

**Consultation Title: Guidance on Engaging Communities in Decisions Relating to and**

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**To: landreform@gov.scot**

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Scottish Land & Estates is a member organisation that uniquely represents the interests of both land managers and land-based businesses in rural Scotland. We welcome the opportunity to respond to this consultation on the draft guidance on engaging communities relating to land and commend the Scottish Government for its inclusive approach to developing the guidance..

As an organisation we continue to promote the benefits of community engagement and have previously cited both the National Standards for Community Engagement and the Sustainable Estates toolkit as examples of good practice to be used by landowners when engaging with local communities. Within the Scottish Land & Estates' Landowners' Commitment we state that landowners should:

- Communicate estate plans to those who will be affected by them
- Provide the wider estate community with an opportunity to contribute to relevant decision making
- Have regard to community aspirations as part of estate planning

We would hope that all landowners would follow this Commitment.

We broadly welcome the draft guidance especially its proportionate approach and we are happy to further discuss or review subsequent iterations of the guidance.

**Question 1:** Does the draft Guidance (Chapter 3 of this consultation) respond appropriately to the considerations of Section 44(2) of the Act?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

Yes, the draft guidance does appear to consider the various aspects listed in section 44(2). Provided the interpretation is not onerous or burdensome on the land owner or manager, but is as drafted, proportionate, then there should not be any infringement of their human rights. Sustainable development will also be furthered to the extent that adherence or non-adherence to the guidance may be considered in the future as part of evidence from a community body to support the absolute community right to buy to further sustainable development under Part 5 of the Act (still to come into force), albeit please see our response to question 14. Where communities and land owners and managers are seen to be valued partners then ideally positive decisions will be made in line with the guidance which will have socio-environmental and economic boosts. Engagement which takes place may also help to identify new opportunities for sustainable development.

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

- Yes, the scope of the guidance aligns with the legislation, discussions held during the legislative process and discussions held with stakeholders since the Act received Royal assent. We agreed that the guidance should apply as per para 17 and relates only to those decisions which could impact on a local community.
- We fully support the sentiments in para 18 which advocate a proportionate and reasonable approach and make clear that engagement will not be required for many decisions with very little or no impact on a community. After all, engagement on day-to-day management of land would mean additional time to reach decisions which would adversely affect the good management of the land to the detriment of both the land owner and the community.
- We do have concerns that many people will be unaware that the scope of the guidance extends to all land managers and is not just limited to private landowners. We would welcome further action by the Scottish Government and organisations such as STFA and others to raise awareness of this. Specifically the guidance could more clearly define land owners and managers as the second sentence of section 1 on page 10 could be interpreted as the neighbouring community consisting of the different types of organisations as opposed to clearly stating at the outset that all types of landowner fall within the application of the guidance.
- Para 22 states the importance of clear expectations for landowners and land managers regarding community engagement. It is equally important, as referenced elsewhere in this response, that communities also have clear expectations.
- We do have some concern in relation to the second sentence of paragraph two of section 1 of the guidance on page 10. We do not feel that the guidance should cover the continuation of existing practices nor should it apply to decisions which have been taken in the past..

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

- Yes, the guidance is not there to replace or replicate any statutory consultation. Again this is something which will have to be communicated clearly to land managers and to communities.

**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.

- We are happy with this approach, it is one we have suggested in the past to provide a degree of consistency to community engagement.
- One issue is that the language used is very public sector and may be inaccessible to both land managers and communities. The guidance goes some way to address this but further work will be required in terms of communicating the national standards to those new to this subject.

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

- We feel that this section is a little lightweight and open to interpretation. If read in conjunction with sections 4 and 5 then it is clear what is meant by Section 1.
- It may be difficult for land managers to judge the impact on cultural or social opportunities, it would be beneficial to have these explained in more detail.

**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.

While referencing the Scottish Government National Outcomes helps place the guidance in a wider policy context, we do feel that overall this section could be more user friendly. A diagram or chart might help bring to life the advantages and positives from following the guidance. Also some form of wording nearer the start noting that land owners and managers should feel and be part of the community, since at present although there is reference in the first bullet point half way down the page, the language overall suggests there are owners and managers on the one hand and the community on the other. If it is more of a shared goal, this should encourage 'buy in'.

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

Yes, we broadly agree with the best practice principles set out. It would be particularly important that "Ongoing" is viewed alongside the first principle "proportionate". In fact it may be better termed "Outcome sharing". The guidance is around decisions being taken (be it a new decision or deciding to retain the status quo per section 1 of the guidance) and while it is for the land owner and manager to feedback on the decision taken, that does not necessarily fit with "ongoing". Also, while of interest to both land owner/manager and community as to how a decision reached shapes up over time, there should not be the unrealistic expectation of constant 'updates' going forward. Naturally, one would hope that the good relations would continue and there would be engagement going forward. However, there is a risk that compelling a land owner / manager to focus on an ongoing basis where the decision has already been taken with community input, where appropriate, will mean that other engagement which is particularly relevant to the community and

specific to the land and environment owned by that land owner will likely not receive the attention that it should.

There could be an additional principle of “Inclusive” or this could be encapsulated within “Collaborative”, as it is vital that engagement is not centred on a vocal minority, which is possibly totally unrepresentative of the broader community.

**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.

Yes, we believe that this section appropriately identifies the respective situations, although in formatting it may be worthwhile highlighting “routine activities” or “normal, everyday activities” and also “emergency situations” so specific points stand out a bit more.

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

The methods listed are appropriate, but obviously not exhaustive. Attendance at community council meetings, establishing fora or working groups which involve and engage representatives from the community are also formal engagement methods. What will be important in relation to the engagement is the capacity of the land manager and the community groups/representatives.

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

Knowing who to engage with is a major challenge for land owners and managers in many cases. In some areas there may be no functioning community council or clearly established representative group and in other areas there may be a plethora of bodies, some with conflicting views as to what is a positive decision making process and outcome. There needs to be reference in the guidance to the latter situation where there are competing views in order to ensure that land managers can clearly understand how they ought to deal with that from a best practice point of view.

The capacity of the community to engage is a very real issue and can detrimentally impact upon the effectiveness of the engagement process. It is well documented that community councils are not operating properly in all areas of Scotland – this can lead to a deficit of a democratic and representative community voice. Even in areas where community councils are functional, there is a wide diversity in terms of knowledge and skill sets – and often a deficit in terms of understanding of legislation and associated guidance. Our understanding is that the role of a community council in terms of planning is that they are limited to addressing community wide applications rather than individual householder ones – does their remit allow them to be the conduit for engagement from an individual farmer, estate owner or land manager?

It should be borne in mind that there may well be other obligations where the land owner is a charity or trust. It may be that in order to continue to be recognised as a charity it must provide a benefit to the public, or a sufficient section of it and hence other tests may be

failed if the definition of “community” is too narrowly drawn. Therefore it would be worthwhile in this section also noting that the land owner may, depending upon its status, have other tests to meet in terms of engagement, outwith the guidance.

Overall it is important, as with the sports facility example given, that there is some link between the definition of the “community” and the activity being decided upon.

Finally, in relation to a large estate, the relevant community to engage with e may involve more than one geographical community.

**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?

On the whole we believe the guidance as drafted does what the Act set out to do and we feel that if interpreted in a sensible and appropriate way, that the expectations are proportionate and do not place undue burden on land owners and managers. The “two directional” reference in the principles is key and reinforces that it is vital that both parties communicate and engage. It may also be worthwhile expressly stating that vexatious behaviour by either party is unacceptable.

It is also imperative to further stress that the outcome of engagement does not mean that the community has control over land use decision making - this is covered in para 20 of the consultation document but a section on outcomes should perhaps be added into the flowchart (Section 4) or the table in section 5.

**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?

Unfortunately there will be a high degree of subjectivity in relation to fulfilling the expectations of the guidance, and in many cases the level of dissatisfaction by the community may be linked to the message/activity which is at the centre of the engagement rather than the engagement itself. The success of the engagement cannot be evaluated solely by how it is viewed by the community – this will mean that any applications under Section 5 will have to look at the reality of the engagement in the round rather than one party’s views.

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

**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?

Not necessary or desirable where:

- Anything which is at an individual business or household level which doesn't impact upon the community should not necessitate any community engagement.
- Ongoing land management decisions ie to continue with an existing type of land management/land use
- Changes to opening hours/days of historic properties or changes of timings of normal business activity, unless there would be a significant impact on the community.
- Any changes to terms of residential, commercial or agricultural tenancies eg succession discussions, discussions re ending or renewing tenancies.

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

- As previously suggested, further examples of how to engage – both for the land manager and the community – will be very useful. Scottish Land & Estates will be providing advice and support to land managers on the application of the guidance. However, if the community has different, or indeed unrealistic expectations, of what engagement will be carried out then this is likely to increase conflict or perhaps even create conflict where non currently exists. The Scottish Government will therefore have to manage this expectation.
- The application of the guidance will require to be monitored during the three years period set out in the Act prior to reporting to Scottish Parliament. We would like to have more information on how this monitoring and evaluation will be carried out especially as so much of the engagement may well be on an informal basis. We do intend to look at ways in which we can facilitate this monitoring but this will of course only cover a subset of Scotland's land managers. .
- As mentioned in response to question 1 the consultation expressly mentions that adherence or non-adherence to the guidance may be considered in the future as part of evidence from a community body to support the absolute community right to buy to further sustainable development (Part 5) and so this monitoring will be of extreme importance.
- Engagement should supplement rather than circumvent any other processes – for example, if environmental health has already dealt with, and dismissed, a complaint regarding smell (as often happens when those moving into the countryside encounter slurry for the first time) then the community, or members of the community, shouldn't seek to use this guidance as a route to getting an alternative outcome.
- Although the legislation, and this guidance, are focused on engagement by land managers we do feel that continued guidance and support must be provided to community groups, community councils and communities in general to improve the way that they communicate with land managers in their area. We have heard of the

community councils making pronouncements or decisions which could impact on livelihoods without having engaged with the land manager – sometimes the first he is aware of the issue is when he reads about it on social media. Effective engagement is a two way process – greater emphasis must be placed on the responsibility of community groups to engage and to respond to engagement.