

Directorate for Local Government and
Communities

Equality, Third Sector and Communities Division



T: 0131-244 0382

E: community.empowerment@scotland.gsi.gov.uk

Our ref: CERB/June 2012

06 June 2012

Dear Colleague

**CONSULTATION ON THE PROPOSED COMMUNITY EMPOWERMENT AND
RENEWAL BILL**

Responding to this consultation paper

We are inviting written responses to this consultation paper by **29 August 2012**.

Please send your response with the completed Respondent Information Form (see "Handling your Response" below) to:

community.empowerment@scotland.gsi.gov.uk

or

Community Empowerment Unit
Scottish Government
Area 3H South
Victoria Quay
Edinburgh
EH6 6QQ

If you have any queries, please contact Kate Thomson-McDermott on 0131 244 0382

We would be grateful if you would use the consultation questionnaire provided or could clearly indicate in your response which questions or parts of the consultation paper you are responding to as this will aid our analysis of the responses received.

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at <http://www.scotland.gov.uk/consultations>.

The Scottish Government has an email alert system for consultations, <http://register.scotland.gov.uk>.

This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new consultations (including web links). It complements, but in no way replaces SG distribution lists, and is designed to allow stakeholders to keep up to date with all SG consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the **Respondent**

Information Form which forms part of the consultation questionnaire attached to this letter as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.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 are 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 in the Scottish Government Library (see the attached Respondent Information Form), these will be made available to the public in the Scottish Government Library and on the Scottish Government consultation web pages by 26 September 2012. You can make arrangements to view responses by contacting the SG Library on 0131 244 4552. Responses can be copied and sent to you, but a charge may be made for this service.

What happens next ?

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach a decision on what to take forward in the draft Community Empowerment and Renewal Bill. We aim to issue a report on this consultation process by October 2012. We will also hold a consultation on the draft Community Empowerment and Renewal Bill in Spring 2013.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to Kate Thomson-McDermott at either the email or postal address listed above.

We look forward to receiving your response and to your ongoing contribution to the development of the Community Empowerment and Renewal Bill

Kind Regards

Kate Thomson-McDermott

Kate Thomson-McDermott
Policy Officer

Community Empowerment and Renewal Bill



RESPONDENT INFORMATION FORM

Please Note both pages of this form **must** be returned with your response to ensure that we handle your response appropriately.

1. Name/Organisation

Organisation Name

Title Ms Mrs Miss Mr Dr *Please tick as appropriate*

Surname

Forename

2. Postal Address

Postcode	Phone	Email

3. Please indicate which category best describes your organisation (Tick one only).

Executive Agencies and NDPBs	<input type="checkbox"/>
Local authority	<input type="checkbox"/>
NHS	<input type="checkbox"/>
Other statutory organisation	<input type="checkbox"/>
Representative body for private sector organisations	<input type="checkbox"/>
Representative body for third sector/equality organisations	<input type="checkbox"/>
Representative body for community organisations	<input type="checkbox"/>
Representative body for professionals	<input type="checkbox"/>
Private sector organisation	<input type="checkbox"/>
Third sector/equality organisation	<input type="checkbox"/>
Community group	<input type="checkbox"/>
Academic	<input type="checkbox"/>
Individual	<input type="checkbox"/>
Other – please state...	<input type="checkbox"/>

4. Permissions - I am responding as...

Individual

/ Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate Yes No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate Yes No

Please ensure you return this form along with your response.

Thank-you.

Community Empowerment and Renewal Bill

CONSULTATION QUESTIONS



PART 1: STRENGTHENING COMMUNITY PARTICIPATION

Community Planning

Q1. What would you consider to be effective community engagement in the Community Planning process? What would provide evidence of effective community engagement?

Q2. How effective and influential is the community engagement currently taking place within Community Planning?

Q3. Are there any changes that could be made to the current Community Planning process to help make community engagement easier and more effective?

An overarching duty to engage

Q4. Do you feel the existing duties on the public sector to engage with communities are appropriate?

Q5. Should the various existing duties on the public sector to engage communities be replaced with an overarching duty?

Yes No

Please give reasons for your response below.

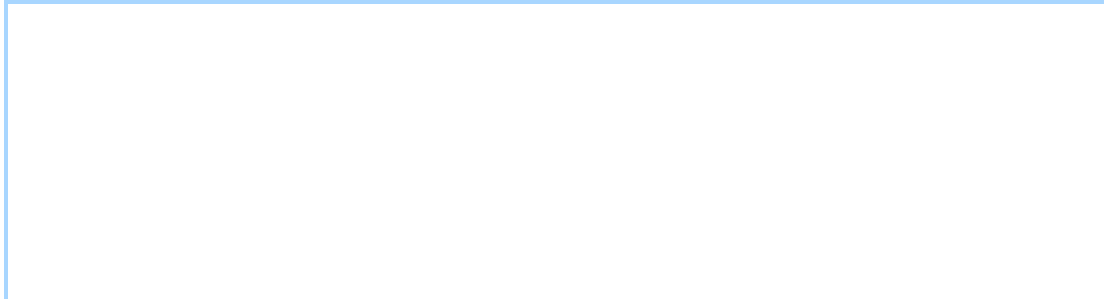
If you said 'yes' to Question 5, please answer parts a. and b. –

a. What factors should be considered when designing an overarching duty?

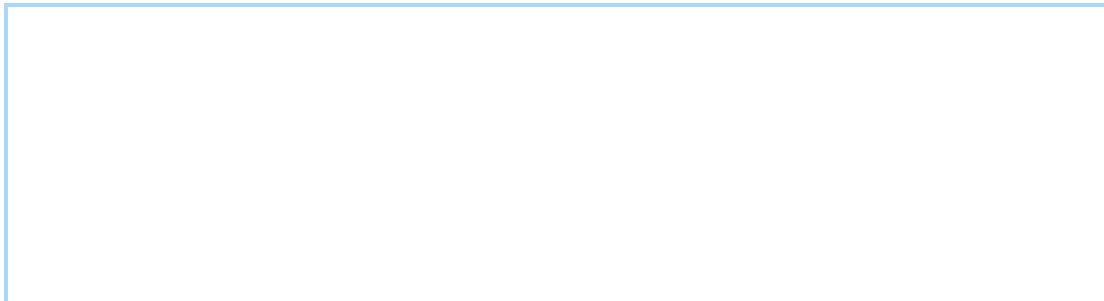
b. How would such a duty work with existing structures for engagement?

Community Councils

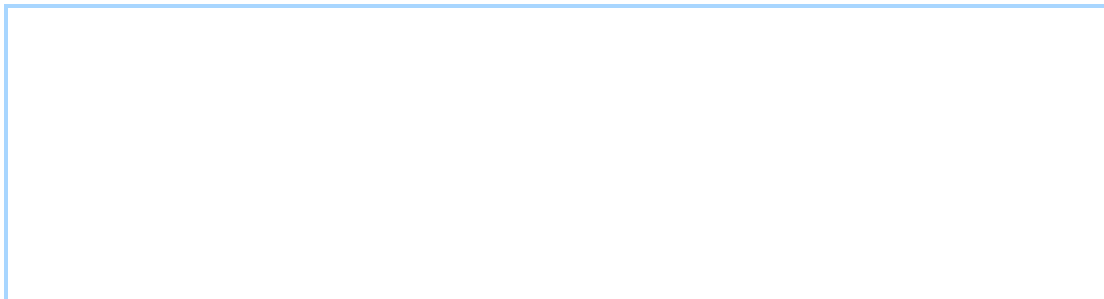
Q6. What role, if any, can community councils play in helping to ensure communities are involved in the design and delivery of public services?



Q7. What role, if any, can community councils play in delivering public services?

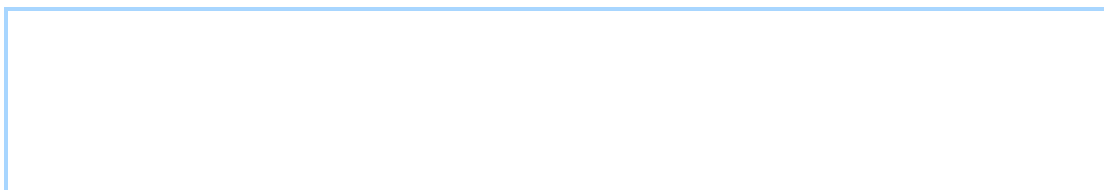


Q8. What changes, if any, to existing community council legislation can be made to help enable community councils maximise their positive role in communities



Third Sector

Q9. How can the third sector work with Community Planning partners and communities to ensure the participation of communities in the Community Planning process?



National Standards

Q10. Should there be a duty on the public sector to follow the National Standards for Community Engagement?

Yes No

Please give reasons for your response

Community engagement plans

Q11. Should there be a duty on the public sector to publish and communicate a community engagement plan?

Yes No

Please give reasons for your response

If you said 'yes' to Question 11, please answer parts a. –

a. What information would be included in a community engagement plan?

Auditing

Q12. Should community participation be made a more significant part of the audit of best value and Community Planning?

Named Officer

Q13. Should public sector authority have a named accountable officer, responsible for community participation and acting as a primary point of contact for communities?

Yes No

Please give reasons for your response

Tenants' right to manage

Q14. Can the Scottish Government do more to promote the use of the existing tenant management rights in sections 55 and 56 of the Housing (Scotland) 2001 Act?

Yes No

Please give reasons for your response

Q15. Should the current provisions be amended to make it easier for tenants and community groups to manage housing services in their area?

Yes No

Please give reasons for your response

Community service delivery

Q16. Can current processes be improved to give community groups better access to public service delivery contracts?

Yes No

Please give reasons for your response

Q17. Should communities have the right to challenge service provision where they feel the service is not being run efficiently and that it does not meet their needs?

Yes No

Please give reasons for your response

Community directed spending – participatory budgeting

Q18. Should communities have a greater role in deciding how budgets are spent in their areas?

Yes No

Please give reasons for your response

Q19. Should communities be able to request the right to manage certain areas of spending within their local area?

Yes No

Please give reasons for your response

If you said 'yes' to Question 19, please answer parts a., b. and c. –

a. What areas of spending should a community be responsible for?

b. Who, or what body, within a community should be responsible for making decisions on how the budget is spent?

c. How can we ensure that decisions on how the budget is spent are made in a fair way and consider the views of everyone within the community?

Definitions for Part 1

Q20. Please use this space to give us your thoughts on any definitions that may be used for the ideas in Part 1. Please also give us examples of any definitions that you feel have worked well in practice

PART 2: UNLOCKING ENTERPRISING COMMUNITY DEVELOPMENT

Community right to buy

Q21. Would you support a community right to buy for urban communities?

Yes No

Please give reasons for your response

If you said 'yes' to Question 21, please answer parts a., b. and c.:

- a. Should an urban community right to buy work in the same way as the existing community right to buy (as set out in Part II of the Land Reform (Scotland) Act 2003)?**

- b. How should an 'urban community' be defined?**

- c. How would an urban and rural community right to buy work alongside each other?**

Community asset transfer

Q22. The public sector owns assets on behalf of the people of Scotland. Under what circumstances would you consider it appropriate to transfer unused or underused public sector assets to individual communities?

Please also answer parts a. to d. below:

a. What information should a community body be required to provide during the asset transfer process?

b. What information should a public sector authority be required to provide during the asset transfer process?

c. What, if any, conditions should be placed on a public sector authority when an asset is transferred from the public sector to a community?

d. What, if any, conditions should be placed on a community group when an asset is transferred from a public sector body to a community?

Q23. Should communities have a power to request the public sector transfer certain unused or underused assets?

Yes No

Please give reasons for your response

Q24. Should communities have a right to buy an asset if they have managed or leased it for a certain period of time?

Yes No

Please give reasons for your response

If you said 'yes' to Question 24, please answer parts a:

a. What, if any, conditions should be met before a community is allowed to buy an asset in these circumstances?

Common good

Q25. Do the current rules surrounding common good assets act as a barrier to their effective use by either local authorities or communities?

Yes No

Please give reasons for your response

Q26. Should common good assets continue to be looked after by local authorities?

Yes No

Please give reasons for your response

If you said 'yes' to Question 26, please answer parts a. and b.:

- a. What should a local authority's duties towards common good assets be and should these assets continue to be accounted for separately from the rest of the local authority's estate?**

- b. Should communities have a right to decide, or be consulted upon, how common good assets are used or how the income from common good assets is spent?**

If you said 'no' to Question 25, please answer part c.:

- c. Who should be responsible for common good assets and how should they be managed?**

Asset management

Q27. Should all public sector authorities be required to make their asset registers available to the public?

Yes No

Please give reasons for your response

If you said 'yes' to Question 27, please answer part a.:

a. What information should the asset register contain?

Q28. Should all public sector authorities be required to make their asset management plans available to the public?

Yes No

Please give reasons for your response

If you said 'yes' to Question 27, please answer part b.:

a. What information should the asset management plan contain?

Q29. Should each public sector authority have an officer to co-ordinate engagement and strategy on community asset transfer and management?

Yes No

Please give reasons for your response

Q30. Would you recommend any other way of enabling a community to access information on public sector assets?

Allotments

Q31. What, if any, changes should be made to existing legislation on allotments?

Q32. Are there any other measures that could be included in legislation to support communities taking forward grow-your-own projects?

Definitions for Part 2

Q33. Please use this space to give us your thoughts on any definitions that may be used for the ideas in Part 2. Please also give us examples of any definitions that you feel have worked well in practice

PART 3: RENEWING OUR COMMUNITIES

Leases and temporary uses

Q34. Should communities have a right to use or manage unused and underused public sector assets?

Yes No

Please give reasons for your response

If you said yes to Question 33, please answer parts a., b. and c.:

a. In what circumstances should a community be able to use or manage unused or underused public sector assets?

b. What, if any, conditions should be placed on a community's right to use or manage public sector assets?

c. What types of asset should be included?

Encouraging temporary use agreements

Q35. Should a temporary community use of land being made a class of permitted development?

Yes No

Please give reasons for your response

Q36. Should measures be introduced to ensure temporary community uses are not taken into account in decisions on future planning proposals?

Yes No

Please give reasons for your response

Q37. Are there any other changes that could be made to make it easier for landlords and communities to enter into meanwhile or temporary use agreements?

Dangerous and defective buildings

Q38. What changes should be made to local authorities' powers to recover costs for work they have carried out in relation to dangerous and defective buildings under the Building (Scotland) Act 2003?

Q39. Should a process be put in place to allow communities to request a local authority exercise their existing powers in relation to dangerous and defective buildings under the Building (Scotland) Act 2003?

Yes No

Please give reasons for your response

Compulsory purchase

Q40. Should communities have a right to request a local authority use a compulsory purchase order on their behalf?

Yes No

Please give reasons for your response

If you said 'yes' to Question 39, please answer part a.:

a. What issues (in addition to the existing legal requirements) would have to be considered when developing such a right?

Q41. Should communities have a right to request they take over property that has been compulsory purchased by the local authority?

Yes No

Please give reasons for your response

If you said 'yes' to question 40, please answer part a.:

a. What conditions, if any, should apply to such a transfer?

Power to enforce sale or lease of empty property

Q42. Should local authorities be given additional powers to sell or lease long-term empty homes where it is in the public interest to do so?

Yes No

Please give reasons for your response

If you said 'yes' to Question 41, please answer parts a., b. and c.:

a. In what circumstances should a local authority be able to enforce a sale and what minimum criteria would need to be met?

b. In what circumstances should a local authority be able to apply for the right to lease an empty home?

c. Should a local authority be required to apply to the courts for an order to sell or lease a home?

Yes No

Please give reasons for your response

Q43. Should local authorities be given powers to sell or lease long-term empty and unused non-domestic property where it is in the public interest to do so?

Yes No

Please give reasons for your response

If you said 'yes' to Question 43, please answer parts a., b. and c.:

a. In what circumstances should a local authority be able to enforce the sale of a long-term empty and unused non-domestic property and what minimum criteria would need to be met?

b. In what circumstances could a local authority be able to apply for the right to lease and manage a long-term empty non-domestic property?

c. Should a local authority be required to apply to the courts for an order to sell or lease a long-term empty non-domestic property?

Yes No

Please give reasons for your response

Q44. If a local authority enforces a sale of an empty property, should the local community have a 'first right' to buy or lease the property?

Yes No

Please give reasons for your response

If you said 'yes' to Question 44, please answer part a.:

a. In what circumstances should a community have the right to buy or lease the property before others?

Definitions for Part 3

Q45. Please use this space to give us your thoughts on any definitions that may be used for the ideas in Part 3. Please also give us examples of any definitions that you feel have worked well in practice

ASSESSING IMPACT

Q46. Please tell us about any potential impacts, either positive or negative, you feel any of the ideas in this consultation may have on particular group or groups of people?

Q47. Please also tell us what potential there may be within these ideas to advance equality of opportunity between different groups and to foster good relations between different groups?

Q48. Please tell us about any potential impacts, either positive or negative, you feel any of the ideas in this consultation may have on the environment?

Q49. Please tell us about any potential economic or regulatory impacts, either positive or negative, you feel any of the proposals in this consultation may have?

Thank-you for responding to this consultation.

Please ensure you return the respondent information form along with your response.



Consultation on the proposed Community Empowerment and Renewal Bill

Consultation on the proposed Community Empowerment and Renewal Bill



MINISTERIAL FOREWORD

The people who live in Scotland are best placed to make decisions about Scotland's future. And that doesn't stop at national level. The Scottish Government believes that Scotland's people are its greatest asset and are a rich source of creativity and talent. In future we want to see all Scots having increased opportunities to shape and decide on their own futures.

Government in Scotland at national and local level is committed to people playing the fullest possible role in delivering the successful future we all want to see. Across the country, local authorities and their Community Planning partners are striving to work with local communities to make Scotland a better place. Their work and the many examples of active communities provide a firm foundation for launching this consultation on the proposed Community Empowerment and Renewal Bill.

The ideas we set out here have been developed after listening to a wide range of people from the public, third and private sectors and from communities themselves. They are designed to strengthen community participation, unlock enterprising community development and renew our communities.

This consultation marks the next stage of the process in developing the Bill. As a Government we will continue to listen carefully to your views. Your responses to the ideas in this consultation, and your new ideas, will help shape what ends up in draft legislation. I encourage you to get involved in the consultation. This is your Bill and we want to work with you to help us unlock the vast potential that exists in Scotland's communities.

A handwritten signature in black ink, which appears to read 'Derek Mackay'. The signature is fluid and cursive, written in a professional style.

Derek Mackay MSP
Minister for Local Government and Planning

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INTRODUCTION

1. The Scottish Government has a clear purpose to create a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth, and it is determined to work in partnership across Scottish society to deliver on that purpose.
2. As part of our vision for strengthening Scotland's communities, the Scottish Government has proposed to bring forward a Community Empowerment and Renewal Bill. Through this Bill we aim to make it easier for communities to take over unused and underused public sector assets and to introduce measures to help communities deal more effectively with vacant and unused property in their areas. Both aims have a shared goal of increasing locally driven, enterprising community development – an important step to achieving sustainable economic growth.
3. Our economic strategy and our plans for public service reform both set out the need to ensure we have high quality, sustainable public services that are capable of delivering the best outcomes for our communities. As noted above, those delivering public services need to ensure they work with communities to design and deliver services around the communities needs. That is why we welcomed the Christie Commission's recommendation that this Bill consider ways to strengthen the participation of communities in the planning and delivery of services.¹
4. In developing initial ideas for this Bill we have spoken to many people across all sectors and from a number of different communities throughout Scotland. We have heard from those communities, and from many in local authorities and the wider public sector, of inspiring and innovative examples of work already being undertaken to support community empowerment. However, we also heard that much of the success to date has been achieved despite the current rules and regulations rather than because of them. This consultation seeks ideas to rectify that situation.

Public Service Reform and Community Planning

5. These are uniquely challenging times. We need to do things smarter and better - the driving purpose of our plans for public service reform is to achieve better outcomes, reduced inequalities and sustainable economic growth for local communities. Achieving this will not be possible without working with our partners in the public, private and third sectors – and with communities themselves – to unlock the knowledge, abilities and potential of all of Scotland's communities.
6. The review of Community Planning recently undertaken jointly by the Scottish Government and the Convention of Scottish Local Authorities ('COSLA'), agreed that effective community planning arrangements will be at the core of public service reform and will drive the pace of public service integration, increase the focus on prevention and secure continuous improvement in public service delivery in order to achieve better outcomes for communities.
7. Key to this will be ensuring the right processes are in place to enable the breadth of Community Planning partners and communities to come together to understand local needs and aspirations and to design and deliver services that meet those needs and aspirations.

¹ See Report on the Future Delivery of Public Services by the Commission chaired by Dr Campbell Christie <http://www.scotland.gov.uk/Publications/2011/06/27154527/0>

8. The Scottish Government, COSLA and other Community Planning partners recognise that changes, including as necessary legislative change, will be needed to realise these ambitions. Work to develop and deliver proposals for such changes will be taken forward quickly. The Community Empowerment and Renewal Bill could be a suitable vehicle for delivering any such legislative change.

Proposed aims and content of the Bill

9. Throughout our discussions people have said we will need to be clear about the policy aims of the Bill. We are proposing that the Bill strengthens opportunities for communities to take independent action to achieve their own goals and aspirations and ensure communities are able to have a greater role in determining how their local public services are delivered. We would welcome your views on this proposed aim.

10. Community empowerment is a process which brings people from across communities and across the public, private and third sectors together to develop real and lasting change. As we recognised in our Community Empowerment Action Plan, produced in partnership with COSLA, there are many different ways in which communities can become more empowered. You can see a copy of the plan here:

<http://www.scotland.gov.uk/Publications/2009/03/20155113/0>

11. Some communities become more empowered through owning assets, controlling budgets, or generating their own income to re-invest. In some cases, communities may want to take action to tackle anti-social problems in the community, to meet demand for new or different services or to protect a valued resource. Others will want to have an enhanced role in shaping the services delivered on their behalf by others.

12. We have separated our ideas for this Bill into three sections. Each contains a range of ideas, from new statutory rights and duties to smaller amendments to existing legislation, that could act as a catalyst for a wide range of community enterprise, community development and public service improvement:

- **Strengthening Participation:** Services should be built around and with people and communities - paying attention to their needs, aspirations, capacities and skills. Having the right procedures, practices and organisations in place will help deliver effective community engagement. Consistent and high standards of engagement can be achieved through ensuring appropriate methods are used by those designing and delivering services to inform, monitor, evaluate and report on engagement.
- **Unlocking Enterprising Community Development:** Communities owning assets, and being able to bring unused and underused assets in their areas back into use, can in the right circumstances be a catalyst for unlocking community empowerment, enterprise and increasing social capital.
- **Renewing our Communities:** Vacant or unused property can blight areas, create barriers to economic development, and lead to increased social costs for local authorities. Property owners can help by taking responsibility for the effect their properties have on communities. Local authorities should have the appropriate powers to step in and take action where necessary and communities can play an important role by taking action and influencing how such property is dealt with in their areas.

13. We hope this consultation will stimulate a debate on what we want to see in our local communities and what kind of participation we want to see. The consultation paper looks at how communities can take action and how they can influence the delivery of public services - we will also consider the role of local democracy and how people participate in and understand local government and elections.

14. Average voter turnout at the recent local government elections in Scotland was around 39%. Turnout (and engagement in the political process) is a matter for us all and we will work with relevant bodies (including the Electoral Management Board and the Electoral Commission) to consider what might lie behind the relatively low turnout and what can be done to increase turnout in future elections. This will form an important part of our thinking on how to empower communities and reinvigorate participation.

15. The overall aim of any consultation to bring forward new legislation must be to consider how legislation can build on and promote best practice, remove barriers and provide a framework of support where necessary. At the same time, it must recognise the need to strike the right balance, respecting and consulting on the interests and perspectives of stakeholders, and avoiding unnecessary or disproportionate new regulatory burdens.

Involving all our communities

16. We appreciate that there are diverse communities throughout Scotland, each with different needs and aspirations. Throughout our earlier discussions on the scope of the Bill, we heard of the importance of building community capacity to enable communities to take advantage of the opportunities the Bill will provide. Building capacity will also play an important part in achieving the aims of wider public service reform and in meeting the requirements of the public sector equality duty. We know this is an area where budgets are being hit – and once capacity is lost, it will be hard to build up again.

17. Building the capacity of our communities is a key outcome for Community Learning and Development (CLD). We are developing new national strategic guidance for Community Planning partnerships on CLD, which is due to be published shortly ('the strategic guidance'). The Christie Commission had recommended that the Bill should explore ways to promote action to build community capacity, recognising the particular needs of communities facing multiple social and economic challenges.

18. However, as part of the ongoing development and implementation of the strategic guidance, we are considering what can be done through legislation to strengthen the provision of CLD. This essentially fulfils the same goal and so this consultation does not ask about community capacity building. In taking forward the Community Empowerment and Renewal Bill we will take account of any issues arising from the work on the strategic guidance.

19. We will also ensure the Bill is developed alongside national policies which aim to promote equality and strengthen our communities. Along with COSLA, we will continue in our efforts to tackle inequality in Scotland through our three frameworks: Equally Well (health inequalities); Achieving Our Potential (tackling poverty); and the Early Years Framework (supporting children pre-birth to age eight). We will also continue with the implementation of our Regeneration Strategy, which responds to the challenges faced by our most disadvantaged communities.

20. It will be important to ensure that community empowerment takes account of diverse communities and reaches both more marginalised individuals within communities and more marginalised communities within society. Public authorities are subject to the public sector equality duty and must have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations. Proposed new duties will also require public authorities to undertake equality impact assessments of new policies and practices and to publish the results of those assessments in order to consider the impact of new policies and practices.

21. We will consider how to promote a more integrated approach between equalities and community empowerment, which will help increase community cohesion and improve the effectiveness of service delivery to more diverse and marginalised groups.

Defining community

22. When discussing community empowerment - one of the first questions many ask is 'What do we mean by community?' All communities are, of course, different. There are communities of place and communities of interest. Areas can contain a mixture of different communities. Community organisations can also play an important role - they are often around for the long term, have strong ties into the wider community and can provide the focus for community led action.

23. Deciding how communities are defined in this legislation will be an important consideration in taking this Bill forward. The definition may be different depending on whether we are discussing the transfer of assets or how to strengthen community participation.

24. We have included space for comments at the end of each section in the consultation paper to provide space for your thoughts on this issue. We would also encourage you to provide examples of definitions you feel have worked well in practice.

Purpose of the consultation

25. We would like to hear your views on the suggested ideas that we have heard could help deliver the aims of this Bill. This paper covers a wide range of complex issues and we appreciate there is a lot to consider. That is why we wanted to set out these ideas at an early stage, to ensure we are having the right discussions to create good and meaningful legislation.

26. Each of the three sections of this paper are equally important. Only by balancing action in all three areas can we hope to achieve the aims of the Bill. However, we appreciate some people will have a particular interest in certain areas. We would encourage you to respond to any or all of those parts where you feel you have a contribution to make.

27. Your contributions to this consultation will help us to decide what ideas should be taken forward in a draft Bill. We appreciate that getting the words and definitions used in this Bill right will be fundamental to achieving effective and meaningful legislation. That is why we will also hold a consultation on the draft Bill in Spring 2013.

28. Another reason for consulting at an early stage in the Bill's development is to give you the opportunity to share your views on the potential impacts of these ideas. We believe that by empowering communities we will promote positive social, economic and environmental impacts.

29. Throughout the development process we have been considering the potential impacts the Bill may have. We will carry out a full Equality Impact Assessment and Business and Regulatory Impact Assessment on the proposals that will be contained in the draft Bill. We will also consider the potential environmental impacts of any proposals and if a Strategic Environmental Assessment will be required.

30. We welcome your thoughts on the potential impacts, both positive and potentially negative, of any of the ideas in this paper and questions have been included at the end of the consultation paper for this purpose.

PART 1: STRENGTHENING COMMUNITY PARTICIPATION

Structures for participation

31. The Christie Commission on the Future Delivery of Public Services was clear that we must all work together to understand the different needs and aspirations of the communities we serve and work with communities to achieve better outcomes. We fully support this approach and it is reflected in our plans for public service reform that, amongst other things, aim to improve integration in service delivery through promoting greater collaboration, partnership and public participation.²

32. We know there is already a lot of good work being done by local government and different parts of the public sector. We want to focus on ways in which the current landscape can be built upon to ensure a greater emphasis is placed on improving community participation and promoting best practice at a strategic level, across the whole of Scotland.

Community Planning

33. Community Planning is a process that aims to ensure public service providers work together to plan and deliver local services. Community Planning is delivered by Community Planning partnerships (CPPs), one for each local authority area. CPPs are made up of the local authority and other public bodies, as well as community representatives and representatives from the third and private sectors.

34. The Scottish Government and COSLA recently reviewed Community Planning to identify how it can be made stronger and more effective. That review produced a Statement of Ambition, setting out the key principles underlying Community Planning and providing a basis for improvement. You can read the Statement of Ambition at:

<http://www.scotland.gov.uk/Topics/Government/local-government/CP/soa>

35. The Statement of Ambition acknowledges communities have high expectations of public services and a key role to play in helping to shape and design better local outcomes. If CPPs are to unlock this potential, their foundations must be built on a strong understanding of their communities. There must be genuine opportunities to consult, engage and involve communities. CPPs must, therefore, engage closely with the needs and aspirations of their communities.

36. We would welcome your views on the extent to which Community Planning currently meets these expectations and on what, if any, changes to the process you would like to see.

Q1. What would you consider to be effective community engagement in the Community Planning process? What would provide evidence of effective community engagement?

Q2. How effective and influential is the community engagement currently taking place within Community Planning?

Q3. Are there any changes that could be made to the current Community Planning process to help make community engagement easier and more effective?

² See *Renewing Scotland's Public Services - Priorities for reform in response to the Christie Commission* at <http://www.scotland.gov.uk/Publications/2011/09/21104740/0>

An overarching duty to engage

37. We have heard that one way to take a more strategic approach would be to identify and remove existing engagement duties and replace them with an overarching duty to ensure effective community engagement.

38. There are a number of different types of legal duties to engage with communities – from informing, to consulting, to co-operating – that apply in a number of different situations, on a number of different public sector authorities.³ However, different duties and obligations can lead to confusion for communities and the public sector alike and can result in silos of engagement rather than a consistent and inclusive overall approach that considers the needs of the community as a whole.

39. We would welcome your thoughts on this proposal and how such a duty would work with existing structures for engagement in specific areas – such as in health and social care, land-use planning, and social housing.

Q4. Do you feel the existing duties on the public sector to engage with communities are appropriate?

Q5. Should the various existing duties on the public sector to engage communities be replaced with an overarching duty?

If yes –

a. What factors should be considered when designing an overarching duty?

b. How would such a duty work with existing structures for engagement?

Community Councils

40. In our manifesto we committed to looking at ways in which community councils could be made more relevant.⁴ We have established a short life working group, comprising a range of people with hands-on knowledge of the community council sector. The short life working group will consider and recommend how best to build the resilience and capacity of community councils, in order to strengthen their role and their relevance as voices of communities. The short life working group will report later in the summer.⁵

³ E.g. duties on: local authorities to consult with ‘such community bodies and other bodies or persons as is appropriate’ when planning the provision of public services under the provisions on Community Planning in the Local Government (Scotland) Act 2003; local authority and registered social landlords to prepare a strategy on promoting the participation of tenants on the formulation of proposals in relation to the management of housing accommodation and the provision of related services, so far as such proposals are likely to affect such tenants, under the Housing (Scotland) Act 2001; NHS boards to ensure those that use or may use services are involved in and consulted on the planning and development of services under the National Health Service Reform (Scotland) Act 2004.

⁴ Community Councils were created under Part IV of the Local Government (Scotland) Act 1973

⁵ For more information on the short life working group, please see

<http://www.scotland.gov.uk/Topics/Government/local-government/CommunityCouncils/CCShortLifeWorkingGroup>

41. There are good examples of community councils who, by agreement with the local authority, undertake a wide range of roles and activities for the benefit of their community. We would like to use this consultation to explore where community councils can play a role in strengthening the participation of communities in the design and delivery of services.

Q6. What role, if any, can community councils play in helping to ensure communities are involved in the design and delivery of public services?

Q7. What role, if any, can community councils play in delivering public services?

Q8. What changes, if any, to existing community council legislation can be made to help enable community councils maximise their positive role in communities?

Third Sector

42. The third sector can also play an important role in contributing to Community Planning and delivery of services in a local area. The third sector often works closely with communities, local authorities and other Community Planning partners and is often well placed to understand their needs and aspirations. We would like to hear how you feel the third sector can help promote effective community engagement in the Community Planning process.

Q9. How can the third sector work with Community Planning partners and communities to ensure the participation of communities in the Community Planning process?

Quality and accountability for participation

43. It is important that the public sector is accountable for how it engages with communities in order to ensure consistent standards of good practice across Scotland. We need to consider how public sector actions in community participation can be effectively understood, monitored, evaluated and reported upon. We would welcome your thoughts on the ideas set out below.

National Standards

44. The National Standards for Community Engagement⁶ ('the Standards') were launched in May 2005 and have been widely adopted in Community Planning Partnerships and in other areas of the public sector.

⁶ See <http://www.scdc.org.uk/what/national-standards/>

45. The Standards set out best practice principles for the way that government agencies, councils, health boards, police and other public sector authorities engage with communities. However, the Standards are not compulsory and we would welcome your view on whether introducing a duty on the public sector to follow the Standards would help improve practice across Scotland.

Q10. Should there be a duty on the public sector to follow the National Standards for Community Engagement?

Community engagement plans

46. We heard from a number of local authorities that have developed interesting community engagement plans. One way to make sure communities are informed of and understand the public sector's methods of engagement would be to ask all public sector authorities to publish and communicate their community engagement plans.

47. These plans could set out the ways in which a public sector engages with the community and how it decides which method of engagement to use. We would be interested to hear your thoughts on this proposal and on what would be contained in such plans.

Q11. Should there be a duty on the public sector to publish and communicate a community engagement plan?

If yes –

a. What information would be included in a community engagement plan?

Auditing

48. Participation is currently one of the criteria that Audit Scotland considers during its audit of best value and Community Planning. It has been suggested that Audit Scotland could make community engagement and participation a more significant part of its audit.

Q12. Should community participation be made a more significant part of the audit of best value and Community Planning?

Named Officer

49. Some people suggested it would be helpful to have one person in each public sector authority with overall responsibility for community participation. Each public sector authority could have a named officer responsible for overseeing community participation. The named officer could also act as the primary contact point for the community.

Q13. Should each public sector authority have a named accountable officer, responsible for community participation and acting as a primary point of contact for communities?

Community-led design and delivery

50. Encouraging communities to participate in decisions on how services are delivered by public service providers is an essential part of our plans for public service reform. However, community empowerment can also mean communities being able to take their own action and make their own decisions on how best their needs can be met.

Tenants' right to manage

51. The tenant participation provisions of the Housing (Scotland) Act 2001 ('the 2001 Act') are an example of how legislation can be used to promote successful engagement in the design and delivery of services. In many places, registered tenants organisations engage with local authorities and registered social landlords (RSLs) to share information and ideas and work together to improve the standard of housing services in their areas. However, this participation is patchy with some landlords being more effective than others at developing ways of involving tenants in the decisions that affect them.

52. We want all landlords to offer their tenants opportunities to participate in ways that suit the tenants. With that in mind, we have included in the first ever Scottish Social Housing Charter an outcome on tenant participation, which covers how social landlords comply with their tenant participation duties under the 2001 Act, for example through gathering and taking account of the views and priorities of their tenants, shaping their services to reflect these views, and helping tenants and other customers to become involved.

53. The new independent Scottish Housing Regulator will be monitoring, assessing and reporting on how well social landlords are achieving all of the Charter's standards and outcomes. We will be paying particular attention to the Regulator's assessment of landlords' achievement of the participation outcome and looking for evidence that all landlords are now offering genuine and suitable opportunities for involvement.

54. The 2001 Act also sets out arrangements for a Tenant Management Co-operative to enter into an agreement with a local authority or a registered social landlord to manage the landlord's houses. Although no tenants have taken up this right to manage in the last decade, if exercised, it would allow tenants to take decisions about the management of their houses.

55. We are keen to explore why the right to manage hasn't been taken up and whether tenant and community groups are interested in making use of the powers. We would be interested to hear your thoughts on this.

Q14. Can the Scottish Government do more to promote the use of the existing tenant management rights in sections 55 and 56 of the Housing (Scotland) 2001 Act?

Q15. Should the current provisions be amended to make it easier for tenants and community groups to manage housing services in their area?

Community service delivery

56. Enabling community organisations to deliver public services on behalf of the public sector can help improve the efficiency of services and empower communities to design services around their own needs and aspirations. We would be keen to hear your thoughts on ways we can make it easier for community organisations to get involved in designing and delivering public services.

57. We have also heard suggestions that a community right to challenge should be introduced (similar to the provisions under the Localism Act 2011 that apply in England and Wales), where communities can challenge a public sector authority if they feel an area of public service delivery is not being run efficiently or does not genuinely meet their needs. If following investigation, the public sector authority agrees with the challenge, they will begin the search for a new provider. The community could at this stage bid to take on the contract themselves.

Q16. Can current processes be improved to give community groups better access to public service delivery contracts?

Q17. Should communities have the right to challenge service provision where they feel the service is not being run efficiently and that it does not meet their needs?

Community directed spending – participatory budgeting

58. Involving communities in making decisions on local budgets can help build community capacity. It can also help the public sector identify the needs and priorities in an area and target budgets more effectively.

59. Community empowerment can be promoted when communities have a degree of economic independence. Communities could, in addition to being involved in the budgetary decision making process, be directly responsible for an area or areas of spending in their community. Community organisations could be given a right to request responsibility for a defined amount of spending in one or more specific areas where Community Planning partners have powers and duties.

Q18. Should communities have a greater role in deciding how budgets are spent in their areas?

Q19. Should communities be able to request the right to manage certain areas of spending within their local area?

If yes –

- a. What areas of spending could a community be responsible for?
- b. Who, or what body, within a community should be responsible for making decisions on how the budget is spent?
- c. How can we ensure that decisions on how the budget is spent are made in a fair way and consider the views of everyone within the community?

Definitions – Part 1

Q20. Please use this space to give us your thoughts on any definitions that may be used for the ideas in Part 1. Please also give us examples of any definitions that you feel have worked well in practice.

PART 2: UNLOCKING ENTERPRISING COMMUNITY DEVELOPMENT

Community right to buy

60. We have a long history in Scotland of work that has supported asset ownership and development. This includes the community right to buy legislation which has enabled rural communities to form 180 properly constituted community bodies and make 143 applications to register a community interest in land. This gives communities a pre-emptive right to buy the land when it comes up for sale and this applies regardless of whether the property is in public or private sector ownership⁷.

61. In our manifesto we promised to review how the land reform legislation, which contains the community right to buy, has worked to date and bring forward proposals to make legislation easier and faster to use. This will be taken forward through the Land Reform Review Group which will be appointed in 2012.

62. During our discussions on the Bill, people have asked us to look at whether the community right to buy should be extended to urban communities. We will continue to consider this option as we develop the Bill and as part of the review of land reform legislation. We would like to hear from you on whether an 'urban community right to buy' should be introduced and how you think it would work alongside the existing right to buy for rural communities.

Q21. Would you support a community right to buy for urban communities?

If yes –

- a. Should an urban community right to buy work in the same way as the existing community right to buy (as set out in Part II of the Land Reform (Scotland) Act 2003)?
- b. How should an 'urban community' be defined?
- c. How would an urban and rural community right to buy work alongside each other?

Community asset transfer

63. In these challenging times there is a need to ensure we achieve the maximum benefit from the public sector estate in Scotland. To do this we need to ensure the legislative framework promotes a best value approach to asset management. Such an approach should consider ways in which unused and underused assets, that the public sector own on behalf of communities, could be used to achieve better outcomes in the hands of communities themselves. We know of many examples where local government and the wider public sector are already taking positive and proactive steps in this area.

⁷ See Part II of the Land Reform (Scotland) Act 2003

64. In many cases the public sector will be willing to transfer assets to community bodies at less than the market value rate in order to achieve a better social, economic and community focussed outcome. We have heard, from both the public and community sectors, a view that the current accounting and legal rules around such transfers might be a barrier. It is evident that we need to be clearer on the how these rules work and why they are in place. We have attached an Annex to this consultation paper that explains what the relevant rules and practices are, why they are in place, and the restrictions the Scottish Government and Local Authorities have to operate under.

65. However, not all transfers of assets to communities need to be at a discount. Although discounted transfers can help certain communities become more sustainable and build capacity, our long-term aim is to have sustainable communities that are able to pay full value for the assets they require. With the growing levels of community benefit achievable from the renewable energy sector and a growth in social enterprise, increasing numbers of communities are already at this stage.

66. We have looked at many examples of good practice and will continue to support community asset transfer through a range of national policies, for example our continued funding of the Community Ownership Support Service.⁸ However, we continue to hear of cases across Scotland where community asset transfer hasn't been achieved, the process has not been clear or has taken too long.

67. Both the public sector and communities could benefit from having clear and realistic processes to manage community asset transfer. One idea we have heard is to give communities a right to request the public sector transfer an unused or underused asset, where the community can show it will use the asset to greater benefit.

68. We appreciate this is a complex issue for both communities and those public sector authorities who hold assets. Promoting community asset transfer was a significant part of our manifesto commitment on the Bill and we want to make sure we get our response to this issue right. That's why we have set out a number of questions on this proposal.

Q22. The public sector owns assets on behalf of the people of Scotland. Under what circumstances would you consider it appropriate to transfer unused or underused public sector assets to individual communities?

- a. What information should a community body be required to provide during the asset transfer process?
- b. What information should a public sector authority be required to provide during the asset transfer process?
- c. What, if any, conditions should be placed on a public sector authority when an asset is transferred from the public sector to a community?
- d. What, if any, conditions should be placed on a community group when an asset is transferred from a public sector authority to a community?

Q23. Should communities have a power to request the public sector transfer certain unused or underused assets?

⁸See <http://www.dtascommunityownership.org.uk/>

69. It has also been suggested that where a community has leased an asset and invested significantly in that asset, the community should have a right to buy. An example was given of a community group having fully funded the building of a new community centre, but they did not own the centre as the local authority still had title to the underlying land.

Q24. Should communities have a right to buy an asset if they have managed or leased it for a certain period of time?

If yes –

- a. What, if any, conditions should be met before a community is allowed to buy an asset in these circumstances?

Common good

70. There is growing interest across Scotland on the status of common good assets and calls for there to be more information and transparency on how these assets are managed⁹. Communities are also increasingly interested in exercising some influence on how funds from common good assets are spent and even in taking responsibility for the income from those assets or taking ownership of the assets.

71. We have also heard that current requirements can get in the way of local authorities efforts to help communities use or take over common good assets. We will be considering the potential for this Bill to clarify the status of common good assets and if communities can be given the right to have a say in how these assets are managed.

Q25. Do the current rules surrounding common good assets act as a barrier to their effective use by either local authorities or communities?

Q26. Should common good assets continue to be looked after by local authorities?

If yes –

- a. What should a local authority's duties towards common good assets be and should these assets continue to be accounted for separately from the rest of the local authority's estate?
- b. Should communities have a right to decide, or be consulted upon, how common good assets are used or how the income from common good assets is spent?

If no –

- c. Who should be responsible for common good assets and how should they be managed?

⁹ The 'common good' are generally assets that were held by the former burghs of Scotland for 'the common good'. Under successive local government reforms, common good assets are now looked after by the local authority. See also *Magistrates of Banff v Ruthin Castle Ltd.* 1944 SC 36.

Asset management

72. We have heard that it is important for more and better information on existing assets to be made available to people. Finding out who owns a particular piece of land or building in an area can be difficult. Proving title can be even more challenging.

73. We have included provisions in the current Land Registration etc. (Scotland) Bill that, once passed, will lead to the eventual completion of the Land Register of Scotland.¹⁰ This means it should, in future, be easier for communities to find out who owns property in their area by conducting a search on the Land Register. This applies regardless of whether the property is owned by the public, private or third sector.

74. The public sector can often be a major asset owner within a community and having asset management plans for an area can enable the delivery of improved outcomes for communities. The Scottish Futures Trust is working with the public sector at a national and local level to promote collaborative, outcomes based approaches to public sector asset management within local areas.¹¹

75. One proposal we are considering is to ask public sector authorities to publish their asset registers and asset management plans. This would give people a better understanding of the public sector assets in their area.

Q27. Should all public sector authorities be required to make their asset registers available to the public?

If yes -

a. What information should the asset register contain?

Q28. Should all public sector authorities be required to make their asset management plans available to the public?

If yes -

a. What information should the asset management plan contain?

¹⁰ <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/44469.aspx>

¹¹ *Improving Asset Management Across the Scottish Public Sector: The Local Civil Estate*, see http://www.scottishfuturestrust.org.uk/files/publications/Asset_Management_-_The_Local_Civil_Estate_-_September_2011.pdf and *Improving Asset Management Across the Scottish Public Sector: The Scottish Government Civil Estate*, <http://www.scottishfuturestrust.org.uk/publications/asset-management-the-scottish-government-civil-estate/>

76. Public sector authorities could also nominate an officer who would be responsible for co-ordinating engagement with communities and providing information on what assets are owned by the public sector authority and what their asset management plans and transfer procedures are.

Q29. Should each public sector authority having an officer to co-ordinate engagement and strategy on community asset transfer and management?

Q30. Would you recommend any other way of enabling a community to access information on public sector assets?

Allotments

77. Providing communities with space to grow fruit and vegetables or establish community gardens can lead to better health, environmental and social outcomes. It can also be a tool to building community capacity. Current allotment legislation dates back to 1892 and although it contains a well defined set of responsibilities and land tenure lease agreements, the language is outdated and there are no set time frames for local authorities to meet their responsibilities.¹²

78. At present, policies and provision of allotments varies across Scotland. Although there are a number of independently owned allotments, the vast majority are owned by local authorities. According to a survey in 2010 there were 4465 local authority allotment plots across Scotland, but also a waiting list of 3019.¹³ In our manifesto we committed to increasing the land available for allotments in Scotland by using unused and under-used public sector land. Our National Food and Drink Policy also seeks to ensure that allotments and 'grow-your-own' projects are strategically supported.

79. In 2009 we convened the Grow Your Own Working Group to consider how allotments and 'grow your own' projects could be supported. One of the Group's recommendations was to amend the Allotments (Scotland) Act 1892 to provide for a specified timescale for allotment provision and a specified number of allotments per head of population.¹⁴

¹² Allotments (Scotland) Act 1892

¹³ Survey of allotment waiting lists of principal local authorities in Scotland (2010) Margaret Campbell for Transition Town West Kirkby - note these figures are for Council allotments where there is information about waiting lists. The Freedom of Information questions are (1) how many allotment sites are in XX for which XX Council has access to waiting list data? (2) what is the total number of plots on these sites? (3) what is the total number of people on waiting lists for these?

¹⁴ For more information on the Grow Your Own Working Group and for a copy of their Report, see <http://www.scotland.gov.uk/Topics/Business-Industry/Food-Industry/own>

80. We would welcome your views on what, if any, changes should be made to existing legislation to better support communities taking forward grow-your-own projects.

Q31. What, if any, changes should be made to existing legislation on allotments?

Q32. Are there any other measures that could be included in legislation to support communities taking forward grow-your-own projects?

Definitions– Part 2

Q33. Please use this space to give us your thoughts on any definitions that may be used for the ideas in Part 2. Please also give us examples of any definitions that you feel have worked well in practice.

Part 3: RENEWING OUR COMMUNITIES

81. Properties that are empty over a long period can blight areas and lead to increased social costs for local authorities. We are keen to consider ways we can encourage owners to bring empty and unused properties back into use.

Leases and temporary uses

82. Leases and temporary use agreements can all be used to help bring unused assets back into use or to maximise the use of underused assets.

Maximising use of public sector assets

83. We have heard suggestions that communities should have a right to use unused or underused public sector assets. Some public sector assets, such as transport vehicles, could be used by communities outwith the normal use.

Q34. Should communities have a right to use or manage unused and underused public sector assets?

If yes –

- a. In what circumstances should a community be able to use or manage unused or underused public sector assets?
- b. What, if any, conditions should be placed on a community's right to use or manage public sector assets?
- c. What types of asset should be included?

Encouraging temporary use agreements

84. Temporary use agreements can allow communities to make use of 'hope' land or property, i.e. land that is not currently being used but is being held by an owner who plans to develop or sell the asset in the future.

85. We have talked to organisations that help to facilitate such agreements between communities and land owners. Often owners are happy to allow communities to use their land on a temporary basis. We are keen to find ways to work with land owners to make it easier for them to enter into such agreements with communities.

86. One suggestion has been to consider whether community use – such as for recreational purposes or as growing spaces – could be included as a class of permitted development. It has also been suggested that meanwhile or temporary community uses should not be considered as material planning considerations for future planning proposals. This may help to protect the land owner's future plans for the land and encourage the use of such agreements.

87. Depending on the responses to this section, we will consider whether we can meet this aim through changes to planning policy or changes to legislation.

- Q35.** Should a temporary community use of land be made a class of permitted development?
- Q36.** Should measures be introduced to ensure temporary community uses are not taken into account in decisions on future planning proposals?
- Q37.** Are there any other changes that could be made to make it easier for landlords and communities to enter into meanwhile or temporary use agreements?

Dangerous and defective buildings

88. Often property that has been vacant and unused for a long period of time can fall into disrepair and even become dangerous. Under current legislation a local authority can require an owner to undertake work to fix dangerous or defective buildings.¹⁵ If the owner fails to carry out the work then the local authority can do the work themselves and recover the cost from the owner. However, local authorities have had difficulties recovering these costs.

89. We will be considering ways to improve a local authority's powers to recover these costs. This should hopefully allow local authorities to undertake more work, at an earlier stage, to tackle dangerous and defective buildings and lead to more of these properties being brought back into use. Communities are often most affected by properties that are falling into disrepair. We will also be considering giving communities a right to request that the local authority take action to tackle a dangerous or defective building.

- Q38.** What changes should be made to local authorities' powers to recover costs for work they have carried out in relation to dangerous and defective buildings under the Building (Scotland) Act 2003?
- Q39.** Should a process be put in place to allow communities to request a local authority exercise their existing powers in relation to dangerous and defective buildings under the Building (Scotland) Act 2003?

Compulsory purchase

90. Where attempts to work with owners to bring their properties back into use fail, or where owners cannot be identified, it may be necessary to look at ways to bring in new owners. Local authorities have existing powers of compulsory purchase that can be used in certain circumstances. In our guidance on the use of compulsory purchase orders¹⁶, we highlight the possibility of local authorities using these powers to bring vacant and unused property back into use and the possibility of transferring property to a community group once it has been purchased.

¹⁵ See Part IV of the Building (Scotland) Act 2003

¹⁶ Planning Circular 6/2011 <http://www.scotland.gov.uk/Publications/2011/10/21133522/0>

91. However, it would appear these powers have not often been used for this purpose and we are currently considering if more can be done to increase a community's ability to influence the use of compulsory purchase in their area. It has been suggested that communities should have a right to request a local authority use compulsory purchase powers on behalf of the community, for the benefit and regeneration of that community, where an empty property meets specific criteria. The community could also be given a right to request that they take over the property.

Q40. Should communities have a right to request a local authority use a compulsory purchase order on their behalf?

If yes –

a. What issues (in addition to the existing legal requirements) would have to be considered when developing such a right?

Q41. Should communities have a right to request they take over property that has been compulsory purchased by the local authority?

If yes –

a. What conditions, if any, should apply to such a transfer?

Power to enforce sale or lease of empty property

92. A number of local authorities have also indicated they would welcome further powers to deal with the most problematic empty homes.¹⁷ Such powers could be used where the owner will not work with the local authority and either the property is causing problems for neighbours because it is in poor condition, because it is attracting antisocial behaviour or because there is a strong case for bringing it back into use due to high demand for housing in the area. In such cases local authorities could be given powers to either enforce the sale of the empty home, or be given rights to take over the management of the home so that it could be renovated and let as affordable housing for a period of time.

93. In the case of an enforced sale, this may be similar to a Compulsory Purchase Order, but the local authority could be entitled to deduct any costs incurred in enforcing the sale from any sales proceeds, along with the costs for any improvements carried out to make the property habitable and any debt owed to the local authority by the owner. In the case of a compulsory lease, the local authority would be entitled to deduct its management costs and any costs of renovation works it had to fund from the rent paid by the tenant, but any remaining rent would be paid to the owner. The home would then be returned to the owner after the period of the lease (for example, under similar powers in England this is normally seven years).

94. Non-domestic property that has been empty and unused over a long period of time can also cause problems for neighbouring property owners and attract anti-social behaviour. It can also dampen local enterprise and growth. We are considering if it would be helpful for local authorities to have similar powers to enforce the sale or lease of long-term empty and unused non-domestic property.

¹⁷ Local Authorities already have a number of powers to help deal with poor quality housing, including under the Housing Scotland Act (2006).

Q42. Should local authorities be given additional powers to sell or lease long-term empty homes where it is in the public interest to do so?

If yes –

- a. In what circumstances should a local authority be able to enforce a sale and what minimum criteria would need to be met?
- b. In what circumstances should a local authority be able to apply for the right to lease an empty home?
- c. Should a local authority be required to apply to the courts for an order to sell or lease a home?

Q43. Should local authorities be given powers to sell or lease long-term empty and unused non-domestic property where it is in the public interest to do so?

If yes -

- a. In what circumstances should a local authority be able to enforce the sale of a long-term empty and unused non-domestic property and what minimum criteria would need to be met?
- b. In what circumstances could a local authority be able to apply for the right to lease and manage a long-term empty non-domestic property?
- c. Should a local authority be required to apply to the courts for an order to sell or lease a long-term empty non-domestic property?

95. Where properties have been empty for a long time, communities often have their own ideas and aspirations as to what the property could be used for. We will consider whether a local authority's power to enforce the sale or lease of a property should be linked to a right for the community to take over the property.

Q44. If a local authority enforces the sale of an empty property, should the local community have a 'first right' to buy or lease the property?

If yes -

- a. In what circumstances should a community have the right to buy or lease the property before others?

Definitions – Part 3

Q45. Please use this space to give us your thoughts on any definitions that may be used for the ideas in Part 3. Please also give us examples of any definitions that you feel have worked well in practice.

ASSESSING IMPACT

96. We believe that by empowering communities we will promote positive social, economic and environmental impacts. As we highlighted in the introduction, this consultation is also designed to give you the opportunity to share your views on the potential impacts of the ideas set out in this paper.

97. Please use these questions to highlight any potential impacts of the ideas and to discuss any broader equality, economic or environmental issues raised by any of the 3 sections or by the consultation paper as a whole.

Equality

Q46. Please tell us about any potential impacts, either positive or negative, you feel any of the ideas in this consultation may have on a particular group or groups of people?

Q47. Please also tell us what potential there may be within these ideas to advance equality of opportunity between different groups and to foster good relations between different groups?

Environmental

Q48. Please tell us about any potential impacts, either positive or negative, you feel any of the ideas in this consultation may have on the environment?

Business and Regulatory

Q49. Please tell us about any potential economic or regulatory impacts, either positive or negative, you feel any of the ideas in this consultation may have?

ANNEX A: THE DISPOSAL OF PUBLIC SECTOR ASSETS.

Central Government

The Scottish Public Finance Manual (SPFM) governs the disposal of public sector assets by Scottish Government (SG) departments, SG executive agencies, non-ministerial executive agencies and SG sponsored bodies.¹⁸

An explanation of the requirements for these bodies when disposing of public sector assets at less than market value is reproduced from the SPFM below:

“Assets sold on the open market should normally be disposed of at market value as defined in the Royal Institution of Chartered Surveyors Appraisal and Valuation Standards, but reflecting special value and the effect of any voluntary conditions imposed by the seller. The extent to which assets are disposed of at less than market value, whichever definition is being used, would constitute a gift and may have State Aid implications.

Disposals of assets at less than market value must be approved in advance by Ministers, taking account of advice from the SG's Finance Directorate, SG's State Aid Unit and, where appropriate, the SG's Property Advice Division. Any loss on disposal (i.e. the extent to which the proceeds from a disposal were less than the net book value of the asset) by a body within the SG's resource budgeting boundary would score against that body's resource budget and result in a corresponding reduction in its spending power.”¹⁹

The reasons for these requirements are:

- The SG is obliged to operate within EU competition law, therefore, any transaction which could be construed as state support for a domestic body or company should be checked to ensure that it is compliant.
- HM Treasury set out the accounting framework for UK Central Government in the Financial Reporting Manual which is based on the principals underlying the International Financial Reporting Standards (IFRS). Where an asset is sold at less than the value disclosed in the accounts then the loss is charged against the Statement of Comprehensive Net Expenditure i.e. a cost to the selling department. These principals apply to all Central Government bodies, the NHS, Agencies and NDPB's.
- Accounting treatment aside, it should be borne in mind that publically held assets are being disposed of. Accordingly a full business case addressing the costs and benefits of the disposal should be provided to support the proposal.

¹⁸ <http://www.scotland.gov.uk/Topics/Government/Finance/spfm/>

¹⁹ Para 19, Scottish Public Finance Manual

Local Government

The requirements on local government for disposing of public sector assets at less than market value are different. The disposal of local authority assets (excluding housing land) is regulated by section 74 of the Local Government (Scotland) Act 1973 ('the 1973 Act'). This requires local authorities to sell land for the best consideration that can reasonably be obtained ('best consideration').

In determining the best consideration, the local authority must obtain a valuation report from a suitably qualified valuer. The valuer should take into account the requirements of the latest edition of the Royal Institution of Chartered Surveyors Appraisal and Valuation Standards.²⁰

However, following amendments to section 74 of the 1973 Act by section 11 of the Local Government in Scotland Act 2003, regulations were brought forward that set out the circumstances in which a local authority could dispose of land for less than best consideration.

Under the Disposal of Land by Local Authorities (Scotland) Regulations 2010 a local authority can dispose of an asset for less than best consideration where the local authority consider the disposal is reasonable and the disposal is likely to promote or improve the economic development or regeneration, health, social well-being or environmental well-being of the whole or part of the local authority area.²¹

The reasons for these requirements are:

- Local Government is also obliged to operate within EU competition law therefore any transaction which could be construed as state support for a domestic body or company should be checked to ensure that it is compliant.
- The accounting framework for UK Local Government is set out in the Code of Practice on Local Authority Accounting in the UK, also based on the IFRS. Where an asset is sold at less than the value disclosed in the accounts then the loss is charged against the Comprehensive Income and Expenditure Statement i.e. a cost to the local authority. A statutory intervention to the accounts permits this cost to be set aside and the actual capital receipt made available to fund further capital investment. Any reduction in the capital receipt is a cost to the local authority as it results in a reduction in the value of the capital receipt it would otherwise have achieved and therefore its ability to provide further capital investment in the community.
- A local authority may dispose of an asset at less than best consideration but, before deciding in favour of such disposal, must appraise and compare the costs, benefits and drawbacks of the proposal. This will also include the loss of the capital receipt and the capital investment opportunity forgone.

²⁰ See para 2.1 of the *Statutory Guidance on the duty to appoint a suitably qualified valuer* and para 6 of *Disposal of land by Local Authorities - Non Statutory Guidance*, both at <http://www.scotland.gov.uk/Publications/2010/07/26124543/0>

²¹ Regulation 4 of the Disposal of Land by Local Authorities (Scotland) Regulations 2010



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The Scottish Government
St Andrew's House
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EH1 3DG

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