

Guidance on Engaging Communities in Decisions Relating to Land



Scottish Government
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Roseanna Cunningham, MSP
Cabinet Secretary for Environment,
Climate Change and Land Reform

Ministerial Foreword

Land is one of Scotland's most fundamental assets. It is essential to achieving sustainable development, and key to many other important aspects of people's lives, from housing to recreation, from agriculture to mitigating climate change. Land underpins communities' social and cultural development, and is crucial in protecting and enhancing the environment. In a progressive and fair Scotland, communities must have a say in the important decisions about land that affect them.

Engagement helps ensure that the aspirations and concerns of communities across Scotland are rightly taken into account, enabling and empowering them to help shape decisions about land. It helps to create trust between local communities and those with control over land and demonstrates that land is being managed well.

I know that many people with control over land already engage regularly with local communities and have built positive, productive relationships with them. I want to build on this good practice, and I expect all those with control over land in Scotland to engage with local communities in an open and effective way. This guidance will support those with control over land to take a proactive approach to engaging with communities about decisions relating to land.

The Land Reform (Scotland) Act 2016 recognises the importance of land to the realisation of a person's human rights, and that is reflected in the principles of the Scottish Land Rights and Responsibilities Statement. The statement is the first such document to be published in the world,

and we in Scotland can be justifiably proud of the approach we are taking to ensuring that human rights are a key part of decisions about land. Accordingly, this guidance takes a human rights based approach to engagement.

I welcome the Scottish Land Commission's involvement in developing the guidance, and the key role it will play in supporting the use of the guidance in practice. The Commission will be crucial in the success of land reform, and I look to them to help ensure that this guidance becomes a central part of how decisions about land are made.

Scottish Ministers are required to lay a report before Parliament within three years of publishing this guidance, assessing its effectiveness and setting out any further steps which should be taken to improve its impact. The Commission will help to make this assessment, and over the next three years I expect to see sustained and significant progress towards making sure that community engagement about decisions relating to land becomes the norm.

I'm also pleased that many individuals and organisations took part in both formal and informal consultation about this guidance. That has been crucial in shaping the final version of the guidance, and I am encouraged by the positive and purposeful engagement that has taken place. I want to thank everyone who has contributed, and I look forward to seeing the results of the guidance in practice.

Part 1

Overview

Introduction

1. This guidance is issued by Scottish Ministers. It supports the greater collaboration and engagement that Ministers expect between those who make decisions about land and the local communities that are affected by those decisions.
2. Many forms of guidance exist relating to particular land related activities, including planning matters, housing, environmental emissions and certain farming activities. This document contains guidance about engaging communities in decisions relating to land generally, and does not relate to any particular land based activity or sector. As such, it applies to all situations where decisions being made about land might affect local communities.
3. The guidance is flexible enough to be useful in a wide variety of circumstances across urban and rural Scotland, and it can take account of changing socio-economic and environmental circumstances and contexts. To support this guidance, the Scottish Land Commission may from time to time issue further advice on its application to real world scenarios.

Context

4. Under section 44 of the Land Reform (Scotland) Act 2016¹ (“the Act”), Scottish Ministers have a duty to issue “guidance about engaging communities in decisions relating to land which may affect communities”.
5. In addition, Principle 6 of the Scottish Land Rights and Responsibilities Statement² (SLRRS), which was published in September 2017, states that, “There should be greater collaboration and community engagement in decisions about land”. Scottish Ministers are under a legislative duty to promote the principles of the SLRRS when exercising their functions.
6. This guidance meets the requirements of section 44 of the Act and is part of the Scottish Government’s commitment to promote Principle 6 of the SLRRS.
7. Both this guidance and the SLRRS are informed by a consideration of human rights. The United Nations Office of the High Commissioner on Human Rights³ (OHCHR) states that land is not a mere commodity, but an essential element for the realisation of many human rights.

1 <http://www.legislation.gov.uk/asp/2016/18>

2 <http://www.gov.scot/Publications/2017/09/7869>

3 <http://www.ohchr.org/EN/pages/home.aspx>

8. Human rights include Article 1 of Protocol 1 of the European Convention on Human Rights, which is incorporated into UK law and which protects people's rights to enjoy their property peacefully. Human rights also include those rights contained in international conventions on economic, social and cultural rights to which the UK is a signatory. This includes rights to basic resources such as housing, food, clothing and water. More detail on human rights can be found in Annex A of this guidance.

Who this guidance is for

9. This guidance is for those with control over land, covering both rural and urban Scotland. It is for all private and public sector owners of land and buildings, including individuals, companies and trusts, non-governmental organisations, charities and community owners. It also applies to tenants, of any sort, where they have control over land.
10. Good practice in relation to land means being aware that decisions about land can have an impact on many people's lives. Community engagement can be about a specific issue, or range of issues, but can also be a means of finding out what the issues are for local people.
11. Engagement creates an opportunity to air issues, establish good working relationships and help to shape decisions about land.

Purpose and scope

12. The primary aim of this guidance is to help ensure that people have the opportunity to be involved in decisions about land that affect them. It contains guidelines on when and how engagement should take place and with whom. However, it is neither prescriptive nor exhaustive, and engagement should be tailored to meet local circumstances.
13. This guidance applies to all land in Scotland, both urban and rural, including watercourses, buildings and structures on the land.
14. It does not replace or duplicate statutory requirements for community consultation and engagement where these exist; for example, the requirement under planning legislation for pre-application consultation for proposed major developments.
15. This guidance supports a change across all of urban and rural Scotland, so that engagement and collaboration with local communities about significant issues is the norm and local communities and land owners see each other as partners in achieving sustainable development.
16. The guidance sets out how those who take decisions about land should be proactive in engaging with communities affected by those decisions. Building and maintaining a positive working relationship with representatives of local communities can help decision makers understand when engagement may be necessary. It can also help inform the approach to engagement.
17. Community engagement is a key element of the Scottish Government's land reform agenda. The Land Reform (Scotland) Act 2016 places human rights at the centre of land reform and this is reflected in the Scottish Land Rights and Responsibilities Statement. All those with responsibility for taking decisions about land are expected to consider and take forward community engagement as set out in this guidance.

18. Engagement does not give local communities any legal right over land nor any power to direct the actions and decisions of land owners or their delegates. However, engagement will enable communities' views to be heard and help to shape decisions about land. Engagement will also help to foster trust between communities and those who are making decisions about land, which in turn will often lead to better decisions.

What local communities can expect

19. It is reasonable for Scotland's local communities to expect engagement about land, especially where human rights issues, such as jobs, housing and issues impacting on gender equality, are part of the consideration.
20. Scottish Ministers expect anyone who is making decisions about land to consider engaging communities about decisions that are likely to significantly impact on those communities, especially where such decisions impact on the human rights of community members at the local population level.
21. Engagement should be carried out in good faith, with a view to genuinely listening to the ideas put forward by members of local communities. Communities can reasonably expect their views to be heard and taken into account when decisions are reached.
22. Local communities are advised that the best way to work with land owners or their delegated managers is through a representative organisation. Examples of these are community councils, local farming associations, residents associations, tenants associations and Business Improvement Districts.
23. Although the impact of decisions will vary from place to place, most day-to-day activities, especially where carried out under regulations (such as pesticide spraying and muck spreading), are unlikely to require community engagement.
24. Community engagement is an opportunity for developing collaborative solutions, ensuring the community's voice is heard. However, it is not an instrument for addressing individual disputes.

Meaning of the term "land"

25. For the purposes of this guidance, the meaning of land is taken to be that within Schedule 1 of the Interpretation and Legislative Reform (Scotland) Act 2010⁴. This provides that land includes buildings and other structures, land covered with water, and any right or interest over land.

Sector based guidance

26. Some sectors, such as forestry, already provide guidance within the sector on community engagement about decisions. The Scottish Government encourages all sectors which make significant land related decisions to work towards developing their own guidance on community engagement in decisions relating to land.
27. It is recommended that sectors considering developing their own guidance approach the Scottish Land Commission for advice.

⁴ <http://www.legislation.gov.uk/asp/2010/10/schedule/1>

Part 2

Engaging with Communities

Benefits of engagement

28. When community engagement is carried out well it can lead to the following outcomes:
- Those with control over land are seen as valued members of the local community, contributing to community wellbeing and sustainable development.
 - Those with control over land recognise the value of the local community's views. They see the community as taking a vital role when taking important decisions relating to land.
 - There are increased opportunities for local economic, social, cultural and environmental improvements, supporting sustainable development and creating opportunities for land owners and communities to develop mutually beneficial solutions to local issues.
29. Community engagement can also help community building by bringing people together. This can be the case in both urban and rural areas.
30. In many cases there will be a range of views within a community. Engagement can help all parties to understand each other's wishes, concerns and constraints, with the aim of achieving a better outcome and building better relationships.

When to engage with communities

31. The earlier in a decision making process that engagement begins, the more opportunity there is to find solutions to land issues that are mutually advantageous for the land owner and the community. Even where there is already a regulatory process, such as where a decision about land use or development falls under the planning system, land owners should consider beginning engagement at the earliest possible stage. This can help establish a mutually beneficial approach, create clear lines of communication, and help prevent misunderstandings arising in the future.
32. Community engagement is particularly important for situations where a decision about land is likely to have a significant impact on the local community, and where there is no pre-existing requirement for engagement under legislation, regulatory regimes or other official guidance. The nature of engagement will depend on the circumstances of each situation, and the **Diagram A** flow chart provides a guide for when and how this might take place.
33. The person with decision making power over land should choose a form and level of engagement that is proportionate to the impact of their decision, and fits the local context. **Diagram B** gives some examples of proportionate engagement.

34. Those who have decision making powers over land should also consider carrying out community engagement in situations where they have no immediate plans for their land, but are open and willing to listen to community aspirations in relation to the land. The decision maker might initiate such a process proactively, or do so in response to a request from legitimate community representatives, such as from a community council or residents' association. This can help to build trust and a productive working relationship.

Significant impact

35. Significant impact cannot be precisely defined. The impact of a decision about land will differ from place to place, and what is significant for one local community may not be for another.
36. As a broad guideline, a significant impact is one which is felt at the level of the local population, rather than just at the level of an individual person or household. It will usually include things that impact on opportunities for local sustainable development, wellbeing, the fulfilment of human rights, and sustaining a viable community. Examples are housing availability and quality, essential services, prospects for economic development and job creation. It also includes social and environmental issues, such as land on which to build a village hall, protecting and enhancing the natural and built environment, creating a local community nature reserve and looking after green space within towns and cities.
37. If you live and work within an area, you may already have a good idea of what would be significant and what would not be. Your local council, community council, or community planning partnership should be able to advise on what the main issues are within an area.
38. If there has been a local assessment aimed at identifying key issues within an area, this would also be very useful. An example is the Place Standard⁵, which provides a framework to assess the quality of a place, and is designed to support communities, public, private and third sectors to work efficiently together.

Cumulative effects

39. Sometimes a series of small decisions about land taken over time can result in a significant negative impact in the local area. For example, if a landlord withdraws a large number of rented properties over time but in a piecemeal fashion, this could lead to a lack of residential accommodation within an area, with consequences for the local economy, schools, public services, neighbourhood and community.

⁵ <http://www.placestandard.scot>

40. In such cases, where the cumulative effect could be significant, community engagement will take place to consider the cumulative effect, even though it is expected that the impact of each individual decision may not appear significant in itself. This can be particularly important for small communities, but also applies generally across Scotland.
41. In a similar way, a number of different land related activities, each with a relatively minor impact, could have a significant cumulative impact. For example, a large number of timber lorries and tractors on a local road at the same time as road works are taking place on that road could create significant disruption. Businesses, local authorities and other public authorities are therefore encouraged to think about the combined impact of their activities, and to try to manage their activities in such a way as to minimise unnecessary negative impact while promoting the public good.

Relationship with existing statutory requirements to consult

42. Community consultation can be a statutory requirement, for example under planning legislation, environmental regulations and forestry licensing.
43. This guidance can support statutory engagement in a number of ways, two examples of which are given below.
44. Firstly, where engagement with a local community, or their representatives, takes place early, it can help inform how the statutory engagement takes place. It can help the person taking a decision about land to understand who to engage with and the best ways to engage with them, so that any statutory engagement or consultation is more effective. It can also, by building good working relationships at an early stage, help establish collaboration and co-production.
45. The second example is where a decision relating to land involves a mix of statutory and non-statutory decisions, or involves more than one statutory requirement to engage or consult. In such circumstances, this guidance can help develop an engagement process which, while not running counter to any statutory requirement, allows decisions relating to land to be discussed and taken on a joined-up basis, with the local community having the opportunity make their views known on any relevant economic, social, cultural and environmental factors.

Who to engage

46. Where those who take decisions about land live within and are a part of the local community, they may know who could be affected by their decisions.
47. If this is not known, then Scotland's local authorities and community councils may be sources of information on local needs and in identifying the right people to engage with. Other useful sources of information may be Community Planning Partnerships, local chambers of commerce and Business Improvement Districts, local farming associations, residents' associations, tenants' associations and housing associations.
48. Public bodies such as Scottish Natural Heritage (SNH) and the Scottish Environmental Protection Agency (SEPA), or National Park bodies, if present in the area, may also be able to help.

Specialist issues

49. While this guidance is explicitly about engaging with local communities, the person carrying out the engagement should also consider contacting local or national representative organisations to seek specialist advice to inform and support local engagement.
50. An example would be when taking a decision that could impact on, or offer opportunities for, disabled people in the local community. In such a case it would be useful to contact a relevant national or local representative body for advice.
51. Another example is where a decision could impact on biodiversity or the local environment, and in this case Scottish Natural Heritage, or a non-government nature conservation or environmental organisation, may be able to offer advice which could supplement your local community engagement.
52. Similarly with issues that could impact on the historic man-made environment, it could be useful to contact Historic Environment Scotland or a non-governmental organisation dedicated to looking after Scotland's heritage.
53. In addition, your local council may employ people who can help you with advice on a wide range of matters, ranging from biodiversity to equalities issues.

Best practice principles for fair engagement

54. Land owners or their delegates should choose the means of engagement most appropriate to the context. The following principles may help guide how engagement is carried out:

Proportionate

Engagement is proportionate to the impact that the decision may have on the community.

- Engagement is not a disproportionate burden on either the land owner, land manager or community.
- Impact is thought about in a holistic way, including environmental, economic, social and cultural impacts.
- Appropriate and accessible methods of communication are used.

Collaborative

Engagement is a genuine exercise in collaboration, and consideration of community views helps to achieve mutually beneficial outcomes.

- Engagement is started at the earliest opportunity in the decision making process.
- Community views are given due consideration.
- Communication is open, clear and two-directional.

On-going

Where appropriate, on-going engagement and communication can foster positive working relationships and communication channels between communities and land owners and managers.

- Feedback is provided to the community on the final decision taken, and the reasons for it.
- The community is kept informed by on-going communication and updates, possibly through community representatives.

55. **Diagram B** provides examples of ways of engaging.
56. It is important that any engagement process is tailored to the local context and the local community. One of the best ways to get this right is for the person carrying out the engagement to work with community representatives to develop the process. This can be easier where there are already good working relationships between the decision maker and the local community.
57. Community engagement is a shared activity, with both those carrying out the engagement and those participating in it having a joint responsibility for its success.

Removing barriers to engagement

58. Practical barriers which might prevent people in the community from taking part in engagement activities should be removed. This can be as simple as ensuring that meetings are advertised, organised at appropriate times, in accessible locations and venues, and that any written material is clear and easy to understand. The Equality and Human Rights Commission can advise on removing barriers to engagement for protected groups (women, disabled people, minority ethnic groups, children and older people).

Joined-up engagement

59. Where a number of people or organisations are undertaking community engagement in a local area, community engagement should be aligned where practicable.
60. Alignment of community engagement can help reduce engagement fatigue among communities and be more effective for both those organising the engagement and the communities they are engaging with.
61. Where local networks exist, such as business networks, NGO networks, public service networks and community networks, these may provide opportunities to explore joined-up engagement activities. In particular, if you are involved with your local Community Planning Partnership, this may provide a platform to explore maximising the benefits of community engagement.
62. Your local authority, and community council if you have one, may also be a good source of information about other engagement taking place in your area.

Personal and business information

63. It is expected that information about plans that could impact on the lives, wellbeing and development prospects of members of the local community is made available during engagement. However, information given or discussed during an engagement process should be pertinent to the engagement only. When carrying out community engagement under this guidance, no one is expected to disclose personal information or business information that is commercially confidential.

The National Standards for Community Engagement

64. The National Standards for Community Engagement⁶ are good practice principles designed to support and inform the process of community engagement, and improve what happens as a result. Created in 2005 and updated in 2016, they provide detailed performance statements that everyone involved can use to achieve the highest quality results and the greatest impact. The Standards are designed to help the public, private and community sectors to involve and work with communities in planning services and developments.

⁶ <http://www.voicescotland.org.uk/>

Diagram A - When should I engage?

Community engagement should be undertaken when making a decision relating to land that will have a significant impact on the local community.

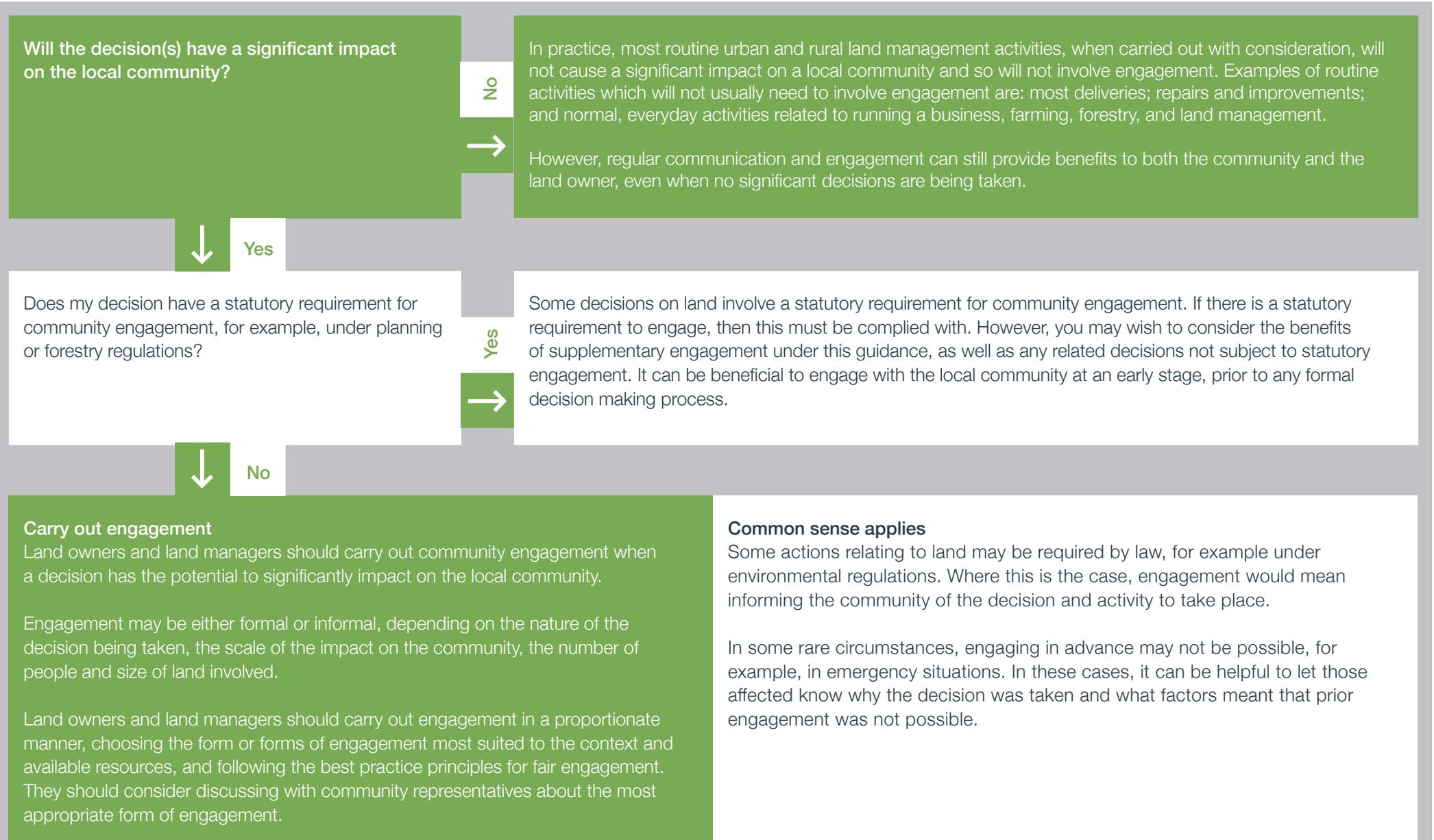


Diagram B - How to Engage

| | Description | Examples | How to engage |
|---------------------|---|---|---|
| Good Neighbour | Most day-to-day decisions relating to land where the impact on the local community is small or non-existent. | Most routine urban and rural land management activities including day-to-day farming, forestry, estate management and business activities, when the activity is carried out with reasonable consideration. | When there is little impact on the community, there is no need to engage. However, regular contact is encouraged to help to prevent problems arising. |
| Informal Engagement | <p>Decisions which can lead to moderately significant impacts on the local community.</p> <p>This includes:</p> <ul style="list-style-type: none"> ■ short-term but disruptive activities ■ activities carried out in irregular circumstances ■ changes to regular activities | <p>Decisions about:</p> <ul style="list-style-type: none"> ■ activities which disrupt transport or business activities ■ activities causing significant light, sound or smell pollution ■ activities carried out at unusual times, or causing more disruption than usual ■ other disruptive activities in both the urban and rural environments | <p>Informal engagement can include:</p> <ul style="list-style-type: none"> ■ sending a letter or an email ■ a notice on a community notice board ■ posting on social media ■ a phone call ■ visiting in person ■ putting up a sign <p>Regular communication, even when no very significant decisions are being undertaken, can help to prevent problems arising, and build good neighbourhood relationships.</p> |
| Formal Engagement | <p>Decisions which may significantly impact on the social, economic or cultural development of a community, access to a good quality environment, and community viability.</p> <p>This includes:</p> <ul style="list-style-type: none"> ■ long-term or permanent changes with significant impact ■ long-term disruptive activities ■ activities which impact significantly on the local economy, society and culture, or environment ■ decisions likely to alter the local population level or structure, including through intergenerational impact | <p>Decisions about:</p> <ul style="list-style-type: none"> ■ significant long-term changes to land use, for instance changes between agricultural land, forestry, nature reserves, green spaces, industry, housing, regeneration and development ■ estate management, where a significant proportion of land in a community is controlled by one party ■ a business or service that significantly contributes to local employment or provides vital services ■ decisions impacting on the viability of vital local institutions such as schools, doctors' surgeries, sports centres and cultural centres | <p>Engagement about significant decisions is characterised by being planned and should include feedback to the community. Formal methods of engagement include:</p> <ul style="list-style-type: none"> ■ publishing a written consultation or survey ■ holding local meeting(s) ■ holding site visit(s) ■ carrying out workshop(s), perhaps with a facilitator ■ collaborating with the community to co-design a project <p>Once formal engagement is carried out, there should be feedback to the community on the decision taken and the reasons for it. The references section gives links to further guidance on different ways of involving communities in decision making.</p> |

Annex A

Fairness, Rights and Equalities

Fairness

1. In terms of engagement, fairness means everyone involved in an engagement process having an equal opportunity to be heard or to participate in the process, if they have an interest in doing so. It means recognising that all participants not only have the right to air their views and participate, but that everyone involved should be actively welcomed, recognising that they can bring something positive to the process.
2. Anyone involved in an engagement process, whether as land owner, tenant or land manager, community member or any other person involved, should expect to be treated with dignity and respect. This includes welcoming minority viewpoints, even where they are unpopular.
3. It should always be remembered that community engagement about issues relating to land is an opportunity to develop practical results which can improve outcomes for some or all of the participants and support the wider public good. Even where some negative outcomes are unavoidable, such as temporary disruption, engagement should provide a fair opportunity to find ways of mitigating these.
4. The person carrying out community engagement will have a particular responsibility in designing, setting up and carrying out the engagement process. However, if community engagement is to be regarded as a valid process which can lead to positive outcomes for all involved, then all who take part have to play their part in contributing to an atmosphere of fairness and mutual respect.
5. While community engagement can sometimes involve difficult discussions, no person can reasonably be expected to take part in an engagement process they find intimidating. Every effort should be made to ensure that the engagement process provides a safe and supportive opportunity for everyone to discuss the issues at hand and make their views known.
6. Sometimes professionals and experts may be needed to explain technical issues. Examples of such professionals and experts are lawyers, architects, economists and environmental consultants. Care needs to be taken when such professionals and experts are involved in community engagement to ensure that this does not give an unfair bias to any one viewpoint. Professionals and experts should participate in a spirit of sharing their knowledge, rather than using their expertise to bias the outcome of the engagement in favour of themselves or a person for whom they may be working.
7. Everyone involved should have the opportunity to express their views without prejudice to any aspect of their person, such as their socio-economic status, gender, sexuality, race, age, religion or ethnic background, political views, dwelling place or lifestyle.

Rights

Human rights

8. All of us have human rights and they apply equally to all of us, regardless of who we are.
9. The United Nations Office of the High Commissioner on Human Rights (OHCHR) states that land is not a mere commodity, but an essential element for the realisation of many human rights, and that governance of land is central to the protection and promotion of many human rights.
10. Land is a resource which enables the fulfilment of a range of rights, such as the rights to employment, sustained improvement in living conditions, housing, food and clothing, and ensuring that women benefit equally with men from any land related measures.
11. The European Convention on Human Rights (ECHR) has been incorporated into the domestic law of Scotland through the Human Rights Act 1998 and the Scotland Act 1998. These Acts prevent public bodies in Scotland acting in a way that is incompatible with “Convention Rights” (as defined in section 1 of the Human Rights Act 1998⁷).
12. Article 1 Protocol 1 (A1P1) of the ECHR provides protection against the unlawful taking of a person’s property by the state.
13. Article 14 of the ECHR prevents discrimination in the enjoyment of the other rights under the Convention. Article 14 is not a standalone right, and must be read in conjunction with another right under ECHR. For example, in pursuing a policy of allowing community rights to buy land, which engages the A1P1 rights of individual landowners, while that policy may be justifiable, it is not permitted to apply the policy in a discriminatory way (for example by granting or refusing applications on the basis of a person’s nationality).
14. The International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and other internationally agreed conventions outlining economic, social and cultural rights to which the UK is a signatory, are binding on the UK state in international law. The term “state” in this context includes all emanations of the state such as devolved administrations, which includes the Scottish Government, local authorities and other public authorities.
15. Rights under these international instruments cannot, however, be enforced by individuals through the courts. Compliance with these international obligations is monitored by the UN Committee on Economic, Social and Cultural Rights⁸ and the UN Committee on the Elimination of Discrimination against Women⁹.
16. For instance Article 14 of CEDAW requires that women benefit equally with men from rural development programmes, and have equal access to credit as men do. This links with requirements for gender equality under the Equality Act 2010, and the Scottish Government would like to see all those taking significant decisions about land consider if their decisions are an opportunity to address the gender imbalances within society.

7 <http://www.legislation.gov.uk/ukpga/1998/42/section/1>

8 <http://www.ohchr.org/en/hrbodies/cescr/pages/cescrindex.aspx>

9 <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/CEDAWIndex.aspx>

17. As an example, this can be achieved by ensuring that decisions about land contribute to women having equality with men in terms of ownership of land, income derived from land, and decision making powers over land. It is vital that in any community engagement process, women and men are able to participate and benefit equally from the process.
18. Of particular importance for this guidance are Article 6 and Article 11 of ICESCR. These Articles provide for the right to work and the right to an adequate standard of living, including the right to adequate food and housing and the right to a continuous improvement in living conditions. The Scottish Government expects community engagement where decisions about land, or a lack thereof, are likely to lead to a significant impact in terms of these articles.

Property rights

19. This guidance does not affect existing land owning or land management rights, such as those under property law, tenure law, and A1P1 of the ECHR, which protects the right of persons to enjoy their property peacefully. These rights apply equally to all people regardless of how much property they own, and such rights are protected by the courts.
20. It should be remembered that a person's property rights are not absolute under A1P1. In certain exceptional circumstances a person's property may be transferred, even against their will, where it can be shown to be in the public interest. An example of this is where government or local authorities use compulsory purchase powers, for instance in order to build a road or railway, or to promote socio-economic development.
21. All compulsory transfers of land must be in accordance with legislation that is in force, must be in the public interest, and must be proportionate to the aims being pursued. The way in which such transfers are made is subject to supervision by the courts.
22. The interaction between property rights and economic, social and cultural rights are complex. Applying them to decisions about how land is used may also be complex.
23. A decision about land is usually ultimately one for the land owner or their delegate. However, where a number of land related interests are involved, a consideration of what is reasonable, proportionate and necessary may be helpful. Finding solutions which benefit all parties involved is the ideal to which this guidance expects both land owners and local communities to work towards. Even if this is not always achievable it may help to establish working relationships which could create opportunities or help in tackling other issues which may arise.

Voluntary Guidelines on the Responsible Governance of Tenure (VGGTs)

24. In terms of internationally accepted principles and standards for responsible practices in relation to land, the Land Reform (Scotland) Act 2016 states that these are to include the principles and standards contained in the VGGTs. The goal of the VGGTs is to support the progressive realisation of the right to adequate food and national food security. They promote secure tenure rights and equitable access to land, fisheries and forests, as a means of eradicating hunger and poverty, supporting sustainable development and enhancing the environment. They state that responsible investments "should do no harm". Community engagement should support the goal of VGGTs by allowing a wider range of perspectives to be taken into account prior to any major investment decisions relating to land.

EQUALITIES

Poverty and social inequality

25. Community engagement is for all of Scotland, but it is particularly important that those living within areas of poverty and deprivation are engaged in decisions about land that affect them. This is because it offers communities in those areas opportunities to improve the natural and built environment in which they live and work, influence how local services are provided, find opportunities for growing the local economy, and it opens up opportunities for participation and community empowerment.
26. In relation to poverty and social inequality, Articles 6 and 11 of ICESCR, which have been discussed above, are very relevant. As discussed, these Articles provide for the right to work and the right to an adequate standard of living, including the right to adequate food and housing and the right to a continuous improvement in living conditions. It is particularly important that people living in areas of poverty and social deprivation, in both urban and rural Scotland, are given the opportunity to engage with decisions about land that can help them improve their conditions in line with Articles 6 and 11 of ICESCR.
27. Areas of poverty exist in both rural and urban Scotland. The Scottish Index of Multiple Deprivation¹⁰ is one tool sometimes used to show these.

The Equality Act 2010

28. Actions, or lack of actions, when taking or considering decisions about land can impact on other people. This not only relates to planning and implementing decisions, but also consulting and engaging with others, including local communities. The Equality Act 2010 prohibits discrimination against anyone who shares one or more of the protected characteristics listed¹¹ and we advise anybody taking decisions relating to land to make themselves aware of the requirements of the 2010 Act.
29. The protected characteristics in the Equality Act¹² are:
 - age;
 - disability;
 - gender reassignment;
 - marriage and civil partnership;
 - pregnancy and maternity;
 - race;
 - religion or belief;
 - sex;
 - sexual orientation.

¹⁰ <http://www.gov.scot/Topics/Statistics/SIMD>

¹¹ <http://www.legislation.gov.uk/ukpga/2010/15/section/4>

¹² <https://www.gov.uk/guidance/equality-act-2010-guidance>

Rights for ethnic groups

30. The Equality Act 2010 provides the legislative framework which protects people who are recognised as a distinct ethnic group from being discriminated against on the grounds of ethnicity.
31. It is important to ensure that ethnic groups are included in any community engagement.
32. For example Scottish Gypsy/Travellers are a group which can be defined by reference to their ethnic origins and can therefore be afforded legal protection under the Equality Act 2010.

Public Participation Rights

33. Members of the public also have rights under the Aarhus Convention¹³, including the right to participate in environmental decision making. Under the terms of the Convention, arrangements are to be made by public authorities to enable the affected public and environmental non-governmental organisations to comment on certain proposals. This includes proposals for projects affecting the environment, or plans and programmes relating to the environment. These comments are to be taken into due account in decision making, and information is to be provided on the final decisions and the reasons for those decisions.

13 <http://ec.europa.eu/environment/aarhus/>

References

Scottish Land Rights and Responsibilities Statement (SLRRS)

The Scottish Government

The SLRRS is a statement of land rights and responsibilities in Scotland. Its preparation and publication by Scottish Ministers was a requirement of the Land Reform (Scotland) Act 2016, and the principles within the SLRRS underpin the Scottish Government's vision for land reform. Principle 6 of the SLRRS states: "There should be greater collaboration and community engagement in decisions about land". Reading the SLRRS can help to clarify the purpose of the guidance on engaging communities about decisions relating to land.

www.gov.scot/Publications/2017/09/7869

National Standards for Community Engagement

Scottish Community Development Centre

The National Standards for Community Engagement are good practice principles designed to support and inform the process of community engagement, and improve what happens as a result.

www.scdc.org.uk/what/national-standards/

Place Standard

Scottish Government, NHS Health Scotland and Architecture & Design Scotland

The Place Standard provides a framework to assess the quality of a place, and is designed to support communities, public, private and third sectors to work efficiently together.

www.placestandard.scot

Talking about our place

Scottish Natural Heritage

This toolkit provides a range of guidance and practical tools on how to talk about your place, celebrate it, and consider ways to improve it.

www.nature.scot/enjoying-outdoors/communities-and-landscape/talking-about-our-place-toolkit

A toolbox for public engagement in forest and woodland planning

The Forestry Commission

This toolbox aims to assist forest and woodland managers when preparing for public engagement.

www.forestry.gov.uk/toolbox

Involving your community

Development Trusts Association Scotland

This practical guide describes techniques for involving and consulting local communities in community asset based projects.

www.dtascommunityownership.org.uk/sites/default/files/COSS_Involving_Community_WEB.pdf

Working together for sustainable estate communities

University of the Highlands and Islands

This document explores the potential of collaborative initiatives between privately-owned rural estates, rural communities and other partners in upland Scotland.

www.issuu.com/cms_uhi/docs/working_together_for_sustainable_estate_communitie/4

Equality and Human Rights Commission

The Commission can advise on removing barriers to engagement for protected groups (women, disabled people, minority ethnic groups, children and older people).

www.equalityhumanrights.com/en

Scottish Rural Action

Scottish Rural Action (SRA) is the non-profit body which organises the Scottish Rural Parliament. Its website includes an online forum for communities to connect and share views and ideas. SRA takes forward priorities voted on at the Rural Parliament and advocates on behalf of rural communities on a wide range of issues.

www.sra.scot/



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