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**To:** Leadership Board

**On:** 8<sup>th</sup> June 2016

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**Report by:** Chief Executive

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**Heading:** Community Empowerment (Scotland) Act 2015: Consultation On Guidance

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**1. Summary**

- 1.1 The Scottish Government has invited consultation on a number of aspects of the Community Empowerment (Scotland) 2015 Act, with responses requested by various dates in June 2016. The guidance that emerges following the consultation will provide the framework for Community Planning Partnerships to work within when implementing the provisions of the Act.
- 1.2 The proposed response of Renfrewshire Council to the consultation questions is set out below. An additional response on behalf of Renfrewshire Community Planning Partnership will be approved by Renfrewshire Forum For Empowering Communities and submitted to the Scottish Government.

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**2. Recommendations**

- 2.1 It is recommended that members of the Leadership Board approve the response to the consultation papers on the Community Empowerment (Scotland) Act 2015 as set out in the completed consultation questionnaires attached.

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### 3. Background

- 3.1 The Community Empowerment (Scotland) Act 2015 provides the legal basis for participation in community planning partnerships in Scotland and sets out to empower communities to participate wherever appropriate in the planning and delivery of public services.
- 3.2 Consultation on draft guidance on different aspects of the Act was issued in March 2016, with a response sought by various dates in June 2016. The individual consultations are as follows:

Consultation	Date For Response
Community Empowerment (Scotland) Act 2015 – Community Planning Guidance and Regulation	13 June 2016
Community Empowerment (Scotland) Act 2015 – Participation Requests: Consultation on Draft Regulations	15 June 2016
Asset Transfer under the Community Empowerment (Scotland) Act 2015: Consultation on Draft Regulations	20 June 2016
Consultation on secondary legislation proposals relating to Part 3a of the Land Reform (Scotland) Act 2003 – the community right to buy abandoned, neglected or detrimental land as introduced by the Community Empowerment (Scotland) Act 2015	20 June 2016

The full text of these consultations can be accessed at [www.consult.scot.gov.uk](http://www.consult.scot.gov.uk). The response to the questions requires to be read in conjunction with the four consultations papers available through this weblink.

### Implications of the Report

- Financial** – Implementation of the Guidance may have implications for Council finances regarding the asset portfolio and delivery of public services.
- HR & Organisational Development** - None
- Community Planning** – Community Empowerment (Scotland) Act Guidance has implications for community participation in Renfrewshire Community Planning Partnership.

4.           **Legal** – The guidance places legal duties on public organisations in terms of community planning responsibilities and provides the legal framework for processing asset or land transfer and participation requests. This will require amendments to the duties of Council Boards.
  5.           **Property/Assets** – Implications for future ownership of the Council's asset portfolio, including promotion of increased community ownership.
  6.           **Information Technology** - *none*
  7.           **Equality & Human Rights** - *none*
  8.           **Health & Safety** - *none*
  9.           **Procurement** – *none*
  10.          **Risk** - *none*
  11.          **Privacy Impact** - *none\_*
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#### **List of Background Papers**

1. Background Papers – Community Empowerment (Scotland) Act 2015
2. Part 2 Community Planning – Consultation on Draft Guidance and Regulation
3. Asset Transfer – Consultation On Draft Regulations
4. Participation Requests – Consultation On Draft Regulations
5. Consultation on secondary legislation proposals relating to Part 3A of the Land Reform (Scotland) Act 2003 – the community right to buy abandoned, neglected or detrimental land as introduced by the Community Empowerment (Scotland) Act 2015

The foregoing background papers will be retained within Chief Executive's Service for inspection by the public for the prescribed period of four years from the date of the meeting. The contact officer within the service is *Stuart Graham, Partnerships Planning and Development Manager* [stuart.graham@renfrewshire.gov.uk](mailto:stuart.graham@renfrewshire.gov.uk), 0141 618 7408

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## Asset Transfer under the Community Empowerment (Scotland) Act 2015: Consultation on Draft Regulations



### Questionnaire

Q1: Do you agree that the types of land set out in the draft Community Empowerment (Registers of Land) (Scotland) Regulations 2016 need not be included in relevant authorities' registers?

Yes X ☐ No ☐

If not, please explain what you would change and why.

Land purchased by a statutory authority within a certain period prior to the Asset Transfer application (e.g. 2 years) for a specific purpose should be excluded from the register.

Q2: Are there any other types of land that relevant authorities should not have to include in their register? Please explain what should not be included and why.

Cemeteries and crematoria should be excluded from the register, to guarantee the continuity of these services.

Q3: Do you have any comments on the proposals for guidance on what information registers should contain and how they should be published?

Information registers should be online publications only. The proposals are reasonable as a starting point for communities. The guidance should state that the Unique Property Reference Number should be included for each property.

Q4: Is there any information you think a community transfer body should be able to request from a relevant authority, that it would not be able to obtain under FOISA or the EIRs?

No – all other information that is not commercially confidential would be available on request.

Q5: Do you think the proposed additional requirements for making an asset transfer request are reasonable?

Yes X ☐ No ☐

If not, please explain what you would change and why.

Q6: Is there any other information that should be required to make a valid request?

The date of any community consultation used as evidence in a request should be included, in order to ensure that the current views of the community are taken into account.

Q7: Do you have any comments on the proposals for acknowledgement of requests?

The proposals for acknowledgement of requests should include a clear statement about prohibition of the disposal of land acquired under asset transfer.

Q8: Do you have any comments on the proposed requirements for notification and publication of information about a request?

The proposed requirements are reasonable.

Q9: Do you think 6 months is a reasonable length of time for the relevant authority to make a decision on an asset transfer request? (This time may be extended if agreed with the community transfer body.)

Yes X ☐ No ☐

If not, how long should the period for making a decision be?

6 months is a reasonable benchmark, but should recognise that this might take longer if alternative uses or objections are raised within the community. The impact on timescales of Council recess should also be taken account of. There should be provision to ask Scottish Ministers to agree an appropriate timescale if the statutory authority and the applicant cannot agree on a reasonable timescale.

Q10: Do you agree with the proposals for additional information to be included in a decision notice?

Yes X ☐ No ☐

If not, please explain what you would change and why.

Q11: Do you agree that the Scottish Ministers should be required to appoint a panel of 3 people to consider reviews of Ministers' own decisions?

Yes X ☐ No ☐

If not, how do you think these reviews should be carried out?

Q12: Do you agree that a local authority should be required to make a decision on a review within 6 months?

Yes X ☐ No ☐

If not, how long should the period for making a decision be?

Q13: Do you have any other comments about the draft Asset Transfer Request (Review Procedure) (Scotland) Regulations 2016 or draft Asset Transfer Request (Appeals) (Scotland) Regulations 2016?

No further comment.

Q14: Do you agree that the Scottish Ministers should appoint a single person to consider an appeal where no contract has been concluded?

Yes X ☐ No ☐

If not, how do you think these reviews should be carried out?

Q15: Do you agree that the documents should not be published in relation to appeals where no contract has been concluded?

Yes X ☐ No ☐

Please explain your reasons.

Q16: Do you agree that no third party representations should be allowed in relation to appeals where no contract has been concluded?

Yes X ☐ No ☐

Please explain your reasons.

Q17: Do you have any comments on the proposed procedures for appeals where no contract is concluded?

No

Q18: Do you have any comments on the proposed procedures for applications to Ministers for Directions?

No



## Consultation on the Draft Participation Request (Procedure)(Scotland) Regulations 2016



### Participation Requests under the Community Empowerment (Scotland) Act 2015: Consultation on Draft Regulations

#### Questionnaire

Q1: Should the use of a statutory form be required in the regulations?

Yes X ☐ No ☐

Please give reasons for your response.

This would promote consistency in the approach taken across all community bodies and all statutory authorities.

Q2: Should it be possible for a community body to put in a participation request without using a form?

Yes ☐ No X ☐

Please give reasons for your response.

Communities should be allowed to make their initial contact with a statutory authority in any format, then supported, if necessary, to complete the statutory form.

Q3: What else might a statutory form usefully cover beyond the example set out in Annex B?

Q3: What else might a statutory form usefully cover beyond the example set out in Annex B?

Q4: Is 14 days a reasonable amount of time for additional public service authorities to respond?

Yes ☒ No ☐

If not, please suggest an alternative timescale and explain reasons for the change.

14 days is a reasonable guide time. However, guidance may wish to reflect that some cases may require more time to respond depending on complexity.

Q5: What, if any, are the particular/specific ways that public service authorities should promote the use of participation request?

Public service authorities should promote participation through a programme of engagement including social media, online material, press coverage, events and an open invitation to enter into dialogue with community groups.

Public service authorities should also work through Community Planning Partnerships with the local Third Sector Interface to promote participation requests.

Q6: What are the ways that public service authorities should support community participation bodies to make a participation request and participate in an outcome improvement process that should be set out in the regulations?

- Discussion and support to articulate their case in the participation request form.
- Signpost to local and national agencies.
- Provide information to community groups where available through an Open Data approach.

Q7: What types of communities could the regulations specify that may need additional support? Please give reasons for your response.

- Communities of interest such as groups with protected characteristics under the Equality Act 2010.
- Communities with no current community bodies e.g. new communities or communities underrepresented by community bodies.

Q8: How long should the public service authority have to assess the participation request and give notice to the community participation body? Is 30 days a reasonable amount of time?

Yes X ☐ No ☐

If not, how long should the period for making a decision be? Please give reasons for your response.

Q9: Are there any additional information requirements that should be included in connection with a decision notice? Please give reasons for your response.

In the event of a refusal of the request, statutory authorities should state the action necessary to overcome the refusal.

Q10: What other information, if any, should the regulations specify should be published in relation to the proposed outcome improvement process? Please give reasons for your response.

- If a participation request is approved and responsibility for service delivery is to change, the new point of contact for public queries should be published and from what point of contact the new point of contact will apply.
- How the public can keep informed of the progress of the participation request should be published, in order to promote transparency.

Q11: What other information, if any, should the regulations specify should be published in relation to the modified outcome improvement process? Please give reasons for your response.

The reason for the modification should be published.

Q12: Section 31 sets out the aspects that the report of the outcome improvement process must contain. What other information, if any, should the regulations require the report include? Please give reasons for your response.

The report should include a projection of when improvements to a particular outcome can be expected, if this is not immediate.

Q13: Do you have any other comments on the draft Participation Request (Procedure)(Scotland) Regulations 2016?

Regulations should be reviewed after an agreed period (possibly two years) to confirm that the regulations work as intended or to determine any changes required to the regulations.

## Community Planning under the Community Empowerment (Scotland) Act 2015: Consultation on Draft Guidance and Regulation



### Questions

Q1: The guidance identifies a series of principles for effective community planning. Do you agree with them? Should there be any others?

Please explain why.

The principles for effective community planning are sufficient.

Q2: The draft guidance sets out common long-term performance expectations for all CPPs and community planning partners. Each CPP will adopt its own approach towards meeting these expectations, reflecting local conditions and priorities. Even so, do you think there are common short- or medium-term performance expectations which every CPP and partner should be expected to meet? If so, what are they?

Improvement of skills and qualifications of resident populations and reduction of health inequalities should be included as performance expectations that community planning partnerships are required to meet.

Q3: The 2015 Act requires CPPs to keep under review the question of whether it is making progress in the achievement of each local outcome in their LOIP and locality plan(s). CPPs must from time to time review their LOIP and locality plan(s) under review, and to revise them where appropriate. Even with this, do you think the statutory guidance should require CPPs to review and if necessary revise their plans after a specific period of time in every case? If so, what should that specific period be?

Yes ☒ No ☐

Please explain why.

Review after a period of three years would be appropriate, in order that the LOIP and locality plans remain current.

Q4: What should the statutory guidance state as the latest date by which CPPs must publish progress reports on their local outcomes improvement plans and locality plans?

4 months ☐ 6 months ☐ Other X ☒

If other please provide timescale. Please explain why.

One year would be a reasonable schedule for progress reports in order to allow accurate data collection.

Q5. Do you have any other comments about the draft Guidance?

The draft guidance should set out the role of the Scottish Government in terms of its partnership and governance roles.

Q6. We propose that the draft regulation for locality planning should set one criterion only, which is a maximum population permissible for a locality. Do you agree? What are your reasons?

The flexibility of only having one criteria for locality planning is welcomed.

Q7: The draft regulation sets a maximum population size for localities subject to locality planning of 30,000 residents. It also proposes an exception which allows a CPP to designate a local authority electoral ward as a locality even where its population exceeds 30,000 residents. Are there circumstances in which these criteria would prevent a CPP from applying a reasonable approach to locality planning? What difference would it make to how localities were identified for the purposes of locality planning in the CPP area(s) in which you have an interest, if the maximum population size were set at (a) 25,000 residents or (b) 20,000 residents?

Some flexibility around the proposed upper limit would be welcomed, where a natural community in a densely populated urban location is slightly above the 30,000 limit.

Q8: Do you have any other comments about the draft Regulation?

No further comment.

Q9: Are there any equality issues we should be aware of in respect of local outcomes improvement plans and locality plans?

Locality planning should be required to take account of communities of interest as well as place, particularly where these communities are disadvantaged.

**Consultation on secondary legislation proposals relating to Part 3A of the Land Reform (Scotland) Act 2003 – the community right to buy abandoned, neglected or detrimental land as introduced by the Community Empowerment (Scotland) Act 2015**



**1. Section 97C(4) – Prescribe eligible land for the purposes of Part 3A – land which is eligible for purchase by a Part 3A community body**

**Question 1**

Do you agree with the above matters? Yes X ☐ No ☐

If not, please explain

Are there any matters you believe should be added? If so, please give details.

Any site or property acquired within the last 2 years, any site or property acquired for a defined or known regeneration scheme and any site compulsorily acquired by a statutory authority for a specific purpose should not be eligible.



Are there any matters you believe should be removed? If so, please give details.

No.

**2. Section 97C(5) – Land pertaining to land on which there is a building or structure which is a person’s “home”**

**Question 2**

Do you agree that the above types of land should be land pertaining to land that is a person’s home?

Yes X ☐ No ☐

If not, please explain

Are there any types of land that you believe should be added? If so, please give details.

No.

Are there any types of land that you believe should be removed? If so, please give details.

No.

**3. Section 97C(5)(f) – Descriptions or classes of land which is not eligible for purchase by a Part 3A community body**

Are there any descriptions or classes of land that you believe should not be eligible for purchase by a Part 3A community body? If so, please give details.

Same classes of land as set out under question 1 .

**4. Section 97C(6)(b) – Descriptions or classes of occupancy or possession which are, or are to be treated as, a tenancy – land which will be eligible for purchase by a Part 3A community body**

**Question 3**

Do you agree with the above descriptions or classes of occupancy or possession which are, or are to be treated as, a tenancy for the purposes of Part 3A of the Land Reform (Scotland) Act 2003? Yes X

☐ No ☐

If not, please explain

Are there any descriptions or classes of occupancy or possession which are, or are to be treated as, a tenancy, that you believe should be added? If so, please give details.

No.

Are there any descriptions or classes of occupancy or possession which are, or are to be treated as, a tenancy that you believe should be removed? If so, please give details.

No.

**5. Section 97H(6) – List of prescribed regulators**

**Question 4**

Do you agree that a regulator should be described as a person, body or office-holder that has the power to carry out regulatory functions? Yes X ☐ No ☐

If not, please explain

Are there any persons, bodies or office-holders that you believe should be included in the definition of regulator, but are not listed above? If so, please give details.

No.

Are there any persons, bodies or office-holders that you believe should not be included in the definition of regulator? If so, please give details.

Fire & Rescue Scotland and Building Standards could also be included as regulators.

**6. Section 97N(1)&(3): Prohibitions on sale or transfer of land; suspension of rights**

**Date prohibition or suspension of right applied**

**Question 5**

Do you think the proposed dates are appropriate? Yes X ☐ No ☐

If not, please explain

For clarity, the regulations should state that any notice should be sent by recorded delivery and should be deemed received after 48 hours from the date of posting.

**Date prohibition or suspension of rights lifted**

**Question 6**

Do you think the proposed dates are appropriate? Yes X ☐ No ☐

If not, please explain

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**Section 97N(1) and 97N(3) – Persons subject to prohibition**

**Question 7**

Do you agree with proposals? Yes X ☐ No ☐

If not, please explain

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**Section 97N(2) regulations made under section 97N(1) – Transfers or dealings not subject to these regulations**

### Question 8

Do you agree with the above list of transfers or dealings?

Yes ☒ No ☐

If not, please explain

Are there any that you believe should be added? If so, please give details.

No.

Are there any that you believe should be removed? If so, please give details.

No.

**Section 97N(3) – Suspension of rights over the land**

**Question 9**

The above section sets out proposals surrounding the rights which are to be suspended when a valid application is made under Part 3A.

Do you agree with these proposals? Yes X ☐ No ☐

If not, please explain

Are there any other rights that you believe should be suspended? If so, please give details.

No.

Are there any of these rights that you believe should not be suspended? If so, please give details.

No.

**7. Section 97J(7) – Provision for or in connection with enabling a Part 3A community body to apply for the cost of ballot expenses to be reimbursed**

**Question 10**

Do you agree with these proposals? Yes ☒ No ☐

If not, please explain

Are there any other circumstances under which you believe a community body should be able to apply for reimbursement? If so, please give details.

No.

**Procedures to be followed when applying for reimbursement of the full cost of conducting the ballot**

**Question 11**

Do you agree with these proposals? Yes ☒ No ☐



If not, please explain

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**8. Section 97T(4) – entitlement to compensation**

**Question 12**

Do you agree with these proposals? Yes X ☐ No ☐

If not, please explain

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