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23 January 2014

Dear Sir / Madam,

## **Consultation on the Community Empowerment (Scotland) Bill**

Thank you for the opportunity to comment on the provisions of this Bill.

### **The Institute for Archaeologists**

The Institute for Archaeologists (IfA) is a professional body for the study and care of the historic environment. It promotes best practice in archaeology and provides a self-regulatory quality assurance framework for the sector and those it serves.

IfA has over 3,000 members and more than 70 registered practices across the United Kingdom. Its members work in all branches of the discipline: heritage management, planning advice, excavation, finds and environmental study, buildings recording, underwater and aerial archaeology, museums, conservation, survey, research and development, teaching and liaison with the community, industry and the commercial and financial sectors.

IfA's Scottish Group has over 200 members practising in the public, private and voluntary sector in Scotland. Furthermore, IfA is a member of the Built Environment Forum Scotland (BEFS), a network organisation that brings together non-governmental organisations and professional bodies that work with Scotland's built environment.

## **The Community Empowerment (Scotland) Bill**

### **General**

The Institute responded to Scottish Government's consultation on the Proposed Community Empowerment and Renewal Bill by letter dated 25 September 2012 and continues to welcome proposals to engage and empower communities. IfA's primary concern in responding to this consultation is the management and protection of the historic environment and how this can be promoted through the Bill. Any provisions should not undermine the crucial role of local authorities in managing and protecting the historic environment. Historic Environment Records (HERs) or Scheduled Monument Records (SMRs) supported by expert staff are key components in this regard and need to be available to communities.

### **Specific Questions**

**Q1 Do you agree with the definition of community body at section 1? Do you have any changes to suggest?**

1.1 Yes, save for the following and on the basis that the definition in section 1(5) is wide enough to include companies representing communities of interest (whose interest is often the historic environment or aspects of it) as well as communities of place.

1.2 Although public benefit is to be considered by the relevant authority when deciding whether to agree to an asset transfer request (see section 5(3)), there appears to be no safeguard to ensure that, following such a transfer, the community body continues to act in the public interest. This is particularly relevant if the asset is a historic asset since competing interests (for instance, the need to raise finance through sale or commercial use) or lack of knowledge and expertise may result in a historic asset being managed in a way which detracts from its significance. It would therefore be helpful if the definition in section 1(5) expressly included a requirement to act in the public interest and if, at least where historic assets are concerned, subsequent transfer by the community body were restricted to cases where the transferee was subject to similar requirements. This should apply in all cases, not just on winding up, which is dealt with in section 1(5)(f) and 1(6).

1.3 Furthermore, relevant authorities such the Scottish Ministers and local authorities not only have duties to act in the public interest, but also in furtherance of those duties have, or have access to, expertise in relation to the historic environment. It may not be appropriate to require all communities bodies to have, or have access to, expertise in relation to the historic environment, but, where historic assets are transferred, the terms on which the assets are to be transferred (see section 6(2)(a)) should include a requirement for the transferee at all times to have, or have access to appropriate expertise (as, for instance, provided by accredited organisations under IfA's Registered Organisations scheme: see <http://www.archaeologists.net/regulation/organisations>).

**Q2 Do you agree with the list of public bodies to be covered in this Part at Schedule 1 (Annex C page 21)? What other bodies should be added, or removed?**

2.1 Yes. However, bodies such as Historic Scotland (and, no doubt, its successor upon merger with the Royal Commission) are charged with the care of numerous historic assets because of their expertise and remit in the public interest. This would no doubt be fully taken into account were any application made to transfer such assets, but it would be prudent to have appropriate safeguards for the historic environment in legislation.

**Q3 What do you think would be reasonable timescales for dealing with requests, making an offer and concluding a contract, in relation to sections 5(6), 6(2)(c) and 6(6)?**

3.1 There needs to be sufficient time adequately to assess material considerations including the heritage significance of the land or buildings.

**Q4 Do you agree that community bodies should have a right of appeal to Ministers as set out in section 8? Are there other appeal or review procedures that you feel would be more appropriate?**

4.1 Yes, provided that the appeal mechanism ensures that the heritage significance of the land or buildings is fully taken into account in the determination of the appeal (see also the answer to question 6 below).

**Q5 What form of appeal or review processes would be appropriate in relation to decisions made by local authorities and by Scottish Ministers?**

5.1 No comment.

**Q6 Do you have any other comments about the wording of the draft provisions?**

6.1 Notwithstanding the reference to '*environmental wellbeing*' in section 5(3)(c)(v) (which is often, however, interpreted to refer solely to the natural environment) and the catch-all in section 5(3)(d), the considerations in section 5(3) should include 'the management and protection of the historic environment' for the reasons set out above.

**Q7 What costs and savings do you think would come about as a result of these draft provisions? Please be as specific as you can.**

7.1 No comment.

**Q8 Do you agree with the definition of community body at section 11?**

8.1 Yes, provided that such bodies would work in partnership with other stakeholders and experts.

**Q9 Do you agree with the list of public bodies to be covered in this Part at Schedule 2 (Annex C page 21)? What other bodies should be added, or removed?**

9.1 Yes. However, with regard to the management and protection of the historic environment, it should be noted that local authority archaeological and historic environment services play a crucial role on account of their expertise and their ability to engage with issues at a local, regional and national level.

9.2 Engagement with communities is already a significant part of the work of such services and is very much to be encouraged, but it should not in any way undermine the requirement for services to be carried out:

- to accepted standards (see, in particular, the *IfA Standards and guidance for archaeological advice by historic environment services*: <http://www.archaeologists.net/sites/default/files/node-files/IfASG-Archaeological-Advice-and-glossary.pdf>)
- by an organisation registered under the IfA's Registered Organisations scheme (see <http://www.archaeologists.net/regulation/organisations>) and/or by accredited practitioners with appropriate expertise.

**Q10 Do you agree with the description at section 13 of what a participation request by a community body to a public service authority should cover? Is there anything you would add or remove?**

10.1 Yes. In the case of activities affecting the historic environment, the details required should include details of accreditation (for instance, as a member of IfA or one of its Registered Organisations).

**Q11 Do you agree with the criteria at section 15 that a public service authority should use when deciding whether to agree or refuse a participation request? Are there any other criteria that should be considered?**

11.1 Notwithstanding the reference to '*environmental wellbeing*' in section 15(3)(c)(v) (which is, however, often interpreted to refer solely to the natural environment) and the catch-all in section 15(3)(e), the considerations in section 15(3) should include 'the management and protection of the historic environment' for the reasons set out above.

**Q12 Do you have any other comments about the wording of the draft provisions?**

12.1 No comment.

**Q13 What costs and savings do you think would come about as a result of these draft provisions? Please be as specific as you can.**

13.1 No comment.

**Q14 Do you think the draft provisions will meet our goal to increase transparency about the existence, use and disposal of common good assets and to increase community involvement in decisions taken about their identification, use and disposal? What other measures would help to achieve that?**

14.1 No comment, save that

- where historic assets are involved, local authorities should, prior to disposal or change of use, consult with those with appropriate knowledge and expertise relating to that historic asset, in addition to other consultees (see section 24)
- the guidance envisaged in section 25 should include guidance with regard to the management and protection of historic assets.

**Q15 Do you agree that the cost recovery powers in relation to dangerous and defective buildings should be improved as set out in the draft Bill?**

15.1 Yes.

**Q16 Do you agree that the same improvements should apply to sections 25, 26 and 27 of the Building (Scotland) Act 2003?**

16.1 Yes.

**Q17 The Scottish Government proposes to extend right to buy to communities in all parts of Scotland, where the Scottish Government is satisfied that it is in the public interest. Do you agree with this proposal, and are there any additional measures that would help our proposals for a streamlined community right to buy to apply across Scotland?**

17.1 Yes, provided that assessment of the public interest includes consideration of the heritage significance of land or buildings affected by a transfer and its implications for a proposed transfer of ownership. The definition of communities should include communities of interest.

**Q18 Do you think that Ministers should have the power to extend “registrable” land” to cover land that is currently not included as “registrable land”? What other land should also be considered as being “registrable”?**

18.1 No. This should be dealt with (if the need arises) through primary legislation.

**Q19 Do you think that there should be a compulsory power for communities to buy neglected or abandoned land in certain circumstances? What should these circumstances be?**

19.1 Yes, where this would be in the public interest (the assessment of which should include consideration of the heritage significance of the land and the effect of such a purchase on that significance).

**Q20 How do you think this should work in practice? How do you think that the terms “neglected” and “abandoned” should be defined?**

20.1 No comment.

**Q21 Do you think that the criteria to be met by a community body in section 38(1) of the Act are appropriate?**

21.1 Yes, provided that it is accepted that actions which fail properly to address the management and protection of the historic environment are not *‘compatible with furthering the achievement of sustainable development’*.

**Do you think that there should be additional criteria? Please set out what changes or additions should be made to the criteria.**

21.2 No, subject to the above proviso.

**Q22 Do you think that the information that is included in the Register of Community Interests in Land is appropriate? If not, what should that information include?**

22.1 No comment.

**Q23 How could the application form to register a community interest in land be altered to make it easier to complete (eg, should there be a word limit on the answers to particular questions)? Should the questions be more specifically directed to the requirements of sections 36(2) and 38(1) of the Act? Do you have any other suggestions?**

23.1 No comment.

**Q24 Do you agree that communities should be able to apply to register an interest in land in cases where land unexpectedly comes on the market and they have not considered using the community right to buy? If so, what changes should be made to section 39 to ensure that such communities can apply to register a community interest in land?**

24.1 No comment.

**Q24 Do you agree that communities should be able to apply to register an interest in land in cases where land unexpectedly comes on the market and they have not considered using the community right to buy? If so, what changes should be made to section 39 to ensure that such communities can apply to register a community interest in land? Do you think that there should be additional criteria? Please set out what changes or additions should be made to the criteria.**

24.1 No comment.

**Q25 Do you agree that the process to re-register a community interest should be a re-confirmation of a community interest in land?**

25.1 Yes.

**Q26 Do you think that the community body should be asked to show that its application is (1) still relevant, (2) has the support of its “community”, and that (3) granting it is in the public interest?**

26.1 Yes. Demonstration that granting the application is in the public interest is particularly important.

**Q27 What do you think should be the length of the statutory period for completing the right to buy, taking into account both the interests of the landowner and the community body? Please explain the reasons for your proposal.**

27.1 No comment.

**Q28 Do you think that some of the tasks within the right to buy (such as valuation, ballot etc) should be rearranged and the timescales for their completion changed in order to make the best use of the time available within the right to buy? Please set out what changes you think should be made and why.**

28.1 No comment.

**Q29 Do you agree that Scottish Ministers should organise the undertaking of a community body’s ballot and pay its costs? If you disagree, please provide your reasons.**

29.1 No comment.

**Q30 Should Scottish Ministers notify the ballot result to the landowner? Please explain your reasons.**

30.1 No comment.

**Q31 Do you think Ministers should develop a pro-forma for community bodies to set out their plans for the sustainable development of land and community? Please give reasons for your view.**

31.1 Yes. This could help to ensure that issues such as the management and protection of the historic environment are adequately considered when assessing whether the body's proposals are compatible with furthering the achievement of sustainable development. Where historic assets are concerned, bodies should be required to include details as to how such assets would be managed and protected including details of appropriate, accredited archaeological and other expertise to which the community body has access. (See, for instance, <http://www.archaeologists.net/regulation/organisations>.)

**Q32 Do you agree that community bodies should be able to define their "community" in a more flexible way by the use of either postcodes, settlement areas, localities of settlements, and electoral wards, or a mixture of these, as appropriate?**

32.1 Yes. See also under question 33.

**Q33 Are there any other ways that a "community" could be defined?**

33.1 Yes. 'Communities of interest' (as envisaged in paragraph 22 of the 2012 Consultation on the Proposed Community Empowerment and Renewal Bill) would allow intervention and ownership by bodies with an interest in the historic environment (or a specific aspect or aspects of it).

**Q34 Do you agree that other legal entities in addition to the company limited by guarantee should be able to apply to use the community right to buy provisions?**

34.1 Yes, provided there are sufficient safeguards to ensure that the historic environment was at all times properly managed and protected.

**Q35 Do you agree that SCIOs should be able to apply under the provisions?**

35.1 See under question 34.

**Q36 What other legal entities should be able to apply under the community right to buy provisions – and why?**

36.1 No comment.

**Q37 Do you agree that Ministers should only have to "approve" the changes to Articles of Association for community bodies that are actively seeking to use or are using the community right to buy?**

37.1 No. The Ministers should continue to monitor the constitution of community bodies which have purchased land (particularly where historic assets are involved) in order to ensure that they continue to act in the public interest.

**Q38 Do you think that the length of a registered interest in land should remain as 5 years or be changed? If it should be changed, how long should it be – and what are your reasons for making that change?**

38.1 No comment.

**Q39 Do you agree that the valuation procedure should include counter representations by the landowner and community body? If you disagree, please give your reasons for your decision.**

39.1 Yes.

**Q40 Do you think that there should be a provision to deter landowners from taking the land off the market after they have triggered the right to buy? Please explain your reasons.**

40.1 No comment.

**Q41 Do you think that there should there be greater flexibility in a community body's level of support for a right to buy in the ballot result than is currently permitted?**

41.1 No comment.

**Q42 Do you think that the ballot result should focus on a sufficient amount of support to justify the community support to proceed with the right to buy the land? If yes, please explain how secured community support should be measured.**

42.1 No comment.

**Q43 Do you agree that community bodies should be able to submit evidence to Ministers in support of their ballot result where they believe that their ballot has been affected by circumstances outwith their control?**

43.1 No comment.

**Q44 Do you think that Scottish Ministers should be able to ask community bodies for additional information relating to their right to buy "application" which Ministers would then take into account in considering their right to buy "application"? Please explain your reasons.**

44.1 No comment.

**Q45 Do you think that Ministers should be able to accept an application to register a community interest in land which is subject to an option agreement (on part or all of the land)?**

45.1 Yes.

**Q46 If there is an option agreement in place, do you think that the landowner should be able to transfer the land as an exempt transfer while there is a registered interest over that land? Please explain your answer.**

46.1 Yes. Otherwise, the pre-existing contractual rights of the holder of the option would be unfairly overridden.

**Q47 Do you think that the prohibition on the landowner from taking steps to market or transfer the land to another party should apply from the day after the day on which Ministers issue the prohibition letter rather than the day when the owner/heritable creditor receives the notice? Please explain your answer.**

47.1 No. Otherwise an owner / heritable creditor acting in good faith may be materially prejudiced.

**Q48 Do you agree that public holidays should be excluded from the statutory timescales to register a community interest in land and the right to buy?**

48.1 No comment.

**Q49 Do you agree that where a landowner makes an "exempt" transfer, this should be notified to Scottish Ministers? If you disagree, please provide reasons for your decision.**

49.1 Yes.

**Q50 Do you agree that community bodies and landowners should notify Scottish Ministers of any changes to their contact details (including any registered office)?**

50.1 Yes, but what would be the sanction for failure to notify?

**Q51 Do you think that Ministers should monitor the impact of the community right to buy?**

51.1 Yes. IfA is particularly concerned with related impacts upon the historic environment.

**How do you think that monitoring should be undertaken and what information should Ministers seek?**

51.2 With regard to the historic environment, such monitoring should be undertaken by those with appropriate expertise to assess impacts upon the historic environment. Ministers should seek information relating to historic assets (which includes both designated and undesignated assets).

**Should the monitoring process be a statutory requirement, including provisions for reporting?**

51.3 Yes.

**Q52 What are your views on our proposals for requiring a CPP to be established in each local authority area, and for amending the core statutory underpinning for community planning to place stronger emphasis on delivering better outcomes?**

52.1 IfA supports these proposals.

52.2 IfA supports greater engagement of communities in planning, generally, insofar as it affects the historic environment, and, in particular, in the town and country planning process (recognising that the historic environment is managed and protected for the public benefit). However, IfA does not advocate the vesting in local communities of planning powers to make development plans and grant consent, believing that such roles are best undertaken by elected Councils albeit with the active participation of the communities which they serve.

**Q53 What are your views on the core duties for CPPs set out above, and in particular the proposal that CPPs must develop and ensure delivery of a shared plan for outcomes (i.e., something similar to a Single Outcome Agreement) in the CPP area?**

53.1 No comment.

**Q54 Do the proposed duties of the CPP support effective community engagement and the involvement of the third and business sectors? What other changes may be required to make this more effective?**

54.1 No comment.

**Q55 How can we ensure that all relevant partners play a full role in community planning and the delivery of improved outcomes in each CPP area? Do the core duties set out above achieve that? What else might be required?**

55.1 No comment.

**Q56 What are the respective roles of local elected politicians, non-executive board members and officers in community planning and should this be clarified through the legislation?**

56.1 No comment.

**Q57 Should the duty on individual organisations apply to a defined list of public bodies – if**



**so, which ones? Or should we seek to take a more expansive approach which covers the public sector more generally?**

57.1 A more expansive approach would, where appropriate, include bodies representing the historic environment sector. If the duty is to apply to a defined list, this should include a body or bodies representing the historic environment sector.

**Q58 Local authorities are currently responsible for initiating, facilitating and maintaining community planning. How might the legislation best capture the community leadership role of Councils without the CPP being perceived as an extension of the local authority?**

58.1 No comment.

**Q59 How can the external scrutiny regime and the roles of organisations such as the Accounts Commission and Auditor General support the proposed changes? Does this require changes to their powers or functions?**

59.1 No comment.

**Q60 What other legislative changes are needed to strengthen community planning?**

60.1 No comment.

**Q61 Do you agree with the definition of an allotment site and allotment plot? How else would you suggest they be defined?**

61.1 No comment.

**Q62 In order to include all existing allotments in the new legislation they must fit within the size range. What is the minimum and maximum size of one allotment plot in your area/site?**

62.1 No comment.

**Q63 Do you agree with this duty to provide allotments? Are there any changes you would make? Do you agree with the level of the trigger point, ie that a local authority must make provision for allotments once the waiting list reaches 15 people?**

63.1 No comment.

**Q64 Do you prefer the target Option A, B or C and why? Are there any other target options you wish to be considered? Do you agree with the level of the targets?**

64.1 No comment.

**Q65 Do you agree with this list of local authority duties and powers? Would you make any changes to the above list?**

65.1 No comment.

**Q66 Do you think the areas regarding termination of allotment tenancies listed above should be set out in legislation or determined by the local authority at a local level?**

66.1 No comment.

**Q67 Are there any other areas you feel should apply to private allotments?**

67.1 No comment.

**Q68 Do you agree that surplus produce may be sold? If you disagree, what are your**

reasons?

68.1 No comment.

**Q69 Do you agree with this list of subjects to be governed by Regulations? Would you make any changes to the above lists?**

69.1 No comment.

**Q70 Scotland Performs - We invite your views on this proposal.**

70.1 IfA supports an outcomes-based approach, provided that the identified outcomes include outcomes which adequately reflect the state of the historic environment and the nature and extent of community engagement with regard to it.

**Q71 Given the actions that the Government and others already take to enable and support local democracy, together with the additional measures proposed in this consultation, are there any other actions we could take to reflect local democracy principles that would benefit communities?**

71.1 Government should ensure that sufficient resources are available to allow local authorities fully to operate on behalf of local communities. Local authority historic environment and archaeology services play a crucial role in managing and protecting the historic environment. Their expertise in engaging with the communities that they serve, facilitating sustainable development and otherwise protecting and promoting historic assets in the public interest is invaluable and needs to be supported notwithstanding the budgetary constraints affecting Government generally. None of the support expressed above for wider public involvement in the historic environment should be taken in any way to undermine the continuing role of local authorities in Scotland.

**Q72 Please tell us about any potential impacts, either positive or negative, you feel any of the proposals for the Bill may have on particular groups of people, with reference to the “protected characteristics” listed above.**

72.1 None known.

**Q73 What differences might there be in the impact of the Bill on communities with different levels of advantage or deprivation? How can we make sure that all communities can access the benefits of these proposals?**

73.1 No comment.

**Q74 Please tell us about any potential costs or savings that may occur as a result of the proposals for the Bill, and any increase or reduction in the burden of regulation for any sector. Please be as specific as possible.**

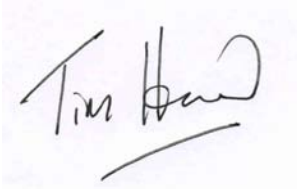
74.1 No comment.

**Q75 Please tell us about any potential impacts, either positive or negative, you feel any of the proposals for the Bill may have on the environment.**

75.1 Failure properly to address the management and protection of the historic environment in the Bill has the potential to cause significant harm to the historic environment through failure to consider the historic environment in planning and decision-making and failure fully or adequately to engage with local communities in respect of their heritage.

If there is anything further that I can do to assist please do not hesitate to contact me.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Tim Howard", with a horizontal line underneath.

Tim Howard LLB, Dip Prof Arch  
Policy Advisor  
Institute for Archaeologists