



Law Society
of Scotland

Consultation Response

Community Empowerment and Common Good
Property: Consultation on Draft Guidance

September 2017



Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

The Society's Property and Land Law Reform Sub-committee welcomes the opportunity to consider and respond to the Scottish Government's consultation on *Community Empowerment and Common Good Property: Consultation on Draft Guidance*¹. The Sub-committee has the following comments to put forward for consideration.

General comments

As stated in our response to consultation on Guidance on Engaging Communities in Decisions Relating to Land in June 2017,² we are, in principle, supportive of measures to encourage engagement with communities where a decision relating to land will also have an impact on the community. We therefore welcome this consultation which gives further detail as to how the system would operate in practice in relation to common good property.

We also refer to our response to the call for evidence on common good property which we responded to in March where we highlighted concerns surrounding the common law rules which currently define common good property: we do not consider that these provide the required clarity.

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

If the asset includes a building used by the public, we consider that the notice should be displayed prominently in that building. It could also be appropriate to publish the information outside the building.

¹ https://consult.scotland.gov.uk/local-government-policy/community-empowerment-and-common-good-property/user_uploads/sct0617482908-1_empowerment_p2.pdf [

² <https://www.lawsco.org.uk/media/1126785/prop-lss-response-to-consultation-on-guidance-for-community-engagement-15-06-17-.pdf>

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

We consider eight weeks to be a reasonable length of time for this.

Question 3: What, if any, further information about common good property should be provided?

We think it would be useful for the notice to provide details of how the asset became common good; and also details of its current or established use.

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

We have no comment on this question.

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

We think that it may take longer than eight weeks to give all representations proper consideration, particularly if the representations require further research. We would recommend that any stated timescale is set as a target rather than a mandatory period.

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

We think that 6 months is a reasonable cut-off for publishing the Common Good register.

Question 7: Do you agree or disagree with the proposals to publish the register even when some items on it are not yet confirmed?

We agree that it should be competent to include provisional entries in the list of Common Good Property. This is particularly so if there is to be a fixed timescale for publishing a list of Common Good Property.

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

We consider that a compulsory annual review, if it involved work additional to that already required for accounting purposes, could place an excessive burden on the local authority.

Question 9: If applicable, where or how else, should details of a proposed disposal or change of use be published as a minimum requirement? Why is this (are these) needed in addition?

When ScotLIS comes into operation a link should be created to the Common Good register. When or if similar platforms are created, they should also be linked. This should help to promote and enable public awareness regarding common good property.

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

We do not take a view as to whether the 20 day timescale is appropriate. However, we would recommend expressing the period as a minimum, to encourage a longer period where appropriate, in light of timescales and complexity of the issues.

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

Similar to our response to question 10, we would recommend that any period is flexible, rather than fixed. If the complexity of the issue, or the issues raised by the responses to the consultation, mean that further consideration is required, it would be most efficient to allow the process the necessary time to generate the best outcome.

Question 12: If the proposals are amended, should the guidance recommend consulting again on the revised proposal?

We would recommend that:

- (i) the local authority would always be free to consult again; and
- (ii) there would be a wide degree of latitude as to whether or not a further consultation was required due to changes in the proposal.

For example, if the proposal was for the use of a park for the construction of a school, the project would be hard to manage if the consequence of a re-design of the school layout, or the addition of other facilities meant that a further consultation was required.

In contrast, if the proposal was changed from use from housing to retail, then such a change would be likely to mean that a fresh consultation was appropriate.

If Common Good Property was being disposed of for a commercial development, then the risk of the local authority requiring to re-consult, depending upon the outcome of the planning/development consent process, would reduce the value that could be achieved by the local authority on the disposal of the asset.

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