



SCOTTISH LAND COMMISSION  
COIMISEAN FEARAINN NA H-ALBA

## **GUIDANCE ON ENGAGING COMMUNITIES IN DECISIONS RELATING TO LAND**

### **RECOMMENDATIONS TO THE SCOTTISH GOVERNMENT**

#### **Introduction**

1. The Scottish Land Commission came into being on 1<sup>st</sup> April 2017 in accordance with provisions in the Land Reform (Scotland) Act 2016, and with the purpose of providing the support services necessary to enable the Land Commissioners and Tenant Farming Commissioner to perform their respective functions.
2. Positive engagement between those with control over land and communities is recognised as supporting the Scottish Government's ambition for inclusive growth, defined as the mutually supportive pillars of competitiveness and tackling inequality. The purpose of the Guidance is to encourage land owners and land managers to develop co-operative and positive working relationships with local communities. The aim is to support good working practices that can lead to mutually beneficial solutions to land-related problems and better local outcomes for economic, environmental, social or cultural issues.
3. We have reviewed the likely impact and effectiveness of the guidance on engaging communities in decisions relating to land (the "Guidance") as outlined in the consultation in relation to what we understand to be its intended outcomes, and we offer the following recommendations to Ministers.

#### **a) Intended Outcomes**

4. In considering the likely impact and effectiveness of the Guidance we have reviewed its expected outcomes, as outlined in the consultation document and other Ministerial statements. The consultation document explains that the Guidance responds to seven of the Scottish Government's National Outcomes and relates to land-related policies, such as the Land Use Strategy and the Land Rights and Responsibilities Statement.
5. In addition to these, we understand that the Scottish Government has four key themes in its approach to taking forward land reform:
  - Collaboration
  - Diversity

- Social justice and sustainable development (including human rights)
  - A breadth of coverage to include urban and rural land across Scotland
6. In terms of outcomes we interpret these four themes to imply that there will be:
- Higher levels of collaboration between all parties who are involved in the ownership, management and use of land.
  - Greater diversity of ownership, management and use of land, improving its productivity and building more resilient local communities.
  - Progressive realisation of economic, social and cultural human rights in relation to land.
  - More opportunities arising from land reform to empower urban communities and overcome urban development challenges.
7. We note that although the Guidance does refer to the seven related National Outcomes and one of the four themes of land reform (collaboration), it does not mention the Land Use Strategy or the Land Rights and Responsibilities Statement.
- *Recommendation 1: The Guidance might be strengthened by further reflecting and articulating how it relates to and supports the implementation of the Land Use Strategy, the Land Rights and Responsibilities Statement and the remaining themes of land reform. For example, the Guidance's focus on the benefits of community engagement to land owners and managers, as well as the communities themselves, could be directly integrated with Principle 4 of the Land Rights and Responsibilities Statement.*

## **b) Ease of Implementation**

8. In order for this Guidance to have the expected positive impact on land-related problems, it needs to be clear, unambiguous and readily usable by the target users. This is particularly important given the link between the Guidance and Part 5 of the Land Reform (Scotland) Act 2016, which provides communities with a right to buy land to further sustainable development.
9. The Guidance was introduced by the Land Reform (Scotland) Act 2016 which provides useful further detail. In its preparation, Ministers are required to have regard to the desirability of: (a) promoting respect for, and observance of, relevant human rights, (b) promoting respect for such internationally accepted principles and standards for responsible practices in relation to land as the Scottish Ministers consider to be relevant, (c) encouraging equal opportunities (within the meaning of Section L2 of Part 2 of schedule 5 of the Scotland Act 1998), (d) furthering the reduction of inequalities of outcome which result from socioeconomic disadvantage, and (e) furthering the achievement of sustainable development in relation to land (s.44(2)).
10. Furthermore, we note that in relation to human rights the Act highlights the International Covenant on Economic, Social and Cultural Rights and in relation to internationally accepted principles and standards the Act highlights the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the context of National Food Security issued by the Food and

Agriculture Organization of the United Nations and endorsed by the Committee on World Food Security on 11 May 2012.

11. The Guidance as drafted does not explicitly refer to any of the external elements as described by s.44(2) of the Act, such as relevant human rights or sustainable development in relation to land. Nor does it elaborate how the achievement of these broader goals of the Scottish Government and the implementation of the Guidance are related.

- *Recommendation 2: It might be helpful if the Guidance provided further elaboration as to how this external context (as described by s.44(2)) was taken into account. For example, these could be reflected in section (2) “why should I engage with communities?” and / or section (3) “best practice principles for fair engagement”.*

### **c) Developing cooperative and positive working relationships with local communities**

12. The Act requires that the Guidance include information about: (a) the types of land and types of decision in relation to which community engagement should be carried out, (b) the circumstances in which persons with control over land (for example, owners and occupiers) should carry out community engagement, and (c) the ways in which community engagement should be carried out (for example, by consulting or involving the community) (s.44(5)).

13. We are aware that there may be greater experience and documentation in Scotland of successful working relationships between land owners and managers and local communities in rural areas. There may also be greater experience of engagement with local residents in a particular geographical area, than other more dispersed “local communities”. We are not surprised therefore to note that such a focus on resident communities in rural areas is reflected in the examples provided by the Guidance.

- *Recommendation 3: The Guidance might be strengthened by ensuring it is appropriate to and meets the very different challenges of engaging with “local communities” in both rural and urban areas.*

14. We understand that users of this Guidance will rely significantly on sections (4) “when should I engage?” and (5) “how should I engage?” when considering its implementation. We also expect these sections to be a crucial tool for Ministers in assessing the extent to which regard has been had to the Guidance, in determining whether a community application to buy land meets the sustainable development conditions.

15. We note that at only one page each, sections (4) and (5) may be overly concise and not provide adequate detail to either land owners and managers, or communities, as to how the Guidance is expected to be implemented. The draft leaves key terms undefined as well as oversimplifying what can be very complex processes; which risks creating an imbalance of expectations between stakeholders as to how community engagement is expected to take place. For

example, local communities may expect to meet with land owners and managers to discuss land-related decisions which may have a “significant” impact on them, as outlined by the “informal engagement” stage of section (4), rather than simply being informed of the expected impact by email or a poster, as the Guidance currently suggests.

- *Recommendation 4: Providing further detail within sections (4) and (5) might ensure the Guidance is clear, unambiguous and readily usable by the target users. Existing basic principles for community engagement could be incorporated into the Guidance, such as the National Standards for Community Engagement (in Scotland), or international human rights instruments could be drawn upon, such as the UN Guiding Principles on Business and Human Rights.*
- *Recommendation 5: Further consideration could be given as to the extent to which the Guidance as implemented will be able to be concretely assessed by Ministers as part of determining whether a community application to buy land meets the sustainable development conditions.*

**Final Version**  
**Scottish Land Commission**  
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