

Community Empowerment and Common Good Property

Guidance for Local Authorities

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Introduction

Guidance

1. Part 8 of the [Community Empowerment \(Scotland\) Act 2015](#) (the Act) imposes duties on local authorities in relation to common good property. [Sections 103](#) and [105](#) of the Act require local authorities to have regard to any guidance issued by Scottish Ministers in relation to those duties. This document provides such guidance.

Overview

2. Common good is property owned by a local authority which has been passed down, through local government reorganisation, from former burghs. Those burghs would have received it as a gift or purchased it. It includes land and buildings, and moveable items such as furniture and art. It may include cash where property has been sold and income received.
3. The use or disposal of an item of common good property can be subject to conditions imposed by those who gifted or sold the property. In some cases, whether or not a property can be sold may have to be decided by the courts.
4. It is worth noting that, due to the time which has passed since property was first acquired by a burgh, it can be difficult to establish whether property is common good.

Community Empowerment (Scotland) Act 2015

5. [Part 8](#) of the Act seeks to increase transparency about the existence of common good assets and to ensure there is community involvement in decisions taken about their identification, use and disposal.
6. The Act places new duties on local authorities in relation to common good property:
 - [Section 102](#) places a duty on local authorities to “establish and maintain a register of property which is held by the authority as part of the common good.”
 - [Section 104](#) places a duty on local authorities that, “Before taking any decision to dispose of, or change the use of, such [common good] property the local authority must publish details about the proposed disposal or, as the case may be, the use to which the authority proposes to put the property.”
7. Part 8 of the Act does not define or redefine common good or remove or alter any restrictions on the use or disposal of common good property.
8. The Act does not make a distinction between alienable and inalienable common good property and therefore should be taken to cover both types.

Related Legislation and Guidance

9. When considering this guidance, local authorities should also be mindful of other legislation and guidance which may have an impact upon decisions about the use of common good property.
10. The two key pieces of legislation which set out the framework for dealing with common good property are:
 - Local Government (Scotland) Act 1973 ([Section 75](#))
 - Local Government etc. (Scotland) Act 1994 ([Section 15](#))
11. Local authorities should also have regard to the principles set out in the [Scottish Land Rights and Responsibilities Statement](#), the Scottish Government's [Guidance on Engaging Communities in Decisions Relating to Land](#), and any advice about common good land which may be issued by the [Scottish Land Commission](#).
12. Local authorities will also want to be aware of the [guidance on community asset transfers](#). Communities may request the transfer of common good property, but agreement to an asset transfer request would not override existing restrictions, such as requiring the agreement of the courts for disposal when the property concerned is classed as inalienable common good property.

Chapter 1 – Establishing common good registers

1. [Section 102](#) of the Act requires each local authority to establish and maintain a register of property which is held by the authority as part of the common good (a “common good register”). Before establishing a common good register, the Act requires a local authority to publish a list of property that it proposes to include in the register, and to consult on this list.

Publishing the list of property

2. The Act provides that the list may be published in such a way as the local authority may determine. The local authority should be consistent in how and where it publishes both the list of common good property and the resultant common good register. Both documents should be available in the same place and in the same format. The local authority must ensure that the public can inspect the list of common good property free of charge and access it electronically.
3. Members of the public should be able to access the list from the local authority’s own website. The local authority should ensure that members of the public can view the list in person at local council offices, council hubs and local libraries. The local authority should either produce paper copies of the list or ensure that staff in these locations are able to assist members of the public in viewing an electronic version.
4. The local authority should also be ready to make the list of property available in alternative languages and formats, if requested, to meet equality requirements.

Advertising the list

5. The local authority should publicise the consultation on its website, on social media or in publications which it produces. It may also be possible to invite expressions of interest from the public or have automated notifications. Equally, if the list of common good property is likely to be extensive, the local authority may also wish to place adverts or articles in local papers to reach a wider audience.

Length of consultation

6. The list of common good property should be made publicly available for comment for at least twelve weeks.

Information about property

7. The list of common good property should include enough detail about each item to enable members of the public to identify and locate individual assets. The minimum information which should be included is given in [Table 1](#). An example of what entries in the common good register might look like is given at [Annex A](#).

Table 1 - Minimum Information for Entries in a Common Good Register

Information	Detail
Former Burgh	The name of the burgh to which the property originally belonged.
Name of property	The name by which the asset or cash fund is generally known.
Description of property	A brief description of what the asset is, or was, if now held as cash.
Location of property	Information about the location of the asset, including a map or postcode/Unique Property Reference Number (UPRN)/OS reference if available. A member of the public should be able to use this information to accurately identify where the asset is. Where the property is a common good income fund or an item is in secure storage, it is not necessary to include a precise location. For income funds, the location details should include a statement that the annual accounts of the common good will provide more information on any use of income funds.

8. When a common good property is sold, the income received becomes a common good income fund. The local authority should include in the list information about any income funds held and include information on the use of that fund.
9. When setting out the list of property, it is recommended that the list is split into sections for each of the former burghs, and then further subdivided by the type of property e.g. land, buildings, funds etc. to make it easy to navigate. Where the list contains a lot of information, the local authority should ensure that it has a search facility so that readers can easily find the information they are looking for.
10. During the consultation on the draft guidance, respondents indicated that they would like to have more information about common good property in their area, including things such as the history of the property, information about any property being leased to a third party, and the income from any leases.

It is recognised that there will be considerable variation in the quantity of information available about common good property, depending on what the asset is and how and when it was acquired. However, if the local authority does have additional information about common good property, it is encouraged to consider how it could make this available to local communities.

Accounting requirements for common good property

11. In 2007, the Local Authority Scotland Accounts Advisory Committee (LASAAC) published guidance on [Accounting for the Common Good Fund](#), which requires local authorities to present Common Good Fund statements separately in their accounts. It also reiterated advice from the Scottish Government that:

“For councils to fully maximise the potential of their assets, they must hold accurate records of the assets they are responsible for. This would include those assets held for the Common Good.”

12. Therefore, most local authorities will have a list of property which they already consider to be common good. It is expected that this will, in effect, form the common good list. There is no requirement on local authorities to make further checks or reconfirm titles on these assets before including them on the list, so long as they are satisfied that the information held on these properties is robust.

Chapter 2 – Identifying and contacting community bodies

1. [Section 102\(4\)](#) states that once the list of property is published, the local authority must notify community councils and other community bodies so that these groups can consider the list and give their views (make representations).

Community councils

2. As statutory consultees, community councils have an important role to play in ensuring that local communities are aware of common good property in their area, and can contribute to the process of developing the common good register.
3. When notifying community councils about the publication of the list of common good property and the development of the common good register, the local authority should aim to use the same methods which already exist for involving community councils in other issues, in particular the planning process (where community councils are also statutory consultees).

Community bodies

4. The definition of “community bodies” given in [section 106](#) of the Act is very broad and it may be difficult for the local authority to identify every individual group with a potential interest in a piece of common good property.
5. However, important considerations are:
 - Pre-1975 local authority areas – [section 15](#) of The Local Government etc. (Scotland) Act 1994 provides that, in the case of the councils for Aberdeen, Dundee, Edinburgh and Glasgow, regard should be given to the interests of all the inhabitants of their areas, and, in the case of other councils, to the interests of the inhabitants of the area to which the common good related prior to 16 May 1975.
 - Type of property – large and well-used assets, such as parks or public buildings, are likely to be of interest to the wider community and not just specific groups that use them regularly.

How to contact community bodies

6. Although it will be fairly straightforward to contact community councils, it may be less obvious how to contact smaller community groups – especially if they have no formal status. Local authorities should consider using a variety of methods to reach community bodies and they may find the revised [National Standards for Community Engagement](#) helpful when trying to connect with diverse groups of people from across the community.
7. As well as being consultees in their own right, community councils have a stock of local knowledge and may be able to give advice about other groups in the local area e.g. lunch clubs, sports groups or residents’ associations. Some community councils also have newsletters, websites and community noticeboards where they publicise things which are of interest to the local community.

8. Community planning partners and third sector organisations such as Voluntary Action Scotland or the Development Trust Association may be able to help identify relevant groups or networks in the local area. The Office of the Scottish Charities Regulator (OSCR) can also provide information about registered charities.
9. Local authorities should be mindful that other networks, such as local business groups or regional heritage networks, may also have an interest in common good property.
10. Ultimately, each local authority will have a different set of circumstances so it is impossible to set out one way of contacting local community bodies. A local authority should use a variety of methods to publicise the consultation on the list of common good property and to engage local community groups.

Chapter 3 – Dealing with representations

1. The ability to provide views and comments (make representations) before the common good register is formally published ensures that individuals, community councils and other community bodies have an opportunity to make a case for property to be included in or excluded from the register.

How to make representations

2. When publishing the list of common good property, the local authority should clearly set out the process and timescale for making any representations.
3. All representations should be required to be made in writing, either by e-mail or by letter. It should also be made clear that all representations will be published (although personal details must be handled in accordance with the local authority's data protection policy).

How to access representations

4. The local authority should publish all the representations it receives. All of these documents, whether paper copy or electronic, should be accessible from the same place as the list of property and, in due course, the common good register.

Responding to representations

5. The local authority should aim to consider and respond to representations within twelve weeks.
6. The final response(s) should be published alongside the original representation(s). Once the local authority has fully considered a representation, its decision will be final – unless significant new information comes to light or a court decides otherwise.
7. The local authority is not required to consider repeated representations in relation to the same asset when no new information is provided.

Chapter 4 – Publishing the common good register

1. The local authority should aim to publish the first version of its common good register as soon as practicable after the initial twelve week consultation period has closed, and in any case, within six months of the end of the consultation.

Cases requiring further investigation

2. In cases where there have been numerous or complex representations, and the local authority is still carrying out investigations, a note should be added to the register making clear that some representations are still being followed up.
3. It is proposed that an annex is produced which lists all of the property still under investigation, along with an indication of when these investigations are likely to be concluded (an example of what this might look like is provided at [Annex A](#)). This will ensure transparency, while still allowing the local authority to properly investigate complex cases.
4. If there are numerous complex cases to be investigated and the local authority does not have the resources to follow them up immediately, there should be a clear timetable of when each case will be looked at. This will assist the local authority in managing workloads and will provide greater clarity to communities.

Access to the register

5. The public must be able to inspect the common good register free of charge, and the document must be available electronically.
6. Members of the public should be able to access the common good register from the local authority's own website. The local authority should also ensure that members of the public can view the register in person at local council offices, council hubs and local libraries. The local authority should either produce paper copies of the register or ensure that staff in these locations are able to assist members of the public in viewing an electronic version.
7. Local authorities should be ready to make the common good register available in alternative languages and formats, if requested, to meet equality requirements.

Requirement to maintain and update the register

8. The common good register is a living document and the local authority is required to update its register if new property is identified or if existing property is disposed of or reclassified. Changes to the register for acquisitions and disposals must be made in the same financial year as the property is acquired or disposed. This will ensure the register and the common good accounts are aligned.

9. It is good practice for the local authority to review the register at regular intervals, to check that all details held for any property or income fund remain relevant and up to date. This could be a rolling review where a percentage of the register is reviewed each year. A review must, however, be carried out at intervals of no more than five years. The local authority should publish its review process.

Chapter 5 – Consultation when planning to dispose of or change the use of common good property

1. [Section 104](#) requires the local authority to consult with the local community when it is planning to dispose of common good property, or change its use. The local authority must publish details of the proposed disposal or change of use of common good property, and notify and invite representations from community councils and community bodies.

What information should be included about the property?

2. The proposal should clearly state which property the change relates to and exactly what change is being proposed, along with likely timescales. The local authority should use the same information about the property which is included in the common good register.
3. In relation to cash funds, “change of use” would not cover every payment to different people, or moving investments about, but would include, for example, changing the rules about what type of things could be funded.

Where and how should details be published?

4. In common with the requirements for publishing the common good register, members of the public should be able to view any proposals to change the use of, or dispose of, common good property on the local authority’s own website.
5. The local authority should also ensure that members of the public can view the proposals in person at local council offices, council hubs and local libraries. The local authority should either produce paper copies of the proposals or ensure that staff in these locations are able to assist members of the public in viewing an electronic version.

Advertising

6. The local authority should publicise the consultation on its website, on social media or in publications which it produces. It may also be possible to have automated notifications linked to the common good register. Where the proposal is likely to affect a large number of people, the local authority may also wish to consider advertising in the local press or holding public meetings.
7. If the request relates to a building or area of land, a public notice should be placed on the building or land, or on an object close to it. If it is a building open to the public, the local authority may also want to put a copy somewhere prominent inside. However, it is more important that the notice is put up where interested people will see it than that it is on or adjacent to the land in question. It could be displayed in a village shop, on a community noticeboard or an information point in a car park – wherever local events and notices are normally advertised.

Representations

8. The local authority must invite community councils and other community bodies to consider and give their views on the proposal, making it clear that all representations will be published. This ensures that the process is carried out in a transparent way.
9. The local authority should allow eight weeks from the date of publication for community bodies and others to make representations. This ensures that individuals, community councils and other community bodies have an opportunity to consider the proposal and how it might affect them.

Final response

10. The local authority should aim to consider and respond to any representations within eight weeks of receiving them.
11. The final response(s) should then be published online alongside the original representation(s). The local authority should also ensure that it publishes the final decision about the proposal (i.e. whether the proposal will be taken forward and any changes which will be made) and notify community bodies and anyone who made a representation.

Amendment of proposals

12. In some cases, the local authority may decide to amend a proposal in response to changing circumstances or the representations received. If an amended proposal is materially different from the original, then a new eight week consultation should be carried out.

Annex A – Common good register: example entries

ROYAL BURGH OF SCOTLANDTOWN

Land		
Name of asset	Location	Description
The Haugh	Parkland in Scotlandtown, which is bordered to the north by the river Alba and on the east by Scotland Street. It is adjacent to Scotlandtown town hall.	Exact date of acquisition is unclear but was before 1900.
Scotlandtown Recreation Park	(O/S grid reference)	Playing fields in Scotlandtown. 0.6 square km of the park is common good land (see marked area on attached map). Park currently leased to Scotlandtown Leisure Trust.
Art and Artefacts		
Name of asset	Location	Description
Painting of Provost Ross (1893)	Scotlandtown Town House, Mercat Square, Scotlandtown, ST1 AB2	Painting gifted to the Royal Burgh of Scotlandtown by the family of Provost Ross in 1893.
Provost's chain	In storage, Scotlandtown.	Chain of office containing the arms of the Burgh (see attached photo). Traditionally worn by the Provost of Scotlandtown.
Common Good Fund		
Name of asset	Location	Description
Scotlandtown Common Good Fund	N/A	Fund set up for the benefit of the inhabitants of Scotlandtown. Information about the fund and the most recent balance sheet is available from this link.

Property which is unconfirmed as common good but is under investigation

ROYAL BURGH OF SCOTLANDTOWN

Land			
Name of asset	Location	Description	Status
Chandlers Row	A lane in Scotlandtown, running from the Harbour to the Marketgate.	Cobbled lane previously used by ships' chandlers as a market until 1920s.	Proposed by Scotlandtown Community Council on 05/05/18 (see representation). Legal department currently reviewing title deeds. Decision expected by 05/08/18.

Annex B – Section 102: Common good registers

- (1) Each local authority must establish and maintain a register of property which is held by the authority as part of the common good (a “common good register”).
- (2) Before establishing a common good register, a local authority must publish a list of property that it proposes to include in the register.
- (3) The list may be published in such a way as the local authority may determine.
- (4) On publishing a list under subsection (2), the local authority must—
 - (a) notify the bodies mentioned in subsection (5) of the publication, and
 - (b) invite those bodies to make representations in respect of the list.
- (5) The bodies are—
 - (a) any community council established for the local authority's area, and
 - (b) any community body of which the authority is aware.
- (6) In establishing a common good register, a local authority must have regard to—
 - (a) any representations made under subsection (4)(b) by a body mentioned in subsection (5), and
 - (b) any representations made by other persons in respect of the list published under subsection (2).
- (7) Representations as mentioned in subsection (6) may in particular be made in relation to—
 - (a) whether property proposed to be included in the register is part of the common good,
 - (b) the identification of other property which, in the opinion of the body or person making the representation, is part of the common good.
- (8) A local authority must—
 - (a) make arrangements to enable members of the public to inspect, free of charge, its common good register at reasonable times and at such places as the authority may determine, and
 - (b) make its common good register available on a website, or by other electronic means, to members of the public.

[\(The Community Empowerment \(Scotland\) Act 2015, Part 8 Common Good Property\)](#)

Annex C – Section 104: Disposal and use of common good property: consultation

- (1) Subsection (2) applies where a local authority is considering—
 - (a) disposing of any property which is held by the authority as part of the common good, or
 - (b) changing the use to which any such property is put.
- (2) Before taking any decision to dispose of, or change the use of, such property the local authority must publish details about the proposed disposal or, as the case may be, the use to which the authority proposes to put the property.
- (3) The details may be published in such a way as the local authority may determine.
- (4) On publishing details about its proposals under subsection (2), the local authority must—
 - (a) notify the bodies mentioned in subsection (5) of the publication, and
 - (b) invite those bodies to make representations in respect of the proposals.
- (5) The bodies are—
 - (a) where the local authority is Aberdeen City Council, Dundee City Council, the City of Edinburgh Council or Glasgow City Council, any community council established for the local authority's area,
 - (b) where the local authority is any other council, any community council whose area consists of or includes the area, or part of the area, to which the property mentioned in subsection (1) related prior to 16 May 1975, and
 - (c) any community body that is known by the authority to have an interest in the property.
- (6) In deciding whether or not to dispose of any property held by a local authority as part of the common good, or to change the use to which any such property is put, the authority must have regard to—
 - (a) any representations made under subsection (4)(b) by a body mentioned in subsection (5), and
 - (b) any representations made by other persons in respect of its proposals published under subsection (2).

[\(The Community Empowerment \(Scotland\) Act 2015, Part 8 Common Good Property\)](#)



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