



Law Society
of Scotland

Consultation Response

Guidance on Engaging Communities in Decisions Relating to Land

June 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, and Rural Affairs Sub-committees welcome the opportunity to consider and respond to the Scottish Government's consultation on *Guidance on Engaging Communities in Decisions Relating to Land*.¹ The Sub-committee has the following comments to put forward for consideration.

General comments

In principle we are supportive of measures to encourage engagement with communities where a decision relating to land will also have an impact on the community. We recognise that there is difficulty in ensuring that legislation is not unduly prescriptive while giving sufficient detail to allow certainty. We note that the consultation document focuses on the policy: further detail is needed to carry out a proper analysis of how the system would operate in practice. At present it is very difficult to work out exactly what the law is or what situations the proposals are intended to cover.

As currently drafted, we assume that the obligation to consult would not be enforceable but we would welcome greater clarity on this point.

¹ <https://consult.scotland.gov.uk/land-reform-and-tenancy-unit/engaging-communities-in-decisions-relating-to-land/>

Response to questions

Question 1: Does the draft Guidance (Chapter 3 of this consultation) respond appropriately to the considerations of Section 44(2) of the Act? Please explain your answer.

We feel that it would be helpful to have some examples or case studies to illustrate the situations that the proposals are intended to cover.

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

It is not clear to what degree the legislation would apply to small pieces of land. A particular project might also have more or less impact relative to the amount of land owned. The impact could also depend on the (strategic) importance of a particular piece of land: one strategic acre could be more important to a community than 10,000 acres with nothing on it. There might also be different criteria in an urban setting. More clarity around this issue would be helpful.

A further issue is whether engagement is proportionate to the landowner, which might again pick up the issue of the importance of land. In addition, it may be appropriate to consider the resources of the landowner, and ensure that obligations are proportionate in that respect. This issue could be expanded upon.

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

Yes. In particular, we welcome the fact that where a statutory obligation to consult exists already, there will be no additional obligations.

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

No comment.

Questions on the draft Guidance

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

No comment.

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

Whether the reasons identified are appropriate is a matter for policy makers. However, we note that the reasons presented seem to be sensible and provide a helpful summary of the underlying drivers and objectives of the legislation.

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

As noted in the general comments, an assumption is that the guidance is not intended to be enforceable against landowners who fail to comply. As such, including best practice principles are helpful.

However, if the obligation to consult were to be enforceable, then the guidance should be framed around the idea of “good practice”. “Best practice” at all times is too high an obligation, not least as it could be prohibitively expensive to meet this standard. Parties should have some flexibility to take the best approach for their own circumstances and there should be potential to go “above and beyond”.

We do not take a view as to whether the best practice principles are appropriate in themselves.

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

As noted above, the guidance is framed in general terms which makes it difficult to establish exactly what the scope of application of the guidance would be. In particular it is not clear how the impact of a decision would be assessed and where the threshold for “significant impact” might sit.

One situation in which the guidance may be interpreted to apply is a situation where a company intended to close down or make significant redundancies in a business unit which was a significant employer. In such a situation, the appropriate interaction between engagement with employees, and engagement with the community, should be considered.

In addition, situations involving a legitimate need for confidentiality, including for example commercial sensitivity, should also be reflected in the guidance.

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

No comment.

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

No comment.

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

As noted above, the guidance lacks details which would allow a fuller assessment of the likely impact on landowners and managers and those communities who would or should be consulted. Some case studies or examples of scenarios where the obligation to consult would arise, and indeed other examples of where it would not, could be helpful in giving a better indication of the scope of the guidance. Similarly, examples to demonstrate the level of consultation expected in particular circumstances could be helpful in helping stakeholders to understand how the guidance would operate in practice.

Question 12: In relation to Part 5 of the Land Reform (Scotland) Act 2016 (as discussed in Chapter 1 of this consultation), we consider the Guidance should contain sufficient certainty so that land owners and land managers can demonstrate that they are fulfilling the expectations of the Guidance, or so that communities can demonstrate that this is not the case. This must be balanced against being overly prescriptive and failing to account for the specific local contexts in which the decision is being taken. Do you agree that, as a whole, the draft Guidance balances these concerns? How could we improve the Guidance in this respect?

No comment.

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

No comment.

Question 14: Do you have any other comments?

No.

For further information, please contact:

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