

## **Guidance on Engaging Communities in Decisions Relating to Land**

### **Response from the Scottish Charity Regulator**

#### **1. Background**

##### **1.1 The Scottish Charity Regulator**

The Scottish Charity Regulator (OSCR) is established under the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act) as a Non-Ministerial Department forming part of the Scottish Administration. OSCR is the registrar and regulator of charities in Scotland. There are currently over 24,000 charities registered in Scotland.

#### **2. Consultation response**

##### **2.1 Make-up of the Scottish Charity sector**

OSCR currently regulates over 24,000 charities, with landowning charities of varying types including Universities, conservation charities, charities holding land under the community 'right-to-buy', trusts and churches. It is not possible to identify how many of the 24,000 charities own land or manage in Scotland. Land will often have been held in trust by charities continuously for long periods and may therefore be less likely to appear in the Land Register.

##### **2.2 Decision making in charities**

In charity law the charity trustees are the people in management and control of the charity. In their dealing with charity land all charity trustees are under a general duty to act in the interests of the charity and to ensure the charity operates in a manner consistent with its purposes (section 66 of the 2005 Act). One of the defining characteristics of charities is that they are independent and that decisions by the charity trustees are taken independently.

Whilst many charities already actively engage with their local community, and may be established to do so, the legal obligation to act in the interests of the charity could, in some cases, create a tension between the wishes of the local community and the purpose of the charity. For example, there may be a tension between the land use plans of a conservation charity and the needs of a community for affordable housing.

### **2.3 Comments on the draft guidance**

We appreciate that this guidance needs to be general and apply to a wide range of land owners/managers. Whether the need for generality satisfies the aim of providing clear expectations for land owners/managers is uncertain, it may be that more specific guidance for different sectors or types of land owner/managers would be beneficial in due course. The guidance would definitely benefit from more examples and case studies demonstrating best practice in different situations – especially for smaller organisations and individuals who may not have access to professional advisers and consultants.

- The guidance does not say anything about collating, recording, evaluating or analysing engagement responses or how to report on/demonstrate community engagement.
- The flowchart in section 4 on when to engage is very useful, and could maybe be expanded on.
- In section 5 of the guidance ‘How should I engage?’ the example of estate management is given in both the ‘Good Neighbour’ row and the ‘Formal Engagement’ row, with the latter adding ‘where a significant proportion of land in a community is controlled by one party’. This seems ambiguous as written; does day to day estate management by a land owner holding a significant proportion of the land in a community always require formal engagement, or does the requirement apply only to significant changes or decisions? For the benefit of the land owner/manager it would be helpful if examples are provided of day to day farming, forestry and estate management and on the other hand ‘disruptive land management activities’.
- The guidance does not specifically address situations where the relationship between the land owner/manager and the local community (or sections of it) is already difficult. We have seen examples of this in OSCR casework involving land owning charities. In these cases there is a danger that community engagement could be seen as (or actually be) just a tick box exercise.
- It would be helpful to provide examples or an explanation of some of the terminology used: ‘local community’, ‘cultural opportunities’, ‘significant impact’.

**Question 16: Please tell us about any potential impacts, either positive or negative, costs and burdens that you think may arise as a result of the proposals within this consultation.**

We understand the aim of community engagement in land ownership and use. However, we would be concerned if questions of proportionality in terms of the size

and scale of charity land owners/managers were to be overlooked. We would particularly stress the size and income profile of the Scottish charity sector. Of the 24,000 charities in Scotland, 52% have an income of less than £25,000, and the vast majority of charity trustees serve unpaid. While there are a small number of large charities which hold significant amounts of land, more typical are the village halls, churches and scouting and guiding associations, which hold one or two buildings where charitable activities are carried out.

What is not clear from the guidance is how Scottish Ministers will consider whether a land owner/manager has complied with the guidance. It is also unclear what the consequences of not engaging are if no application for right to buy is ever made.

Were OSCR to receive a concern about a charity in relation to landownership we would take into consideration in looking at charity trustees' compliance with their trustee duties any community engagement and whether the charity trustees had given due regard to the guidance, so it would be helpful for there to be clarity on what is required.

See our [previous responses to land reform consultations](#) for more information on our powers and charity trustee duties.

### **3. Conclusion**

OSCR has welcomed the opportunity to respond to this consultation and looks forward to the development of the guidance.

Should you wish to discuss any aspect of the response please contact:

Caroline Monk, Engagement Manager (Policy and Guidance)  
[caroline.monk@oscr.org.uk](mailto:caroline.monk@oscr.org.uk)  
01382 346839