in tenanted land.

Question 18: Do you think that Ministers should have the power to extend “registrable land” to cover land that is currently not included as “registrable land”? What other land should also be considered as being “registrable”?

7.13 178 respondents (42% of all respondents) stated clearly whether they agreed that Ministers should have power to extend “registrable land” to cover land that is currently not included as “registrable land”. The majority (83%) agreed with the proposal (see Table 7.2 overleaf). Local government representatives displayed most diversity with around two-thirds (65%) agreeing and one-third opposing.²

² It should be noted that very few respondents recognised the current scope of “registrable land”, which includes all types of land in relevant areas. The majority of suggestions for the extension of registrable land are, in fact, already included.

Table 7.2 Responses to Question 18

| Category | Yes | | No | | Total |
|------------------------|------------|-----------|------------|-----------|--------------|
| | No. | % | No. | % | No. |
| Individuals | 26 | 84 | 5 | 16 | 31 |
| Third sector | 20 | 91 | 2 | 9 | 22 |
| Community organisation | 34 | 97 | 1 | 3 | 35 |
| Community Council | 29 | 81 | 7 | 19 | 36 |
| Public Body | 6 | 86 | 1 | 14 | 7 |
| Local government | 15 | 65 | 8 | 35 | 23 |
| Other | 8 | 80 | 2 | 20 | 10 |
| CPP | 3 | 75 | 1 | 25 | 4 |
| Representative body | 5 | 83 | 1 | 17 | 6 |
| Private sector | 2 | 50 | 2 | 50 | 4 |
| Academic | - | - | - | - | - |
| Total | 148 | 83 | 30 | 17 | 178 |

7.14 Overall there was much support for extending the scope of “registrable land” as widely as possible, with land being excluded only where there is good reason. Recurring themes were that extensions should be decided in consultation with key stakeholders, including communities, and that the process should be transparent.

7.15 On balance, support was expressed for extending “registrable land” to include tenanted land, but caution was also advocated to ensure community owners will adhere to the terms of the lease in future, the view of the current landlord is taken into account and that the transfer will be in the tenants’ interests.

7.16 Other suggestions for land which should be considered as being “registrable” were:

- land in which the public clearly has an interest and which could provide positive outcomes if in community ownership
- urban land (although it was acknowledged that this would be more difficult to define than is the case for rural land)
- run-down land such as wasteland
- land adjoining wasteland
- Crown Estate land particularly inshore sea-bed and foreshore land
- brownfield land such as former industrial sites
- public parks and recreation land
- woodland/plantation land
- routes of new paths proposed by local authorities
- allotment sites
- sporting estates.

A compulsory right for communities to purchase land

7.17 The existing community right to buy allows a community to register an interest in land, but it can buy it only if the owner decides to sell. The

consultation sought views on what a compulsory power for communities to buy neglected or abandoned land would look like and how it would work.

Question 19: Do you think that there should be a compulsory power for communities to buy neglected or abandoned land in certain circumstances? What should these circumstances be?

7.18 214 respondents (50% of all respondents) stated clearly whether they agreed or disagreed that there should be a compulsory power for communities to buy neglected or abandoned land in certain circumstances. Overall the majority of respondents (83%) agreed with the proposal, however the three CPPs who expressed a view and almost half (45%) of local government representatives who provided a response, disagreed. The basis of their disagreement was generally that the issues involved are extremely complex, and it would be more effective for power to be vested in local authorities, who could work on a case-by-case basis and possibly purchase land on behalf of communities.

Table 7.3 Responses to Question 19

| Category | Yes | | No | | Total |
|------------------------|------------|-----------|------------|-----------|--------------|
| | No. | % | No. | % | No. |
| Individuals | 36 | 86 | 6 | 14 | 42 |
| Third sector | 32 | 94 | 2 | 6 | 34 |
| Community organisation | 41 | 100 | - | - | 41 |
| Community Council | 35 | 83 | 7 | 17 | 42 |
| Public Body | 8 | 89 | 1 | 11 | 9 |
| Local government | 11 | 55 | 9 | 45 | 20 |
| Other | 8 | 73 | 3 | 27 | 11 |
| CPP | - | - | 3 | 100 | 3 |
| Representative body | 4 | 57 | 3 | 43 | 7 |
| Private sector | 2 | 50 | 2 | 50 | 4 |
| Academic | 1 | 100 | - | - | 1 |
| Total | 178 | 83 | 36 | 17 | 214 |

7.19 The prevailing view was that communities should have a compulsory power to buy neglected or abandoned land where the public benefit is clearly justifiable and where reasonable efforts had been made to contact the landlord. It was commented that this may happen in circumstances where the landlord is absent, or has gained planning permission but then failed to take the plans forward.

7.20 A common view across many respondent sectors was that a time period should be set, following which the land could be deemed to be abandoned and action taken to pursue the compulsory purchase.

7.21 15 respondents from a range of sectors expressed concern that clear definitions of “neglected” and “abandoned” may be difficult to agree, but nonetheless essential in order to take the provision forward.

7.22 Recurring comments were that communities should be required to demonstrate that they will follow the principles of sustainable land use following purchase, that they have support for the purchase and sufficient resources for the additional investment needed.

7.23 18 respondents from a range of sectors considered that circumstances in which land is causing an eyesore and affecting the quality of life of the community should warrant a compulsory power to buy the land.

7.24 Other circumstances in which there should be a compulsory power for communities to buy neglected or abandoned land were each identified by fewer than ten respondents:

- where the land is curtailing the ability of communities to develop and/or attract inward investment
- where the land or buildings on it pose a danger (e.g. derelict buildings)
- where the land is attracting anti-social behaviour
- where there is a significant demand for land (e.g. for crofting; allotments)
- land that was previously in multiple ownership
- land surplus to local authority requirements
- where the owner cannot be traced
- where landowners' plans for use are inconsistent with the wishes of the community (e.g. will compromise an area of natural beauty)
- land which has cultural/historic significance to the community.

Question 20: How do you think this should work in practice? How do you think that the terms “neglected” and “abandoned” should be defined?

7.25 168 respondents (40% of all respondents) addressed this question. An overarching view was that the terms “neglected” and “abandoned” are subjective and very difficult to define. It was considered that in urban areas identifying neglect may be more obvious than in rural areas, where land lying apparently unused may in reality be undergoing active stewardship. Further challenges were identified as land which is subject to lengthy legal disputes, inheritance issues, land-banked sites, and development planning where sites are designated for housing which has not yet commenced. One respondent (Priv) considered that such complications demonstrated the need to take into consideration an owner's intention and not just the visible physical state of land.

7.26 Eight respondents, largely community councils and community organisations, recommended that a case-by-case basis is adopted with individual circumstances taken into consideration and an independent adjudicator having the final say. Two respondents (LG, Rep) suggested that a set of principles be developed rather than strict criteria; others (LG, Third) remarked that neglected and abandoned land will be identified by local authorities as part of their development of their local plans.

Neglect

7.27 Amongst the many respondents from a range of sectors who attempted to define “neglect”, the recurring view was that neglect is evidenced by the failure to maintain land over time, thereby reducing its value, and in some cases rendering it increasingly dangerous to the public. A strong theme was that the assessment of appearance and of extent of use of the land should be measured against typical practice for that type of landscape, and possibly cross-referenced against the local land-use plan.

7.28 Five respondents from a range of sectors suggested balloting the local population so seek their views on whether land should be classed as neglected.

Abandonment

7.29 One of the main criteria for assessing abandonment according to those respondents who provided a view was that the owner is not traceable or has not responded to attempts to make contact.

7.30 Another recurring recommendation was to identify a fixed time period during which if no purposeful action on the land had taken place, with the land lying deserted during this period, then it could be considered to have been abandoned. There were differing views on an appropriate length of time, with periods from 6 months to 20 years being proposed. It was commented that existing registers of vacant and derelict land could be used to record these cases.

Other comments

7.31 Six respondents suggested that the lack of evidence of any action or future development plan that would ensure the sustainable use and management of land could indicate neglect and/or abandonment. One view was that land which is out of keeping with the area around it could suggest neglect (PB).

7.32 Views differed on whether the onus should be on the land owner to justify that the land is not neglected or abandoned, or whether the local community should be required to set out a case to argue their opposing view.

Streamlining the community right to buy

7.33 The criteria that have to be met for Ministers to consent to register a community interest in land are set out in s.38(1) of the Land Reform (Scotland) Act 2003.

Question 21: Do you think that the criteria to be met by a community body in s.38(1) of the Act are appropriate? Do you think that there should be additional criteria? Please set out what changes or additions should be made to the criteria.

7.34 154 respondents (36% of all respondents) provided their view on whether or not the criteria to be met by a community body in s.38(1) of the Land Reform (Scotland) Act 2003 are appropriate. Overall, 82% of respondents indicated that they agreed with the criteria.

Table 7.4: Responses to Question 21

| Category | Yes | | No | | Total |
|------------------------|------------|-----------|-----------|-----------|------------|
| | No. | % | No. | % | No. |
| Individuals | 27 | 82 | 6 | 18 | 33 |
| Third sector | 10 | 67 | 5 | 33 | 15 |
| Community organisation | 26 | 84 | 5 | 16 | 31 |
| Community Council | 27 | 82 | 6 | 18 | 33 |
| Public Body | 6 | 100 | - | - | 6 |
| Local government | 16 | 84 | 3 | 16 | 19 |
| Other | 5 | 71 | 2 | 29 | 7 |
| CPP | 3 | 100 | - | - | 3 |
| Representative body | 4 | 100 | - | - | 4 |
| Private sector | 2 | 50 | 1 | 50 | 3 |
| Academic | - | - | - | - | - |
| Total | 126 | 82 | 28 | 18 | 154 |

7.35 Comments on the criteria are summarised below:

Section 38(1)(b)

7.36 The terms “substantial”, “significant” and “sufficiently” were perceived as “woolly” and subjective by several respondents, with a few recommending that these terms be deleted. One community organisation called for significant number to be replaced with a precise percentage of the local population.

7.37 The view of six respondents was that there is no need for the land to be sufficiently near land with which those members of the community have a substantial connection.

7.38 Two respondents (Com, Ind) perceived the term “sustainable development” to be meaningless.

Section 38(1)(d)

7.39 Two community organisations and two third sector respondents considered that the threshold of one tenth of members of the community was too high, particularly for urban contexts, where they considered community members may be transient, some people may have language difficulties, there are likely to be higher levels of apathy than in rural communities and the community is generally less heterogeneous than in rural areas.

7.40 In contrast, two local government representatives argued for the threshold to be higher.

7.41 One other body called for community bodies to demonstrate in their application that they had engaged with vulnerable groups and the business community.

Section 38(1)(e)

7.42 Three respondents (two community councils and one local government representative) recommended a clearer definition of “public interest”.

Additions

7.43 Recommendations for additional criteria included:

- body must have robust governance with a defined legal status
- body must be financially stable
- ability to finance the project
- must have the endorsement of the community council
- comparison of existing and proposed ownership to demonstrate that the proposed change is in the interests of economic advancement
- commitment to protect and conserve green space.

7.44 Section 36(2) of the Land Reform (Scotland) Act 2003 sets out information and documents to be included in the Register of Community Interest in Land which includes all applications and Ministerial decisions on applications. The application form to register a community interest in land is a statutory one: the current one is provided in the Community Right to Buy (Prescribed Form of Application and Notices) (Scotland) Regulations 2009.

Question 22: Do you think that the information that is included in the Register of Community Interests in Land is appropriate? If not, what should that information include?

7.45 138 respondents (33% of all respondents) provided their view on whether the information that is included in the Register of Community Interests in Land is appropriate. Most (91%) of those who provided a view considered the information to be appropriate.

Table 7.5: Responses to Question 22

| Category | Yes | | No | | Total |
|--------------|-----|----|-----|----|-------|
| | No. | % | No. | % | No. |
| Individuals | 20 | 87 | 3 | 13 | 23 |
| Third sector | 17 | 89 | 2 | 11 | 19 |

| | | | | | |
|------------------------|------------|-----------|-----------|----------|------------|
| Community organisation | 25 | 96 | 1 | 4 | 26 |
| Community Council | 26 | 90 | 3 | 10 | 29 |
| Public Body | 5 | 83 | 1 | 17 | 6 |
| Local government | 16 | 94 | 1 | 6 | 17 |
| Other | 5 | 80 | 1 | 20 | 6 |
| CPP | 3 | 100 | - | - | 3 |
| Representative body | 4 | 80 | 1 | 20 | 5 |
| Private sector | 4 | 100 | - | - | 4 |
| Academic | - | - | - | - | - |
| Total | 125 | 91 | 13 | 9 | 138 |

7.46 Very few substantive comments were made about the information included in the Register of Community Interests in Land. Three respondents (LG, Com, Third) considered the amount of information requested to be demanding for small community groups to fulfil. Three further respondents (Third, Ind, Oth) emphasised the importance of high quality maps to delineate clearly the land in question.

7.47 Other recommendations for additions to the information were:

- “buildings” should be referred to in addition to “land” (CC, Ind)
- information on the status of the land with regard to leases, HRA, common good and restrictions on transfer/disposal (LG)
- other communities who may be affected (LG)
- evidence of neglect/abandonment (LG).

7.48 A few further comments related to making the Register easy to navigate and use. One respondent (Ind) called for the Register to be kept up-to-date by removing expired applications. One public body made several suggestions including organising the entries around local authority boundaries, listing associated documents in alphabetical order and including documents relating to the post-activation period of a right to buy.

Question 23: How could the application form to register a community interest in land be altered to make it easier to complete (e.g. should there be a word limit on the answers to particular questions)?

7.49 105 respondents (25% of all respondents) addressed this question. In general, the application form was viewed as onerous for community volunteers to complete, with repeated calls made for the form to be simplified and shortened. It was suggested that community members be involved in considering changes to the form to make it easier to complete.

7.50 Six respondents from four different sectors argued for a two-stage process in which community bodies provided only outline applications initially, prior to being requested to provide more detailed information.

7.51 43 respondents provided a view on the issue of word limits, with a slight majority view (55%) not in favour. Reasons were that adhering to word limits

is difficult and can be burdensome, and may result in important information being missed out. Those in favour of word limits said that this gave an indication of how much to write and helped to focus the mind.

7.52 Other suggestions were made for making the form easier to complete:

- use plain English (14 mentions)
- providing accompanying guidance with examples, checklist and glossary (12 mentions)
- more targeted questions, grouped logically and requiring short answers (7 mentions)
- providing on-line or in-person support (5 mentions)
- pre-designed templates (4 mentions)
- provide form electronically and in hard copy (3 mentions)
- remove the need for signatures by both chair and secretary (1 mention)
- remove need for incorporation certificate as this can be checked with Companies House on-line (1 mention)
- use hyperlinks to relevant information (1 mention)
- no acronyms (1 mention).

Should the questions be more specifically directed to the requirements of sections 36(2) and 38(1) of the Act? Do you have any other suggestions?

7.53 95 respondents (22% of all respondents) answered this question. The majority (69%) considered that the questions should be more specifically directed to the requirements of these sections of the Act.

7.54 Very few other suggestions were made over and above those already documented. A few respondents emphasised the need for a simple application form with overlaps in questions minimised and any redundant areas removed (Third). One respondent (Ind) argued that it should not be necessary to have to seek legal advice to complete the form. Another commented that the application process should accommodate applications relating to land where there are currently multiple owners (CC).

Communities responding where land unexpectedly comes on the market

Question 24: Do you agree that communities should be able to apply to register an interest in land in cases where land unexpectedly comes on the market and they have not considered using the community right to buy? If so, what changes should be made to s.39 to ensure that such communities can apply to register a community interest in land?

7.55 189 respondents (45% of all respondents) stated clearly whether they agreed that communities should be able to apply to register an interest in land in cases when land unexpectedly comes on the market and they have not considered using the community right to buy. Of these, 88% agreed and 12% disagreed.

Table 7.6: Responses to Question 24

| Category | Yes | | No | | Total |
|------------------------|------------|-----------|------------|-----------|--------------|
| | No. | % | No. | % | No. |
| Individuals | 31 | 86 | 4 | 14 | 35 |
| Third sector | 24 | 92 | 2 | 8 | 26 |
| Community organisation | 35 | 95 | 2 | 5 | 37 |
| Community Council | 34 | 94 | 2 | 6 | 36 |
| Public Body | 7 | 88 | 1 | 12 | 8 |
| Local government | 17 | 71 | 7 | 29 | 24 |
| Other | 8 | 80 | 2 | 20 | 10 |
| CPP | 4 | 100 | - | - | 4 |
| Representative body | 4 | 80 | 1 | 20 | 5 |
| Private sector | 2 | 50 | 2 | 50 | 4 |
| Academic | 1 | 100 | - | - | 1 |
| Total | 167 | 88 | 22 | 12 | 189 |

7.56 A general theme was that the interests of the landlord and wider commercial bodies should be taken into account in addition to those of the community. It was acknowledged that late applications to register interest could delay proceedings and several respondents suggested ways to streamline processes in order to keep delays to a minimum:

- shorter registration form (3 mentions)
- “fast track” application form (3 mentions)
- “provisional” registration form (1 mention)
- remove the need for signatories on this occasion (1 mention)
- permit an “interim” community body to register interest whilst a fully constituted body is being set up (1 mention)
- provide assistance in registering (1 mention)

7.57 Many respondents acknowledged that an extended time period would most likely be needed by community bodies registering an interest late, but a common view (11 mentions) was that a deadline should still be set in fairness to the landowner.

7.58 Five respondents (three of them local government representatives) proposed that a tight timetable be set for Ministers to make a decision on late registrations in order to provide certainty for landowners.

7.59 Another theme was that late applications should be avoided as far as possible by ensuring communities have information about future sales wherever possible:

- Introducing “partial registration” for certain classes of premises (4 mentions) or registration “in principle” (1 mention) which would enable a greater volume of registrations without overloading the system.
- Requiring landowners to offer land to communities before putting land on the open market (3 mentions).

- Considering the introduction of advance notices (in line with planning notices) so landowners will be obliged to notify users of their land (e.g. allotment holders) of the imminent sale (2 mentions).
- Encouraging regular dialogue between landowners and communities (2 mentions).

7.60 Some respondents (3 mentions) recommended that there be no change in s.39 late application requirements where land unexpectedly comes on the market. Others, however, argued for the removal of all special conditions (4 mentions), or at least the removal of the need to show more significant support (9 mentions). One third sector respondent suggested an additional condition of requiring a reason for why there is interest now, when this had not been expressed previously. Two local government representatives considered a valid reason for registering late is the availability of land not previously considered which has unexpectedly come on the market.

7.61 A recurring comment (7 mentions) was that in cases where no prior registration of interest by communities has been made, they can always register interest as potential buyers on the open market.

Views of those opposing late registration of interest

7.62 The key reasons documented were:

- the community should not have preferential treatment over other potential buyers
- makes a mockery of the registration process
- permitting late registration opens the door for manipulation of processes including deliberate frustrating of sales on the open market
- compromises the position of Ministers who have a target of more community ownership of land
- in urban areas in particular could become very complex with many late registrations and different community bodies in competition
- community bodies had a chance previously to register an interest but did not use it.

Re-registration of a community interest in land

7.63 A registered interest in land lasts for five years. A community body can apply to re-register its community interest in land six months before its registration expires. The registration and re-registration processes are the same, including the information required on the application form. To make the re-registration process more streamlined it is proposed that the re-registration process become a process to simply re-confirm a registered interest in land, although the consultative process between the landowner and the community body and consideration and subsequent approval or rejection by Ministers would remain the same.

Question 25: Do you agree that the process to re-register a community interest should be a re-confirmation of a community interest in land?

7.64 184 respondents (43% of all respondents) stated clearly whether or not they agreed that the process to re-register a community interest should be a re-confirmation of a community interest in land. Of these, 92% agreed and 8% disagreed.

Table 7.7: Responses to Question 25

| Category | Yes | | No | | Total |
|------------------------|------------|-----------|------------|----------|--------------|
| | No. | % | No. | % | No. |
| Individuals | 33 | 92 | 3 | 8 | 36 |
| Third sector | 23 | 96 | 1 | 4 | 24 |
| Community organisation | 29 | 91 | 3 | 9 | 32 |
| Community Council | 33 | 92 | 3 | 8 | 36 |
| Public Body | 7 | 100 | - | - | 7 |
| Local government | 22 | 92 | 2 | 8 | 24 |
| Other | 9 | 100 | - | - | 9 |
| CPP | 4 | 100 | - | - | 4 |
| Representative body | 5 | 83 | 1 | 17 | 6 |
| Private sector | 5 | 100 | - | - | 5 |
| Academic | - | - | 1 | 100 | 1 |
| Total | 170 | 92 | 14 | 8 | 184 |

Question 26: Do you think that the community body should be asked to show that its application is (1) still relevant, (2) has the support of its “community”, and that (3) granting it is in the public interest?

7.65 170 respondents (40% of all respondents) stated clearly whether or not they thought that the community body should be asked to show that its application is still relevant, has the support of the community and that granting it is in the public interest. Of these, 89% agreed and 11% disagreed.

Table 7.8: Responses to Question 26

| Category | Yes | | No | | Total |
|------------------------|------------|-----------|-----------|-----------|------------|
| | No. | % | No. | % | No. |
| Individuals | 34 | 92 | 3 | 8 | 37 |
| Third sector | 25 | 96 | 1 | 4 | 26 |
| Community organisation | 29 | 91 | 4 | 9 | 33 |
| Community Council | 30 | 92 | 7 | 8 | 37 |
| Public Body | 6 | 100 | 1 | - | 7 |
| Local government | 23 | 92 | 1 | 8 | 24 |
| Other | 7 | 70 | 3 | 30 | 10 |
| CPP | 4 | 100 | - | - | 4 |
| Representative body | 6 | 100 | - | - | 6 |
| Private sector | 5 | 100 | - | - | 5 |
| Academic | 1 | 100 | - | - | 1 |
| Total | 170 | 89 | 20 | 11 | 190 |

The timescale to complete the “right to buy”

7.66 When a right to buy is triggered in relation to a “timeous” application, a community body has seven months to complete its right to buy; this period can be extended by agreement between a community body and the landowner. The timescales for the right to buy are set out in s.56(3) of the Land Reform (Scotland) Act 2003.

Question 27: What do you think should be the length of the statutory period for completing the right to buy, taking into account both the interests of the landowner and the community body? Please explain the reasons for your proposal.

7.67 146 respondents (34% of all respondents) provided a response to this question. Overall there was an appreciation of the need to balance the rights of the different parties involved in the process, and keep the period required to complete the right to buy to a minimum. There was general agreement that a statutory period for completion should be set, but with flexibility retained for further negotiation on time periods depending on the complexity and scale of the transaction.

7.68 Of the 109 respondents who stated clearly whether they considered that the statutory period for completing the right to buy should be amended, 80 (73%) recommended extending the statutory period, with a common recommendation being up to 12 months. 27 respondents (25%) stated clearly that they were content with the current statutory period and 2 (2%) advocated a shorter period of 3 months. 16 further respondents from a range of sectors suggested that there should be greater flexibility regarding time limits depending on the nature of the case.

Question 28: Do you think that some of the tasks within the right to buy (such as valuation, ballot, etc) should be rearranged and the timescales for their completion changed in order to make the best use of the time available within the right to buy? Please set out what changes you think should be made and why.

7.69 103 respondents (24% of all respondents) addressed this question. Of these 17 (largely individual respondents) stated simply that tasks should be rearranged and timescales changed to make best use of time. Ten respondents considered the status quo should remain, one CPP and one local government representative commenting that they were not aware of any issues relating to timescales.

7.70 One dominant theme was that pressure to complete tasks to deadlines could be eased by extending the overall timeframe and simplifying the application process. Some respondents argued for taking the ballot and valuation of land out of the statutory period and starting timescales after these had been completed.

7.71 The focus of most comment was the time taken for the ballot and the order in which it should be conducted. Most of those who expressed a view on the ballot considered that more time should be allocated to its execution, particularly as some communities had experienced difficulties getting hold of the electoral register when preparing for their ballot. The majority view amongst those who commented was that the valuation should take place as early as possible and before the ballot, in order that the community could make a more informed decision when balloted. The view of two respondents (Ind, Third) was that the need for a ballot should be re-considered, and other ways of assessing support devised.

7.72 Another recurring recommendation was for flexibility to enable different tasks to be undertaken concurrently. Four respondents (including three community organisations) suggested removing any prescribed time periods and order for individual tasks, but simply providing an overall timescale for completion.

7.73 The view of seven respondents from a range of sectors was that the issues raised by this question should be subject to wider consultation and input from communities and professional experts.

Ballot issues

7.74 A number of challenging issues have arisen in connection with the requirement for community bodies to undertake a community ballot. It is proposed that instead of community bodies arranging the ballot, Scottish Ministers could instruct an independent body to undertake the ballot for the community body. Scottish Ministers could also pay the costs of the ballot. The results of the ballot could be sent to the Scottish Ministers, community body and landowner at the same time.

Question 29: Do you agree that Scottish Ministers should organise the undertaking of a community body's ballot and pay its costs? If you disagree, please provide your reasons.

7.75 194 respondents (46% of all respondents) stated clearly whether they agreed that Scottish Ministers should organise the undertaking of a community body's ballot and pay its costs. Of these, 84% agreed and 16% disagreed. The level of support expressed by individual respondents was relatively less than indicated for previous questions. Three of the five private bodies disagreed with the proposal.

Table 7.9: Responses to Question 29

| Category | Yes | | No | | Total |
|------------------------|------------|-----------|-----------|-----------|------------|
| | No. | % | No. | % | No. |
| Individuals | 28 | 74 | 10 | 26 | 38 |
| Third sector | 24 | 92 | 2 | 8 | 26 |
| Community organisation | 34 | 97 | 1 | 3 | 35 |
| Community Council | 36 | 90 | 4 | 10 | 40 |
| Public Body | 6 | 67 | 3 | 33 | 9 |
| Local government | 18 | 78 | 5 | 22 | 23 |
| Other | 8 | 90 | 2 | 10 | 10 |
| CPP | 2 | 67 | 1 | 33 | 3 |
| Representative body | 3 | 75 | 1 | 25 | 4 |
| Private sector | 2 | 40 | 3 | 60 | 5 |
| Academic | 1 | 100 | - | - | 1 |
| Total | 162 | 84 | 32 | 16 | 194 |

Views in support of proposal

7.76 The following views were provided in support of the proposal:

- transparent and fair (10 mentions)
- costs not borne by community (7 mentions)
- eases the administrative burden on communities (5 mentions)
- particularly good for communities with limited capacity in terms of skills and finance (3 mentions)
- promotes consistency (1 mention)
- may streamline the process (1 mention)
- addresses the issue of communities having difficulty obtaining the electoral roll (1 mention)
- more likely to be accessible to disabled people (1 mention).

Views opposing the proposal

7.77 The following views were provided against the proposal:

- communities should show their commitment by organising their own ballot and paying for it (11 mentions)
- communities should pay their own costs, not taxpayers (10 mentions)
- seems to go against the ethos of community empowerment/communities engaging with local bodies (7 mentions)
- a ballot may not be required if other ways of indicating support are used (3 mentions)
- threat of public spending cost cutting in future (2 mentions)
- may prolong process (2 mentions)
- Scottish Ministers' impartiality may be compromised if they fund the ballot (1 mention)
- people may be less likely to vote if the ballot is issued by an unknown third party (1 mention)
- communities need to demonstrate that they can organise the ballot (1 mention).

Other views

7.78 A recurring theme amongst some local government representatives was that they are experienced at running ballots and could undertake this if supported by funding from Ministers.

7.79 Ten respondents from a range of sectors indicated that Ministers should pay all or some of the costs but the community should organise the ballot, albeit with some assistance where required.

| |
|--|
| Question 30: Should Scottish Ministers notify the ballot result to the landowner? |
|--|

7.80 191 respondents (45% of all respondents) stated clearly whether they agreed that Scottish Ministers notify the ballot result to the landowner. Of these, 98% agreed and 2% disagreed (see Table 7.10 overleaf).

Table 7.10: Responses to Question 30

| Category | Yes | | No | | Total |
|------------------------|------------|-----------|----------|----------|------------|
| | No. | % | No. | % | No. |
| Individuals | 35 | 95 | 2 | 5 | 37 |
| Third sector | 25 | 100 | - | - | 25 |
| Community organisation | 34 | 100 | - | - | 34 |
| Community Council | 37 | 100 | - | - | 37 |
| Public Body | 7 | 100 | - | - | 7 |
| Local government | 24 | 96 | 1 | 4 | 25 |
| Other | 12 | 100 | - | - | 12 |
| CPP | 3 | 100 | - | - | 3 |
| Representative body | 5 | 100 | - | - | 5 |
| Private sector | 5 | 100 | - | - | 5 |
| Academic | 1 | 100 | - | - | 1 |
| Total | 188 | 98 | 3 | 2 | 191 |

Views in support of proposal

7.81 The following views were provided in support of the proposal:

- to promote transparency (43 mentions)
- to enable the landowner to progress with next steps (8 mentions)
- to show the landowner the strength of community feeling (8 mentions)
- to be courteous (7 mentions)
- would provide equity with community (6 mentions)
- no reason not to (6 mentions)
- demonstrates the legitimacy of the process (4 mentions)
- avoids delays (2 mentions)
- avoids friction (1 mention).

Right to buy “application” pro-forma

7.82 There is no right to buy “application form”. Community bodies submit documentation that they consider will meet the requirements of the legislation. Community bodies have to provide a range of evidence to Ministers. It is proposed that Ministers could develop a pro-forma for community bodies to help them set out their plans for the sustainable development of land. This could help community bodies to be clear about their proposals.

Question 31: Do you think Ministers should develop a pro-forma for community bodies to set out their plans for the sustainable development of land and community? Please give reasons for your view.

7.83 200 respondents (47% of all respondents) stated clearly whether they thought that Ministers should develop a pro-forma for community bodies to set out their plans for the sustainable development of land and community. Of these, 90% agreed and 10% disagreed.

Table 7.11: Responses to Question 31

| Category | Yes | No | Total |
|----------|-----|----|-------|
|----------|-----|----|-------|

| | No. | % | No. | % | No. |
|------------------------|------------|-----------|------------|-----------|------------|
| Individuals | 35 | 95 | 2 | 5 | 37 |
| Third sector | 27 | 96 | 1 | 4 | 28 |
| Community organisation | 29 | 88 | 4 | 12 | 33 |
| Community Council | 32 | 80 | 8 | 20 | 40 |
| Public Body | 11 | 100 | - | - | 11 |
| Local government | 22 | 88 | 3 | 12 | 25 |
| Other | 11 | 100 | - | - | 11 |
| CPP | 3 | 100 | - | - | 3 |
| Representative body | 7 | 100 | - | - | 7 |
| Private sector | 3 | 60 | 2 | 40 | 5 |
| Academic | - | - | - | - | - |
| Total | 180 | 90 | 20 | 10 | 200 |

Views in support of proposal

7.84 The following views were provided in support of the proposal:

- consistency of approach (43 mentions)
- simplifies the process particularly for inexperienced community bodies (25 mentions)
- promotes a more consistent and fairer assessment process, particularly where there is more than one application (19 mentions)
- more accessible for some groups; levels the playing field (18 mentions)
- efficient/saves time/streamlined (13 mentions)
- will help to ensure all the information required is provided (13 mentions)
- saves on community costs for consultancy fees (4 mentions)
- makes it easier to refer to previous applications for information (3 mentions)
- promotes better quality of application (1 mention).

Views opposing the proposal

7.85 The following views were provided in opposition to the proposal:

- one size does not fit all and one pro-forma will not accommodate the different circumstances of all community bodies (7 mentions)
- the pro-forma could be too restrictive/prescriptive (3 mentions)
- being restricted to certain questions could lead to communities missing out important information (3 mentions)
- a pro-forma may be off-putting (1 mention).

Other views

7.86 Recurring views were that the pro-forma should be developed in conjunction with expert advice from a range of organisations and also community representatives who have had experience of using application forms. Respondents emphasised that the pro-forma should be written in plain English and supported with accompanying guidance.

7.87 Many respondents recommended that the pro-forma accommodate free-text information in addition to prescribed information. The pro-forma was viewed by many as a tool to aid communities and as such it should not be overly prescriptive nor bureaucratic in nature.

7.88 A few respondents suggested that there be different versions of the pro-forma according to scale, in order to ensure applications are kept in proportion. Tailored pro-forma according to local context were also envisaged.

Improving the process of the right to buy

7.89 A community body describes its “community” according to a postcode unit or units. Ministers also have the discretion to allow a “community” to be defined by other means. It is proposed that community bodies have greater flexibility in how they define their “community”.

Question 32: Do you agree that community bodies should be able to define their “community” in a more flexible way by the use of either postcodes, settlement areas, localities of settlements, and electoral wards, or a mixture of these, as appropriate?

7.90 200 respondents (47% of all respondents) addressed this question. Their responses are summarised below.

Table 7.12: Responses to Question 32

| Support for: | No of respondents* |
|--|---------------------------|
| General support for community bodies defining “community” in a more flexible way | 64 |
| Specific support for use of settlements | 68 |
| Specific support for use of settlement areas | 64 |
| Specific support for use of postcodes | 57 |
| Specific support for use of electoral wards | 51 |

*Many respondents supported more than one option and therefore numbers add to more than 200.

7.91 It was commented that defining self is a key component of community empowerment (Com). Several respondents considered that flexibility in definition is particularly important in urban areas.

7.92 Six respondents all from different sectors expressed opposition to the proposal. They argued that this would lead to inconsistent definitions with overlaps between different communities in the same geographic area.

7.93 Twelve respondents from a range of sectors remarked that the proposal did not encompass communities of interest.

7.94 A few respondents cautioned about using postcodes, perceiving these to be blunt in that they may span more than one community, and commenting that communities do not tend to define themselves by postcode.

| |
|---|
| Question 33: Are there any other ways that a “community” could be defined? |
|---|

7.95 169 respondents (40% of all respondents) addressed this question. It was commonly acknowledged that communities vary considerably and so flexibility in how they define themselves is sensible. However, in practical terms, the community will require to be balloted in order to exercise their right to buy and this may be a consideration in decisions on definition. One respondent commented:

“Communities will be mindful of the need to demonstrate a connection to the land, and the need to achieve a reasonable turnout in a ballot (i.e. relevance of the land to the community identified). These considerations will likely influence their decision as to an appropriate size (in terms of relative population and geographic spread) for the community” (Highlands and Islands Enterprise) (PB).

7.96 The most common view expressed (78 respondents from a range of sectors) was that communities should be able to define themselves according to interest in addition to place. A multitude of examples was provided, a selection being: arts organisations; people with disabilities; fishing interest groups; railway preservation groups; ex-soldiers; wildlife preservation association; language group; ethnic group; people with mental health problems; church; and users of allotments.

7.97 Many other suggestions for ways in which communities could define themselves were made, with those most frequently proposed being:

- island communities (16 mentions)
- geographic location (13 mentions)
- community councils (10 mentions)
- old parish boundaries (6 mentions)

“Community body”: appropriate legal entities

7.98 Under current provisions, the only type of legal entity that can apply to register a community interest in land is a company limited by guarantee. It has been suggested that other legal entities should be able to apply under the Act as it is felt that the provisions are unduly restrictive. It is proposed that SCIOs should also be able to apply under the Act. As with companies limited by guarantee, they would need to meet set criteria.

Question 34: Do you agree that other legal entities in addition to the company limited by guarantee should be able to apply to use the community right to buy provisions?

7.99 181 respondents (43% of all respondents) responded to this question. Of these, 81% agreed that other legal entities in addition to the company limited by guarantee should be able to apply to use the community right to buy provisions; the remaining 19% disagreed. Individual respondents were almost evenly split on whether they agreed with the proposal, whereas the views of the other sectors who commented were largely in favour.

Table 7.13: Responses to Question 34

| Category | Yes | | No | | Total |
|------------------------|------------|-----------|-----------|-----------|------------|
| | No. | % | No. | % | No. |
| Individuals | 16 | 48 | 17 | 52 | 33 |
| Third sector | 28 | 93 | 2 | 7 | 30 |
| Community organisation | 28 | 88 | 4 | 12 | 32 |
| Community Council | 30 | 86 | 5 | 14 | 35 |
| Public Body | 6 | 100 | - | - | 6 |
| Local government | 17 | 89 | 2 | 11 | 19 |
| Other | 9 | 82 | 2 | 18 | 11 |
| CPP | 3 | 100 | - | - | 3 |
| Representative body | 6 | 100 | - | - | 6 |
| Private sector | 4 | 67 | 2 | 33 | 6 |
| Academic | - | - | - | - | - |
| Total | 147 | 81 | 34 | 19 | 181 |

Question 35: Do you agree that SCIOs should be able to apply under the provisions?

7.100 174 respondents (41% of all respondents) responded to this question. Of these, 89% agreed that SCIOs should be able to apply under the provisions, with 11% disagreeing. Several of the individual respondents who responded to question 34 did not provided a response to question 35 which could explain the difference in the balance of views for this sector, reflected in Table 7.14 overleaf.

Table 7.14: Responses to Question 35

| Category | Yes | | No | | Total |
|------------------------|------------|-----------|-----------|-----------|------------|
| | No. | % | No. | % | No. |
| Individuals | 18 | 75 | 6 | 25 | 24 |
| Third sector | 30 | 97 | 1 | 3 | 31 |
| Community organisation | 30 | 91 | 3 | 9 | 33 |
| Community Council | 29 | 85 | 5 | 15 | 34 |
| Public Body | 5 | 100 | - | - | 5 |
| Local government | 21 | 95 | 1 | 5 | 22 |
| Other | 11 | 100 | - | - | 11 |
| CPP | 3 | 100 | - | - | 3 |
| Representative body | 5 | 83 | 1 | 17 | 6 |
| Private sector | 3 | 60 | 2 | 40 | 5 |
| Academic | - | - | - | - | - |
| Total | 155 | 89 | 19 | 11 | 174 |

| |
|--|
| Question 36: What other legal entities should be able to apply under the community right to buy provisions – and why? |
|--|

7.101 115 respondents (27% of all respondents) addressed this question. A variety of other legal entities were proposed by respondents:

- Community interest groups (24 mentions)
These were viewed as organisations which ensured assets are held for the public good.
- Properly constituted community groups (23 mentions)
Different views emerged about the need for these to be incorporated or not. One respondent remarked:
“Community Groups aren’t always limited companies but are properly constituted and representative. It will be important to consider whether “unincorporated entities” should be included – as this leads to personal liability for members of the group. Unincorporated entities may be “properly constituted” but they cannot own property, nor enter contracts etc., so this is a complex area” (South Ayrshire Council).
- Industrial and Provident Societies (17 mentions)
It was commented that some community enterprises find this a preferable corporate model rather than company limited by guarantee. Another benefit highlighted was that Industrial and Provident Societies are considered to be legitimate bodies for funders and Government.
- Co-operative societies (11 mentions)
As with Industrial and Provident Societies, these were viewed as robust bodies which could attract funding. They were also viewed as capable of raising significant investment through community shares.
- Community Development Trusts (8 mentions)
Trusts were seen as increasingly prominent in acting as the main body for asset management in rural communities.
- Charities/Charitable Trusts (8 mentions)
Such organisations were viewed as playing a key role in representing special interest groups.

- Community councils (7 mentions)
Community councils were perceived to be the bodies closest to the communities they serve. Enabling them to apply under the community right to buy was seen as supporting their involvement and community ownership.
- Social enterprises (6 mentions)
- Registered Social Landlords/Housing Associations (6 mentions)
- Communities of interest (3 mentions)
- Harbour authorities (1 mention)

7.102 A few respondents argued that decisions on which bodies could apply should be made on a case-by-case basis. Several identified criteria which any applicant should possess: asset lock in place; for community benefit; has the support of the community; transparent and accountable; and sustainable.

7.103 Ten respondents from a range of sectors argued that no further legal entities should be able to apply other than incorporate bodies and SCIOs. Their main arguments were that other bodies may not provide community protection and could lead to personal liability for their members.

“Forever conditions”

7.104 Currently, Scottish Ministers must “approve” the Articles of Association of a community body before it can apply under the community right to buy to register a community interest in land. When a community body wishes to make changes to its Articles of Association, these have also to be approved by Ministers. It is proposed that Ministers should continue to “approve” the Articles of Association of a community body before it can apply under the community right to buy. However, instead of continually approving all changes to all Articles of Association, it is proposed that only where community bodies are actively seeking to use or are actively using the community right to buy provisions, they should continue to be compliant with the Act.

Question 37: Do you agree that Ministers should only have to “approve” the changes to Articles of Association for community bodies that are actively seeking to use or are using the community right to buy?

7.105 161 respondents (38% of all respondents) addressed this question. Of these, 91% agreed that Ministers should only have to “approve” the changes to Articles of Association for community bodies that are actively seeking to use or are using the community right to buy (see Table 7.15 overleaf).

Table 7.15: Responses to Question 37

| Category | Yes | | No | | Total |
|-----------------|------------|----------|------------|----------|--------------|
| | No. | % | No. | % | No. |
| Individuals | 25 | 86 | 4 | 14 | 29 |
| Third sector | 17 | 89 | 2 | 11 | 19 |
| Community | 28 | 100 | - | - | 28 |

| | | | | | |
|---------------------|------------|-----------|-----------|----------|------------|
| organisation | | | | | |
| Community Council | 31 | 89 | 4 | 11 | 35 |
| Public Body | 4 | 80 | 1 | 20 | 5 |
| Local government | 19 | 90 | 2 | 10 | 21 |
| Other | 8 | 100 | - | - | 8 |
| CPP | 3 | 100 | - | - | 3 |
| Representative body | 6 | 86 | 1 | 14 | 7 |
| Private sector | 6 | 100 | - | - | 6 |
| Academic | - | - | - | - | - |
| Total | 147 | 91 | 14 | 9 | 161 |

Length of the period of registration

7.106 Community bodies have argued that the period of the registration of five years is too short. In particular, they feel that this period is disproportionate to the amount of work that is required to register a community interest in land.

Question 38: Do you think that the length of a registered interest in land should remain as five years or be changed? If it should be changed, how long should it be – and what are your reasons for making that change?

7.107 138 respondents (33% of all respondents) provided views in response to this question. Of these, the majority view (67%) was for the length to remain at five years. Amongst the 92 respondents arguing for the status quo were 21 community councils and 20 local government representatives. A few supporters emphasised that five years is appropriate especially if the application form is streamlined, and/or if some flexibility is retained for extending the period depending on local circumstances.

7.108 Overall, respondents advocating the retention of the five year period considered that this offered a compromise between maintaining robustness and rigour in the application process without overburdening communities with bureaucracy. Any longer period was seen as not responsive to changes which could occur in community bodies such as loss of interest.

7.109 34 respondents (25% of those providing a view) argued for a longer length of a registered interest in land. Where a specific length of time was stipulated by respondents, the most common suggestion was for 10 years (21 mentions), with others suggesting seven years (5 mentions), 15 years (1 mention) or simply “ongoing” until withdrawn (suggested by two individuals). A longer period was viewed as appropriate in terms of reducing the burden on both communities and the Scottish Government, without reducing the strength of the regulations.

7.110 12 respondents (9% of those providing a view) recommended shortening the time period for registered interest in land. All of them were either individuals, community councils, third sector or community organisations. Their reasons were that this would allow developments to

happen at a good pace, might prevent drop-off in community interest and was commensurate with planning approvals.

Valuation of the land – counter representations

7.111 At present, both landowner and the community body have the opportunity to provide representations on the value of the land. However, there is currently no process to allow for counter representations. It is proposed that counter representations could provide increased confidence in the valuation. The inclusion of counter representations would extend the period of the valuation from six to eight weeks.

Question 39: Do you agree that the valuation procedure should include counter representations by the landowner and community body? If you disagree, please give your reasons for your decision.

7.112 178 respondents (42% of all respondents) addressed this question. Of these, 172 (97%) agreed that the valuation procedure should include counter representations by the landowner and community body. Six respondents (3% of those who provided a view) disagreed.

Table 7.16: Responses to Question 39

| Category | Yes | | No | | Total |
|------------------------|------------|-----------|------------|----------|--------------|
| | No. | % | No. | % | No. |
| Individuals | 36 | 97 | 1 | 3 | 37 |
| Third sector | 20 | 100 | - | - | 20 |
| Community organisation | 40 | 98 | 1 | 2 | 41 |
| Community Council | 30 | 91 | 3 | 9 | 33 |
| Public Body | 5 | 100 | - | - | 5 |
| Local government | 23 | 100 | - | - | 23 |
| Other | 5 | 100 | - | - | 5 |
| CPP | 3 | 100 | - | - | 3 |
| Representative body | 6 | 100 | - | - | 6 |
| Private sector | 4 | 80 | 1 | 20 | 5 |
| Academic | - | - | - | - | - |
| Total | 172 | 97 | 6 | 3 | 178 |

7.113 Overarching views were that by including counter representations by the landowner and community body, the valuation process would be more transparent, fair and instil confidence that the final valuation is appropriate. A few professional respondents commented that this procedure is in line with current arbitration practice. The key concern to emerge was that the process could become protracted if both parties make counter representations. Several respondents argued that allowing one independent assessment, with both parties agreeing beforehand to abide by the outcome, could provide the way forward.

Landowner withdrawing land from sale

7.114 The community right to buy currently involves only situations with a willing seller and willing buyer. There have been instances where a landowner has put registered land on the market and then withdrawn the sale, usually after the valuation figure for the land has been revealed.

Question 40: Do you think there should be a provision to deter landowners from taking the land off the market after they have triggered the right to buy? Please explain your reasons.

7.115 174 respondents (41% of all respondents) stated clearly whether or not they thought there should be a provision to deter landowners from taking land off the market after they have triggered the right to buy. Of these, 125 (72%) considered that there should be a provision to deter landowners from taking the land off the market after they have triggered the right to buy. However, a substantial minority of 49 respondents (28% of those providing a view) disagreed. Three-quarters of the local government representatives who provided a view did not think that such a provision should exist. A further 10 respondents did not provide a clear view in favour or not, but provided relevant commentary.

Table 7.17: Responses to Question 40

| Category | Yes | | No | | Total |
|------------------------|------------|-----------|-----------|-----------|------------|
| | No. | % | No. | % | No. |
| Individuals | 31 | 86 | 5 | 14 | 36 |
| Third sector | 18 | 90 | 2 | 10 | 20 |
| Community organisation | 29 | 88 | 4 | 12 | 33 |
| Community Council | 27 | 75 | 9 | 25 | 36 |
| Public Body | 4 | 67 | 2 | 33 | 6 |
| Local government | 5 | 24 | 16 | 76 | 21 |
| Other | 6 | 75 | 2 | 25 | 8 |
| CPP | 1 | 33 | 2 | 67 | 3 |
| Representative body | 3 | 50 | 3 | 50 | 6 |
| Private sector | 1 | 20 | 4 | 80 | 5 |
| Academic | - | - | - | - | - |
| Total | 125 | 72 | 49 | 28 | 174 |

7.116 General comments were that the situation where a landowner wishes to take the land off the market is unfortunate, but there may be exceptional circumstances which have led to this decision. It was envisaged that improvements in the valuation processes may lead to this situation becoming rare. A recurring theme was that any landowner withdrawing land at this stage should be required to pay the costs already incurred by communities.

Views in favour of a provision to deter landowners from withdrawing their land

7.117 The most common view across a range of sectors was that the community will have dedicated much time, effort and costs, to registering to

buy the land, and this will have been to no avail if the land is subsequently withdrawn from the market.

7.118 Others agreed that communities could lose confidence in the Act and be deterred from putting in the effort required to register for right to buy if landowners are able to take the land off the market after they have triggered the right to buy.

7.119 One recurring argument was that communities will have demonstrated that they have plans for sustainable development, and by taking the land off the market, landowners may be jeopardising the future viability of the land and prevent public interest being met. A few respondents expressed concern that an irresponsible landlord may use their right to withdraw the land in a manipulative fashion, to wear down community efforts.

7.120 One local government representative argued that a provision would prevent landowners putting their land on the market for speculative purposes only.

Views against a provision to deter landowners from withdrawing their land

7.121 The most prevalent view was that any landowner should have the right to withdraw their land from the market if they so wish. It was argued that this is a commercial transaction like any other sale, and sellers can change their mind about selling. A typical view was:

“If the landowner is not a willing seller, perhaps because they do not agree with the price offered, then they should be entitled to withdraw. In appropriate circumstances, the local authority could exercise compulsory purchase powers to acquire the land on behalf of the community. Landowners must retain the right to make business decisions concerning sale or otherwise of assets. To remove the right to take land off the market would restrict this right” (Renfrewshire Council).

7.122 Twelve respondents (including five local government representatives) considered that introducing such a provision may breach European Human Rights legislation. Three respondents argued that the provision may serve to deter landowners from bringing their land to the market in the first place.

Level of support to be secured for the ballot

7.123 There is currently some flexibility in the level of support which a community body has to secure for Ministerial approval in relation to a right to buy application. It is proposed that the amount of community support could be considered in other ways. For example, it could focus on a sufficient amount of support to justify proceeding with the right to buy the land. Or it could focus on the level of “No” votes so that the support does not rely only on the number of “Yes” votes.

Question 41: Do you think that there should be a greater flexibility in a community body's level of support for a right to buy in the ballot result than is currently permitted?

7.124 176 respondents (42%) provided a clear view on this question, with 147 (84% of those who responded) thinking that more flexibility should be permitted, and 29 (16%) disagreeing (see Table 7.18 overleaf). Of the 19 local government representatives who provided a view, eight opposed permitting greater flexibility in the ballot. Half of the six public bodies who responded to this question also opposed the proposal, one remarking:

“We think it is important that there is still a significant threshold set to demonstrate community-wide support for proceeding with a right to buy. Any reduction in turnout thresholds particularly for large communities has to be weighed against giving undue preference to single issue groups within these communities if the principles of accountability and local democracy are to be upheld. We also suggest that it is important that the focus remains on an affirmative expression of interest in proceeding with a right to buy by the communities concerned, not matter how large or small they may be” (Scottish Water) (PB).

Table 7.18: Responses to Question 41

| Category | Yes | | No | | Total |
|------------------------|------------|-----------|-----------|-----------|------------|
| | No. | % | No. | % | No. |
| Individuals | 32 | 89 | 4 | 11 | 36 |
| Third sector | 23 | 96 | 1 | 4 | 24 |
| Community organisation | 33 | 94 | 2 | 6 | 35 |
| Community Council | 31 | 84 | 6 | 16 | 37 |
| Public Body | 3 | 50 | 3 | 50 | 6 |
| Local government | 11 | 58 | 8 | 42 | 19 |
| Other | 5 | 71 | 2 | 29 | 7 |
| CPP | 3 | 100 | - | - | 3 |
| Representative body | 5 | 83 | 1 | 17 | 6 |
| Private sector | 1 | 33 | 2 | 67 | 3 |
| Academic | - | - | - | - | - |
| Total | 147 | 84 | 29 | 16 | 176 |

Question 42: Do you think that the ballot result should focus on a sufficient amount of support to justify the community support to proceed with the right to buy the land? If yes, please explain how secured community support should be measured.

7.125 162 respondents (38% of all respondents) addressed this question with 89% of those providing a view considering that the ballot result should focus on a sufficient amount of support to justify the community support to proceed with the right to buy the land.

Table 7.19: Responses to Question 42

| Category | Yes | | No | | Total |
|------------------------|------------|-----------|-----------|-----------|------------|
| | No. | % | No. | % | No. |
| Individuals | 30 | 89 | 3 | 11 | 33 |
| Third sector | 20 | 100 | - | - | 20 |
| Community organisation | 26 | 94 | 3 | 6 | 29 |
| Community Council | 29 | 84 | 7 | 16 | 36 |
| Public Body | 5 | 50 | 2 | 50 | 7 |
| Local government | 17 | 58 | 1 | 42 | 18 |
| Other | 5 | 71 | 2 | 29 | 7 |
| CPP | 3 | 50 | 3 | 50 | 6 |
| Representative body | 6 | 100 | - | - | 6 |
| Private sector | 3 | 100 | - | - | 3 |
| Academic | - | - | - | - | - |
| Total | 144 | 89 | 18 | 11 | 162 |

7.126 Some respondents found the question difficult to understand, and several responses appeared to confuse issues of level of support amongst the community population as a whole and level of support expressed by those who vote in a ballot. A general theme was that flexibility is required in order that different thresholds and measures can be used according to local

circumstances. For example, an area may contain a significant proportion of holiday homes and other vacant properties. One local government representative suggested that criteria should depend on proposed use, so for example, if a community wished to buy a community hall, then the level of support shown at a ballot must suggest adequate future use of the asset.

7.127 Many respondents favoured a ballot with criteria relating to percentage turn out and/or percentage of those who voted. A recurring view was that over 50% of those who voted is an appropriate target to demonstrate support. However, others identified a majority of those eligible to vote as more appropriate. Caution was expressed repeatedly by respondents from a range of sectors around the difficulty of achieving 50% turn out rates, particularly in urban areas. It was argued that such rates were not even evident in council and government elections.

7.128 Many respondents recommended that other methods of demonstrating level of support should be recognised, especially if communities of interest were to be allowed to use the process. Some argued that community support could be gauged through a variety of qualitative measures including community engagement, public meetings, focus groups and discussions. Six respondents considered that the word of representative bodies such as community councils should suffice. Other methods of measuring community support suggested (by no more than four respondents each) were:

- petitions
- postal votes
- written statements
- questionnaires
- vision statements
- on-line methods
- votes at meetings
- minutes of committee meetings

7.129 The suggestion that support could be assessed by focusing on the “no” vote in addition to “yes” votes received a small number of supporters from a range of sectors.

Ballot – extenuating circumstances

7.130 Community bodies have stated that there are times in the year when it is difficult to achieve a good turnout to the ballot. There have also been problems reported with the postal system when a significant number of returns could not be taken into account. Community bodies have asked if they can provide additional evidence to support their ballot result where circumstances outwith their control have had an impact on their ballot result.

Question 43: Do you agree that community bodies should be able to submit evidence to Ministers in support of their ballot result where they believe that their ballot has been affected by circumstances outwith their control?

7.131 188 respondents (44% of all respondents) addressed this question with 91% of those providing a view agreeing that community bodies should be able to submit evidence to Ministers in support of their ballot result where they believe that their ballot has been affected by circumstances outwith their control.

Table 7.20: Responses to Question 43

| Category | Yes | | No | | Total |
|------------------------|------------|-----------|-----------|----------|------------|
| | No. | % | No. | % | No. |
| Individuals | 35 | 95 | 2 | 5 | 37 |
| Third sector | 26 | 100 | - | - | 26 |
| Community organisation | 35 | 97 | 1 | 3 | 36 |
| Community Council | 34 | 85 | 6 | 15 | 40 |
| Public Body | 6 | 86 | 1 | 14 | 7 |
| Local government | 17 | 77 | 5 | 23 | 22 |
| Other | 7 | 78 | 2 | 22 | 9 |
| CPP | 4 | 100 | - | - | 4 |
| Representative body | 4 | 100 | - | - | 4 |
| Private sector | 3 | 100 | - | - | 3 |
| Academic | - | - | - | - | - |
| Total | 171 | 91 | 17 | 9 | 188 |

Right to buy “application” – need for further information

7.132 Article 7(3) of the Community Right to Buy (Ballot) (Scotland) Regulations 2004 gives Ministers the opportunity to ask a community body for additional information on its ballot. The information has to be provided within seven days of the request being made.

Question 44: Do you think that Scottish Ministers should be able to ask community bodies for additional information relating to their right to buy “application” which Ministers would then take into account in considering their right to buy “application”? Please explain your reasons.

7.133 193 respondents (46% of all respondents) addressed this question with 96% of those providing a view agreeing that Scottish Ministers should be able to ask community bodies for additional information relating to their right to buy “application” which Ministers would then take into account in considering their right to buy “application”.

Table 7.21: Responses to Question 44

| Category | Yes | | No | | Total |
|--------------|-----|-----|-----|---|-------|
| | No. | % | No. | % | No. |
| Individuals | 35 | 95 | 2 | 5 | 37 |
| Third sector | 23 | 96 | 1 | 4 | 24 |
| Community | 35 | 100 | - | - | 35 |

| | | | | | |
|---------------------|------------|-----------|----------|----------|------------|
| organisation | | | | | |
| Community Council | 36 | 95 | 2 | 5 | 38 |
| Public Body | 10 | 100 | - | - | 10 |
| Local government | 21 | 91 | 2 | 9 | 23 |
| Other | 10 | 100 | - | - | 10 |
| CPP | 4 | 100 | - | - | 4 |
| Representative body | 7 | 100 | - | - | 7 |
| Private sector | 4 | 100 | - | - | 4 |
| Academic | 1 | 100 | - | - | 1 |
| Total | 186 | 96 | 7 | 4 | 193 |

7.134 In general this proposal was viewed as enabling Scottish Ministers to take well informed decisions, in the public interest. It was seen as fair in that it allowed for some flexibility in a complex process. A recurring comment was that it would be far better for further information to be requested, than for an application to be declined outright simply because detail is missing or ambiguous. One respondent remarked:

“If the request for more information is presented in the spirit of encouraging and facilitating, rather than putting up barriers to community ownership, as supportive of the application rather than challenging it, it would send the message to communities that the system is designed in their favour” (Clackmannanshire Alliance) (CPP).

7.135 Many respondents across a range of sectors argued that Ministers require a full picture in order to make decisions on applications, and therefore they should be able to request additional information so long as this is relevant and proportionate. Several local government representatives considered that Ministers may require more information relating to the ballot, particularly if there had been a low turnout. Other respondents suggested that a fuller picture may be required on the financial feasibility of the application and the support behind this. One recurring comment was that enabling Ministers to ask for additional information promoted openness and transparency.

7.136 A dominant theme was that communities often have never been involved in the process before, and may make mistakes in their application. One respondent commented:

“It is preferable that communities are asked for further information; communities do not go through this process often, probably not more than once, so to expect a community to fully provide all the information that is relevant at a first attempt, is unrealistic. Hence it is much fairer if those with more experience ask for missing or reduced information on some subjects” (Banff and Macduff Community Council).

7.137 Others argued that one size does not fit all, and a standard application form may not be able to accommodate all of the information on the distinct features of communities and their circumstances. Allowing Ministers to ask

for additional information would provide an opportunity for such details not documented in the body of the application to be highlighted.

7.138 Other reasons given in support of the proposal were submitted by only a few respondents:

- Allows for new information, not known at the time of application, to be declared.
- Provides a safety measure for Ministers to assess the validity and sustainability of the application.

7.139 15 respondents (largely third sector and community bodies) suggested that the time period for providing the additional information should be extended from 7 days to between 10 – 14 days in view of the fact that volunteers will need to find time to respond to the request.

7.140 Amongst the seven opponents to the proposal, only a few substantive objections emerged:

- creates uncertainty and vagueness (CC)
- if an application is inadequate then it should be rejected (Ind)
- the scope of evidence required should be prescribed clearly (LG)
- such decisions should be taken out of Ministers' hands as they should be free from political interference (Third).

Option agreements and the community right to buy

7.141 An option agreement is a private agreement between a landowner and another party to purchase land. Options are not made publically available. Ministers are currently not able to accept applications from communities to register interest in land which has been subject to an option agreement. It is proposed that this be changed and applications be accepted where an option agreement is in place. The landowner would still be able to transfer the land in accordance with the conditions set out in the option.

Question 45: Do you think Ministers should be able to accept an application to register a community interest in land which is subject to an option agreement (on part or all of the land)?

7.142 161 respondents (38% of all respondents) addressed this question with 88% of those providing a view agreeing that Scottish Ministers should be able to accept an application to register a community interest in land which is already subject to an option agreement. The majority of respondents in all but one sectors agreed with the proposal; three of the five private sector respondents disagreed.

Table 7.22: Responses to Question 45

| Category | Yes | | No | | Total |
|------------------------|------------|-----------|-----------|-----------|------------|
| | No. | % | No. | % | No. |
| Individuals | 31 | 91 | 3 | 9 | 34 |
| Third sector | 18 | 95 | 1 | 5 | 19 |
| Community organisation | 29 | 100 | - | - | 29 |
| Community Council | 30 | 88 | 4 | 12 | 34 |
| Public Body | 5 | 83 | 1 | 17 | 6 |
| Local government | 16 | 84 | 3 | 16 | 19 |
| Other | 4 | 57 | 3 | 43 | 7 |
| CPP | 3 | 100 | - | - | 3 |
| Representative body | 3 | 60 | 2 | 40 | 5 |
| Private sector | 2 | 40 | 3 | 60 | 5 |
| Academic | - | - | - | - | - |
| Total | 141 | 88 | 20 | 12 | 161 |

7.143 One opponent of the proposal commented:

“The Society believes that, for Ministers to accept an application to register a community interest in land which is already subject to an option agreement would provide Communities with the opportunity to interfere unduly with the landowner’s commercial activities” (Law Society) (Rep).

Question 46: If there is an option agreement in place, do you think that the landowner should be able to transfer the land as an exempt transfer while there is a registered interest over the land? Please explain your answer.

7.144 153 respondents (36% of all respondents) addressed this question with a majority of 59% disagreeing that the landowner should be able to transfer the land as an exempt transfer while there is a registered interest over the land (see Table 7.23 overleaf).

Table 7.23: Responses to Question 46

| Category | Yes | | No | | Total |
|------------------------|-----------|-----------|-----------|-----------|------------|
| | No. | % | No. | % | No. |
| Individuals | 11 | 34 | 21 | 66 | 32 |
| Third sector | 9 | 56 | 7 | 44 | 16 |
| Community organisation | 5 | 18 | 23 | 82 | 28 |
| Community Council | 12 | 38 | 20 | 62 | 32 |
| Public Body | 3 | 50 | 3 | 50 | 6 |
| Local government | 13 | 65 | 7 | 35 | 20 |
| Other | 4 | 67 | 2 | 33 | 6 |
| CPP | - | - | 3 | 100 | 3 |
| Representative body | 2 | 40 | 3 | 60 | 5 |
| Private sector | 4 | 80 | 1 | 20 | 5 |
| Academic | - | - | - | - | - |
| Total | 63 | 41 | 90 | 59 | 153 |

Views opposed to the transfer exemption

7.145 A general concern was that transfer exemptions appeared to be in conflict with the ethos of community empowerment and their right to buy. It was commonly felt (by respondents from a range of sectors) that option agreements leading to exempt transfers provided a loophole for unscrupulous landowners to stall the process of communities pursuing their rights to own land. A typical comment was:

“To allow this would provide a set of arrangements that could be put in place by owners in advance of a registration of interest as a specific means to get round the provisions of the Act” (Community Land Scotland) (Com).

7.146 One respondent (Com) argued that if a community with a registered interest can demonstrate the benefit of their owning the land and if they can match the sale price then their wish to purchase should be prioritised over that of the option holder. Another (Ind) expressed concern that to allow the option agreement to be honoured could lead to the land being neglected or abandoned. It was felt that using the exempt transfer could be unfair to a community body which has already invested in the process of pursuing their right to buy (Rep).

7.147 Two respondents argued that there should be no absolute right to buy by the option holder nor the community, and Ministers should make the final decision in these cases, based on what is best in the public interest (Com, Oth). Another (CC) commented that strictly speaking, the rights to exercise the option lie with the option holder and not the landowner.

7.148 A few individual respondents remarked that in special circumstances such as an inheritance, the exempt transfer should be prioritised. Others (CC, Com) suggested that the transfer be exercised only in the event of the registered interest expiring or being withdrawn.

Views in favour of the transfer exemption

7.149 Two recurring arguments in favour of the landowner being able to honour the option agreement despite there being a registered interest in the land were:

- otherwise economic activity around land sales could be curtailed due to uncertainty about ownership
- landowners need to abide by existing contractual arrangements which precede the community interest being registered.

One respondent commented:

“If the option agreement was entered in to before the CRTB was registered the land owner must be able to comply with their prior contractual obligations. A lot of time, money and resources will be involved in negotiating an option and it would be contrary to natural justice if all this time and investment could be trumped by a CRTB”
(Pinsent Masons LLP) (Priv).

7.150 Many of those who felt that the option agreement should stand even though communities have registered interest, remarked that the transfer would not remove their rights, as their registration should simply transfer to the new owner. (Although there was one exception (Priv) who argued that the interest should be removed as option holders would not wish to exercise the option if there was a risk that a community body could acquire their development in future.)

7.151 Other arguments were that preventing a landowner from honouring a previously agreed option arrangement could be in breach of the European Court of Human Rights (LG, Third); landowners should be free to make their own tax/succession planning arrangements (Rep); and the Act already provides for pre-existing option agreements to be exercised under s.40(4)(g)(iv) (Third).

7.152 Supporters conceded that should community registration be in place then no new option should be permitted (LG, Com). It was also recommended by two third sector respondents that if an option lapses during a period of registration then the community right to buy should take precedence.

Date of the prohibition notice coming into effect for the owner/heritable creditor

7.153 A prohibition notice is placed on a landowner/heritable creditor to prohibit them from transferring, or taking steps with a view to transferring the land or any part of it which is subject to an application to register a community interest in land. This notice comes into effect from the date when the owner/heritable creditor receives that notice. There may be delays, however, between the notice being issued and it being picked up by the landowner/heritable creditor, in which time steps could be taken to market the land.

Question 47: Do you think that the prohibition on the landowner from taking steps to market or transfer land to another party should apply from the day after the day on which Ministers issue the prohibition letter rather than the day when the owner/heritable creditor receives the notice? Please explain your answer.

7.154 143 respondents (34% of all respondents) addressed this question with 74% agreeing that the prohibition should apply from the day after the day on which Ministers issue the prohibition letter.

Table 7.24: Responses to Question 47

| Category | Yes | | No | | Total |
|------------------------|------------|-----------|-----------|-----------|------------|
| | No. | % | No. | % | No. |
| Individuals | 19 | 83 | 4 | 17 | 23 |
| Third sector | 19 | 90 | 2 | 10 | 21 |
| Community organisation | 24 | 96 | 1 | 4 | 25 |
| Community Council | 21 | 70 | 9 | 30 | 30 |
| Public Body | 4 | 100 | - | - | 4 |
| Local government | 9 | 39 | 14 | 61 | 23 |
| Other | 4 | 67 | 2 | 33 | 6 |
| CPP | 2 | 100 | - | - | 2 |
| Representative body | 2 | 50 | 2 | 50 | 4 |
| Private sector | 1 | 25 | 3 | 75 | 4 |
| Academic | 1 | 100 | - | - | 1 |
| Total | 106 | 74 | 37 | 26 | 143 |

7.155 There was an acknowledgement that postal delays and other factors may result in owners not always receiving prohibition notices the day after they are issued. This led to a common recommendation from respondents across many sectors for hard copy notices to be backed up with communication by other means such as emails, text and phone calls. One view was:

“In these days of instant communication and on-line government the existing arrangement is archaic” (Holmehill Community Buyout) (Com).

A local government representative advocated sending Sheriff Officers to deliver the notices in cases which are known to be time critical.

7.156 Where respondents favoured the prohibition applying from the day after the day of issue their reasons were:

- This will reduce the opportunity for owners to deliberately delay receipt of the notice (or be accused of this) (19 mentions). One comment was: “This closes a potential loophole and encourages the process of community ownership of land, striking balance between individual rights and community interests” (Cairngorms National Park Authority) (PB).

- It would establish a definite commencement date which is in the interests of transparency and equality (12 mentions).
- Will reduce the chance of a quick sale by landowners in the gap between issue and receipt of notice (5 mentions).
- Fairer to the community body (4 mentions).
- In accordance with the accepted timeframe for issue and receipt via the postal system (2 mentions).

7.157 Where respondents opposed the proposal for the prohibition applying from the day after the day of issue their reasons were:

- The prohibition should start on the day of receipt of the notice (with the return receipt from the owner confirming this) in order to be fair to the landowner who will then have full knowledge of the prohibition (16 mentions).
- An owner cannot be prohibited from taking steps to market or transfer land to another party if they have not received notification to this effect (10 mentions). A few local government representatives suggested that unless it is clear that the owner has received the notice, prohibition may not be ECHR compliant.

7.158 One local government representative recommended that the notification should specify a start date for the prohibition, such as three days after sending the notification by post.

Public holidays

7.159 There have been times when the statutory deadlines to be met by parties involved in registering community interest in land and the right to buy have fallen on public holidays. This has posed difficulties.

Question 48: Do you agree that public holidays should be excluded from the statutory timescales to register a community interest in land and the right to buy?

7.160 186 respondents (44% of all respondents) addressed this question with 85% agreeing that public holidays should be excluded from the statutory timescales (see Table 7.25 overleaf). The only significant opposition to the proposal came from individuals.

Table 7.25: Responses to Question 48

| Category | Yes | | No | | Total |
|------------------------|------------|-----------|------------|-----------|--------------|
| | No. | % | No. | % | No. |
| Individuals | 24 | 63 | 14 | 37 | 38 |
| Third sector | 21 | 91 | 2 | 9 | 23 |
| Community organisation | 29 | 85 | 5 | 15 | 34 |
| Community Council | 35 | 88 | 5 | 12 | 40 |
| Public Body | 8 | 100 | - | - | 8 |
| Local government | 23 | 100 | - | - | 23 |
| Other | 6 | 100 | - | - | 6 |
| CPP | 3 | 100 | - | - | 3 |
| Representative body | 6 | 100 | - | - | 6 |
| Private sector | 3 | 75 | 1 | 25 | 4 |
| Academic | 1 | 100 | - | - | 1 |
| Total | 159 | 85 | 27 | 15 | 186 |

“Exempt” transfers of land

7.161 There have been a number of “exempt” transfers of land on which a community interest has been registered. These are transfers which are permitted, such as a transfer of a gift, or a transfer between companies in the same group. Scottish Ministers are currently not made aware of such transfers which means that the administrative records relating to a community interest in land can become out of date.

Question 49: Do you agree that where a landowner makes an “exempt” transfer, this should be notified to Scottish Ministers? If you disagree, please provide reasons for your decision.

7.162 176 respondents (42% of all respondents) addressed this question. Of these, 94% agreed that where a landowner makes an “exempt” transfer, this should be notified to Scottish Ministers (see Table 7.26 overleaf).

7.163 The two substantive arguments amongst opponents of the proposal were that it would create an additional and unnecessary bureaucratic burden; and that information on exempt transfers is already in the public domain, as these are required to be recorded in the Registers of Scotland’s Land Register.

Table 7.26: Responses to Question 49

| Category | Yes | | No | | Total |
|------------------------|------------|-----------|------------|----------|--------------|
| | No. | % | No. | % | No. |
| Individuals | 38 | 97 | 1 | 3 | 39 |
| Third sector | 19 | 90 | 2 | 10 | 21 |
| Community organisation | 29 | 100 | - | - | 29 |
| Community Council | 34 | 89 | 4 | 11 | 38 |
| Public Body | 7 | 100 | - | - | 7 |
| Local government | 21 | 91 | 2 | 9 | 23 |
| Other | 5 | 71 | 2 | 29 | 7 |
| CPP | 3 | 100 | - | - | 3 |
| Representative body | 6 | 100 | - | - | 6 |
| Private sector | 3 | 100 | - | - | 3 |
| Academic | - | - | - | - | - |
| Total | 165 | 94 | 11 | 6 | 176 |

Changes to a community body's contact address and registered office

7.164 During the time when a community body has registered its community interest in land, its Directors may change. The contact details provided to Scottish Ministers in their application to register a community interest in land may change, as also the address of the registered office. The landowner may also change their address.

Question 50: Do you agree that community bodies and landowners should notify Scottish Ministers of any changes to their contact details (including any registered office)?

7.165 188 respondents (44% of all respondents) addressed this question. Of these, 97% agreed that community bodies and landowners should notify Scottish Ministers of any changes to their contact details (see Table 7.27 overleaf).

Table 7.27: Responses to Question 50

| Category | Yes | | No | | Total |
|------------------------|------------|-----------|----------|----------|------------|
| | No. | % | No. | % | No. |
| Individuals | 37 | 100 | - | - | 37 |
| Third sector | 24 | 100 | - | - | 24 |
| Community organisation | 32 | 94 | 2 | 6 | 34 |
| Community Council | 39 | 100 | - | - | 39 |
| Public Body | 8 | 100 | - | - | 8 |
| Local government | 23 | 96 | 1 | 4 | 24 |
| Other | 6 | 75 | 2 | 25 | 8 |
| CPP | 3 | 100 | - | - | 3 |
| Representative body | 6 | 100 | - | - | 6 |
| Private sector | 3 | 75 | 1 | 25 | 4 |
| Academic | 1 | 100 | - | - | 1 |
| Total | 182 | 97 | 6 | 3 | 188 |

Monitoring the community right to buy

7.166 Ministers do not currently monitor the impact of the community right to buy. Ministers have received a number of calls to monitor the community right to buy. It is considered that this would provide evidence on how provisions were working in practice.

Question 51: Do you think that Ministers should monitor the impact of the community right to buy? How do you think that monitoring should be undertaken and what information should Ministers seek? Should the monitoring process be a statutory requirement, including provisions for reporting?

7.167 193 respondents (46% of all respondents) addressed the question of whether Ministers should monitor the impact of the right to buy, with 96% agreeing that this should take place (see Table 7.28 overleaf).

7.168 There was a wide range of recommendations on the nature of monitoring which should be undertaken, by whom and how often. Whilst some respondents focused on local level impact, others envisaged national overviews of the operation of community right to buy. It was generally agreed that quantitative, monitoring data would be easier to identify than softer, qualitative information, although both were viewed as important.

Table 7.28: Responses to Question 51: Whether Ministers should monitor the impact of the community right to buy

| Category | Yes | | No | | Total |
|------------------------|------------|-----------|----------|----------|------------|
| | No. | % | No. | % | No. |
| Individuals | 37 | 100 | - | - | 37 |
| Third sector | 22 | 96 | 1 | 4 | 23 |
| Community organisation | 32 | 94 | 2 | 6 | 34 |
| Community Council | 34 | 89 | 4 | 11 | 38 |
| Public Body | 10 | 100 | - | - | 10 |
| Local government | 24 | 100 | - | - | 24 |
| Other | 8 | 89 | 1 | 11 | 9 |
| CPP | 3 | 100 | - | - | 3 |
| Representative body | 8 | 100 | - | - | 8 |
| Private sector | 5 | 100 | - | - | 5 |
| Academic | 2 | 100 | - | - | 2 |
| Total | 185 | 96 | 8 | 4 | 193 |

7.169 Reasons for monitoring the community right to buy which were identified explicitly by respondents were:

- Need to assess progress against objectives: to what extent is right to buy achieving against its aims?
- Helps in the identification of areas where right to buy activity is low in comparison with other areas.
- Helps in identifying areas where support can be targeted for current and potential community landowners.
- Can learn from experience.
- Helps in the assessment of future applications.
- To ensure right to buy has not resulted in loss of value of land.
- To ensure wider communities are content with the use and management of the land.

7.170 Respondents envisaged a range of mechanisms by which monitoring could be accomplished. These encompassed:

- Ministers undertaking the monitoring
- communities encouraged/expected to undertake self assessment (perhaps with the help of monitoring agencies)
- local authorities undertaking the monitoring (perhaps subsidised by Government funds)
- monitoring by third sector bodies
- monitoring by CPPs
- in partnership with universities
- based on case studies
- based on site visits
- aided by focus groups
- random checks on communities
- using information held by Land Registry

- using information already collected by relevant third sector funders who will be undertaking their own monitoring.

7.171 There were various suggestions as to the appropriate frequency of monitoring activity, with some respondents remarking that this would depend on the precise nature of the enterprise and its key milestones. The most commonly recommended frequency was for annual assessments and reports. Other suggestions were for biennial or three yearly assessments. A few respondents commented that formal monitoring should be more robust and frequent during the first few years after completion of the transfer (although others pointed out that some outcomes would materialise only in the longer-term).

7.172 Many respondents made recommendations for the type of information to be collected. Some described evaluation frameworks in which a baseline is established against which progress towards target outcomes can be identified and assessed. Whilst some respondents focused on local goals such as those set out in the plans of communities in their application to buy and single outcome agreements relating to these local community areas, others clearly envisaged monitoring progress towards national, overarching aims of the right to buy policy. However, it was agreed by some that the starting point is clarity over the main aim of the policy which, according to a few respondents should relate to empowering communities rather than area of land owned by communities. One respondent remarked:

“It is concerning that the main yardstick of the success of community ownership is how many acres of land it covers. It is extremely important that Ministers take responsibility for monitoring the system, so that both positive and negative experiences can be learned from. Empowerment of communities must be considered more important than physical ownership, and it would be far more positive to have fewer successful projects, than a great number which are failing and doing nothing for their communities” (National Farmers Union) (Rep).

7.173 Several respondents emphasised the importance of setting meaningful criteria against which to assess progress. One individual respondent recommended that criteria should be drawn up in discussion with communities. A recurring comment was that monitoring should not be burdensome for communities and should be tailored to suit their circumstances and local context. The dominant view was that the monitoring framework should not be overly prescribed, but should leave room for flexibility and creativity in approaches to monitoring. The main reasons for some respondents opposing the proposal included caution over burdening communities with more administration, and difficulties in devising a monitoring framework to fit all circumstances.

7.174 Some respondents outlined the main types of data which they considered should be collected:

- data on all transactions (at both local and national level) (e.g. dates of transfers; area of land transferred; value; subsequent use; number of

applications; level of successful/unsuccessful applications; reasons for applications being rejected)

- local impact of community right to buy in terms of economic, social, environmental, regeneration benefits
- ongoing viability of ownership
- level of community involvement over time.

7.175 A recurring comment was that both quantitative and qualitative data should be collected, with process data (e.g. issues relating to registering) identified in addition to outcome information. A few respondents emphasised what they perceived to be the importance of assessing impacts from the right to buy against developments in control areas in which no registration of interest in community ownership has been made. In addition, it was considered useful to compare areas where right to buy has been activated against areas where activation commenced but was not followed through.

7.176 Suggestions were made for the development of a register of community right to buy in which activity can be logged, appeals can be documented, and examples of good practice highlighted.

7.177 134 respondents (32% of all respondents) addressed the question of whether the monitoring process should be a statutory requirement including provisions for reporting, with 81% agreeing that the process should be statutory.

Table 7.29: Responses to Question 51: Whether the monitoring process should be a statutory requirement

| Category | Yes | | No | | Total |
|------------------------|------------|-----------|-----------|-----------|------------|
| | No. | % | No. | % | No. |
| Individuals | 29 | 88 | 4 | 12 | 33 |
| Third sector | 17 | 77 | 5 | 23 | 22 |
| Community organisation | 19 | 68 | 9 | 32 | 28 |
| Community Council | 24 | 77 | 7 | 23 | 31 |
| Public Body | 6 | 75 | 2 | 25 | 8 |
| Local government | 21 | 95 | 1 | 5 | 22 |
| Other | 5 | 62 | 3 | 38 | 8 |
| CPP | 3 | 100 | - | - | 3 |
| Representative body | 6 | 100 | - | - | 6 |
| Private sector | 4 | 100 | - | - | 4 |
| Academic | - | - | - | - | - |
| Total | 134 | 81 | 31 | 19 | 165 |

8. STRENGTHENING COMMUNITY PLANNING

Background

8.1 Community planning was given a statutory basis by Part 2 of the Local Government in Scotland Act 2003. Although the 2003 Act makes no provision for the establishment and functions of CPPs, the framework provided by the Act and associated guidance has led to the formation of 32 such Partnerships, one in each local authority area across Scotland. Each CPP operates in a different way and at a range of different levels to suit local circumstances.

8.2 The Scottish Government/COSLA Statement of Ambition on Community Planning and Single Outcome Agreements³ (March 2012) stated that:

“Effective community planning arrangements will be at the core of public service reform. They will drive the pace of service integration, increase the focus on prevention and secure continuous improvement in public service delivery, in order to achieve better outcomes for communities.”

8.3 The Statement also set out what CPPs must do and how they should operate and improve outcomes. The Scottish Government and COSLA recognise that significant changes, including legislative change, will be needed to ensure the successful realisation of that shared ambition for community planning. They propose that to create the right legislative framework for effective community planning will require:

- Increased emphasis on the planning and delivery of outcomes.
- CPPs and their key roles and responsibilities to be placed on a statutory basis.
- New duties to be placed on partner bodies so that the CPP can fulfil its responsibilities, and so that each partner's role in community planning is fully reflected in its own governance and accountability arrangements.
- Ensuring that the external scrutiny provided by the Accounts Commission, the Auditor General and other bodies reinforces the above and supports progress towards the Statement of Ambition.

8.4 The Scottish Government proposes that:

- A CPP must be established by relevant partners in each local authority area.
- The core legislative underpinning for community planning is amended to place stronger emphasis on the purpose of delivering better outcomes.

³ www.scotland.gov.uk/resource/0038/00389822.doc

Question 52: What are your views on our proposals for requiring a CPP to be established in each local authority area, and for amending the core statutory underpinning for community planning to place stronger emphasis on delivering better outcomes?

8.5 234 respondents (55% of all respondents) addressed this question. The question attracted much commentary, largely supportive, highlighting benefits to the proposals, but also raising some queries and concerns.

Views in support of the proposals

8.6 Many respondents across a range of sectors stated simply that they agreed with what was proposed. Some, however, expressed confusion particularly in relation to the proposal for requiring a CPP to be established in each local authority area, remarking that they thought every area had already accomplished this. One public body suggested that the proposals represented more of a “catch up” than introducing something new. Five respondents questioned what added value the proposals would bring, over and above current practice.

8.7 Although generally supportive, 15 respondents (eight of whom were local government representatives and CPPs) recommended that the legislation “underpins” rather than prescribes too tightly, any arrangements for community planning, as they felt that flexibility should remain to accommodate each CPP’s individual dynamics and needs.

8.8 Many respondents gave reasons as to why they welcomed the proposals. Establishing a statutory footing for community planning was viewed as beneficial for the following reasons:

- Gives effect to the Statement of Ambition and single outcome agreements.
- Signals the importance of CPPs and secures their existence into the future.
- Will promote consistency across CPPs.
- Should help to provide the necessary legal support if partners are not fully engaging in the process.
- Places all partners on an equal footing.
- Will give the community sector more opportunity for contributing in a meaningful manner.
- Essential where budgets are increasingly restricted.

8.9 The stronger emphasis on delivering better outcomes was viewed as beneficial for the following reasons:

- Will drive forward the shift from focusing on process to focusing on outcomes.
- Gives a clear message to all partners about the purpose of the CPP, what is expected of them.
- Should improve overall performance.
- Aligned with/builds on what is already taking place; aligned with national outcomes and links with National Performance Framework.

- Fits with the ultimate objective of local authorities and Scotland as a whole.

8.10 A recurring theme (31 respondents from a wide range of sectors made this explicit) was that to get the best from CPPs, it will be crucial to deploy effective mechanisms to empower communities to play a central part. Several respondents perceived the input of communities to date to have been largely tokenistic, with the direction of respective CPPs overly aligned with the local authority agenda rather than the local needs of communities. Some emphasised the importance of getting this aspect of CPP working better, before being able to strengthen with statute and focus on outcomes.

8.11 Some respondents (largely third sector and community organisations) raised questions about how communities can best be represented when they are not homogenous and have multi-perspectives and needs.

Predominant queries

8.12 Four queries emerged most frequently:

- How will outcomes/priority of outcomes be decided within CPPs? It was generally acknowledged that outcomes should be developed in partnership with communities, and indeed the emphasis on outcomes was seen by some as an opportunity for communities to have a central input, but with local government representatives having the democratic mandate, some suggested that they would continue to play the key role. Some concern was also expressed over the time and costs associated with consulting with communities across large CPP areas to ensure their views are taken into account.
- How will the new duty interface with existing duties introduced by other legislation (such as Public Bodies (Joint Working) (Scotland) Bill; Public Sector Equality Duty; Human Rights; Children's Services; Land Use Planning); Procurement Bill)?
- Guidance will be required to address how partners who work towards national outcomes with associated budgets, can also contribute to local CPPs with local outcomes to deliver.
- What will be the lines of accountability within CPPs? It was acknowledged that CPPs would not be separate legal bodies, but for some respondents that raised questions over their status if they were to be entities over and above merely an informal meeting of people. Specific comments included:

"In order for CPPs to exercise even limited powers there will need to be certainty as to what a CPP is. Their present status of being an informal meeting of people from different organisations is not conducive to the exercise of any powers. This lack of clarity has also given rise to criticism of a lack of transparency around CPPs" (Society of Local Authority Solicitors and Administrators in Scotland) (Rep).

Opposition to the proposals

8.13 Two main arguments against the proposals emerged from a minority of respondents:

- They are not necessary and simply add more bureaucracy.

- The process will still be “top-down” with the community having little say in determining outcomes. A few respondents considered that, ironically, providing statutory underpinning may marginalise communities even further. One remarked:
“....there is a real danger that placing a stronger statutory emphasis on delivering better outcomes will reinforce a tendency to see the public sector partners, who are bound by this, as the principal Community Planning partners, and others, especially the community and voluntary sectors, as less important, in spite of their enormous potential to contribute to achieving outcomes” (Community Development Alliance Scotland) (Oth).

8.14 A few other arguments were presented by only a few or one respondent:

- This will not change attitudes of public bodies towards communities and cultural and attitudinal changes are needed to make the proposals effective.
- There is no real enthusiasm for CPPs which are a “forced method of working” (Ind).
- CPPs are not democratic.
- The word “Planning” is confusing for some communities as this has connotations of planning departments.

Other comments

8.15 A few respondents commented that the operation of CPPs may be more challenging in large areas and island areas. Guidance was sought on the position of partners whose responsibilities extended over multiple local authority areas (such as National Parks). It was remarked that very large CPPs with many partners could be slow-moving and unwieldy to operate.

8.16 One view was that CPPs should be supported by better public relations and media attention. Another respondent recommended that a quality assurance system be set up to ensure improvements can be demonstrated.

Core duties

8.17 The Scottish Government proposes that, reflecting the Statement of Ambition, the core duties of each CPP should be to:

- develop and agree a common understanding of local needs and opportunities
- agree common and shared outcomes for the CPP areas
- develop an effective, shared approach for achieving those outcomes – identifying who will do what, by when, and with what resources
- manage performance to ensure improvement of outcomes
- scrutinise and challenge all partners’ contributions to the delivery of the agreed shared priorities
- provide strategic oversight of arrangements for partnership working in the CPP area

- report to communities and to other stakeholders on the delivery of agreed priorities and the effectiveness of community planning in the area
- consult and engage with the third sector and the business community on the outcomes to be achieved and how they can best be delivered, and
- consult and engage with communities in identifying and prioritising the outcomes that are to be delivered and ensure that community engagement is properly planned, resources and integrated across partners.

Question 53: What are your views on the core duties for CPPs set out above, and in particular the proposal that CPPs must develop and ensure delivery of a shared plan for outcomes (i.e. something similar to a Single Outcome Agreement) in the CPP area?

8.18 204 respondents (48% of all respondents) addressed this question. Overall there was much support for the core duties, with 33 respondents, from a wide range of sectors, simply expressing the view that the proposals were moving in the right direction, and a further 12 respondents (largely local government representatives and CPPs) describing how the duties were consistent with, or could build upon, practice already followed in their respective areas. Six respondents recommended that the duties should allow for local flexibility, which could perhaps be emphasised through guidance.

Reasons to support the core duties

8.19 Many respondents identified specific or broader benefits that they envisaged would follow the implementation of the core duties:

- greater clarity on individual partner roles
- agreement of partners regarding priorities
- improved partner responsibility for delivering outcomes
- promotion of joint resourcing of activities
- greater emphasis on preventative spend
- improvement in transparency and accountability
- integration of top-down and bottom-up planning
- support for cultural change
- support for wider range of interests being involved in community planning
- minimising duplication of effort
- higher status to community plan (on par with other strategic plans for public sector organisations)
- stronger links between this plan and individual/national partners' corporate plans
- efficient use of resources.

Concerns regarding the core duties

8.20 Respondents raised a wide range of concerns regarding the core duties. By far the most frequent concern related to the involvement of communities in the proposals. 38 respondents across ten different sectors expressed

concern that the role of communities in community planning is not made sufficiently explicit in the list of duties. Several commented that by placing the duty to consult and engage with communities as the last in the list, suggested engagement as an “add on” rather than an integral aspect of the process. Comments included:

“.....somewhat unfortunate that consultation and engagement with communities is the last item in the list of core duties. This sends out a strong symbolic message, even if it is not the intent of the legislation” (Neighbourhoods and Wellbeing Research Group, Urban Studies, University of Glasgow) (Acad).

8.21 Some respondents felt that the final bullet point in the list of duties needed to be strengthened, to reflect “active involvement” of communities, the “systematic” engagement of communities, or a statement of how consultation and engagement would be undertaken. Eight respondents made reference to the potential integration of the use of National Standards for Community Engagement within the duties.

8.22 Five respondents recommended an additional, specific duty to support community empowerment.

8.23 Many other concerns were expressed and are summarised below:

- The duties remain vague on lines of accountability within the CPP and also between partners and their parent organisations.
- How will any conflicts between the plans and priorities of partner parent organisations and the CPP plan be resolved?
- The plethora of outcomes which partners already have to produce could be a barrier.
- The ability of CPPs to impose outcomes with resource implications on an organisation (which has its own governance and responsibilities) is an organisational risk.
- Partners will need to share budget and resource information as a specified early stage and agree how budgets can be collectively deployed.
- Creation of the plan has the potential to create duplication and confusion in the policy landscape.
- There is a need for an outcomes improvement process to be provided alongside.
- Some form of monitoring and evaluation framework is required.
- What is the motivation to contribute? What happens if a partner does not cooperate? What is the motivation for volunteers to invest time?
- There may be tension between the CPPs strategic and performance management roles.
- Guidance will be required on how contributions and actions can be measured.
- Ironically, by making specific reference to consulting and engaging with communities, third sector and the business community this may marginalise rather than mainstream their input.

- As CPPs are not legal entities, no statutory duty can be placed on them.
- As CPPs are not incorporated bodies they are not covered by the General Duty of the Public Sector Equality Duty (although some of the constituent bodies will be).
- There needs to be recognition of the supporting role of volunteers.
- The shared plan could be too broad in reach to be used as a local planning tool.
- Clarity is required on how these plans relate to forthcoming requirements such as those in the Children and Young People Bill and Public Bodies (Joint Working) Bill.
- Overall makes sense, but appears onerous.

Suggestions for additional duties/aspects of duties

8.24 Many suggestions were made for additions to the proposed duties:

- To the second duty add “with demonstrable community participation”.
- Second duty to be expressed so as to require the identification and reduction of inequality within and between communities in the CPP area.
- Replace the seventh duty with, “ensure community involvement in the scrutiny of the delivery of agreed priorities and the effectiveness of community planning in the area”.
- Consider regional opportunities and cross-CPP working.
- Consult and engage with relevant public bodies as well as communities.
- Involve young people in community planning.
- Share information about current resources
- Develop and agree a common understanding of the various types of assets available locally that can be mobilised to address needs.
- Ensure that partners adopt structures and policies which allow the overall aims of the Bill to be achieved.
- Consider environmentally friendly practices.
- Ensure early intervention and prevention.
- Agree the plan with Scottish Ministers.

8.25 General comments were that the duties should adhere to SMART principles: specific; measurable; attainable; relevant; and time-bound. Ten individual respondents and one community organisation emphasised their view that identified outcomes should be generally accessible across communities, including islands. An equality theme ran through many responses, with calls made for the duties to address inequality in poverty and health.

Other suggestions

8.26 The inclusion of the fourth and fifth duties was questioned by two respondents (CPP, LG). They considered that these should be removed, as it is for individual partners to determine their own allocations of resources and their own governance and audit arrangements to assess the extent to which they have met their commitments. One public body requested more information on what was meant by the fifth bullet.

Question 54: Do the proposed duties of the CPP support effective community engagement and the involvement of the third and business sectors? What other changes may be required to make this more effective?

8.27 169 respondents (40% of all respondents) provided either a yes or no response to this question, with several others adding relevant commentary. Respondents were evenly split over whether they considered that the proposed duties of the CPP supported effective community engagement and the involvement of the third and business sectors. Local government representatives and CPPs were more likely to agree than respondents from other sectors; third sector respondents and those in the “other” category were most likely to disagree.

Table 8.1: Responses to Question 54

| Category | Yes | | No | | Total |
|------------------------|-----------|-----------|-----------|-----------|------------|
| | No. | % | No. | % | No. |
| Individuals | 14 | 61 | 9 | 39 | 23 |
| Third sector | 8 | 30 | 19 | 70 | 27 |
| Community organisation | 12 | 46 | 14 | 54 | 26 |
| Community Council | 14 | 47 | 16 | 53 | 30 |
| Public Body | 8 | 50 | 8 | 50 | 16 |
| Local government | 15 | 79 | 4 | 21 | 19 |
| Other | 2 | 20 | 8 | 80 | 10 |
| CPP | 9 | 82 | 2 | 12 | 11 |
| Representative body | 3 | 60 | 2 | 40 | 5 |
| Private sector | - | - | 1 | 100 | 1 |
| Academic | - | - | 1 | 100 | 1 |
| Total | 85 | 50 | 84 | 50 | 169 |

8.28 Where respondents made suggestions for changes to make effective community engagement and involvement of the third and business sectors, these fell into five broad themes.

Need for shift in focus from strategic to local level

8.29 A recurring perception was that the language of the Bill and its focus reinforced top-down approaches, at strategic levels, at the expense of place-based, local approaches. It was commented that communities still had to “request” to participate, with “third sector and community organisations often only get crumbs from the table of the big players” (Torry Community Council).

Need to support community capacity-building

8.30 A common theme across a range of sectors was that all public bodies (and not just local authorities) required to do more to support and develop community capacity-building and development. One respondent commented:

“....every partner requires to ‘join up’ more effectively in relation to engaging with our communities to ensure that community aspirations are reflected in the shared plans and outcomes.

It would be helpful if this dimension was extended to include co-ordination of community capacity building so that the maximum impact is made in this area. You will note from our comments under equality impacts that we are concerned that if community capacity building is not properly developed and resourced then the extent of community empowerment will be constrained and uneven. Capacity building is therefore central to community empowerment and it is not helpful if this effort is fragmented across partners” (South Ayrshire Council).

8.31 Many respondents, largely third sector recommended that communities be appropriately resourced in order to engage effectively.

8.32 A recurring view amongst local government representatives and CPPs in particular was that good practice on effective community engagement and the involvement of the third and business sectors exists, and should be shared. Some called for guidance to be issued, or advice to be sought from expert bodies.

8.33 Many respondents requested that engagement should be based upon the National Standards for Community Engagement, with community engagement plans being developed.

8.34 A few third sector organisations recommended that the principles of co-production and co-design should be embraced by the duties.

8.35 It was suggested by a few respondents that CPPs be regularly evaluated in how well they have involved the third and business sectors, with the results being published annually.

Make engagement and involvement more meaningful and easier to accomplish

8.36 It was recommended that engagement with the CPP process be simplified and made more accessible by communities. Practical steps such as greater consideration to times of meetings, public transport, childcare and timeframes for wider consultation were identified as having potential to assist in enabling communities to engage. One respondent called for:

“....mechanisms that allow for proper, uninhibited and honest engagement in ways that are rapid, low cost and non-complex” (Architecture and Design Scotland) (PB).

8.37 Third sector respondents in particular considered that making engagement more meaningful would ensure greater effectiveness. They thought that this could be done by deploying deliberative and participatory approaches in meetings; making discussions more relevant to communities; demonstrating to businesses how their involvement will benefit them; and feeding back to communities how their needs have been listened to and how they affected decisions.

8.38 A common theme amongst responses was how communities could be represented appropriately within CPPs. Several community councils recommended that they be given a statutory role within CPPs. Many respondents felt that third sector interface organisations should have a seat at the table, although a contrasting view was that even these may not represent the views of entire communities. One suggestion (Priv) was for more public meetings to take place in which wider community views could be canvassed.

Clarify terms

8.39 Many respondents, from a range of sectors, recommended that differences between the terms, “engage”, “involve” and “consult required to be clarified with the language of the Bill used more effectively to signal community empowerment. It was commonly felt that “engage” was more suggestive of a bottom-up process of involvement than was “consult”. However, overall the duties were seen to refer more to outcome-setting rather than articulating processes of engagement and involvement. A few respondents requested that the precise role of communities be articulated clearly.

Educate and publicise

8.40 A recurring view, particularly amongst individual respondents was that information about CPPs and in particular the role of communities, third and business sectors should be publicised more widely, for example in the media, road shows and other events. Some respondents, including several from the third sector, called for efforts to boost the esteem of third sector organisations, and to make explicit that they are “full” partners of CPPs.

Address conflicts of interest

8.41 Caution was expressed that some businesses may not wish to speak up against council officers (Ind), or they may have commercial interests in the outcomes or deliberations (PB). Another view (Third) was that the CPP may have “preferred” business partners with whom they wish to deal. These respondents argued that such potential conflicts needed to be addressed in order to make engagement with business sectors more effective.

Role and contribution of relevant partners

Question 55: How can we ensure that all relevant partners play a full role in community planning and the delivery of improved outcomes in each CPP area? Do the proposed core duties achieve that? What else may be required?

8.42 151 respondents (36% of all respondents) indicated either a yes or no response to this question, with several others adding relevant commentary (see Table 8.2). Respondents were relatively evenly split over whether they considered that the proposed core duties ensured that all relevant partners play a full role in community planning and the delivery of improvement outcomes in each CPP area. Individual respondents were the most likely to agree out of all categories of respondent.

Table 8.2: Responses to Question 55

| Category | Yes | | No | | Total |
|------------------------|------------|-----------|------------|-----------|--------------|
| | No. | % | No. | % | No. |
| Individuals | 16 | 64 | 9 | 36 | 25 |
| Third sector | 9 | 41 | 13 | 51 | 22 |
| Community organisation | 12 | 57 | 9 | 43 | 21 |
| Community Council | 11 | 46 | 13 | 54 | 24 |
| Public Body | 10 | 62 | 6 | 38 | 16 |
| Local government | 10 | 50 | 10 | 50 | 20 |
| Other | 2 | 25 | 6 | 75 | 8 |
| CPP | 6 | 60 | 4 | 40 | 10 |
| Representative body | 1 | 33 | 2 | 67 | 3 |
| Private sector | - | - | 1 | 100 | 1 |
| Academic | 1 | 100 | - | - | 1 |
| Total | 78 | 52 | 73 | 48 | 151 |

8.43 An overarching view amongst those who did not consider the core duties ensured the full participation of all relevant partners was that they provided a framework for participation, but did not go far enough to ensure an obligation to play a full role. Several respondents, largely local government representatives and public bodies, called for more robust legal underpinning to give the duties more “teeth” and make individual partners more accountable for their contribution.

8.44 To support increased accountability suggestions were made for external scrutiny and audit of partners’ contributions towards shared outcomes, with repeated calls for partners to provide regular reports on their performance. However, caution was expressed amongst a few local government representatives that such evaluation of input should be proportionate and not become overly burdensome.

8.45 A common view was that the core duties of CPPS and the duties of individual partners should be more clearly distinguished and defined. One respondent represented the views of others in remarking:

“Of concern is the fact that the terms duties and principles seem to be used interchangeably and this lends a lack of clarity to what is actually being proposed in legislative terms. It would be our view, that the legislation, if developed, should clearly articulate the duties on the CPP and individual Partners” (East Ayrshire Council).

8.46 Suggestions were made for further guidance on roles and partnership working, with examples of good practice shared. Three respondents (two third sector and one individual) recommended that formal training for CPP partners be provided.

8.47 Another common theme was that the relationship between individual partner governance and strategic direction and the priorities of CPPs required to be addressed. One respondent expressed this perceived tension thus:

“There will of course remain a tension between the existing lines of accountability that public bodies hold with the newer responsibilities funnelled through the CPP. There is no easy way around this and it has proved a barrier to partnership working so far”
(Aberdeenshire Council CPP).

8.48 Other suggestions made by fewer respondents included:

- Change the focus of CPPs to be locally led (with a few respondents suggesting a local community chair).
- The leadership within the CPP should change hands according to topic focus.
- Emphasise that partners and not just local authorities are responsible for enacting the duties.
- Ensure a strong leadership.
- Share budgets across partners according to locally identified and agreed priorities.
- Emphasise to partners the relevance and benefits of their input, and provide them with support from national and expert bodies.
- Make the CPP process more transparent and honest.

Question 56: What are the respective roles of local elected politicians, non-executive board members and officers in community planning and should this be clarified through the legislation?

8.49 167 respondents (39% of all respondents) addressed this question. Whilst the predominant view was that the respective roles of local elected politicians, non-executive board members and officers in community planning should be clarified, there was difference of opinion as to whether this should be done through legislation or other means, such as guidance. The balance of views amongst those who commented tended towards legislation (50 respondents, many of whom were individuals, third sector and community organisations) rather than non-legislative approaches (33 respondents, largely local government representatives, CPPs and public bodies. One respondent remarked:

“Whether legislation, at this stage at least, is the best means of addressing the issues raised is in our view more questionable. There could be a risk of making a set of arrangements compulsory that would suit some areas but be problematic in others”
(Community Learning and Development Standards Council for Scotland) (Rep).

8.50 A recurring view was that local flexibility should be retained, and overly prescribed roles may curtail this. However, contrasting views were that clearer prescription would minimise unnecessary duplication of work and duties and promote greater consistency across Scotland.

8.51 A common perception amongst respondents from a range of sectors was that local elected politicians and non-executive board members had important strategic leadership, governance and scrutiny roles to fulfil. The role of local elected politicians in taking the lead in representing their communities was identified by several respondents. One commented:

“Local elected members have a democratic mandate which differentiates them from other CPP members. This clarity and distinctive role as the democratically accountable local elected representatives will be critical if community planning is to lead to meaningful community engagement and empowerment. The legislation needs to strengthen and support the mandate of local elected politicians as visible and accountable leaders of the process” (North Ayrshire Council).

8.52 Officers were generally viewed as having advisory and implementation roles, including attending to the detailed decisions once the overarching priorities and strategy are decided.

8.53 A minority of respondents commented that the roles of politicians and non-executive board members should be focused around engaging with communities and taking forward their priorities.

8.54 An emerging theme was the need to resolve the perceived tension between competing mandates of various partners. For example, between the mandate of elected members to be accountable for services delivered by their own councils, and the lines of accountability of public sector organisations to the Scottish Government. Some respondents called for individual partners to be able to cast off their “party line” or own agency policy in contributing to decisions. One remarked:

“Normally where a councillor, non-exec board member etc serves on an external body such as a trust or company, they owe their primary responsibility to that external body rather than their parent council, board etc. One of the disadvantages of a CPP not having any formal legal status is that each member of the CPP is there as a representative of their own organisation, rather than serving the interests of the CPP. It would be helpful in guidance to make it clear that all serving on the CPP owe their primary duty through effective community planning to improve the wellbeing of the whole CPP area and its inhabitants and to act in the interests of the CPP as a whole rather than their parent body” (Society of Local Authority Solicitors and Administrators in Scotland) (Rep).

Which organisations should the duties apply to?

8.55 As well as local authorities and core partners, a wide range of other organisations, such as colleges, Skills Development Scotland and Scottish Natural Heritage, already participate in community planning across Scotland. The Scottish Government considers that it would be possible to use the existing legislation to add to the list of core bodies under a duty to participate in community planning. That could, for example, place that duty on those organisations which might be expected to have a substantive role in the delivery of outcomes by CPPs right across Scotland or in the particular areas they cover. The Scottish Government proposes that in addition to local authorities and existing core partners, those organisations are:

- Cairngorms National Park Authority
- Loch Lomond and the Trossachs National Park Authority
- Scottish Environment Protection Agency
- Scottish Natural Heritage
- Skills Development Scotland
- Sportscotland
- VisitScotland

8.56 The Scottish Government also considers it important to take into account any “integration authorities” established under the Public Bodies (Joint Working) (Scotland) Bill, currently being considered by the Scottish Parliament.

Question 57: Should the duty on individual bodies apply to a defined list of public bodies – is so, which ones? Or should we seek to take a more expansive approach which covers the public sector more generally?

8.57 167 respondents (39% of all respondents) addressed these questions. Whilst some respondents expressed clearly their preference for a defined list or a more expansive approach, others favoured a combination of both approaches with a general list supplemented by local bodies. Table 8.3 overleaf summarises views of the 139 respondents who indicated their preferences clearly.

Table 8.3 Responses to Question 57

| In favour of definitive list | | In favour of expansive approach | | Combination of both | | Neither | | Total |
|------------------------------|----|---------------------------------|----|---------------------|----|---------|---|-------|
| No. | 31 | No. | 96 | No. | 11 | No. | 1 | 139 |
| % | 22 | % | 69 | % | 8 | % | 1 | 100 |

8.58 The majority view (69%) was in favour of an expansive approach. Reasons in support of this approach were:

- Inclusive – does not exclude organisations which may then be reluctant to engage.
- Allows for flexibility for local circumstances.
- Allows for different mixes of public bodies within different CPPs.
- Will not require constant updating.
- More relevant and meaningful.

- Allows for new organisations to emerge and participate.
- Promotes an integrated approach focusing on needs and purpose rather than form.
- In keeping with the spirit of the legislation.

8.59 A minority of 22% of respondents favoured a definitive list, although several argued that this should not be conclusive, but open to adaptation depending on needs. The main rationales in favour of a prescribed list were:

- Avoids ambiguity.
- Avoids allowing some bodies “wobble” room.
- Is real and not an artificial “catch all” approach.

8.60 Calls were made for the opportunity for Scottish Ministers to review and update the list as appropriate.

8.61 One public body provided their view on being listed amongst those with a duty to participate in community planning:

“We believe this presents us with significant opportunities to better engage with and support local outcomes. It will though be a different way of working that will take time to develop and resource adequately and we therefore recommend that a phased approach is taken, working towards engagement with all CPPs over a period of time as resources and capability is developed” (sportScotland) (PB).

8.62 Amongst the respondents favouring a combination of both approaches, suggestions included operating a two-tier list, with a generic core list supplemented by customised, local lists of organisations appropriate to the area. One respondent (Priv) argued that both options (definitive and expansive) would create unnecessary bureaucracy and complexity.

The role of the local authority

8.63 Local authorities are at present under a statutory duty to initiate, facilitate and maintain community planning. This has meant that councils have played a significant role in the progress of community planning to date. However, it is considered that this may have contributed to the Accounts Commission/Auditor General’s finding that “Community planning has also been seen as a council-driven exercise and not a core part of the day job for other partners who have had little incentive to get fully involved”.

8.64 It is intended that under the proposals for community planning outlined in the consultation paper, community planning can no longer be considered something that local authorities are responsible for taking forward alone, and the balance should shift between the participation and contribution of the council and other partners.

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| <p>Question 58: Local authorities are currently responsible for initiating, facilitating and maintaining community planning. How might the</p> |
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legislation best capture the community leadership role of councils without the CPP being perceived as an extension of the local authority?

8.65 168 respondents (40% of all respondents) addressed this question. The predominant view across a wide range of sectors was that local authorities should retain their statutory duty to initiate, facilitate and maintain community planning on account of their local democratic mandate, but structural and cultural changes are required in order to shift perceptions away from the CPP being perceived as an extension of the local authority. One local authority commented:

“Council is of the view that that the community leadership role of Councils is now more important than ever in order to achieve the step change in partnership working which the legislation seeks to deliver. All the proposed core duties for Community Planning Partnerships referenced in the draft Bill are tasks which will be implemented more effectively through being underpinned by local democratic accountability” (East Dunbartonshire Council).

8.66 A few respondents provided further support to their view that local authorities should continue in these roles, arguing that the CPP needs a clear lead body, local authorities are well placed to support community empowerment, and they already have community leadership roles outwith CPPs.

8.67 A common view, largely amongst local government representatives and CPPs was that the establishment of a robust accountability framework in which individual partners are held to account for their contribution towards achieving agreed outcomes, will challenge partners to step up to taking on responsibility alongside local authorities.

8.68 Another recurring view, again well supported by local government representatives and CPPs, but also receiving support across a range of community bodies, was that the proposed statutory duties on different public bodies set out in the consultation paper along with guidance on clear role and responsibilities of individual partners will help to address perceptions of council dominance.

8.69 One further dominant theme was that the provisions proposed in the consultation regarding collectively working towards shared outcomes will be the main driver in shifting perceptions and cultural change. The Bill was viewed as promoting shared ownership of decision-making and responsibility to achieve agreed outcomes, creating the cultural framework for challenging previously held perceptions about council dominance. One respondent summed this up:

“The legislation, supported by other guidance, should signal clear expectations regarding cultural change that is required. However, we believe that it is the responsibility of individuals and organisations in terms of their behaviours and practices in relation to collaborative working that will deliver the changes” (sportScotland) (PB).

8.70 A few respondents considered that such cultural change will be assisted by learning from effective partnership practice models in health and social care and in strategic planning.

8.71 Four respondents felt that the CPP in their area is not viewed as an extension of the local authority, with five other respondents suggesting that good practice could be shared. Two respondents recommended analysing in more depth why such perceptions exist before identifying ways to change this.

8.72 A dominant view put forward largely by individuals, community organisations, community councils and third sector respondents was that a greater balance in partner roles will be achieved by community empowerment, education and support. One respondent remarked:

“Not every community group has an active understanding of community planning, and who is at the table. There should be easier and more understandable ways for the community to see and understand what goes on, and why decisions are reached. The community should be supported to actively participate in community planning at all levels, and be able to access the information in ways that are easily understandable” (Grampian Employment Opportunities) (Third).

8.73 Many respondents considered that a non-local authority chair would help to signal a sharing of responsibilities within CPPs. Calls were made for an independent chair to be appointed, or the chair to be determined depending on the policy theme being addressed (e.g. a police chair if community safety is under discussion). Some considered the position of chair should be rotated between partners. One commented:

“In Highland we are moving to CPP meetings having a rotating chair across partners and changing venues for meetings. Symbolic change that is easy to make can sometimes be all that is necessary” (The Highland Council).

8.74 Other suggestions for chairs for CPP meetings were:

- community representative
- seconded private sector
- elected by the CPP
- chaired by a local authority representative but at a local level (not higher management).

8.75 A few public bodies recommended that training and leadership development support may be required if the chair will change hands within CPPs. One CPP cautioned that not every partner will welcome taking on the role of chair.

External scrutiny

8.76 The consultation described how success of the new arrangements will require public sector bodies to be effectively held to account for how they fulfil

the duties placed on them and CPPs. This was seen as partly about engaging with and reporting to communities, and partly about the roles of the Accounts Commission, Auditor General and other scrutiny bodies.

Question 59: How can the external scrutiny regime and the roles of organisations such as the Accounts Commission and Auditor General support the proposed changes? Does this require changes to their powers and functions?

8.77 136 respondents (32% of all respondents) addressed this question. It was clear from many responses that knowledge about external scrutiny regimes and the roles of organisations such as the Accounts Commission and Auditor General was limited, particularly amongst communities, making it difficult for some to comment in any depth.

8.78 The predominant view across several respondent categories was that the Accounts Commission and Auditor General do not require changes to their powers and functions to enable them to support the proposed changes. One local government representative suggested that it may be too early to decide this.

8.79 A recurring theme, largely amongst local government representatives and CPPs, was that external scrutiny should focus both on achievement of agreed outcomes, and on the contributions towards these by relevant partners within CPPs.

8.80 A dominant theme largely amongst third sector and community organisations was that part of the scrutiny focus should be on how effective CPPs have been in involving communities in agreeing and achieving outcomes.

8.81 Five respondents recommended that compliance with equality duties should be encompassed within any scrutiny regime.

8.82 An overarching concern was that external scrutiny should not be burdensome for CPP partners to the extent of deterring their involvement. A few respondents recommended that scrutiny be proportionate, with an element of self-evaluation incorporated. One commented:

“Self assessment should also play an important role, whether through EFQM, PSIF etc. Often this is far more effective at delivering meaningful improvements than external scrutiny. Integrated self assessment arrangements will need to be developed” (Society of Local Authority Solicitors and Administrators in Scotland) (Rep).

8.83 There were repeated calls for scrutiny regimes to be streamlined and co-ordinated into a coherent regulatory framework in order to avoid duplication and additional layers. Two respondents (LG, CC) suggested the responsibilities of the Accounts Commission and Auditor General be consolidated in this regard. A few respondents recommended that scrutiny

bodies engage early with CPPs in order to gain an understanding of their operation, different partner roles and appropriate benchmarking and other indicators.

8.84 Local government representatives and CPPs in particular envisaged a supportive role for the Accounts Commission and Auditor General, in which lessons from audits are shared with them and good practice identified. One respondent summed this up:

“While the Accounts Commission process can only examine a small number of community planning partnerships each year, the lessons to be learned from the strengths and weaknesses identified in various localities should be shared swiftly and effectively across all CPPs along with recommendations and guidance which would inform further improvement in their performance” (Dundee City Council).

8.85 Ten respondents, largely third sector and community councils, advocated scrutiny bodies using individual interviews with CPP boards and partners and deliberative techniques with communities, as part of their evidence gathering.

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| Question 60: What other legislative changes are needed to strengthen community planning? |
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8.86 118 respondents (28% of all respondents) addressed this question. Not all made suggestions for further legislative changes with one recurring theme being that changes in culture will make more impact than any further legislation.

8.87 By far the most common view expressed was that legislation should be strengthened to ensure community engagement takes place within CPPs, is genuine and meaningful. There were further calls for CPPs to be required to adhere to the National Standards for Community Engagement. One third sector respondent advocated a legislative duty to engage with young people.

8.88 Another dominant theme was that legislation could be used to facilitate better resourcing of CPPs, and in particular the pooling of budgets across partners to support CPP administration and activities. One community council recommended legislation to ensure greater transparency over spend.

8.89 A few respondents recommended aligning community empowerment legislation with other legislation covering overlapping issues:

- Housing (Scotland) (Act) 2001 gives tenants rights which are not mirrored in the proposed Bill. It was remarked:
“The Scottish Government must extend the legislative right for tenants and RTOs to take part in community planning, linking tenants’ rights from the Housing Act to community planning legislation. This is especially important where CPPs are taking decisions over resources and the use of HRA land or funds” (Edinburgh Tenants Federation) (Com).

- Should be a link between community planning and the Children and Young People Bill in which there is a requirement to produce local children's services plans (Third).
- Link should be made to legislation such as that relating to Land Reform (Third).
- Should develop a set of principles at the centre of the Bill as has been done in relation to the Public Bodies (Joint Working) (Scotland) Bill for integration planning (Third).
- The public sector equality duties set out in the Equality Act should extend to CPPs (CPP).
- National procurement and contracting practices need to be reviewed to align them with the outcomes approach proposed for CPPs (CPP).

8.90 One academic advocated making explicit connections between the consulting and engaging rights within the CPP section of the consultation and the new right to request participation in processes to improve outcomes of service delivery.

8.91 Calls were made for support structures to be legislated for:

- Statutory duties on public bodies to share relevant data (PB).
- Continuation of the National Community Planning Group to provide a framework of support and guidance to CPPs (LG, LG).
- Guidance and national training for CPP partners (CPP, Com).
- Statutory provision by local authorities of community learning and development (PB).

9. ALLOTMENTS

Background

9.1 In 2009 the Scottish Government's National Food and Drink Policy made a clear commitment to strategically support allotments. The Scottish Government recognised, however, that the legislation surrounding allotments is complicated and needs to be updated. It was therefore a SNP Manifesto Commitment in 2011 to review this legislation.

9.2 It is proposed that allotments should be defined as follows:

Allotment Site

An area of land that is subdivided into allotment plots and which may or may not include communal areas and buildings.

Allotment Plot

A piece of land on an allotment site between 60 square metres and an as yet undefined maximum size; used mainly for the cultivation of vegetables, fruit and flowers for non-commercial use; leased to individuals, families, groups of individuals and organisations.

Question 61: Do you agree with the definition of an allotment site and allotment plot? How else would you suggest they be defined?

9.3 165 respondents (39% of all respondents) addressed this question with around three-quarters (76%) agreeing with the proposed definition of an allotment site and an allotment plot. Whilst third sector and community councils were generally strongly in favour of the definitions, this contrasted with the views of local government representatives where only a slight majority (54%) was in favour (see Table 9.1 overleaf).

Views on proposed definition of allotment site

9.4 Six respondents requested clarification on where community gardens/allotment gardens (e.g. in hospital and school grounds) fitted within this definition. One third sector respondent recommended that the definition encompass non-permanent “pop up” sites which made use of wasteland. A community organisation requested that small holdings be considered within the definition.

9.5 Two local government representatives suggested making it clear that any buildings should be directly related to the running of the allotment. Another argued that site infrastructure provision should be accommodated.

9.6 One third sector respondent suggested adding “and facilities” to the definition of allotment site in order to include features such as water supplies, taps and community barbeques.

Table 9.1: Responses to Question 61

| Category | Yes | | No | | Total |
|------------------------|------------|-----------|------------|-----------|--------------|
| | No. | % | No. | % | No. |
| Individuals | 30 | 75 | 10 | 25 | 40 |
| Third sector | 21 | 84 | 4 | 16 | 25 |
| Community organisation | 20 | 74 | 7 | 26 | 27 |
| Community Council | 26 | 96 | 1 | 4 | 27 |
| Public Body | 5 | 71 | 2 | 29 | 7 |
| Local government | 13 | 54 | 11 | 46 | 24 |
| Other | 5 | 71 | 2 | 29 | 7 |
| CPP | 3 | 75 | 1 | 25 | 4 |
| Representative body | 1 | 50 | 1 | 50 | 2 |
| Private sector | 1 | 50 | 1 | 50 | 2 |
| Academic | - | - | - | - | - |
| Total | 125 | 76 | 40 | 24 | 165 |

Views on proposed definition of allotment plot size

9.7 According to six respondents across four respondent sectors, the definition should not include limits on size. One argued:

“(we are) not convinced of the need to apply a prescriptive size, it’s a bit (like) how long’s a piece of string, we believe the use is more important than the size” (Angus Community Planning Partnership).

9.8 There was some support for permitting plots smaller than that proposed (60 square metres) in the consultation. It was argued that small plots may be

required to meet the needs of elderly and/or disabled people; to encompass small, one-off, oddly shaped pieces of land; to enable those with limited time to work an allotment; to provide “tester” plots for novices; and for a pragmatic reason, to help to reduce waiting lists. The benefit of providing small raised beds for cultivation was highlighted by several respondents who argued that setting a minimum plot size may exclude these. Likewise, one individual respondent asked whether a row of hanging “edible” baskets might be excluded should a minimum plot size be stipulated.

9.9 Some respondents specified precisely what they considered to be an appropriate minimum plot size. All but one suggestion ranged from 30 square metres to 60 square metres. The remaining individual respondent recommended 250 square metres as a minimum with no upper limit.

9.10 A recurring view was that there should be one standard size of allotment plot with flexibility for local areas to split plots up depending on local need. The most common standard size suggested was for plots of 250 square metres. However, two third sector respondents called for a standard plot size of 200 square metres. A typical comment was:

“An allotment plot should be close to 250 square metres. This has historically been the accepted size, sufficient to feed a family. It may be possible to subdivide amongst applicants if their needs are less and if a smaller size is all that they can manage, but the trend to create smaller plots deviates from the culture of allotment gardening as it prevents good horticultural practice, for example crop rotation” (Federation of Edinburgh and District Allotments and Gardens Associations) (Com).

9.11 Where respondents considered there should be a maximum size of plot defined (and not just a standard size determined), the most common recommendation was for a maximum of 250 square metres. This was seen to fit with existing allotment policy guidance. Other suggestions, each made by only one respondent, were for plot maximum sizes of 180 square metres (LG), 150 square metres (Ind), 112.5 square metres (LG) and 100 square metres (Ind).

Views on proposed definition of allotment plot use

9.12 The use of the word “mainly” was criticised by four local government representatives as being too vague and potentially allowing use which was not acceptable to local authorities.

9.13 A recurring theme was that by specifying “vegetables, fruit and flowers” this excluded other legitimate uses including growing: herbs; fungi; trees; and biodiversity features associated with, for example, ponds. Some felt that keeping livestock such as poultry and bee should be explicitly defined. One respondent (LG) suggested the definition accommodate the use of polytunnels. Another (LG) recommended that the definition encompass cultivation on both a temporary and a permanent basis.

9.14 One respondent (Com) advocated stipulating that fruit and flower cultivation should not exceed 25% of the total area of the allotment, with the majority of use being for vegetables.

9.15 The inclusion of the term “non-commercial use” was challenged by five respondents who argued that this would curtail commercial opportunities for local enterprises to develop.

Views on proposed definition of allotment lease

9.16 One individual considered that groups and organisations should not be prioritised over individuals and families. However, local government representatives called for a restriction on how many allotments could be held at any one time by one household; and suggested that ownership by families may “clog up” waiting lists if they hand their allotment down over generations.

9.17 Other recommendations were for:

- addition of “social enterprises”
- addition of “not for profit-type groups”
- addition of constituted groups
- inserting “voluntary” before “organisations”
- adding “at a fair rent”.

Other comments

9.18 Eight respondents from a range of sectors urged that allotment sites be protected from closures on both public and private land. Two community organisations and one community council recommended that new definitions on size should not be applied retrospectively.

Question 62: In order to include all existing allotments in the new legislation they must fit within the size range. What is the minimum and maximum size of one allotment plot in your area/site?

9.19 Responses to this question were difficult to analyse as some respondents appeared to outline their recommendations for size rather than reporting actual size of plots in their area; others reported sizes of sub-divided plots rather than whole plots; and it is not known how many times the same plots were referred to by different respondents.

9.20 Where respondents appeared to refer to minimum size and maximum size of existing plots in square metres, a summary of sizes is in Table 9.2.

Table 9.2: Responses to Question 62

| Minimum size | No. of mentions |
|---------------------------------------|------------------------|
| Up to 50 metres square | 15 |
| 51 metres square – 100 metres square | 17 |
| 101 metres square – 150 metres square | 3 |
| 151 metres square – 200 metres square | 1 |
| 201 metres square – 250 metres square | - |
| Over 250 metres square | 1 |

| Maximum size | No. of mentions |
|---------------------------------------|-----------------|
| Up to 50 metres square | 1 |
| 51 metres square – 100 metres square | 4 |
| 101 metres square – 150 metres square | 5 |
| 151 metres square – 200 metres square | 4 |
| 201 metres square – 250 metres square | 18 |
| 251 metres square – 300 metres square | 1 |
| 301 metres square – 350 metres square | 2 |
| Over 350 metres square | 1 |

9.21 Overall, the most commonly mentioned minimum size was 60 metres squared (8 mentions), with 250 metres squared being the most commonly mentioned maximum size of plot (16 mentions).

9.22 Some respondents reported the size of their own plot or stated that all plots in their area were the same size. Plots in size from 10 metre squared to 250 metre squared were reported, with community plots being over 300 metres squared. A few respondents emphasised that these sizes excluded raised beds which were much smaller in size.

9.23 A few respondents provided dimensions in feet or yards. Sizes of 30' x 70'; 30' x 20'; and 120 yards x 10 yards were described. Two respondents provided sizes by number of poles: 10 poles; and 3 – 14 poles were reported.

Local authority duty to provide allotments

9.24 The Scottish Government proposes to retain the current duty on local authorities to acquire any suitable land for the purpose of letting as allotments where it considers there to be a demand for allotments in their area. The following specific duties are proposed:

- First duty: In an area where there are no local authority allotments, the local authority must make provision once the waiting list reaches 15 people.
- Second duty: Where there are currently local authority allotments, but these are not sufficient to satisfy demand, the local authority will be under a duty to keep waiting lists below a specified target, whether by acquiring land or otherwise.
- Third duty: If either of these duties is not met, the local authority must be able to demonstrate through the annual allotments report that they are taking all reasonable steps to meet the duty and provide reasons why it has not been possible.

Question 63: Do you agree with this duty to provide allotments? Are there any changes you would make?

9.25 185 respondents (44% of all respondents) provided a clear view on whether or not they agreed with the duty to provide allotments (see Table 9.3 overleaf). Of these, 84% agreed with the duty. Local government

representatives were divided in their views, with a slight majority of 56% of those who provided a view agreeing with the duty.

Table 9.3: Responses to Question 63

| Category | Yes | | No | | Total |
|------------------------|------------|-----------|------------|-----------|--------------|
| | No. | % | No. | % | No. |
| Individuals | 40 | 91 | 4 | 9 | 44 |
| Third sector | 22 | 85 | 4 | 15 | 26 |
| Community organisation | 29 | 94 | 2 | 6 | 31 |
| Community Council | 30 | 86 | 5 | 14 | 35 |
| Public Body | 7 | 100 | - | - | 7 |
| Local government | 14 | 56 | 11 | 44 | 25 |
| Other | 8 | 100 | - | - | 8 |
| CPP | 3 | 75 | 1 | 25 | 4 |
| Representative body | 1 | 50 | 1 | 50 | 2 |
| Private sector | 1 | 50 | 1 | 50 | 2 |
| Academic | 1 | 100 | - | - | 1 |
| Total | 156 | 84 | 29 | 16 | 185 |

General views

9.26 Many respondents, particularly local government representatives adopted a pragmatic perspective, giving their support to what they saw as the ideal of providing allotments according to demand, but highlighting the need to consider wider local authority strategy, budgets and priorities when establishing targets. It was pointed out that in times of budget restraint, prioritising provision of allotments could impact on provision of other services. One respondent (Rep) recommended involving communities in decisions on whether to prioritise provision of allotments over other council services.

9.27 Five respondents (three community councils and two local government representatives) remarked that the duty could result in disproportionate resources targeted to a small proportion of residents of an area. One commented:

“The financial implications of creating allotments in terms of the identification of suitable land, the provision of parking facilities, the erection of fencing and the provision of services, are substantial and may be disproportionate where this may result in a benefit to an extremely small group within the local authority area. Most local authorities are currently striving to meet stringent budget saving requirements and the imposition of a trigger point would impact on local authority budgets, creating a negative impact on other services funded by local authorities” (Moray Council).

9.28 Many respondents across a wide range of sectors made suggestions on how to generate more provision where local authorities are struggling to meet the duty. A common view was that the conventional concept of an “allotment” should be broadened to consider alternative approaches such as sharing garden schemes, community gardens, small, “taster” plots and raised beds.

9.29 Likewise, innovation was recommended in considering other potential providers of land for allotments, such as farmers, Forestry Commission, private owners and neighbouring local authorities. One respondent remarked:

“We believe that any duties should be extended beyond local authorities. Many other partners are responsible for areas of land and there are other private and third sector organisations that currently provide allotments. This duty placed solely on local authorities reinforces the idea around community planning being an extension of local authorities” (Angus Community Planning Partnership).

9.30 Another innovative model of working, raised among the individual, community and local government representatives, was that of local council as facilitator in negotiating the provision of the land, but with allotment associations then taking over the lease and operation of the plots. This was viewed as empowering to communities, but also reducing the bureaucratic burden for councils.

9.31 There were mixed views on whether information on allotments (waiting lists, availability, benefits) should be publicised more. Whilst most of those who commented supported the promotion of wider knowledge, a few others cautioned that this could lead to an explosion of applicants.

9.32 Two respondents (Third, Com) recommended that provision of allotments should be accompanied by permission to develop, so that the erection of structures such as polytunnels do not require subsequent permission.

Views specific to the proposed first duty

9.33 There were repeated requests, from several sectors, to define “area”. Rather than refer to a local authority area, it was considered that “area” could have more relevance if defined in terms of discrete communities/clusters, rather than wide geographical areas.

9.34 The issue of accessibility of allotment was raised repeatedly, with respondents emphasising the importance of ensuring allotment provision takes account of distance for users to travel. Two third sector respondents and one community council urged that the needs of those with disabilities are considered in providing accessible plots.

9.35 Many respondents across a wide range of sectors commented on the proposed trigger point of 15 people. The most common view was that the trigger point should relate to the geographical size of an area or the proportion of the population. In small towns and villages a lower trigger point was deemed appropriate by some (suggestions were made of as few as six people (Com)); whilst 30 people was suggested as appropriate in larger areas (Rep, Com). A few respondents argued that there should not be a trigger point, but provision should relate simply to demand, which can fluctuate.

9.36 Three respondents questioned what was meant by “people”. One asked if this also meant “organisation” (PB)? Another asked how this related to “households” (CC). A third sector organisation recommended that each

individual within an organisational application should be counted separately for the purposes of the waiting list.

9.37 There was some support expressed for the notion of setting a time constraint on local authorities making provision. Three years appeared to be acceptable to most, although two community councils and one public body requested a shorter timeframe. A few local government representatives, however, argued against setting up time limits, one stating:

“.....the proposal described is actually to provide individuals with a guaranteed allotment plot within a specified timeframe..... If the provision for an allotment was by statute this may militate against (or compromise) the use of the same land where there is an existing (or potential) biodiversity, landscape, cultural or recreational value” (Midlothian Council).

9.38 A few respondents commented that for a council to meet the duty to provide allotments within a specified timeframe may require the council to use compulsory purchase orders.

Views specific to the proposed second duty

9.39 This did not attract much specific comment, with one community organisation questioning whether the duty actually added anything to the other two. The only substantive comment emerged from local government representatives who cautioned against use of the word “acquiring”. They pointed out that this could have considerable cost implications, particularly in city areas such as Edinburgh, and substituting “providing” would enable more cost effective options to apply (such as converting land already owned by the authority into allotments). One local government representative remarked that in crofting areas much of the land is already tenanted and regulated by the Crofting Commission, and it may not actually be possible for the local authority to acquire it.

Views specific to the proposed third duty

9.40 Three respondents from different sectors (Ind, LG, CC) felt that the duty was too vague, and in particular “all reasonable steps” required further definition. A recurring view largely amongst individual respondents and community organisations was that an appeals process (to Scottish Ministers or an independent body) should be established to enable local authorities to be held to account.

9.41 Contrasting views amongst two community councils and one local government representative, however, were that local authorities may have pursued all options to provide allotments without success and this should be accommodated within the legislation.

| |
|---|
| <p>Do you agree with the level of the trigger point, ie that a local authority must make provision for allotments once the waiting list reaches 15 people?</p> |
|---|

9.42 Although many respondents had addressed this question within their overall comments on the proposed duties, 158 respondents (37% of all respondents) provided a “yes/no” response to this closed question. Overall, 63% of those who provided a view agreed with the trigger point of 15. However, a sizeable minority of 37% disagreed.

Table 9.4: Views on whether respondents agree with the level of the trigger point

| Category | Yes | | No | | Total |
|------------------------|-----------|-----------|-----------|-----------|------------|
| | No. | % | No. | % | No. |
| Individuals | 30 | 73 | 11 | 27 | 41 |
| Third sector | 15 | 83 | 3 | 17 | 18 |
| Community organisation | 21 | 75 | 7 | 25 | 28 |
| Community Council | 17 | 55 | 14 | 45 | 31 |
| Public Body | 3 | 60 | 2 | 40 | 5 |
| Local government | 6 | 26 | 17 | 74 | 23 |
| Other | 5 | 100 | - | - | 5 |
| CPP | 1 | 33 | 2 | 67 | 3 |
| Representative body | 1 | 50 | 1 | 50 | 2 |
| Private sector | - | - | 2 | 100 | 2 |
| Academic | - | - | - | - | - |
| Total | 99 | 63 | 59 | 37 | 158 |

Targets

9.43 Local authorities will be under a duty to take steps to keep their allotment waiting lists to below a set target. Suggestions for appropriate targets set out in the consultation document were:

- Option A: waiting list no more than 3 years in length;
Or
- Option B: waiting list should be no more than 50% of the current number of allotment plots;
Or
- Option C: a combination of both Options A and B.

Question 64: Do you prefer the target Option A, B or C and why? Are there any other target options you wish to be considered? Do you agree with the level of the targets?

9.44 133 respondents (31%) identified clearly a preference for one of the Options or for none of the options. The most favoured Option was Option C (45% of those who provided a view). Option A was supported by 26% of those responding to the question. Option B was the preferred option of 13% of those who responded. 22 respondents (16% of those providing a view) did not support any of the Options.

Table 9.5: Number of respondents supporting each Option

| Category | Option A No. | Option B No. | Option C No. | None of these No. | Total No. |
|------------------------|-------------------------|-------------------------|-------------------------|----------------------------------|----------------------|
| Individuals | 11 | 2 | 13 | 8 | 34 |
| Third sector | 4 | 4 | 8 | 2 | 18 |
| Community organisation | 9 | 3 | 11 | 2 | 25 |
| Community Council | 5 | 3 | 8 | 8 | 24 |
| Public Body | 1 | - | 3 | - | 4 |
| Local government | 1 | 4 | 10 | 1 | 16 |
| Other | 3 | - | 3 | - | 6 |
| CPP | - | 1 | 1 | 1 | 3 |
| Representative body | - | - | 2 | - | 2 |
| Private sector | - | - | 1 | - | 1 |
| Academic | - | - | - | - | - |
| Total | 34 | 17 | 60 | 22 | 133 |
| Percentage | 26 | 13 | 45 | 16 | 100 |

Views on Option A

9.45 Two arguments provided by respondents in favour were:

- Waiting times will potentially be shorter than under Option B.
- This Option respects individual needs more than Option B.

9.46 Local government and CPP opposition to Option A was based largely around their lack of control over the availability of plots. One respondent commented:

“We believe Option A, and therefore also Option C, are not feasible. It’s challenging to determine in advance how long an individual may have to be on a waiting list. The time can also vary significantly between individuals, depending on how waiting lists are managed. Mostly, it’s very much dependent on the turnover of current plot holders – something that cannot be predicted in advance. Placing a duty to monitor and calculate unknown turnover in advance creates an unnecessary administrative burden. In addition, such a duty could unduly raise individuals’ expectations that they would automatically get a plot after a set period on a waiting list” (Community Planning Aberdeen).

9.47 Several respondents argued that three years was too long a length to wait, with two respondents suggesting that this may even put people off applying. Recommendations were made for reducing this time to two years (7 mentions); 30 months (1 mention); 18 months (2 mentions); and one year (4 mentions). However, one individual respondent recommended increasing it to five years.

Views on Option B

9.48 This Option was viewed as beneficial in ensuring that provision comes into play only where there is demonstrable clear and consistent demand (CPP); and establishing that level of demand is more important than the time someone is prepared to wait for a plot (LG).

9.49 However, two respondents (Com, Third) commented that if the proposed target of 50% of the current number of allotment plots remains, a common turnover of around 5% of allotment plots per year may result in waiting lists of up to ten years or even longer (Ind). One local authority considered the Option to be unworkable in the context of a fast growing population with conflicting demands for the land use (e.g. for housing).

9.50 Five respondents (three individuals and two community councils) recommended lower target percentages, ranging from 10% to 40%.

Views on Option C

9.51 A recurring comment amongst supporters of Option C was that this provided most flexibility amongst the Options. It represented a balanced approach according to some, and was logical, allowing for different contexts and resources.

Other prominent views

9.52 Whilst many respondents simply stated that the targets appeared reasonable, 12 respondents (half of these being local government representatives or CPPs) argued explicitly against them. Their main concern was that they perceived such targets to be arbitrary and not sensitive enough to take account of local conditions and contexts.

Local authority duties and powers to manage allotments

9.53 In order to effectively manage allotment sites, local authorities need a range of powers. They should also be under duties to ensure they provide and manage their allotments appropriately. Duties and powers were proposed in the consultation document, based upon views provided by consultees to the previous consultation.

Question 65: Do you agree with the proposed list of local authority duties and powers? Would you make any changes to the list?

9.54 153 respondents (36% of all respondents) provided a “yes/no” response to this question, although several others provided additional related commentary. Overall 86% of those providing a “yes/no” response agreed with the proposed list of duties and powers.

Table 9.6: Responses to Question 65

| Category | Yes | | No | | Total |
|--------------|-----|----|-----|----|-------|
| | No. | % | No. | % | No. |
| Individuals | 32 | 86 | 5 | 14 | 37 |
| Third sector | 16 | 84 | 3 | 16 | 19 |
| Community | 24 | 92 | 2 | 8 | 26 |

| | | | | | |
|---------------------|------------|-----------|-----------|-----------|------------|
| organisation | | | | | |
| Community Council | 27 | 90 | 3 | 10 | 30 |
| Public Body | 8 | 100 | - | - | 8 |
| Local government | 15 | 65 | 8 | 35 | 23 |
| Other | 4 | 100 | - | - | 4 |
| CPP | 4 | 100 | - | - | 4 |
| Representative body | 2 | 100 | - | - | 2 |
| Private sector | 1 | 100 | - | - | 1 |
| Academic | - | - | - | - | - |
| Total | 132 | 86 | 21 | 14 | 153 |

General views

9.55 A recurring view from local government representatives was that the proposed duties and powers were admirable, but their execution would depend on available resources.

9.56 A few respondents emphasised the importance of ensuring that any new legislative duties and powers do not duplicate/overlap with those contained in other related legislation such as the Local Government Scotland Act 2003.

9.57 Some confusion was expressed over whether the duties and powers refer only to local authority allotments or encompass private and third sector allotments also.

Substantive views relating to proposed Duty 1 (Waiting List)

9.58 Some local authorities were concerned that if waiting lists are already administered by allotment associations, the duty would demand additional local authority resources to carry it out. One respondent (LG) recommended ensuring regard is taken of the applicant's residence within the local authority area. An individual respondent wished to see legislative provision made for the waiting list to be available for public inspection at any time.

Substantive views relating to proposed Duty 2 (Producing and publishing an annual report)

9.59 Calls were made for the report to break down waiting lists by: protected characteristics defined in the Equality Act; and by individual allotment site. In addition to reporting on size of waiting list, a few respondents requested that waiting time also be reported on. One respondent (Com) advocated reporting on temporary sites in addition to permanent.

9.60 Two respondents (LG, Com) recommended that funds raised by allotment associations should be included within the financial report.

9.61 One third sector organisation suggested that rather than an annual report, the report should be on-going, on the local authority website.

Substantive views relating to proposed Duty 3 (Producing and publishing regulations as necessary for regulating the letting of Allotments under this Act)

9.62 It was suggested by a few respondents that this duty should explicitly refer to local authority and private sites.

9.63 One view (LG) was that “free” should mean freely available to download from the local authority website.

Substantive views relating to proposed Duty 4 (Duty to produce a Food Growing Strategy)

9.64 A recurring view was that there should be a duty to hold a five yearly review of the strategy.

9.65 A few local government representatives described how this duty was already encompassed by the Open Space Strategy.

9.66 Other substantive comments were:

- Remove “to produce” a Food Growing Strategy and replace with “to maintain” a Food Growing Strategy.
- A set timescale to achieve this should be stipulated.
- In relation to 4b), further clarification required of “related facilities”.
- In relation to 4d), the timeframe should be determined in consultation with others (such as allotment association, tenants, those on waiting list).
- Should include a commitment to enable accessibility to plots for people with disabilities.

Substantive views relating to proposed Duty 5 (Protecting a permanent allotment site from closure except in limited circumstances)

9.67 A recurring recommendation was for “limited circumstances” to be defined. A few respondents considered that all allotment sites should be protected from closure unless they were not being well maintained.

Substantive views relating to proposed Duty 6 (Other areas of existing legislation will be updated and consolidated)

9.68 Several respondents sought clarity on whether “vehicular” access to allotments will be encompassed by 6a).

9.69 Regarding 6b) and making suitable local authority owned buildings for allotment meetings, it was argued by local government representatives that this should be at the standard hire price for community groups, and only if such buildings are available.

Substantive views relating to proposed Duty 7 (Land not immediately required can, if suitable, be used for temporary provision of allotments)

9.70 There was some opposition to this proposed power. A recurring view was that the power should not be used in place of providing permanent allotments. Some respondents felt that this power should be deleted altogether, as in reality much time and effort and finance goes into setting up a sustainable allotment, which did not sit happily with a temporary status. A few individual respondents suggested that stipulating a minimum period for the allotment to be available would be beneficial. Another respondent (Com) recommended that after a set period of years if the site has still not been

acquired for another purpose, then its status be changed from temporary to permanent.

Substantive views relating to proposed Duty 8 (Local authorities have the power to incur expenses)

9.71 Clarity was requested by some respondents over what precisely this proposal referred to. One respondent (Third) suggested that expenses may be incurred in adapting plots to accommodate people with disabilities. A few respondents felt that this duty may not be required.

Substantive views relating to proposed Duty 9 (Power to delegate authority of allotments to an appropriate allotment association or group)

9.72 Again, clarity was called for, for example, in relation to whether responsibility for administering the waiting list would be delegated. One specific suggestion was for “landlord” to be deleted and replaced with “local authority” (Com). Some felt that the levels of responsibility of the association or group should be determined by the local authority in conjunction with local associations and groups. One respondent (Com) recommended that associations or groups should be requested to meet minimum governance arrangements such as holding AGMs and elections for office bearer posts.

Substantive views relating to proposed Duty 10

9.73 There were differing views on how to define fair rent. Several respondents recommended this be based on capital investment and sustainable running costs. Others suggested removing capital costs from calculations, with one local authority explaining that they always subsidise rents.

9.74 Some local government representatives called for consistent guidance on which buildings associated with allotments will require planning permission. Where power is retained to remove unauthorised buildings it was recommended that costs be recoverable.

Proposed additional duties and powers

9.75 A summary of additional duties and powers recommended by respondents follows:

- Councils should be required to inform enquirers of the need to put their application in writing.
- New housing developments should be required to contain either allotment land or community garden space in their plans.
- Duties should encompass councils providing basic facilities at allotment sites such as toilets, water provision and security.

Termination of allotment tenancies

9.76 The Scottish Government proposes that the following areas of the legislation be updated and consolidated:

- a) termination of a lease and the timescales involved;
- b) right of a plot holder to compensation upon termination of a lease without a specified period of notice; and

c) right of a lessor to recover any loss to themselves from the plotholder.

9.77 Most of the current provisions which relate to the termination of allotment tenancies apply to private allotments as well as those owned or leased by a local authority. It is proposed to continue to apply the legislation to private allotments in this way.

Question 66: Do you think the areas regarding termination of allotment tenancies listed above should be set out in legislation or determined by the local authority at a local level?

9.78 155 respondents (37% of all respondents) addressed this question (see Table 9.7 overleaf). Overall views were very evenly divided between those in favour of legislation (77 respondents), and those supporting local authority determination at a local level (78 respondents). Local government representatives were distinguished by their relatively high majority of 74% in favour of local level determination.

Table 9.7: Responses to Question 66

| Category | Set out in legislation | | Determined by local authority | | Total |
|------------------------|------------------------|-----------|-------------------------------|-----------|------------|
| | No. | % | No. | % | No. |
| Individuals | 17 | 44 | 22 | 56 | 39 |
| Third sector | 14 | 70 | 6 | 30 | 20 |
| Community organisation | 11 | 46 | 13 | 54 | 24 |
| Community Council | 19 | 63 | 11 | 37 | 30 |
| Public Body | 1 | 33 | 2 | 67 | 3 |
| Local government | 7 | 26 | 20 | 74 | 27 |
| Other | 5 | 80 | 1 | 20 | 5 |
| CPP | 1 | 33 | 2 | 67 | 3 |
| Representative body | - | - | 1 | 100 | 1 |
| Private sector | 2 | 100 | - | - | 2 |
| Academic | - | - | - | - | - |
| Total | 77 | 50 | 78 | 50 | 155 |

Question 67: Are there any other areas you feel should apply to private allotments?

9.79 Few further areas were identified, with only 45 respondents (11% of all respondents) providing substantive comments.

9.80 The dominant view amongst those who responded was that the legislation governing local authority allotments should apply equally to privately owned plots. It was considered important to ensure safeguards are in place, particularly to minimise risks of private sites becoming “eyesores”.

9.81 A few respondents recommended that attention be given to rents applying in the private sector, with suggestions made for capping these to prevent them from becoming too costly.

9.82 Five respondents highlighted security of tenure as a particular issue amongst private allotment holders, with suggestions made for the operation of long term rolling leases.

9.83 Four respondents proposed that private landlords should be under a duty to provide information to local authorities on request, or annually, relating to waiting lists, plot descriptions, livestock kept, committee structures, and so on.

9.84 Other recommendations made by only one or two respondents were for:

- encouraging developers to release part of their land for short term allotment use
- promoting the health benefits of allotment holding amongst the private sector (such as encouraging the provision of allotments as an extension to leisure centres)

- promoting organic growing in private allotments
- requiring private allotment landlords to establish a committee if they have a large number of plots, or field a representative on the Allotment Federation

9.85 Two respondents emphasised that local authorities should take privately owned allotments into account when considering how to meet the demand in their area.

Surplus produce

9.86 At present, surplus produce may be sold with the permission of the local authority but must be non-commercial and all proceeds reinvested back into the site and/or the local community and charities. The local authority determines whether, and under what circumstances, surplus produce may be sold and outlines the details in their Regulations.

Question 68: Do you agree that surplus produce may be sold? If you disagree, what are your reasons?

9.87 178 respondents (42% of all respondents) addressed this question, with the majority of those who provided a view (89%) agreeing that surplus produce may be sold.

Table 9.8: Responses to Question 68

| Category | Yes | | No | | Total |
|------------------------|------------|-----------|-----------|-----------|------------|
| | No. | % | No. | % | No. |
| Individuals | 35 | 83 | 7 | 17 | 42 |
| Third sector | 21 | 91 | 2 | 9 | 23 |
| Community organisation | 27 | 93 | 2 | 7 | 29 |
| Community Council | 29 | 85 | 5 | 15 | 34 |
| Public Body | 8 | 100 | - | - | 8 |
| Local government | 24 | 96 | 1 | 4 | 25 |
| Other | 5 | 71 | 2 | 29 | 7 |
| CPP | 4 | 100 | - | - | 4 |
| Representative body | 2 | 100 | - | - | 2 |
| Private sector | 3 | 100 | - | - | 3 |
| Academic | - | - | 1 | 100 | 1 |
| Total | 158 | 89 | 20 | 11 | 178 |

9.88 Many of those who agreed stated that this was subject to the clauses set out in the consultation document: that the activity is non-commercial with proceeds reinvested. Others agreed on condition that:

- the surplus is sold by a group (such as the allotment association or managing authority) rather than by an individual allotment holder (7 mentions)
- local licensing and environmental health regulations are complied with (5 mentions)

- food stuffs created by the surplus produce (e.g. jams and chutneys) are also permitted to be sold with sellers reimbursed for the added ingredients such as sugar (2 mentions)
- the allotment holder is able to decide what to do with the proceeds (2 mentions)
- the proceeds are reinvested back to the allotment association rather than the local community or charities as the latter may raise issues about aims and use of the proceeds (2 mentions)
- the seller has appropriate insurance cover (1 mention)
- selling takes place in a publicly transparent manner (1 mention)
- the selling should not impact on local businesses (1 mention).

9.89 Arguments against the proposal focused largely around commercial activity being perceived as against the spirit of “allotmenteeing”. One individual respondent remarked:

“If allotments go at all commercial, this will destroy the nature of allotments- some individuals will over-spray, just to increase crop size for profit. Allotments are an escape from the pressures of everyday life, the minute money/profit is an issue, this will erode community spirit and destroy the positive culture of allotments”.

9.90 Other substantive opposition to the proposal included:

- such activity would require inspection by local authority food hygiene inspectors and Trading Standards (4 mentions)
- difficult to envisage how this will be monitored (4 mentions)
- this may impact on the trade of local businesses (3 mentions)
- puts pressure on plot holders to over-spray to increase yield, or grow one crop only for sale, thereby increasing the risk of pests and disease (3 mentions).

9.91 Three respondents criticised the word “surplus” and recommended that this be deleted or replaced with, for example, “food and propagated plants”.

9.92 There was a body of support amongst community councils, individuals and third sector organisations, for donating surplus produce and bartering with it rather than selling it.

9.93 Four respondents emphasised that commercial activity for non-profit making enterprises should be permissible and made explicit. One respondent (Com) recommended extending the legislation to cover all community growing projects and not just allotments. There was some debate about who should determine the details of local provisions, with the balance of view in favour of local allotment associations determining these, within the framework of the local authority establishing the wider rules.

9.94 The view of one respondent was that research is needed on the effects of selling surplus produce from allotments, as little is known about the potential benefits and drawbacks. They commented:

“On the one hand it could encourage local growers to intensify production and provide an incentive to local food production; on the

other hand it presents a lot of questions about how the sale of fresh produce would be governed, how quality would be guaranteed, and whether consumers would be covered by existing legislation. On the whole we feel that it may raise more problems than it would solve” (James Hutton Institute) (Acad).

Local authority regulations

9.95 It is considered that there are a number of areas which would be better determined at a local level than through national legislation. The consultation proposed a list of subjects which such local regulations should include, and a list which they may include.

| |
|--|
| Question 69: Do you agree with the proposed list of subjects to be governed by Regulations? |
|--|

9.96 146 respondents (34% of all respondents provided a “yes/no” response to this question, with several others adding relevant commentary (see Table 9.9 overleaf). Overall 87% of those providing a “yes/no” response agreed with the proposed list of subjects (although several agreed in principle, but made suggestions for amendments).

Views on the list of proposed mandatory regulations

9.97 Item 4: number of plots per plotholder. Different views were put forward as to how many plots per plotholder should be permissible. One local government representative recommended this be framed in terms of size of overall plot area, in order to allow for plots of different sizes.

9.98 Items 6 and 7: relating to arrangements for keeping livestock. Local government representatives suggested that regulations cover consideration of shade cast by new buildings; and define livestock more tightly to relate to hens. Two local government representatives argued that no livestock should be permitted on allotments. One individual respondent suggested that livestock may be more appropriate in some settings (remote rural for example) over others.

Table 9.9: Responses to Question 69

| Category | Yes | | No | | Total |
|------------------------|-----|-----|-----|----|-------|
| | No. | % | No. | % | No. |
| Individuals | 31 | 86 | 5 | 14 | 36 |
| Third sector | 19 | 95 | 1 | 5 | 20 |
| Community organisation | 18 | 86 | 3 | 14 | 21 |
| Community Council | 22 | 88 | 3 | 12 | 25 |
| Public Body | 4 | 67 | 2 | 33 | 6 |
| Local government | 21 | 84 | 4 | 16 | 25 |
| Other | 6 | 100 | - | - | 6 |
| CPP | 3 | 100 | - | - | 3 |
| Representative body | 2 | 100 | - | - | 2 |

| | | | | | |
|----------------|------------|-----------|-----------|-----------|------------|
| Private sector | 1 | 50 | 1 | 50 | 2 |
| Academic | - | - | - | - | - |
| Total | 127 | 87 | 19 | 13 | 146 |

9.99 Additions to the list were recommended by respondents from a variety of sectors:

- equality policy which includes provision for enabling access by people with physical and learning disabilities; those from minority ethnic backgrounds; people within lower socio-economic groups
- conflict resolution procedures
- training and general support
- termination procedures.

Views on the list of potential regulations

9.100 The list under item 4 attracted some attention. Specific suggestions were made as follows:

- b) Dogs. More detail was recommended to ensure this would cover fouling; noise; control (Ind).
- c) Bonfires. Suggestion that this be replaced with “braziers” (LG).
- h) Organic principles. Comment that “organic plots” cannot sit adjacent to “non-organic plots”; as they require separate sites (CC).
- j) Fences. Suggestion that this be replaced with “boundaries” (LG).

9.101 Additions to the list were recommended by respondents from a variety of sectors:

- promotion of bio-diversity
- vehicle access and parking
- acceptable noise levels
- composting
- maintenance (empty plots; boundaries; neglected plots; communal buildings)
- waste disposal
- re-use of waste materials
- storage of hazardous and dangerous materials
- restrictions on use of glass.

9.102 A prominent argument amongst those who stated that they did not agree with the proposals was that where management of sites has been devolved to local associations, they should have the authority to decide on local regulations. It was acknowledged that local authorities could provide a guiding framework, with rules written into leases, but local associations will be responsible for implementation on the ground.

9.103 Two other arguments were put forward:

- Regulations should be set nationally and not at local authority level (Ind).
- The regulations are overly bureaucratic and will be difficult to enforce (Third).

10. SCOTLAND PERFORMS – EMBEDDING THE OUTCOMES APPROACH IN LEGISLATION

10.1 The consultation invited views upon a proposal which builds on the recommendations of the Carnegie UK Trust, that the Community Empowerment (Scotland) Bill should:

- include a provision that places a duty on Scottish Ministers to develop, consult on and publish a set of outcomes that describe their long term, strategic objectives for Scotland; and
- include a complementary duty to report regularly and publicly progress towards these outcomes.

| |
|--|
| Question 70: We invite your views on this proposal. |
|--|

10.2 180 respondents (42% of all respondents) provided a response in relation to the proposal. There was widespread support for the proposal from across a wide range of sectors. Many (48 respondents) simply expressed their support for the proposal, adding no further commentary.

10.3 Several respondents outlined their views on the benefits of what was proposed. The predominant view was that the proposal will support and strengthen alignment between local, regional and national policy, promoting strategic thinking, and enabling communities to understand where their contribution fits into the overall landscape. It was considered that the framework would allow longer term outcomes to be supported, enabling persistent, challenging issues to be tackled over time. The proposal was viewed as promoting clarity and transparency.

10.4 One individual respondent, describing themselves as an academic, considered that embedding the outcomes approach in legislation by building on the recommendations of the Carnegie UK Trust would enable Scotland to become an international leader in the measurement of wellbeing.

10.5 A third sector respondent remarked that embedding the approach in legislation will provide the opportunity to link it to other recent pieces of legislation such as the UN Charter on the Rights of the Child and the Children and Young People Bill.

10.6 Many respondents welcomed specifically the proposals for consulting on the set of National Outcomes. However, a few emphasised that consultation should be genuine and meaningful otherwise community empowerment will be undermined and compromised. It was suggested that lessons are learned from the recent development of the “engagement matrix” by NHS Health Scotland (PB), and that participatory and deliberative processes should be deployed (Third).

10.7 Several third sector and community organisations recommended that care be taken to ensure that any consultation approaches adopted are inclusive, and enable equality groups to participate fully.

10.8 One third sector organisation considered that legislation should stipulate the need to involve community-based and third sector organisations directly in the development of outcomes.

10.9 The proposed duty to report regularly and publicly was also welcomed overall. This was seen as a means to promoting transparency, with two community councils urging that progress should be reported even when it has fallen short of targets. A CPP considered that reporting publicly would also help local communities to understand how local action fitted into wider strategy, with another urging that the link between reporting requirements at CPP level and national reporting is made explicit. One respondent (Oth), however, cautioned that reporting done too frequently could risk “overload by analysis”.

10.10 The concept of a wellbeing measurement attracted comment. A recurring comment amongst third sector respondents was that this added value over and above measuring economic performance. One respondent (Oth) remarked that use of this measure would help to illuminate the extent of community activity which in their view goes largely unnoticed.

10.11 General comments about the proposals were that they required to be properly resourced, with several respondents recommending capacity is built in at national level to undertake collection and analysis of data. Five respondents proposed that regular reviews be instigated in order to keep the performance framework updated and responsive to new opportunities and challenges.

10.12 Calls were made for the language of the outcomes approach framework to be simple and jargon-free.

10.13 Three key and related concerns were raised repeatedly, largely by local government representatives:

- The outcomes approach proposed needs to align very clearly with the work of CPPs in order for CPPs to see where their contribution to the national picture fits, and to avoid undermining them.
- Local flexibility should remain for CPPs to set outcomes which reflect local priorities.
- The setting of national outcomes should not result in a top-down approach to developing strategy.

10.14 12 respondents appeared to oppose the proposal, four of them in the “other” respondent category. Some considered that the proposal was not needed as the National Performance Framework already exists. One (Oth) was of the view that Scotland Performs has not lived up to its promise and the value of the proposed legislation is, therefore, questionable. However, the main argument in opposition was that future changes in Government could negate the effort put into developing such outcomes and working towards them. Two respondents (Third, Ind) queried the legitimacy of the current Government establishing an outcome framework which could impact on future, different administrations.

11. SUBSIDIARITY AND LOCAL DECISION-MAKING

11.1 The Government considers that the people who live and work in Scotland are best-placed to make decisions about our future. The Government perceives this to be the essence of self-determination, and accordingly is committed to subsidiarity and local decision-making.

Question 71: Given the actions that the Government and others already take to enable and support local democracy, together with the additional measures proposed in this consultation, are there any other actions we could take to reflect local democracy principles that would benefit communities?

11.2 180 respondents (42% of all respondents) addressed this question. Many respondents took the opportunity to acknowledge the actions already being undertaken to enable and support local democracy and welcomed the thrust of proposals in the consultation which they felt would contribute to subsidiarity and local decision-making.

11.3 Two key themes dominated the responses. Firstly, respondents from a wide range of sectors recommended that enhancing the role of community councils, with devolved budgets and decision-making would strengthen local democracy. A typical view was:

“The role and resourcing of community councils should be enhanced, ensuring they can play a part in the delivery of public services at a local level to bring decision making and control as close to the people as possible” (Scottish Borders Community Development Company) (Third).

One individual respondent remarked:

“If subsidiarity and local decision-making is to be meaningful then decision-making needs to be pushed downwards to its lowest level and that’s where Community Councils come. Councils would inevitably require staffing and finance but this must be worthwhile and cost effective. By doing so citizens would start again to take pride in the democratic processes that affect them now and in the future; such pride is currently sadly lacking.”

11.4 The second dominant theme was that much more emphasis on community capacity-building will be required, supported by resources, if local democracy is to be enhanced. Many respondents urged that this involve empowering diverse communities including those disadvantaged, to participate. Participatory democracy was explicitly supported by several respondents from a range of sectors.

11.5 Other proposed actions which could reflect local democracy principles to the benefit of communities were each put forward by a few respondents respectively and included:

- Need to give local government greater freedom to raise finances and set its own priorities.

- The need to adhere to the European Charter of Local Self-Government should be placed in statute
- Greater innovation in involving communities in decision-making, such as virtual networking; social media; citizen's juries.
- Changing culture in addition to legislative structures.
- Holding local authorities to account by requiring them to demonstrate that they have involved communities in decision-making.
- Providing local citizens with greater access to appeals mechanisms.
- Identifying and learning from good practice.
- Using plain English in all strategy documents.
- Involving the business/private sector more in local democracy.

11.6 A repeated comment was that the Scottish Government should await the findings of COSLA's Commission on Strengthening Local Democracy before finalising its proposals on community empowerment.

12. ASSESSING IMPACT

Equality

12.1 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 of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

Question 72: Please tell us about any potential impacts, either positive or negative, you feel any of the proposals for the Bill may have on particular groups of people, with reference to the “protected characteristics” listed above.

12.2 The prevailing view was that whilst the Bill has great potential to impact positively on groups of people within the “protected characteristics” list, without determined, pro-active efforts to promote inclusivity throughout the community empowerment framework, the Bill could ironically, and unintentionally, serve to marginalise rather than empower. Many respondents referred to this double-edged sword in their responses, for example:

“There are concerns about any vulnerable groups who are not fully engaged within “communities” and their ability to be able to access any of the potential benefits that the proposed legislation may bring. There is the potential of the unintended consequence of increasing inequalities” (NHS Ayrshire & Arran).

“There is an assumption at the heart of this draft bill that every community is equally able to exercise our rights – an assumption that patently bears no relation to reality, given different communities’ different capacity to engage with Government, or to engage with all members of their own communities, or – indeed – different communities’ variable access to money and power” (Third Sector Strategy Group – Edinburgh).

12.3 Many respondents agreed that robust and comprehensive community capacity-building would contribute to providing positive impacts for all, although this would require continued efforts and resourcing to enable marginalised communities to mobilise their own participation.

12.4 Some respondents felt that the consultation document had lacked explicit reference to equality issues. One commented:

“Our members have expressed concern that there is insufficient reference to equalities throughout the proposals and are disappointed that the needs of equalities groups are not highlighted” (Glasgow Council for the Voluntary Sectors).

It was also noted that there had not been an easy-read or large print version of the consultation document, nor a summary.

12.5 It was considered that a human rights and equalities approach should have underpinned the Bill, for example, with specific reference made to the Public Sector Equality Duty. It was commented that although public sector bodies must adhere to this duty, community groups to whom assets may be transferred, are not under such requirements, which could result in negative impacts for particular groups of people.

12.6 There was criticism that the draft Bill had been developed without apparently undertaking an equality and human rights impact assessment. Some respondents assumed that impact assessments at national and local levels will be undertaken routinely once the provisions are in operation. One comment was that reporting should include disaggregated data in order to identify differing impacts on different groups of people.

12.7 A common theme was that the definition of “community” should encompass groups of interest in addition to place in order to promote positive impacts on those with “protected characteristics”.

12.8 Some concern was expressed that organised community groups, including community councils, may not represent groups with particular characteristics. For example, it was considered that young people, women and people within minority ethnic communities were less likely to be part of mainstream community groups, due to barriers such as childcare and language. Third sector respondents in particular identified the risk of the Bill helping strong voices to become even stronger, to the detriment of marginalised groups.

12.9 Others were concerned that processes proposed under the Bill could introduce bias rather than promote a level playing field. For example, one public body suggested that local authorities responding to high volumes of participation requests may end up reacting to powerful, resourceful sectors of the community, at the expense of spending time pro-actively engaging with those experiencing most marginalisation. Likewise, one third sector respondent suggested that protected characteristic communities may have difficulties raising numbers for the balloting process.

12.10 More specific comments referred to particular groups of interest. The needs of those with disabilities attracted most comment, with recommendations for public buildings used for meetings to be accessible, and for wheelchair access to allotments. Various respondents called for information to be provided in a range of formats such as easy-read, large print and non-written.

12.11 Recommendations were made for written documents such as application forms to be very simple, jargon-free and in different formats and languages to help those whose first language is not English. Changes to allotment terms and conditions were viewed as potentially having greatest impact on older people. Travelling people were identified by several respondents as requiring pro-active support to engage, on account of their lack of connection with place. It was felt that the consultation had not

considered the needs of young people specifically in the provisions. One respondent commented:

“It is our view is that the Bill and the community planning proposals should make specific reference to the need to actively engage with and involve young people in community planning, the right to request asset transfer and the right to request to participate. If this is not on the face of the Bill, then it should appear in the guidance or secondary legislation accompanying the Bill” (YouthLink Scotland) (Third).

Question 73: What difference might there be in the impact of the Bill on communities with different levels of advantage or deprivation? How can we make sure that all communities can access the benefits of these proposals?

12.12 Whilst there was general agreement that provisions of the Bill had the potential to impact positively on communities experiencing disadvantage and deprivation, the common perception was that at present they favoured communities already reasonably well established, well resourced and skilled. Affluent communities were viewed by respondents across a wide variety of sectors as having most to gain, being more “ready” and capable of making use of the provisions. Indeed, a few respondents gave their view that the consultation and provisions were very weak on addressing the issues associated with deprived communities. A typical comment was:

“As it stands, the Bill will entrench and widen inequalities, by enabling the wealthiest and best resourced communities to become richer and be in control of more assets, whilst those that have least will have even less. In specific terms this does not have any regard to Equality considerations” (Glasgow Disability Alliance) (Third).

12.13 Some respondents outlined what they felt were considerable challenges to achieving equality of impact. They described disadvantaged communities as likely to lack confidence to engage and make use of the provisions; be unaware of the provisions; struggle with various aspects of making requests such as finding funding, managing assets and making appeals to Ministers. A few respondents described the starting points of different communities as an uneven playing field and emphasised that equality is not about treating all communities the same with respect to the Bill. Despite such challenges, some respondents felt that such inequality could be addressed:

“There is a real risk that the bill could widen inequalities by favouring those communities who already have the capacity to take action. Ensuring that people in the most deprived and marginalised communities have the same opportunities and can exercise their rights effectively will be a significant challenge for the bill, but not one it should shy away from” (Scottish Council for Voluntary Organisations).

12.14 The most common recommendation for addressing potential inequalities between communities of different levels of deprivation was for

sustained community capacity-building, support and training targeted towards those of most need. Many respondents emphasised that such activity required to be tailored, determined and underpinned by dedicated funding. The views of one local government representative were echoed by others:

“The proposed legislation takes some very positive steps towards supporting community development interventions that are based on an assets based approach that will strengthen community cohesion and is based on the needs, experiences and abilities of individuals and groups within communities. However, in pragmatic terms those communities that are most disadvantaged or that experience the highest levels of deprivation or exclusion will require the greatest levels of support in order to build their capacity and allow them to become empowered and self sufficient.

The implementation of this Bill will require resources to be focused on and targeted much more effectively on areas of need if these challenges are to be overcome and the potential benefits of the legislation are to be realised. To be truly effective this approach towards needs based resource allocation will need to be demonstrably driven by the National Government - with an expectation cascaded through the CPP's and the wider public sector that this also happen at every level of public sector funding” (Renfrewshire Council).

12.15 A few respondents expressed surprise that the consultation lacked explicit reference to how community capacity-building should be manifested. One remarked:

“Operating in one of Scotland’s most deprived areas, we hoped that the bill would include and promote a range of community empowerment methods. We were disappointed with the lack of recognition of the importance of providing support and resources to community engagement” (Maryhill Housing Association).

12.16 Another recurring theme was that there needed to be pro-active efforts to raise awareness of the provisions amongst deprived communities. Both formal awareness raising via media such as roadshows and written material was envisaged, in addition to more informal activity. One respondent provided their view:

“It is very difficult to 'create' community empowerment for any specific community as this is generally something that happens due to unique local circumstances and/or the presence of key individuals. Attempts to impose empowerment are by definition absurd and attempts to 'develop' communities, especially disadvantaged ones, by using external agencies and professionals frequently achieve little. Government can best make sure that all communities can access the benefits of these proposals by promoting the concept to communities, supporting the community-based intermediaries, and encouraging other public sector bodies to do likewise. Communities tend to learn most from one another

and gain confidence from seeing and interacting with the pioneers” (Ekopia Resource Exchange Ltd) (Com).

12.17 Other approaches to ensuring all communities access the benefits of the proposals were identified by only a few respondents and included:

- evaluating impact and working to address any inequalities emerging
- using clear, jargon-free language in any communication
- requiring communities to demonstrate that their requests will benefit the wider community
- involving businesses in engaging with deprived communities
- ensuring consultation with deprived communities is genuine and of high quality
- ensuring CPPs are made subject to the Public Sector Equality Duty
- making more use of community councils in deprived areas
- simplifying processes and making use of the provisions accessible.

Business and regulation

Question 74: Please tell us about any potential costs or savings that may occur as a result of the proposals for the Bill, and any increase or reduction in the burden of regulation for any sector. Please be as specific as possible.

12.18 The prevailing view was that there may be considerable added costs, particularly to local authorities, in the early days of implementing the provisions, but potential for direct and indirect savings over time. A typical remark was:

“As with all significant change to public sector activity, there are likely to be additional short-term costs to establish the necessary systems. Implemented appropriately, with greater alignment and streamlining of resources and requirements, will help to reduce the administrative burden and potentially achieve savings in the long term” (Cairngorms National Park Authority) (PB).

12.19 The areas in which respondents identified costs might arise related to administration (including training staff to deal with the new provisions); community capacity-building; and the duties relating to allotments. Potential costs associated with allotments were referred to explicitly by respondents from a range of sectors. Views included:

“There are clear costs associated within the allotments section of the Bill, this would include land purchase, construction costs, maintenance costs and administration costs. These costs would only occur in the event of the register being triggered” (Dumfries and Galloway Council).

“Specifically in respect of the allotments section, there would be a major economic impact on local authorities, especially where demand for allotment plots is high. Even if there were no land purchase costs, the costs of construction could be millions of

pounds. This may have an impact on other statutory or more likely non-statutory services which are provided by local authorities. Ultimately at a time when local authorities are seeing a downward trajectory of funds available from Scottish Government they will require to look to taxpayers to meet increased cost pressures. Where land is already marked for economic development or housing it would undoubtedly have an impact if a decision was made to change the land use to allotments. Poorly maintained allotment plots are blight and can affect local property values regardless of title” (Scottish Land and Estates) (Oth).

12.20 Other areas which respondents identified as potentially incurring costs included:

- costs for local authorities relating to making good defective and dangerous buildings
- costs for local authorities in bringing assets up to standard
- costs for communities in maintaining assets once acquired
- legal costs incurred if there are disputes over valuations
- costs for land and property owners, for example, if potential private investors hold back due to potential asset transfers
- costs to businesses due to more “red tape”
- costs associated with the regulatory framework.

12.21 Many respondents (although fewer than those who identified costs) identified areas for potential savings to emerge as a result of the proposals. In particular, they foresaw savings in the longer term in respect of:

- greater local economic activity
- efficiency in service delivery
- indirectly, improvements in physical and mental health due to preventative spend
- capital and revenue savings to local authorities, for example, stemming from less maintenance of old buildings which have been transferred to community ownership
- “free” expertise of local volunteers and community bodies.

12.22 One community organisation emphasised that greater savings could be realised by improved openness and transparency in working. For example, clear criteria and assessments and clarity over decision-making should result in fewer requests for information, appeals and so on. This respondent also suggested that funding dedicated local authority officers to implement the provisions would reap rewards by streamlining procedures for communities.

12.23 A third sector respondent argued that savings are not always easy to capture within single-organisation accounts, and an outcome-focused approach will require new ways of joint budgeting and joint accounting.

12.24 A recurring theme was that it is too early to say where the costs and savings will lie and the balance between them. Future research to provide cost-savings analyses was called for.

Environmental impact

Question 75: Please tell us about any potential impacts, either positive or negative, you feel any of the proposals for the Bill may have on the environment.

Potential positive impacts

12.25 Overall, those who commented considered that the proposals presented significant potential for positive impacts on both the natural and built environments, but only where communities are able to sustain good standards of management over time.

12.26 Recurring views were that the asset transfer proposals have the potential to return neglected land back into managed stewardship resulting in positive improvements to the environment, associated with, for example, increased biodiversity, reduction in waste and pollution, reduction in carbon emissions, decrease in fly-tipping and vandalism. Allotments were identified by many as particularly beneficial to the environment and wellbeing of communities, especially in built-up areas. In addition to offering environmental benefits (such as reducing the need for imported foodstuffs) they were seen as providing future educational potential, and linking to further initiatives such as community food banks and co-operatives.

12.27 Community gardens were highlighted by one third sector respondent as offering support for urban wildlife. One local government representative considered that the proposals provided the potential for community-led environmental projects. A few respondents from different sectors commented that community groups will have access to more sources of finance for environmental improvements than is the case for public bodies.

12.28 Many respondents referred to the built environment, commenting in general that the proposals have the potential to ensure neglected buildings and heritage assets are cared for once more, with positive visual and cultural benefits.

12.29 A recurring theme was that once assets are held by communities, these communities will have a stake in ensuring these are looked after and will be more likely to ensure good stewardship and standards of management, resulting in positive environmental benefits.

12.30 Another dominant view was that although the potential exists for positive environment impacts, if community ownership is not properly resourced and assets managed ineffectively, then the potential will not be realised. One respondent commented:

“If community groups can acquire assets then they may be able to access funds for property/environmental improvements otherwise denied to local authorities. The converse also applies in that a community group may not have the resources to maintain an asset in an environmentally friendly fashion, which may leave the asset

without sufficient environmental protection. Consequently, the sustainability of any community group acquiring assets is all important” (Dundee City Council).

Potential negative impacts

12.31 Other than concern over communities lacking the resources to maintain assets in an environmentally-friendly manner (see 12.30 above), only a few substantive comments were made:

- bringing derelict land back into use could, in some instances, be detrimental to bio-diversity
- community groups may not be under the same regulatory regimes as public bodies regarding environmental issues
- delays in settling contested issues and interests may lead to environmental degradation of assets
- community groups may be overly focused on one outcome, to the detriment of wider environmental issues
- there may be active stewardship, but of a poor standard in environmental terms, for example using chemical fertilisers, fuels and so on
- the proposals may result in development on greenfield sites.

Other comments

12.32 Several respondents recommended that any considerations of applications for asset transfer should involve a detailed environmental impact assessment. Others argued for rigorous follow-up evaluations of impact on the environment.

12.33 A few local government representatives urged that the proposals remain embedded in wider local authority and national environmental frameworks, for example, linking to overarching climate change statutory duties. One suggested that care for the environment should be stated explicitly as a core duty of each CPP.

ANNEX 1: LIST OF RESPONDENTS

Third Sector

Amima – the Muslim Women’s Resource Centre
Ayrshire Community Trust
Barnardo’s Scotland
BEMIS Scotland
Built Environment Forum Scotland
Bridgend Inspiring Growth
Campbeltown Community Business Ltd
Carnegie UK Trust
Children in Scotland
Coalition for Racial Equality and Rights
Coigach Community Development Company
Community Land Advisory Service
Community Links (South Lanarkshire)
Community Transport Association
COPE
CVS Inverclyde
East Dunbartonshire Voluntary Action
East Renfrewshire Third Sector Forum
Ecas
Electoral Reform Society Scotland
Embo Trust
ENABLE Scotland
Faith in the Community
Foundation Scotland
Friends of the Earth Scotland
Glasgow Council for the Voluntary Sectors
Glasgow Disability Alliance
Glasgow Homelessness Network
Glasgow Third Sector Forum Executive Committee
Grampian Employment Opportunities
Greenspace Scotland
Health and Social Care Alliance Scotland
Highland Third Sector Interface
Inclusion Scotland
Inverclyde Community Development Trust
Link Group Limited
Living Streets Scotland
Marie Curie Cancer Care
Nourish Scotland
North Glasgow Community Food Initiative
Oxfam Scotland
Planning Aid Scotland
Play Scotland
Plunkett Foundation
Ramblers Scotland and Sustrans Scotland
Reforestation Scotland
Reform Scotland

RSPB Scotland
 Scottish Association of Mental Health (SAMH)
 Scottish Borders Community Development Company (t/a The Bridge)
 Scottish Civic Trust
 Scottish Community Alliance
 Scottish Community Development Centre
 Scottish Community Development Network
 Scottish Council for Voluntary Organisations
 Scottish Council on Deafness
 Scottish Disability Equality Forum
 Scottish Independent Advocacy Alliance
 Scottish Refugee Council
 Scottish Youth Parliament
 Shelter
 Stonehaven Town Partnership
 Strathblanefield Community Development Trust
 The Cockburn Association
 The National Trust for Scotland
 The Prince's Trust Scotland
 Third Sector Strategy Group - Edinburgh
 Voluntary Action East Renfrewshire
 Voluntary Action in Badenoch & Strathspey
 Voluntary Action Scotland
 Voluntary Action South Lanarkshire
 Voluntary Arts Scotland
 Voluntary Health Scotland
 Volunteer Scotland
 WAVE Trust
 West Dunbartonshire CVS
 Youthlink Scotland

Community Organisations

Aberdeen Civic Forum
 Allers Allotments
 Barra and Vatersay Agricultural and Horticultural Association
 Barra Locality Planning Partnership Voluntary Action Barra and Vatersay,
 Castlebay Community Council, Northbay Community Council
 Balerno Village Trust
 Ballantrae Development Group
 Belhelvie Community Trust
 Blane Valley Allotment Association
 Broughty Ferry Development Trust
 Coimhearsnachd Bharraidh agus Bhatarsaidh Ltd
 Community Central Hall
 Community Land Scotland
 Community Resources Network Scotland
 Community Woodlands Association
 Concerned Communities of Falkirk
 Crossroads Community Hub
 Dualchas, Barra and Vatersay Heritage and Cultural Centre

Dumfries and Galloway LEADER Action Group
 East Dunbartonshire Public Partnership Forum
 East Lothian Tenants and Residents Group
 Edinburgh Tenants Federation
 Evangelical Alliance Scotland
 Edinburgh Old Town Development Trust
 Ekopia Resource Exchange Ltd
 Federation of City Farms and Community Gardens
 Federation of Edinburgh and District Allotment and Gardens Associations
 Fintry Development Trust
 Forres Area Community Trust
 Garnock Valley Allotment Association
 Glasgow Allotment Forum
 Grange Association
 Grow Your Own Working Group
 Healthy n Happy Community Development Trust
 Helensburgh Community Woodland Group
 Helmsdale & District Development Trust
 Holmehill Community Buyout
 Inverclyde Community
 Isle of Canna Community Development Trust
 Joint Helensburgh Community Groups
 Kelvinside Allotment Association
 Kilmadock Development Trust Ltd
 Kirknewton Community Development Trust
 Lady Road Allotment Association
 Lambhill Stables
 Lochwinnoch Community Buyout Group
 Nairn Allotment Society
 PLANT Tayport Community Trust
 Portobello Park Action Group
 Newburgh Community Trust
 Ralston Residents' Action Group
 Raasay Development Partnership
 Renfrew Development Trust Steering Group
 Renton Community Development Trust
 Rio Community Centre
 Rosemount Development Trust Ltd
 Scottish Allotments and Gardens Society
 Scottish Traditional Boat Festival
 Stòras Uibhist
 Strathfillan Community Council and Strathfillan Community Development Trust
 Tiree Community Development Trust
 Ullapool Community Trust
 Uplawmoor Development Trust
 West Harris Trust
 Woodlands Community Development Trust

Community Councils

Aberdeen City Community Council Forum
 Ardross Community Council
 Banff and Macduff Community Council
 Boat of Garten and Vicinity Community Council
 Burntisland Community Council
 Charlestown, Limekilns and Pattiesmuir Community Council
 City and Royal Burgh of Elgin Community Council
 City of Brechin and District Community Council
 Clarkston Community Council
 Corstorphine Community Council
 Craignish Community Company
 Crief Community Council
 Cronberry, Logan and Lugar Community Council
 Dailly Community Council
 Dowanhill, Hyndland and Kelvinside Community Council
 Dufftown and District Community Council
 East Renfrewshire Joint Community Councils Group
 East Strathearn Community Council
 Fortrose and Rosemarkie Community Council
 Grantown and District Community Council
 Hillhead Community Council
 Jackson and Thorntonhall Community Council
 Joint Community Councils of Moray
 Juniper Green Community Council
 Kalewater Community Council
 Kemnay Community Council
 Killearn Community Council
 Largs Community Council
 Leith Links Community Council
 Liberton and District Community Council
 Lochardil and Drummond Community Council
 Marchmont and Sciennes Community Council
 Maybole Community Council
 Meldrum Bourtie and Daviot Community Council
 Milton of Campsie Community Council
 Muirkirk Community Council
 Morar Community Council
 Muirhouse/Salvesen Community Council
 Murieston Community Council
 Newtownhill, Muchalls and Cammachmore Community Council
 Newtown Mearns Community Council
 Oban Community Council
 Overtown and Waterloo Community Council
 Paisley West and Central Community Council
 Pollockshields Community Council
 Royal Burgh of Peebles Community Council
 Royal Burgh of Selkirk and District Community Council
 Royal Burgh of Tain Community Council
 Royal Burgh of Wigtown and District Community Council
 Scottish Borders Council Community Council Network

Stockbridge and Inverleith Community Council
Stonehouse Community Council
Strathblane Community Council
Strathfillan Community Council
Strathglass Community Council
Torry Community Council
Trinity Community Council
Westhill and Elrick Community Council
Whiteinch Community Council
Yorkhill and Kelvingrove Community Council

Public Bodies

Aberdeen City Central North GP Practice Cluster - Cluster Operational Group
Aberdeen City Public Health Team
Accounts Commission and Auditor General for Scotland
Architecture + Design Scotland
Big Lottery Fund
Bòrd na Gàidhlig
Cairngorms National Park Authority
Care Inspectorate
Community Justice Authorities
District Valuer Services, Valuation Office Agency
Equality and Human Rights Commission
Forth Valley College of Further and Higher Education
Health Improvement Scotland
Highlands and Islands Enterprise
Loch Lomond and Trossachs National Park Authority
NHS Ayrshire and Arran
NHS Borders
NHS Dumfries and Galloway
NHS Greater Glasgow and Clyde
NHS Health Scotland
NHS Lothian
NHS Orkney
NHS Tayside
Police Scotland
Queen's and Lord Treasurer's Remembrancer
Scottish Ambulance Service
Scottish Enterprise
Scottish Environment and Protection Agency
Scottish Fire and Rescue Service
Scottish Health Council
Scottish Information Commissioner
Scottish Legal Aid Board
Scottish Natural Heritage
Scottish Water
Skills Development Scotland
sportScotland

Local Government

Aberdeen City Council
Aberdeenshire Council
Angus Council
Argyll and Bute Council
Association for Public Service Excellence
City of Edinburgh Council
Comhairle nan Eilean Siar
COSLA
Dumfries and Galloway Council
Dundee City Council
East Ayrshire Council
East Dunbartonshire Council
East Lothian Council
Falkirk Council
Fife Council
Glasgow City Council
Highland Council
Improvement Service
Inverclyde Council
Midlothian Council
Moray Council
Moray Council – Building Standards
North Ayrshire Council
North Lanarkshire Council
Orkney Islands Council
Perth and Kinross Council
Renfrewshire Council
Scottish Assessors Association
Scottish Borders Council
Shetland Islands Council
Stirling Council
South Ayrshire Council
South Ayrshire Council – Building Standards Service
South Lanarkshire Council
West Dunbartonshire Council
West Lothian Council

Community Planning Partnerships

Aberdeenshire Council Community Planning Partnership
Angus Community Planning Partnership
Clackmannanshire Alliance
Community Planning Aberdeen
Dumfries and Galloway Community Planning Partnership
East Ayrshire Community Planning Partnership
East Renfrewshire Community Planning Partnership
Elgin South Area Forum (MCPF)
Fife Community Planning Partnership
Glasgow Community Planning Partnership
North Ayrshire Community Planning Partnership
Outer Hebrides Community Planning Partnership

The Edinburgh Partnership

Representative Bodies for Professionals

Community Learning and Development Managers Scotland
Community Learning and Development Standards Council for Scotland
Development Trusts Association Scotland
Institute for Archaeologists
Law Society
National Farmers Union
National Union of Journalists Scotland
RICS Scotland
RTPI Scotland
Scottish Federation of Housing Associations
Scottish Sports Association
Social Enterprise Local Authority Group
Society of Local Authority Solicitors and Administrators in Scotland

Private Sector Organisations

Anon company
Brodies LLP
Co-operatives UK
Dunecht Estates
Equal and Diverse
Office of the Scottish Charity Regulator
Pinsent Masons LLP
Robertson Holdings Ltd
Scottish Care

Academic or Research Institutes

Glasgow Centre for Population Health

James Hutton Institute

Neighbourhoods and Wellbeing Research Group, Urban Studies, University of Glasgow

Scottish Rural College

Strengthening Democracy Programme

Other

Cassiltoun Housing Assoc Ltd

Community Development Alliance Scotland

Glasgow and West of Scotland Forum of Housing Associations

Govanhill Community Action

Green Group

Local Authority Building Standards

Maryhill Housing Association

Midlothian Voluntary Action

Mike Crockart MP

Museums Galleries Scotland

Scottish Business in the Community

Scottish Council for Development and Industry

Scottish Green MSPs

Scottish Land and Estates

Scottish Property Federation

Social Enterprise Scotland

Strathclyde Partnership for Transport

Sub Group 2 of the National Autism Reference Group

The Architectural Heritage Society of Scotland

The Historic Houses Association Scotland

UNISON Scotland

Individuals

88 individual respondents

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