

10.00am, Tuesday, 28 September 2017

Community Empowerment (Scotland) Act 2015: Proposed Consultation Response on Common Good Matters

Item number	7.7
Report number	
Executive/routine	Routine
Wards	City-wide
Council Commitments	11 and 47

Executive Summary

The Community Empowerment (Scotland) Act 2015 places new duties on local authorities in relation to Common Good property.

The Scottish Government is consulting on the guidance for local authorities on how to fulfil the requirements of the Act. The guidance asks for views on issues such as timescales, information about assets, local consultation, publicising proposals, and the disposal and use of common good property.

This report seeks approval of the Council's response.

Summary Report on Community Empowerment (Scotland) Act 2015: Proposed Consultation Response on Common Good Matters

1. Recommendations

- 1.1 It is recommended that Committee;
 - 1.1.1 approves the Council's response to the Scottish Government consultation in relation to Common Good property; and
 - 1.1.2 Refers this report to Corporate Policy and Strategy Committee for noting.

2. Background

- 2.1 Part 8 of the Community Empowerment (Scotland) Act 2015 places new duties on local authorities in relation to Common Good property. The Scottish Government consultation concerns the statutory guidance related to these processes and asks for views on issues such as timescales, information about assets, local consultation, publicising proposals and the disposal and use of Common Good property.
- 2.2 Responses to the consultation are to be provided by 29 September 2017, and will be made public on the Scottish Government website.
- 2.3 This report seeks approve of the Council's response.

3. Main report

- 3.1 Common Good property is owned by local authorities and has been passed down, through local government reorganisation, from former burghs. Those burghs would have received it as a gift or purchased it. It includes land and buildings, moveable items such as furniture and art, and cash funds. There may be restrictions on how certain items of Common Good property are allowed to be used, and whether the local authority can dispose of them. In some cases, this has to be decided by the courts. It is also worth noting that, due to the time which has passed, it is sometimes difficult and complex to establish whether property forms part of the Common Good.
- 3.2 Section 102 places a duty on local authorities to "establish and maintain a register of property which is held by the authority as part of the Common Good."

- 3.3 Section 104 places a duty on local authorities “before taking a decision to dispose of, or change the use of, such (Common Good) property the local authority must publish details about the proposed disposal or, as the case may be, the use to which the authority proposes to put the property.”
- 3.4 Section 103 and 105 require local authorities “to have regard to any guidance issued by the Scottish Ministers” in relation to these duties.
- 3.5 Part 8 does not define or redefine Common Good or remove or alter any restrictions on the use or disposal of Common Good property.
- 3.6 A copy of the full consultation document is attached at Appendix 1. The Council’s draft response to the consultation is attached at Appendix 2.

4. Measures of success

- 4.1 Local authorities and communities will have a clear understanding of their rights and responsibilities under Part 8 of the Community Empowerment (Scotland) Act 2015 in relation to Common Good property.

5. Financial impact

- 5.1 There is no direct financial impact arising from the content of this report. The Capital Coalition Council budget motion, approved by the Council at the meeting of 21 January 2016 included, inter alia, an instruction to allocate monies to develop and maintain a Common Good Asset Register. It is anticipated that the work associated with Part 8 of the Act will be contained within the budget.

6. Risk, policy, compliance and governance impact

- 6.1 The risk that Common Good property could be unlawfully disposed of or appropriated is managed within the review processes currently in place. Once final guidance is issued in relation to the duties under Part 8 of the Act, the Council will develop processes designed to meet the requirements.

7. Equalities impact

- 7.1 There is no direct relevance of the report’s contents to equalities related issues. However, the statutory obligation placed on the Council for administering property held as part of the Common Good, is to have regard to the interests of all the inhabitants of the city.

8. Sustainability impact

- 8.1 There are no adverse impacts on carbon, adaptation to climate change and sustainable development arising directly from this report.

9. Consultation and engagement

- 9.1 Council Officers in Resources and Strategy and Insight have been consulted in the preparation of this draft response.

10. Background reading/external references

- 10.1 N/A.

Stephen S. Moir

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11. Appendices

Appendix 1: Scottish Government Consultation on Draft Guidance

Appendix 2: Council Response to Consultation

Community Empowerment and Common Good Property

Consultation on Draft Guidance

June 2017



Scottish Government
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Community Empowerment and Common Good Property: Consultation on Draft Guidance

Overview

1. This is a consultation on guidance for local authorities on how to fulfil the requirements of Part 8 of the Community Empowerment (Scotland) Act 2015 in relation to Common Good property.
2. Common Good property is owned by local authorities and has been passed down, through local government reorganisation, from former burghs. Those burghs would have received it as a gift or purchased it. It includes land and buildings, moveable items such as furniture and art, and cash funds. There may be restrictions on how certain items of Common Good property are allowed to be used, and whether the local authority can dispose of them. In some cases this has to be decided by the courts. It is also worth noting that, due to the time which has passed, it is sometimes difficult to know whether property forms part of the Common Good.

Why we are consulting

3. Part 8 of the Community Empowerment (Scotland) Act 2015 places new duties on local authorities in relation to Common Good property. This consultation concerns the statutory guidance related to these processes and asks for views on issues such as timescales, information about assets, local consultation and publicising proposals.
 - Section 102 places a duty on local authorities to “establish and maintain a register of property which is held by the authority as part of the common good.”
 - Section 104 places a duty on local authorities “Before taking any decision to dispose of, or change the use of, such [common good] property the local authority must publish details about the proposed disposal or, as the case may be, the use to which the authority proposes to put the property.”
 - Sections 103 and 105 require local authorities “to have regard to any guidance issued by the Scottish Ministers” in relation to these duties.
4. Part 8 does not define or redefine Common Good or remove or alter any restrictions on the use or disposal of Common Good property.

Responding to this Consultation

We are inviting responses to this consultation by **29 September 2017**.

Please respond to this consultation using the Scottish Government’s consultation platform, Citizen Space. You can view and respond to this consultation online at:

<https://consult.scotland.gov.uk/local-government-policy/community-empowerment-and-common-good-property>

You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of **29 September 2017**.

If you are unable to respond online, please complete the Respondent Information Form (see "Handling your Response" below) and send to:

Karen Fraser
Local Government and Analytical Services Division
Area 3G North
Victoria Quay
Edinburgh
EH6 6QQ

Handling your response

If you respond using Citizen Space (<http://consult.scotland.gov.uk/>), you will be directed to the Respondent Information Form. Please indicate how you wish your response to be handled and, in particular, whether you are happy for your response to be published.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form attached to this document. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.scotland.gov.uk>. If you use Citizen Space to respond, you will receive a copy of your response by email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please e-mail them to: CGConsultation@gov.scot

Or you can contact us by post:

Karen Fraser
Local Government and Analytical Services Division

Area 3G North
Victoria Quay
Edinburgh
EH6 6QQ

Scottish Government consultation process

Consultation is an essential part of the policy-making process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.scotland.gov.uk>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Consultations may involve seeking views in a number of different ways, such as public meetings, focus groups, or other online methods such as Dialogue (<https://www.ideas.gov.scot>)

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Chapter 1 - Common Good registers

1. Section 102 of the Community Empowerment (Scotland) Act 2015 requires local authorities to develop and publish Common Good registers. Before publishing the final version of the register, each local authority must publish a list of property which it proposes to include on its Common Good register and consult on this list.

Publication

2. Local authorities should aim to be consistent in how and where they publish both the initial list of common good property and the final Common Good register. So, in common with the requirements for publishing the final register (Chapter 4), the public should be able to inspect the list of Common Good property free of charge and access it electronically, ideally on the local authority's own website.
3. Local authorities must be ready to make the list of property available in alternative languages and formats, if requested, to meet equality requirements. They may also wish to produce paper copies of the list if they think this will be more accessible to the groups they are looking to reach. Other alternatives could be, for example, to enable people to view the list on a computer at a public enquiry office, or send out printed extracts in response to telephone enquiries.

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

Length of consultation

4. The list of Common Good property should be made publicly available for comment for at least eight weeks.

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

Information about property

5. The list of Common Good property should include enough detail about each item to enable members of the public to identify and locate individual assets. As a minimum this should be: the name of the asset, a brief description of what the asset is, the location of the asset, the name of the burgh to which the asset formerly belonged and any additional information about the asset which may be of use to a reader (see Annex A for more information).
6. There is no requirement on local authorities to make checks or confirm title before including property and assets on the list. This is because it is recognised that the ownership and boundaries of land and property are sometimes unclear, especially where records are old and land has changed hands by statutory powers or reorganisation of public bodies.

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

Chapter 2 – Identifying and contacting Community Bodies

1. When the list of property is published, local authorities must invite community councils and other community bodies to consider the list and provide their views.

How to contact Community Bodies

2. The definition of “community bodies” given in section 106 of the Act is quite broad. We recognise that it may be difficult for local authorities to identify every individual group with a potential interest in a piece of common good property. Therefore we recommend that local authorities work with community planning partners and organisations such as Voluntary Action Scotland to help identify relevant groups in the local area. Local authorities should also note that the Local Government etc. (Scotland) Act 1994 defines specific geographical areas where communities will have an interest in common good property.
3. We expect local authorities to use a variety of methods to reach community bodies and they may find the revised [National Standards for Community Engagement](#) helpful when trying to connect with diverse groups of people from across the community. Community councils are already statutory consultees in the planning process and we would recommend that local authorities take advantage of these existing links when notifying community councils about proposals relating to common good property.

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

Chapter 3 – Dealing with representations

1. The ability to provide views and comments (make representations) before the common good register is formally published, ensures that individuals, community councils and other community bodies have an opportunity to make a case for property to be included in or excluded from the register.

How to make representations

2. When publishing the list of common good property, local authorities should clearly set out the process and timescale for making any representations. All representations should be made in writing, either by e-mail or by letter. It should also be made clear that all representations will be published (although personal details must be handled in accordance with the local authority's data protection policy).

How to access representations

3. We expect local authorities to publish all the representations they receive. All of these documents, whether paper copy or electronic, should be accessible from the same place as the list of property and, eventually, the Common Good register.

Responding to representations

4. Local authorities should aim to investigate and respond to representations within eight weeks. The final response should be published alongside the original representation. Once a local authority has fully considered a representation, this decision will be final - unless significant new information comes to light or a court decides otherwise. Local authorities are not required to consider repeated representations in relation to the same asset when no new information is provided.

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

Chapter 4 - Publishing the Common Good register

1. Local authorities should aim to publish the first version of their Common Good register as soon as practicable after the initial eight week consultation period has closed, and in any case within six months of the end of the consultation.
2. In cases where there have been numerous or particularly complex representations and a local authority is still carrying out investigations, a note should be added to the register to that effect. A covering note to the Register should make clear that some representations are still being followed up and there should be an indication of when these investigations are likely to be completed and a new version of the register made available. This should maintain transparency while still allowing local authorities to properly investigate complex cases.

QUESTION 6: What are your views on the timescale 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?

Access to the register

3. The public must be able to inspect the Common Good register free of charge, and the document must be available electronically, ideally on the local authority website.
4. Local authorities should ensure that their Common Good register is easy to find and has clear instructions for use. They must also be ready to provide information from the register in alternative languages and formats if requested, to meet equality requirements. It is not necessary to produce a full paper version of the register, although this may be the preferred option for some local authorities. Alternatives could be, for example, to enable people to use the register on a computer at a public enquiry office, or to send out printed extracts in response to telephone enquiries.

Review

5. Common Good registers should be considered to be “living documents” and local authorities should revise their register if new Common Good assets are identified or if existing assets are disposed of or re-classified. It is also good practice to review the register at regular intervals, such as at the same time as the register of common good assets for accounting purposes (which is usually carried out annually). The process and timescale for review of the Common Good register should be made clear, along with the date of the last update.

QUESTION 8: What are your views on reviewing the common good register annually?

Chapter 5 - Consultation when planning to dispose or change the use of Common Good property

1. Section 104 requires local authorities to consult with the local community when they are planning to dispose of common good property, or change its use. Each local authority must publish details of the proposed disposal or change of use of common good property.

What information should be included about the property

2. The proposal should clearly state which property is being considered and what the plans are. The proposal should include enough detail to enable members of the public to identify and locate the property. To identify the property, the local authority should use the same information about the property that is included in the Common Good Register (Chapter 1). In relation to cash funds, “change of use” would not cover every payment to different people, or moving investments about, but would include, for example, changing the rules about what type of things could be funded.

Where and how should details be published

3. As a minimum, local authorities should publish the details of the proposal on their own website and should ensure that this is publicised widely. If the request relates to a building or area of land, a public notice should be placed on the building or land, or on an object close to it. If it is a building open to the public, you may also want to put a copy somewhere prominent inside. However, it is more important that the notice is put up where interested people will see it than that it is on or adjacent to the land in question. It could be displayed in a village shop, on a community noticeboard or an information point in a car park - wherever local events and notices are normally advertised.

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?

Chapter 6 – Consulting the Community

1. Local authorities must notify community councils and community bodies when the proposal is published.

Representations

2. Local authorities must invite community councils and other community bodies to consider and give their views on the proposal making it clear that all representations will be published. This ensures a transparent process and that individuals, community councils and other community bodies have an opportunity to consider the proposal and how it might affect them. It should be made clear that people will have at least 20 working days from date of publication to make representations.

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?

Final response

3. Local authorities should aim to consider and respond to any representations within 20 working days. The final response(s) should then be published online alongside the original representation(s). Local authorities should also ensure that they publish the final decision about the proposal (i.e. whether the proposal will be taken forward and any changes which will be made) and notify community bodies and anyone who made a representation.

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

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

Annex A – Information to be included in Common Good Register

Information fields	Detail
Name of asset	The name by which the asset is generally known by
Description of asset	A brief description of what the asset is e.g. land, building, fund
Location	The most detailed information that the local authority has about the location of the asset e.g. grid reference, map or description. A member of the public should be able to use the description to accurately identify where the asset is
Former Burgh	The former Burgh to which the asset originally belonged
Additional Information	Any extra information which might be of use to a reader e.g. if the asset is managed by a third party or, if the asset is not land or property, a description of what the asset is

Example of what entries in a Common Good Register might look like

Name of asset	Type of asset	Location	Former Burgh linked to asset	Additional Information
Scotlandtown Recreation Park	land	An acre of land in Scotlandtown, which is bordered to the north by the river Alba and on the east by Scotland Street. It is adjacent to Scotlandtown town hall.	The Royal Burgh of Scotlandtown	Exact date of acquisition is unclear but was before 1900.
*Chandlers Row	land	A lane in Scotlandtown, running from the Harbour to the Marketgate.	The Royal Burgh of Scotlandtown	*Unconfirmed as common good property – still under investigation.
Dunalba Common Good Fund	fund	N/A	The Burgh of Dunalba	Fund set up for the benefit of the inhabitants of Dunalba. Detailed information about what can be funded is available direct from the local authority
Painting of Provost Ross (1893)	painting	Dunalba Town House, Mercat Square, Dunalba	The Burgh of Dunalba	Painting gifted to the Burgh of Dunalba by the family of Provost Ross in 1893



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APPENDIX TWO: PROPOSED COUNCIL RESPONSE TO CONSULTATION

Chapter 1 – Common Good Registers

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

Response: Agree that the local authority's website is the best place for the register to be made available.

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

Response: 8 weeks may be too short a period for people to become aware of and comment on the list of common good property. 12 weeks is suggested as an alternative.

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

Response: It is recommended that information about how an asset is defined should be provided, for example, for a park, what level of detail is required where there are monuments contained within that park?

Chapter 2 – Identifying and contacting Community Bodies

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

Response: There is a distinction between identifying and contacting, notifying and connecting. It is not clear what the expectation is in terms of what the local authority should do. Scottish Government could consider if links could/need to be made with the "Guidance on Engaging Communities in Decisions Relating to Land" under Part 4 of the Land Reform (Scotland) Act 2016 in terms of community consultation and engagement.

Chapter 3 – Dealing with representations

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

Response: Some cases will be complex and will require historic records to be retrieved and examined to permit a local authority to fully consider representations; 8 weeks could be too short a period. It will also depend on the number of representations received and the resource available to the local authority to process the representations. It is recommended that the period should be extended to 12 weeks.

Chapter 4 - Publishing the Common Good register

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

Response: It would be more appropriate for the long stop date of 6 months to start from the date that representations are received, rather than the date the consultation has closed.

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

Response: It is recommended that the register is published with confirmed assets only, to avoid ambiguity. The register can be added to when the status of additional assets is confirmed.

8. What are your views on reviewing the common good register annually?

Response: As with the accounting treatment of common good assets, an annual review of the register is appropriate and the register should be treated as a “living document.” Some leeway could be given for local authorities to determine the review date to tie in with their own reporting timescales.

Chapter 5 – Consultation when planning to dispose or change the use of Common Good property

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?

Response: It is not considered that any further publication is required – other than the consultation referred to in Chapter 6. Further guidance on what stage the proposal should be advertised would be useful.

Chapter 6 – Consulting the Community when planning to dispose or change use

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?

Response: The timescale of at least 20 working days from date of publication to make representations is considered sufficient.

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

Response: If the issue is particularly complex, it may require additional time. It is recommended that the timescale is increased to 28 days.

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

Response: No, as this could lead to a protracted period of representations and amendments. The revised proposals, having been examined, should be able to proceed.