

## **(Scotland) Act 2015: Consultation on Draft Guidance Section 2**

### **Q1: The guidance identifies a series of principles for effective community planning. Do you agree with them? Should there be any others?**

Midlothian Council broadly welcomes the principles as set out in the Guidance. The Council would welcome further clarification regarding specific requirements for other statutory boards to collaborate with the CPP Board.

#### **Please explain why**

Shared leadership, a collective vision with and for local communities, shared resourcing and commitment to the principles of public sector reform are already matters Midlothian CPP has committed to in its Single Midlothian Plan (the local outcome improvement plan for Midlothian).

Working relationships between the CPP Board and the Integration Joint Board for adult health and care are well established with joint membership of both Boards at both Officer and Board level.

The new legislation for Community Justice is still to complete its passage into law, and work is well advanced in Midlothian to establish similar arrangements linking the new community justice duties to the existing Community Safety and Justice Board which operates as part of the CPP.

There is however some concern to ensure that local Boards with statutory duties fully understand how the expectations of the Community Empowerment Act and national policy expectations placed on other Boards to deliver specific targets interrelates.

Further to this, whilst all partners are committed to effective partnership working, as in all complex areas of resource management and policy implementation there is a potential for disputes to arise, which may require a dispute resolution system between Boards, and it would be helpful for the guidance to set out expectations in this regard.

### **Q2: The draft guidance sets out common long-term performance expectations for all CPPs and community planning partners. Each CPP will adopt its own approach towards meeting these expectations, reflecting local conditions and priorities. Even so, do you think there are common short- or medium-term performance expectations which every CPP and partner should be expected to meet? If so, what are they?**

The Council as a partner is the sole locally democratically accountable body with responsibilities to the whole population of the partnership area. It is subject to statute and regulations from national governments at both UK and Scotland levels, and has welcomed the place it has been given in coordinating and facilitating community planning, adopting the broad national outcomes framework within this context and focussing on meeting its own communities expressed needs in partnership with other CPP partners.

The Single Midlothian Plan is based on a cycle of local evidence gathering, strategic assessment and public/ stakeholder engagement, and has been adopted by the Council as its strategic plan.

In terms of scrutiny and improvement processes, the Council and CPP are already subject to the existing local government benchmarking framework, the local audit network and its variety of sub sets of performance and quality audits, and are working with the Improvement Service's national CPP improvement support processes. The Council do not feel there is any need for further detailed national expectations to be set out as this would run counter to the principles of local partnership working and community participation in decision making set out in the Act.

**Q3: The 2015 Act requires CPPs to keep under review the question of whether it is making progress in the achievement of each local outcome in their LOIP and locality plan(s). CPPs must from time to time review their LOIP and locality plan(s) under review, and to revise them where appropriate. Even with this, do you think the statutory guidance should require CPPs to review and if necessary revise their plans after a specific period of time in every case? If so, what should that specific period be?**

No.

**Please explain why**

The Midlothian CPP has an annual cycle of planning and performance reporting well established. This supports a 3 and 10 year set of outcomes as set out in the 2003 Act guidance. The CPP has just completed a review of its three year outcomes resulting in a revision of key priorities and thematic outcomes. Given this is well established practice; there is no need for further specification of requirements at a national level.

At the locality planning level, the CPP agreed a five year cycle of neighbourhood plans, implementing these on a rolling programme across the 16 community council areas with capacity to undertake 3 planning processes with local communities each year. As a result all areas now have plans, and some are at the end of their first 5 year period and now being revised with communities involved in doing so.

A review of the neighbourhood planning processes two years ago indicated that there was a clear desire from community representatives for a greater emphasis on co- production and dialogue and less on a formal plan with static targets .This revised approach of using neighbourhood planning as a setting for public services and communities to engage in co- production is now being established , using participatory budgeting pilots as an additional element to further extend the role of communities in decision making . Given this the Council does not feel further setting of timetables in statutory guidance adds value.

**Q4: What should the statutory guidance state as the latest date by which CPPs must publish progress reports on their local outcomes improvement plans and locality plans?**

4 months 6 months other

**If other please provide timescale. Please explain why**

Six months provides sufficient time for end of year data analysis, partner approval and preparation of publications.

**Q5: Do you have any other comments about the draft Guidance?**

There are particular implications for a Council led by democratically elected local councillors regarding the governance arrangements for the new CPP Boards where expectations have not been clarified fully. These include:

- Will participation requests require amendments to standing orders of Councils, if so what kind of changes are envisaged?
- As no description of decision making processes to which requests to participate can be made is set out, is it the intention that community groups would participate in Council meetings where policy /resource/ budget setting decision making is taking place?
- How will any such arrangements (if required), ensure that the democratic mandate of the elected members is respected and not eroded by pressure groups representing small numbers of commonly interested parties?
- Further clarity would be helpful to confirm the role of Members of the CPP Boards – will there be a specific code of conduct;
- It would be useful to have further guidance in relation to the role of the Elected Member within the CPP Boards – specifically in respect of interests e.g. an Elected Member might be on the CPP Board and also the Chair of Planning Committee.

**Q6: We propose that the draft regulation for locality planning should set one criterion only, which is a maximum population permissible for a locality. Do you agree? What are your reasons?**

Yes. The scale of each CPP is radically different. In Midlothian we are small enough to be able to operate community planning at a level of recognisable local communities that residents identify themselves with. The Council ward structure (6 wards for the area) in most cases does not provide this recognisable geographic community of shared interests as the wards include separate settlements of a small scale nature that have strong identities and sense of community spirit not present at a ward level. Not specifying scale beyond the level set out in the regulation enables local decisions to be made suiting local circumstances.

**Q7: The draft regulation sets a maximum population size for localities subject to locality planning of 30,000 residents. It also proposes an exception which allows a CPP to designate a local authority electoral ward as a locality even where its population exceeds 30,000 residents. Are there circumstances in which these criteria would prevent a CPP from applying a reasonable approach to locality planning?**

Where areas of deprivation area adjacent to each other in larger urban areas, but cross ward boundaries it may be appropriate to designate the deprivation area as a locality planning area.

**What difference would it make to how localities were identified for the purposes of locality planning in the CPP area(s) in which you have an interest, if the maximum population size were set at (a) 25,000 residents or (b) 20,000 residents?**

For Midlothian with a total population of 85,000, already operating at smaller population scale, very little.

**Q8: Do you have any other comments about the draft Regulation?**

No.

**Q9: Are there any equality issues we should be aware of in respect of local outcomes improvement plans and locality plans?**

Care must be taken to ensure the focus on geographies of concentrated deprivation does not lead to reductions in focus on protected characteristics groups and the barriers and inequality they face. In Midlothian the Council agreed to retain poverty as a protected characteristic when this was removed from the Equality Act at UK level. More than 50% of Midlothian households living below the poverty line (as defined by Scottish Government) do not live in our three areas of multiple deprivations as defined by SIMD. In addition, wage inequality here as in the UK in general, still leads to women receiving less pay than men and contributing significantly in Midlothian to the lower than Scotland average weekly wage for all employees working in the area. Barriers faced by disabled residents and those with learning disabilities or autistic spectrum conditions remain non geographically concentrated, and efforts to close outcome gaps based on geography should not lead to reductions in support to these local people. Ethnicity, age and sexuality characteristics are also not geographically concentrated.

#### **Participation requests Process**

By a Community Participation Body (s.20)

- To a Public Service Authority (s.21, Sch. 2)
- The request must contain certain information (s.22)
  
- The Public Service Authority must assess the request (s.24 (3))
- Public Service Authority agrees or refuses the request (s.24(5))
- Public Service Authority informs the Community Body (s.24(6))
  
- Outcome Improvement Process proposed and discussed (s.25 & s.26)
- Outcome Improvement Process established with 90 days (s.28)
  
- At the end of the Process a report is published (s.31)
- Each year a Public Service Authority must publish a report on the Participation Requests they have received (s.32)

**Q1: Should the use of a statutory form be required in the regulations? Please give reasons for your response.**

On balance, no. Whilst the use of such a form would ensure consistency across Scotland, and avoid duplicate efforts being made at each CPP to set up a formal process to meet statutory duties, there is a concern that established engagement structures and processes would be reduced in effectiveness if statutory forms had to be filled in each time a request emerged to participate. It could be of value where new working relationships are emerging, or where formal legal decision making processes, for example at a Council elected member level were being opened up to Community body participants. The Council already operates a petitions committee, and this kind of request could be routed through this structure. As set out below, however, much work already takes place in partnership operationally.

**Q2: Should it be possible for a community body to put in a participation request without using a form? Please give reasons for your response.**

Yes, where the request by a community group is to participate in operational decision making as part of neighbourhood (locality) planning, or as part of wider CPP joint planning arrangements, there should be no requirement to submit a form. This would reduce the level of effective partnership and co-production already underway.

However, should it be decided to continue with this approach the form needs to remain simple to complete and additional help should be offered to community bodies who may struggle to fill in the form. To ensure accessibility there should be a simple form available online and by request. Where barriers exist statutory organisations should explore filling the forms in over the phone, and local support organisations should offer help to those that need it.

**Q3: What else might a statutory form usefully cover beyond the example set out in Annex B?**

If used, the form should allow community bodies to define what decision-making they would like to be involved in. There should be more details about the organisation, who they work with and what mandate they have to be involved in the specific decisions. The language on the form needs to be simplified. More thought should be given to a range of ways to engage with decision making. For example, does the group need to be informed, how they want to engage and what support they need to engage. The template form in its current form is not fit for purpose.

**Q4: Is 14 days a reasonable amount of time for additional public service authorities to respond? If not, please suggest an alternative timescale and explain reasons for the change.**

The requirements the Council for elected member decision making operate to a set timetable which would make this turnaround timing impossible. A 2 month period rather than 2 week period would be required where elected member decision making is required.

**Q5: What, if any, are the particular/specific ways that public service authorities should promote the use of participation request?**

There needs to be a nationally supported and resourced strategy for promoting participation requests. There also may be some merit in refining the options for how the public engage with public services where there are matters of resource allocation or policy decisions affecting a community of place or interest, where use of assets may change, where land uses owned by a public body may change and where reconfiguration of service delivery may be being considered. There should be a range of engagement options that link with democratic and governance arrangements in the specific public body. These options should be more creative than just filling in a series of forms. As part of the implementation of the Participation Requests the Government should carefully consider how these requests interlink with other statutory requirements for community participation. Other statutory provision such as alcohol licensing, pharmaceutical regulations, planning, community planning, school closures and major service change in the NHS all have detailed provision for community engagement. The rationalisation of the existing participation requirements and Participation Requests may help avoid confusion and duplication in the future.

**Q6: What are the ways that public service authorities should support community participation bodies to make a participation request and participate in an outcome improvement process that should be set out in the regulations?**

Public bodies should provide as much support as possible to support community bodies to make a participation request. The provision of effective community development staffing to support participation ensuring community groups are able to understand systems, processes and constraints is essential to making the community empowerment Act a reality. The Council has a small team of such workers assisted by colleagues in the TSI with complementary roles. Council staff are already targeted towards the areas of greatest need, but must also maintain commitments across the county to delivery of neighbourhood plans already agreed with public services and local people. There are also two staff in NHS who support community involvement in decision making.

Overall resources for such work are stretched both in staff and budget for practical actions such as events costs, funding for Charettes, Planning for real or other engagement tools.

There is a need for wider public service agency engagement with and support to the staff in these front line roles by delivery of agreed actions with communities to ensure credibility of participation is maintained with community agencies and the wider public.

**Q7: What types of communities could the regulations specify that may need additional support? Please give reasons for your response.**

Both geographic communities where there are high levels of multiple deprivation and low levels of engagement, and communities of shared interest where additional barriers arise, this would include protected characteristics groups such as learning or physically disabled people, those who face barriers due to mental health, members of minority ethnic communities, the elderly and children. In addition stigmatised groups such as drugs users, offenders, and victims of domestic violence all require assistance to actively participate in decision making with public bodies. Where there are local conflicts between community agencies there is a need for mediation, consensus building and agreeing shared goals, which will not emerge naturally but requires skilled and supportive interventions.

**Q8: How long should the public service authority have to assess the participation request and give notice to the community participation body? Is 30 days a reasonable amount of time? If not, how long should the period for making a decision be? Please give reasons for your response.**

Dependent on the complexity of the issues being addressed more time may be required to assess and respond, especially if there is a requirement for Councillors to be involved in decisions making to allow a response to be made. A 2 month period appears more feasible to allow for normal business cycles in Councils. Caution should be exercised in defining set timescales as participation requests should start a process of engagement and improvement that may take many years to be concluded.

**Q9: Are there any additional information requirements that should be included in connection with a decision notice? Please give reasons for your response.**

No. A decision notice sounds quite formulaic and formal, more suited to the outcome of planning application, for example. Decision making on complex areas of work such

as the allocation of resources, the closure of certain services or the development of new services are rarely a one-off decision where a notice can be issued in this way.

**Q10: What other information, if any, should the regulations specify should be published in relation to the proposed outcome improvement process? Please give reasons for your response.**

No further information requires to be specified in regulations; however there should be permission to go beyond the specified:

- Names of the community participation bodies and public service authorities which are involved in the outcome improvement process.
- The outcome to which the outcome improvement process relates.
- How the outcome improvement process is to operate.

The guidance encourages openness about decision making, but should also allow for openness about resource constraints that may delay or prevent implementation.

There is also an assumption in the draft regulations that community participation will lead directly to an outcome improvement process. It is important to embed practices so that community groups understand, and contribute to, the normal decision making processes of public bodies rather than creating an industry of publication of new improvement plans.

**Q11: What other information, if any, should the regulations specify should be published in relation to the modified outcome improvement process? Please give reasons for your response.**

Draft Regulation 10 requires the public service authority to publish information regarding the modification:

- The names of the community participation bodies and public service.
- Authorities involved in the modified outcome improvement process.
- The outcome to which the modified outcome improvement process relates.
- Identify the outcome improvement process which has been modified.
- How that outcome improvement process has been modified.
- How the modified outcome improvement process is to operate.

There is a need to allow these new expectations to become established practice before considering further expansion of detailed publication expectations. There could a greater emphasis in the outcome improvement process that relates to disadvantaged groups. If the ethos of the Act is to increase public engagement and reduce inequalities, this should be a focus of the improvement process.

**Q12: Section 31 sets out the aspects that the report of the outcome improvement process must contain. What other information, if any, should the regulations require the report include? Please give reasons for your response.**

Section 31 requires that each public service authority must publish a report each year setting out:

- The number of requests received.
- The number of requests agreed and refused.

- The number of requests which resulted in changes to a public service provided by, or on behalf of, the public service authority.
- Any action taken by the public service authority to promote and support the use of participation requests.

There should be a greater on how the improvement process has addressed inequality. Consideration should be given to the additional resources required to produce the outcome report. There is a risk that the additional requirement will divert staff away from engagement with community groups, if the output is focused on the production of published reports.

**Q13: Do you have any other comments on the draft Participation Request?**

There is an opportunity in the draft regulations to increase community engagement in public sector decision making processes. The focus should be on the quality of the engagement rather than form filling.

In terms of participation requests, there is a risk that more empowered communities and those with a vested interest in the outcome of the decision making will be better placed to take advantage of this new provision. Disadvantaged groups may be unaware of how and who makes decisions. There needs to be an awareness raising campaign to ensure that people are aware of when and what decisions are being taken.

Consideration also needs to be given to the existing involvement standards and processes across different public bodies. How will the requests, for example, interlink with the Participation Standards in the NHS and what role, if any, will the Scottish Health Council have in assessing the requests. With the integration of health and social care and closer partnership working across the public sectors, there needs to be a consistent approach and culture for responding to participation requests. Also, careful consideration needs to be given to public sector processes where decision making areas are not, or only partly, devolved.

**Procedure (Scotland) Regulations 2016 Land Reform**

**Q1:** Ministers should also take into consideration when deciding if land is “eligible land” the position where a site is designated by the Council for future housing development or another use.

The Council welcomes this clarification.

**Q2:** Land on which the Council proposes to build houses or use for another purpose of benefit to the community to the category of classes of land should not be eligible for purchase by a Part 3A Community Body.

The Council supports this proposed interpretation.

**Q3:** Land where there is a building occupied by a person under a tenancy is not excluded.

This could cover Council owned land where there is a tenant of the Council; we suggest that such land should be excluded from the provisions of the Act.



## Community Asset Transfer

Council Property section's emphasis has been on business plan and community capacity, whilst the act proposed seems to focus on the request criteria and the time taken to respond. The timescale issues are one's that can be included in Council procedures and mainly focus on how quickly the Council responds to requests and then deal with offers. The proposals put forward foresees a 6 month period to make a decision – this should be achievable provided the provision of a full business case by the requesting party is considered to form part of the required submitted information; i.e. the clock only starts once all the required information has been submitted

A comparison between the Council's current Community Asset Transfer policy and the Act's expectations is set out below.

	CE Act Asset Transfer Requirements Guidance	Current Midlothian CAT Policy Position	Amendments Required to Policy to address Risk /Variations
1	Asset register format non specific, but can be in Excel or pdf	Asset Register available as pdf	No Changes required
2	Must include basis description	Asset register includes basic description, property address; current use, proposed use account holder etc.	No Changes required
3	Must be available on line	Register, Policy and supporting guidance documentation to be made available on line.	No Changes required
4	Must be available for inspection by Members of the Public	Hard copy of information can be made available for inspection	No Changes required
5	Information request could include information on costs, structure, title burdens. If this information is eligible for release under FOI available etc. it would need to be made available	Policy provides that we are open ant transparent. (NB Act does not propose that the Council are required to provide surveys specific to any proposed new uses of a building /land)	
6	Asset Transfer Requests to be dealt with within specific timescales subject to variation by agreement with the requesting parties	Policy provides for timetabling for dealing with stages of requests	May be a requirement to review the timescales for dealing with requests to align with the requirements of the Act
7	Required to identify a clear process and appropriate single point of contact in respect of requests	Policy provides for timetabling and procedures for dealing with applications; it also provides for the need for a specific point of contact in relation to requests	

	CE Act Asset Transfer Requirements Guidance	Current Midlothian CAT Policy Position	Amendments Required to Policy to address Risk /Variations
8	Standard period for giving decisions should be 6 months from the date of validation of request ( validation date commences when all required information has been provided)	Midlothian Policy allows for more flexibility in relation to timescales allowing community groups 12 months to develop business plans etc. No specific timescales are included for making of decisions	Consider adding specific timescales for responding to requests and delivering decisions to align with the provisions of the act. 6 months is a reasonable period on which to make a decision once a full business case has been presented for consideration
9	Robust decision making process required comprising of officers from property, legal, finance, community development and where relevant economic regeneration and specialist advice where required	Reference if made to Community Management Assessment Group (CMAG) but make up of the group has not been defined	Makeup of the CMAG group representation needs to be agreed and aligned with the requirements of the act
10	Asset transfer decision must be agreed unless there are reasonable grounds for refusal	Council Policy requires that the requesting party can demonstrate a robust business case as part of the process for acceptance. The Policy also considers various levels of transfer from license to full blown transfer depending on the needs ability and resources of the requesting party	No Changes required
11	Decision Notice requirements	Policy /supporting information makes no reference to content of decision notice	A standardised decision notice format needs to be adopted in order to comply with the acts requirements
12	Decision Notice must include reasons for decision	Policy provides for transparency of process and decision making	Need to ensure that Decision notice is clear and backs Council Policy; makes clear the terms and conditions of transfer and terms on which an offer must be made

	CE Act Asset Transfer Requirements Guidance	Current Midlothian CAT Policy Position	Amendments Required to Policy to address Risk /Variations
13	Post decisions requesting body required to make offer compliant with transfer decision within 6 months of the date of decision notice	Policy and procedure currently silent on the date for completion of any transfer agreement but Policy /procedure expectation would be that the terms of any transfer, lease, and sale would be agreed as part of the Business Case discussions	Timescale for completion of an agreement following approval should be included on the procedures attached to the policy
14	Right of appeal to Scottish Ministers is provided in the Act. In considering an appeal they must take into account the same terms and conditions as the original requests	The Policy does not provide for a right of appeal to Scottish Minister	Provision for a right of appeal to Scottish Ministers must be included in a revision to the policy

**Q1: Do you agree that the types of land set out in the draft Community Empowerment (Registers of Land) (Scotland) Regulations 2016 need not be included in relevant authorities' registers? If not, please explain what you would change and why.**

No comments.

**Q2: Are there any other types of land that relevant authorities should not have to include in their register? Please explain what should not be included and why.**

No comments.

**Q3: Do you have any comments on the proposals for guidance on what information registers should contain and how they should be published?**

No comments.

**Q4: Is there any information you think a community transfer body should be able to request from a relevant authority, that it would not be able to obtain under FOISA or the EIRs?**

No.

**Q5: Do you think the proposed additional requirements for making an asset transfer request are reasonable? If not, please explain what you would change and why.**

No comments.

**Q6: Is there any other information that should be required to make a valid request?**

The Council wishes to make it clear that where it has a property which is surplus and can be disposed of in support of a specific project it requires the market value for the site identified in any current register.

**Q7: Do you have any comments on the proposals for acknowledgement of requests?**

No.

**Q8: Do you have any comments on the proposed requirements for notification and publication of information about a request?**

No.

**Q9: Is 6 months a reasonable length of time for the relevant authority to make a decision on an asset transfer request? (This time may be extended if agreed with the community transfer body.) If not, how long should the period for making a decision be?**

This should be achievable provided the provision of a full business case by the requesting party is considered to form part of the required submitted information; the clock only starts once all the required information has been submitted.

**Q10: Do you agree with the proposals for additional information to be included in a decision notice? If not, please explain what you would change and why.**

The Decision Notice; this document needs to meet the prescribed format (see spreadsheet) and the Council need to have reasonable grounds for both acceptance and refusal. The assumption in the proposed act is that there will be a transfer – but there seems to be a provision that whilst community bodies can make an offer, in making a decision the Council can amend the terms provided they can justify doing so; so for example, if the Council require a capital sum or income from a specific asset provided the Council have made this clear then the Council can include this requirement in the decision.

**Q11: Do you agree that the Scottish Ministers should be required to appoint a panel of 3 people to consider reviews of Ministers' own decisions? If not, how do you think these reviews should be carried out?**

Yes.

**Q12: Do you agree that a local authority should be required to make a decision on a review within 6 months? If not, how long should the period for making a decision be?**

Yes.

**Q13: Do you have any other comments about the draft Asset Transfer Request (Review Procedure) (Scotland) Regulations 2016 or draft Asset Transfer Request (Appeals) (Scotland) Regulations 2016?**

No.

**Q14: Do you agree that the Scottish Ministers should appoint a single person to consider an appeal where no contract has been concluded? If not, how do you think these reviews should be carried out?**

No, a single person is not an adequate number. A small panel would be preferable.

**Q15: Do you agree that the documents should not be published in relation to appeals where no contract has been concluded? Please explain your reasons.**

Yes. It will often be the case that there are commercial and local community competitive elements that may be negatively affected by such publication.

**Q16: Do you agree that no third party representations should be allowed in relation to appeals where no contract has been concluded? Please explain your reasons**

No. The appeals come after consideration and local appeals process have been exhausted, so it is not appropriate to have further representations at this stage.

**Q17: Do you have any comments on the proposed procedures for appeals where no contract is concluded?**

No.

**Q18: Do you have any comments on the proposed procedures for applications to Ministers for Directions?**

No.