

Proposals to introduce a Community Right to Buy –  
Assets of Community Value – consultation  
**Summary of responses**



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Any enquiries regarding this document/publication should be sent to us at:

Department for Communities and Local Government  
Eland House  
Bressenden Place  
London  
SW1E 5DU  
Telephone: 030 3444 0000

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## Introduction

The Department for Communities and Local Government conducted a consultation on the secondary legislation for the Community Right to Buy from 4 February to 3 May 2011, underpinning the provisions set out in the Localism Bill (Part Four, Chapter Four – Assets of Community Value). The consultation was conducted according to the Code of Practice on Consultation. It was targeted at local authorities, parish and town councils, voluntary and community bodies, landowners and private businesses, but open to all. Two hundred and fifty-six responses were received during the consultation exercise, indicating a broad level of interest in the Right and in making it effective and fit-for-purpose.

The Localism Bill was introduced in Parliament on 13 December 2010. It sets out a framework for a Community Right to Buy (Assets of Community Value), which will enable communities to identify local assets of community value and will give them the opportunity and the time to raise funds and make a bid to buy the asset if the asset comes up for sale.

Subject to parliamentary approval, regulations will set out a number of elements of the detailed operation of the Right, and will be informed by the responses to this consultation.

# Background

The framework for the process of the Community Right to Buy is set out in the Localism Bill, with powers for the Secretary of State to specify certain aspects in regulations for England (and corresponding powers for Welsh Ministers with regard to Wales). It is these aspects that formed the basis of questions in the consultation document. We also asked about what support would be most helpful for those wishing to take up the Right. In order to understand views on the different aspects of the Right, questions were asked around the following issues:

1. The definition of an asset of community value (Questions 1-6)
2. Ways in which assets may be nominated and listed (Questions 7-9)
3. Information to be included in community nominations (Questions 10-11)
4. The procedure for listing assets (Questions 12-13)
5. Notification about inclusion and removal of a listed asset (Questions 14-19)
6. The content and publication of the list of assets of community value and the list of land nominated by unsuccessful community nominations (Question 20)
7. The right of appeal for landowners (Questions 21-27)
8. The length of the windows of opportunity and protected period (Questions 28-31)
9. Exempt disposals and permitted sales within the full window of opportunity (Questions 32-35)
10. Compensation for landowners (Questions 36-42)
11. Enforcement of the regulations (Questions 43-45)
12. Support and guidance (Question 46)

There was also an opportunity for respondents to make any other general comments about the policy that were not covered by the consultation questions.

## Consultation responses

In total, 256 responses were received and analysed, predominantly from local authorities and voluntary and community sector organisations:

Type of response	Number	Percentage
Local authorities	90	35.2
Parish/town councils	35	13.7
Voluntary and community bodies	61	23.8
Businesses	26	10.1
Landowners	9	3.5
Land conveyancers	1	0.4
Other public body	12	4.7
Other	22	8.6
<b>Total</b>	<b>256</b>	<b>100%</b>

A full list of responding organisations is at Annex A.

## Consultation events

The Department for Communities and Local Government organised five events during the consultation period on the Community Right to Buy in Manchester, London, Bristol and Birmingham, which were attended by over 150 people representing voluntary and community sector organisations, local authorities, parish and town councils, businesses and landowning interests. Some of the main themes raised at the events are summarised in the final section of this document along with other general comments raised by consultation respondents.

## Analysis

Questions mainly consisted of two parts – a closed part ('yes' or 'no' response) and an open part, where respondents could record additional comments. Eight questions were open text questions. Where respondents made additional comments, the number of respondents to each question is given, but in several cases, respondents have raised more than one issue thereby increasing the number of comments received.

In the analysis in subsequent sections of this document, for confidentiality purposes, we have merged the responses from the one respondent under the category of 'Land Conveyancer' into the category of 'Other'.

# Definition of an asset of community value

## Question 1

Do you agree that the regulations should give local authorities the power to decide what constitutes an asset of community value based on a broad definition of 'community benefit' and a list of excluded assets?

Two-hundred and three respondents gave responses to Question 1, as follows:

	Yes	No	Total
Local authorities	75	8	83
Parish/town councils	24	3	27
Other (public)	6	2	8
Voluntary and community bodies	38	9	47
Business	8	8	16
Landowners	3	5	8
Other	11	3	14
<b>Total</b>	<b>165</b>	<b>38</b>	<b>203</b>
<b>Total (%)</b>	<b>81.2</b>	<b>18.8</b>	<b>100</b>

A significant majority of those who responded agreed with the proposal that the regulations should give local authorities the power to decide what constitutes an asset of community value, based on a broad definition of 'local community benefit' and a list of excluded assets. There was a general consensus across all sectors on this point, with the exception of the business and landowners sectors, with marginally more landowners disagreeing with the proposal in Question 1. This could be down to the value those sectors place on having certainty about what types of land and buildings might be listed as assets of community value.

One hundred and two respondents made additional comments to Question 1. Generally, there was support for the definition being set to a certain degree in regulations, or in guidance, with some flexibility for local authorities to interpret at the local level.



*“Given the localism agenda we agree that the local authority should have the power to decide what constitutes an asset of community value, based on a broad definition of ‘local community benefit’ and a list of excluded assets. We would like central government to set out some clear overarching guidance within the regulations on what its intentions are, but this list should not be exhaustive. This would remove some potential ambiguity whilst still allowing local authorities to shape the legislation for their area.”*

Business

Of those who agreed with the proposal, in Question 1:

- sixteen thought that there should be further guidance or a strong steer from central government about the types of asset that have community value, but that local authorities should have discretion to add to this to take account of local circumstances
- fourteen thought the definition of an asset of community value should be left completely to local authorities, in the spirit of localism
- seven wanted local authorities to consult with the wider community and/or link to their Local Development Framework/Neighbourhood Plans, when considering whether an asset is of community value.

Other comments covered various issues, such as the need to have an appeals process against the local authority’s decision; the need for an independent element in the local authority’s decision-making; and suggested types of land to be excluded from listing.

Of those who disagreed with the proposal, in Question 1:

- twenty-five felt that the definition should be clearly set out in regulations or on the face of the Bill because of concerns about inconsistency and uncertainty for land and business owners, rather than leaving it to local authorities to define
- six felt that there could be some kind of national framework or minimum list of assets which could be set out in regulations or guidance, which local authorities could then have discretion to add to
- four expressed concern about private assets being included in the Community Right to Buy or being treated in the same way as public assets
- four felt that local authorities should consult more widely with the local community when deciding whether an asset is of community value.

Of those who did not answer ‘yes’ or ‘no’ to Question 1:

- seven thought that there should be further guidance or a strong steer from central government about the types of asset that have community value, but

that local authorities should have discretion to add to this to take account of local circumstances. It was felt that it was important for local authorities to have some form of clear direction about the definition, in order to minimise the risk of challenge

- five wanted local authorities to consult with the wider community and/or link to their Local Development Framework/Neighbourhood Plans, when considering whether an asset is of community value
- two felt that the definition should be clearly set out in regulations or on the face of the Bill, to ensure clarity and consistency.

Other comments suggested automatically listing certain types of assets, such as the last pub or shop in a local area; excluding privately owned land and land that hosts energy infrastructure; and leaving the definition to local authorities entirely.

## Question 2

If yes,

- (a) do you agree with the factors listed (see below) that the local authority should take into consideration, when deciding whether a piece of land or building is an asset of community value?

A summary of the proposed factors is as follows: the ownership of the land, the occupier of the land (where this is not the same as the owner), the current or former use of the land, evidence of the strength of community feeling for the asset to remain for community use, the price or value of the land, and statutory provisions which relate to the land.

The full wording of the proposed factors is contained in the consultation paper, paragraph, 3.8.

- (b) Should these be set out in regulations?

### Question 2(a)

There were 176 responses to Question 2(a), as follows:

	Yes	No	Total
Local authorities	53	23	76
Parish/town councils	22	2	24
Other (public)	4	2	6
Voluntary and community bodies	31	11	42
Business	8	2	10
Landowners	2	5	7
Other	10	1	11
<b>Total</b>	<b>130</b>	<b>46</b>	<b>176</b>
<b>Total (%)</b>	<b>73.9</b>	<b>26.1</b>	<b>100</b>

Almost three quarters of respondents stated that they agreed with the factors listed in the consultation document. All respondent groups were in agreement on this point, except for landowners, with over two-thirds stating that they did not agree with the proposed factors in the consultation document. This was mainly down to concerns that the factors and definition were too broad and vague, which could result in widespread listing of assets.

*“Clearly the last pub in a village should be subject to listing, along with houses of particular character or historical significance. The challenge is to prevent wholesale listing of all pubs as sui generis community assets, as this would result in unnecessary fetter on property and risk to pub values. We believe that there should be a restriction on listing, to the last such function provider within specific communities.”*

Landowner

In total, 138 respondents made further comments to Question 2(a) – some of whom made specific comments about the list of factors in the consultation document and others made their own comments.

There were 154 specific comments relating to the factors listed in the consultation document. Out of those:

- Thirty agreed that **strength of community feeling** should be included as a factor for consideration by the local authority, with six disagreeing or expressing concern that this should be a factor for consideration. However, those who did think that this should be considered as a factor, acknowledged that this could be too vague/difficult to define in regulations and felt that there needed to be clear guidance about what exactly this would mean

- Twenty-one agreed that the local authority should consider the **former and current use** of the land when deciding whether an asset is of community value, with two disagreeing with this criterion
- Fourteen agreed that the local authority should take account of **existing statutory provisions** relating to a piece of land when considering whether it is an asset of community value, with no respondents specifically disagreeing with this. However, some felt that land governed by existing statutory provisions should not be subjected to more than one consent procedure by being listed as an asset of community value or that such land should not be automatically listed
- Thirteen agreed that the **value of the land** should be taken into consideration by the local authority when deciding whether an asset is of community value with some agreeing that community groups should not be able to list land or buildings that there is no way they would be able to afford to buy. However, 31 disagreed with this saying that this was irrelevant and subjective and that local authorities should not be put in the position of deciding whether a community group can afford to buy a certain piece of land. Others suggested that community groups should be given the opportunity to submit a feasibility assessment with their nomination to demonstrate their financial position
- Seven agreed that the local authority should consider the **ownership** of the land when deciding whether an asset is of community value. However, 17 disagreed with this, citing the use of an asset as being more important than its owner, with several disagreeing that publicly owned assets should automatically be listed.
- Six agreed that the local authority should consider the **occupier** of the land when deciding whether an asset is of community value. However, 10 disagreed with this, saying that use of the land is a more important factor.

### FURTHER COMMENTS

A number of additional themes were identified in the responses to Question 2(a):

- Seventeen of those who made further comments felt that the list of criteria should not be exhaustive and that there should be flexibility for local authorities to add criteria, where necessary. However, an equal number of respondents also commented that the definition of an asset of community value must be clearly set out in regulations or in guidance
- Fourteen felt that when local authorities decide whether an asset is of community value, they should also consider the benefit of listing to the community (by the level of social need) and the impact of not listing an asset
- Eleven respondents felt that the definition of an asset of community value must make reference to existing planning policies/Local Development Frameworks/or Sustainable Community Strategies

- Ten felt that local authorities should make their assessment or decide their criteria for assessment in consultation with the wider community.
- Nine felt that the list of factors should include the potential use of an asset in addition to the current and former use (this is explored in more detail in Question 3)
- Eight suggested that local authorities should also consider the historical and/or cultural significance of an asset when deciding whether it is of community value
- Six thought that local authorities should also take into consideration what alternative provision/facilities there are in the local area and that assets should only be listed if they are the last provider of a service in the area or if the asset is at risk of closure. The Community Right to Buy should not apply to viable businesses
- Five were concerned that the provisions could be used to frustrate legitimate development and regeneration, and felt that land which already has planning permission should be excluded from being listed.
- Five also felt that local authorities should consider the intended use of the asset by the community group and their capacity to sustain/deliver this and their commitment to taking over the asset.

Other comments suggested that for an asset to be of community value, it should have been used predominantly by the community for a specified time (e.g. a minimum of 20 years); that the use of an asset is more indicative of whether an asset is of community value than the building itself; that local authorities should be able to reject nominations on the basis that they are vexatious; and that local authorities should be required to publish the criteria against which they are intending to make an assessment.

**Question 2(b) Should these be set out in regulations?**

There were 178 responses to Question 2(b), as follows:

	Yes	No	Total
Local authorities	48	25	73
Parish/town councils	19	6	25
Other (public)	5	0	5
Voluntary and community bodies	40	2	42
Business	12	1	13
Landowners	5	2	7
Other	10	3	13
<b>Total</b>	<b>139</b>	<b>39</b>	<b>178</b>
<b>Total (%)</b>	<b>78.1</b>	<b>21.9</b>	<b>100</b>

More than three quarters of respondents thought that the factors that the local authority should consider when deciding whether a piece of land or building is an asset of community value should be set out in regulations. There was a consensus across all groups of respondents on this point.

One-hundred and five respondents made further comments in relation to Question 2(b). Overall, there was strong support for some central prescription (either in guidance or in regulations), of the criteria to be considered by local authorities when deciding whether to list an asset – with 48 respondents who made further comments in favour of the criteria being set out in regulations; and 38 in favour of some form of guidance or flexibility for local authorities to interpret the regulations.

Of those who agreed the criteria should be set out in regulations:

- Forty-two felt that it was important to set out the definition of an asset of community value and the criteria for assessing whether an asset has community value in regulations, in order to reduce uncertainty and ambiguity and the risk of challenge to local authorities. It would also increase equity and consistency between different local authorities. Nineteen of these respondents were local authorities

*“It will assist relevant authorities if the factors they should consider – in deciding whether or not to list – have statutory force. This should help community groups when it comes to nominations, and landowners in deciding whether to request an internal review, as both parties will have access to a definitive statutory set of factors as a point of reference.”*

Local authority

- Eighteen were in favour of local authorities having some flexibility to interpret the criteria set out in regulations and, if necessary, add to them. Ten of these respondents were local authorities
- Three felt that it might be preferable to set out the criteria in guidance rather than in regulations, or that guidance would assist with the implementation of the provisions.

Of those who did not agree that the criteria should be set out in regulations:

- nine thought that local authorities should be left to decide what criteria they should use when deciding whether a piece of land is an asset of community value
- nine felt that the criteria should be set out in guidance rather than in regulations
- seven felt that the regulations should not be too prescriptive and that they should allow flexibility and autonomy for the local authority to decide whether to list an asset, based on local circumstances.

Other comments suggested that making the criteria statutory could increase the risk of legal challenge and litigation; and that the criteria were too vague to be put into regulations.

Of those who did not answer ‘yes’ or ‘no’ to the closed part of Question 1:

- six felt that the definition and criteria should be set out clearly in regulations to ensure consistency, etc.
- two were in favour of some flexibility for local authorities.

**Question 3**

We envisage that the definition of ‘land of community value’ would not include a piece of land or a building which the nominator suggests has a potential use, as opposed to its current or former use – do you agree?

There were 206 responses to Question 3, as follows:

	Yes	No	Total
Local authorities	54	25	79
Parish/town councils	12	14	26
Other (public)	6	1	7
Voluntary and community bodies	15	38	53
Business	18	0	18
Landowners	9	0	9
Other	5	9	14
<b>Total</b>	<b>119</b>	<b>87</b>	<b>206</b>
<b>Total (%)</b>	<b>58.0</b>	<b>42.0</b>	<b>100</b>

Fifty-eight per cent agreed with the proposal in the consultation document – that the definition of ‘land of community value’ would not include the potential use of a piece of land or a building. The business and landowner sectors overwhelmingly supported the limited definition and the majority of local authorities were also positive. However the approach was unpopular within the voluntary sector (28% in favour) and parish councils (46% in favour):

*“It is important that land or buildings with a potential use are included within the scheme. This would enable for example currently derelict/at risk sites to be brought into community use. It would also allow innovative community projects to be developed, for the benefit of the wider community.”*

Voluntary and community body

One hundred and eighteen respondents made further comments in relation to this question:

- fifty-five felt strongly that restricting the definition of asset of community value to current or former use and excluding potential use, was too limiting and overly prescriptive and would only support a narrow range of community schemes
- eighteen thought that the decision should be left to local authorities to decide based on a knowledge of local circumstances
- twelve felt that potential use should be excluded, with many stating that this would be too broad and unnecessarily complicated for the local authority to administer
- ten felt that derelict or vacant properties should be included in the definition of an asset of community value, as suggested above.

Other comments suggested that there should be flexibility in the scheme to allow community groups to take over and run assets with multiple uses; others wanted further clarity on the definition of 'former use', or thought it should not be included.

#### Question 4

Are there other areas that you believe should be explored further to strengthen the Community Right to Buy?

There were 175 responses to Question 4, as follows:

	Yes	No	Total
Local authorities	32	42	74
Parish/town councils	13	10	23
Other (public)	2	2	4
Voluntary and community bodies	36	6	42
Business	8	6	14
Landowners	1	4	5
Other	8	5	13
<b>Total</b>	<b>100</b>	<b>75</b>	<b>175</b>
<b>Total (%)</b>	<b>57.1</b>	<b>42.9</b>	<b>100</b>

Just over 57 per cent felt that there are other areas that should be explored further to strengthen the Community Right to Buy. The voluntary and community, parish and business sectors were most in favour of exploring provisions to strengthen the provision, whilst local authorities and landowners were less in favour – although business sector concerns were focused more on the potentially negative impact of the current provisions



on businesses and development, and thought there should be stronger links to the Neighbourhood Planning process.

One hundred and eleven respondents made further comments:

- forty-six agreed that planning permission should be required before any asset of community value can be demolished or converted to another use.

*“The regulations could state that the local community is consulted and informed at an early stage prior to demolition thus giving local groups the opportunity to give a case for community takeover.”*

Voluntary and community body

- ten indicated that legislation should include an ‘emergency listing’ procedure where an asset of community value, which is not yet listed, and is put up for sale, can be added to the list temporarily.
- eight thought the Community Right to Buy should allow a community to nominate one part of a site, which relates to the value the community places on it, rather than the whole site.
- seven said that the legislation should provide more support to local groups in the first stages of property acquisition – additional business planning support and grants/loans at below-market interest rates, access to funding.
- four felt that the Community Right to Buy should apply to assets that have been abandoned or fallen into disuse, but are not actively being considered for sale.

Other comments covered a range of themes including notifying the community when there is a proposed change of use to the asset; giving communities the ‘right of first refusal’ to purchase the asset; and automatic listing of certain types of assets.

### **Question 5**

Do you agree that all residential property should be excluded from being listed as an asset of community value, except where the accommodation is tied to the asset of community value or is integral to the working of the asset?

There were 200 responses to Question Five, as follows:

	Yes	No	Total
Local authorities	70	12	82
Parish/town councils	18	10	28
Other (public)	5	0	5
Voluntary and community bodies	38	10	48
Business	13	2	15
Landowners	7	1	8
Other	8	6	14
<b>Total</b>	<b>159</b>	<b>41</b>	<b>200</b>
<b>Total (%)</b>	<b>79.5</b>	<b>20.5</b>	<b>100</b>

A large majority agreed with the proposal in the consultation document – that residential property should be excluded from being listed, except where it is tied to the asset. There was a consensus across all sectors on this point.

Seventy-seven respondents made additional comments to Question 5. Those who disagreed with the proposal made the following comments:

- twenty-nine felt that many residential properties have a current, former or potential community use and should not be excluded, giving the following examples:
  - residential property that has remained empty for some period
  - residential assets in public or private ownership that were once ‘community’ assets – i.e. former almshouses, police stations
  - ancillary land attached to residential property (paddock, meadow)
  - residential properties that have cultural or historical interest
  - council or housing association residential property
  - where residential property is intrinsically tied to a community asset
  - houses in multiple occupation, residential homes or temporary accommodation
  - social care residential homes.
- three disagreed that residential property should be excluded and felt that exclusion in relation to residential property should only be limited to assets to which a ‘C3’ use class is attached (i.e. private dwellings).

Other comments suggested that the Community Right to Buy should be based on the assumption that any property can be an asset of community value; and that as long as the definition of community value is comprehensive and clearly interpreted, residential property should not be excluded.

Those who agreed with the proposal in Question 5, made the following comments:

- eleven respondents agreed that residential property should be excluded, but that there could be exceptions to this, for example:
  - where an asset has only a small residential element
  - mixed use premises with shops or pubs as well as residential accommodation
  - affordable residential housing/social housing
  - where a change to residential use on an asset has occurred that had previously been determined to have community value
  - children’s homes or retirement/sheltered accommodation.
- seven agreed with the proposal and thought that there should be further exclusions, in addition to residential property, such as:
  - curtilage, including parkland, or ancillary land, garages, parking areas
  - farmland
  - land identified for residential use in any approved development plan or for which planning permission has been granted.

Other comments suggested that there needed to be a clear definition of ‘residential property’; that private businesses that include residential property should not be subject to the Community Right to Buy provisions; and that including residential property could breach Human Rights legislation.

### **Question 6**

Are there other types of land or buildings that should be excluded from being listed as assets of community value?

There were 181 responses to Question 6, as follows:

	Yes	No	Total
Local authorities	47	27	74
Parish/town councils	6	18	24
Other (public)	4	1	5
Voluntary and community bodies	13	27	40
Business	14	4	18
Landowners	6	0	6
Other	6	8	14
<b>Total</b>	<b>96</b>	<b>85</b>	<b>181</b>
<b>Total (%)</b>	<b>53.6</b>	<b>46.4</b>	<b>100</b>

Just over half felt that other types of land and buildings should be excluded from being listed, in addition to residential properties. There was a difference of opinion between different sectors, with the majority of local authorities, businesses and landowners suggesting that other types of land and buildings should be excluded, and the majority of parish and town councils and voluntary and community sector bodies disagreeing with this.

One hundred and nineteen respondents to Question 6 suggested the following types of land be excluded from the provisions:

- Land that is affected by other statutory rights, such as allotments and playing fields. There were concerns about adding more regulatory burdens and creating confusion as a result of overlapping legislation (21 responses)
- Land that has already been earmarked for development e.g. through the Local Development Framework. There was relatively strong feeling that these provisions could be used to frustrate legitimate development (20 responses)
- Land which is critical for national infrastructure and strategic regeneration, e.g. land that hosts energy infrastructure or land that might be needed for the expansion of airports (20 responses)
- Open land that is used for recreational purposes. It was considered that this can already be protected under existing legislation (i.e. through designation as a village green) (14 responses)
- All privately owned property (10 responses)
- Operational land (i.e. for transport use) and property for specific other public uses, such as police stations and fire stations (eight responses)
- Farm and agricultural land (seven responses)

- Assets that are located or integrated within larger estates or properties, such as office developments or shopping centres (five responses)
- Land that has been voluntarily put forward by an individual or organisation to benefit the community, as this might have the effect of discouraging landowners from allowing the community to use their land (four responses)
- Four respondents suggested that places of worship or graveyards should be excluded, with one citing the statutory process for disposing of closed churches under the Pastoral Measure 1983. Eight respondents, however, disagreed and specifically mentioned that places of worship should not automatically be excluded from being listed.

Other suggestions included commercial businesses; shopping centres and units within them; undeveloped land; ancient monuments; National Trust property; national defence and security sites; woodland, lakes and river banks; land with 'B Class' planning uses; land held for specific charitable purposes; land above a certain value (i.e. beyond the means of community groups); settlements of more than 10,000 people; operational schools; and premises safeguarding vulnerable people.

One respondent argued against exempting 'going concern' businesses from the provisions, as this could have the effect of shifting community endeavour towards liabilities rather than assets.

# Ways in which assets may be nominated and listed

## Question 7

Do you agree that the nomination process should be open to any group or individual and that they should have a 'local connection'?

There were 198 responses to Question 7, as follows:

	Yes	No	Total
Local authorities	48	34	82
Parish/town councils	18	8	26
Other (public)	2	3	5
Voluntary and community bodies	33	15	48
Business	7	9	16
Landowners	2	5	7
Other	6	8	14
<b>Total</b>	<b>116</b>	<b>82</b>	<b>198</b>
<b>Total (%)</b>	<b>58.6</b>	<b>41.4</b>	<b>100</b>

Over half agreed with the proposal that the nomination process should be open to any group or individual and that they should have a local connection. Local authorities, parish councils and voluntary and community sector bodies tended to be more supportive of the proposal in the consultation document than businesses and landowners, who expressed concerns about individuals being able to nominate.

One hundred and thirty-five respondents made further comments (several raised more than one issue, which is reflected in the numbers below):

- Seventy-two respondents were opposed to individuals being able to nominate an asset for listing. This was mainly down to concern about the risk of vexatious nominations by individuals opposed to development and a desire for community nominations to represent the views of the community – not just one individual

- Twenty-three respondents also felt that nominations should either only be made by incorporated groups, or that unincorporated groups/individuals should make a nomination in partnership with the parish council or another established body

*“Nominations should not be open to any individual whether with a local connection or not – individuals wishing to nominate an asset should get the support of a relevant local body e.g. Parish Council, Neighbourhood Forum, Residents’ Association, etc.”*

Local authority

- A small number of respondents suggested that the criteria for eligible nominators should mirror those for groups eligible to trigger the window of opportunity, and make a bid during the window of opportunity period. One respondent also suggested that there should be consistency with the types of groups who can be ‘relevant bodies’ under the Community Right to Challenge, and Neighbourhood Forums under the Neighbourhood Planning section of the Localism Bill. Another respondent suggested that nominating groups should pay a nomination fee to demonstrate their commitment
- There was, however, strong support for nominators having a local connection, as this was felt to be in the spirit of the provisions. Fifty-three respondents expressly favoured nominators having a local connection, and only 16 respondents expressly queried the proposal. Those who queried the idea of a local connection cited difficulties in defining what it means and that nominations should be opened up to wider communities of interest – groups from outside the area with a specialist interest who may be well placed to support the local community.

*“...the concept of ‘a local connection’ is extremely problematic, specifically as it has no precise legal definition. The ‘local users’ of a community facility, particularly theatres, may come from a variety of differing local authorities. To limit nomination only to those with a ‘local connection’ limits the listing of an asset that clearly has wider neighbourhood, city-wide, or sub-regional benefit. Often the rarity or quality of a community resource attracts people from outside the local area to be active participants in its maintenance and upkeep, and who are willing to travel to the venue as patrons.”*

Voluntary and community body

A small number of respondents, however, were strongly opposed to the idea of national, specialist interest groups being able to nominate assets of community value for listing.

- Six respondents felt that the nomination process should be open to anyone, including unincorporated groups, provided that there was a robust definition of an asset of community value. The nominator’s case for listing an asset would therefore be more important than who is making the nomination.

Other comments included concerns about the capacity of small, unincorporated groups to make nominations and take over an asset of community value; concerns about companies or commercial organisations using the nomination process for commercial gain; that the right to nominate should be restricted to parish councils only; that local authorities should also be allowed to nominate assets.

### Question 8

How else could an individual or group be defined as having a 'local connection'?

There were 155 responses to Question 8, although many respondents raised more than one issue, which has been reflected in the figures below:

- Thirteen respondents (mainly local authorities) agreed with the criteria proposed in the consultation document without proposing any additions
- Fifty-three respondents supported the idea that a group or individual should be 'based' within existing local authority or parish boundaries or within a specified proximity of the asset (there was broad support across all sectors on this point). This could include the following criteria (often in combination):
  - individuals or members of groups living or working locally
  - individuals or members of groups being registered on the electoral roll
  - individuals or groups paying council or business taxes, or contributing financially to the area
  - individuals owning other property or business in the area
  - individuals having a family or historical link to the area.

There was also some support for groups to be based in the local area for a specific duration (ranging from six months upwards) before making a nomination, or for groups to have a minimum number of members who live or work in the area (examples ranged from 10 to 20 members).

- Thirty-two respondents (mainly local authorities and voluntary and community bodies) were in favour of nominators demonstrating a local community benefit (e.g. through delivering services in the area; or a specified number of beneficiaries in the local area), rather than being physically located in the local area
- Fourteen respondents, across a range of sectors, highlighted that the local authority boundary may not be the most appropriate way of defining a 'local connection', and the definition of 'local' will vary between rural and urban areas. In urban areas, the local authority boundary may be too large. In rural areas, it might make more sense to stipulate a geographical radius (e.g. three miles) around the site of the asset, as the community is likely to be more dispersed



- Ten respondents (mainly local authorities and voluntary and community bodies) were in favour of leaving the definition of ‘local connection’ to local authorities to decide, as it was felt that this was not something that can be determined centrally
- Seven respondents felt that national or sub-national groups whose aims and objectives cover a local area; or who are working with local groups; or who have an interest in the nature of the asset (e.g. a theatre or a sports ground), should be able to nominate assets of community value. A small number also felt that the nomination process should be open to groups or individuals who do not live in the local area, but who use the facilities or assets in question (e.g. commuters or tourists).

### Question 9

Are there other processes by which an asset of community value should be listed?

There were 173 responses to Question 9, as follows:

	Yes	No	Total
Local authorities	31	46	77
Parish/town councils	8	15	23
Other (public)	1	2	3
Voluntary and community bodies	25	15	40
Business	2	10	12
Landowners	2	5	7
Other	7	4	11
<b>Total</b>	<b>76</b>	<b>97</b>	<b>173</b>
<b>Total (%)</b>	<b>44.0</b>	<b>56.0</b>	<b>100</b>

Over half of the respondents to the closed part of Question 9 did not think that there were further processes by which an asset of community value should be listed. All sectors except for voluntary and community bodies and respondents in the ‘other’ category agreed with this.

Ninety-four respondents made additional comments to Question 9, as follows:

- twenty-nine respondents stated they were in favour of local authorities listing assets on their own initiative and three were opposed to this
- twenty supported nominations being linked to the neighbourhood planning process and 14 supported links between nominations and existing community-led or local authority plans.

- twenty respondents wanted other organisations to be able to nominate, ranging from other tiers of government (county and parish councils) other public sector agencies, through national charities, to businesses and self-nomination by owners
- a small number of responses called for all assets of a certain type to be listed automatically, such as the last pub or shop in a village, all buildings with a community or historic value and all sports and recreation clubs/grounds.

## Information to be included in community nominations

### Question 10

Should:

- (a) the regulations specify the minimum information that should be included in a community nomination, or
- (b) should this be left to the local authority's discretion?

There were 197 responses to Question 10(a) and 176 responses to Question 10(b), as follows:

### Question 10(a)

	Yes	No	Total
Local authorities	59	22	81
Parish/town councils	24	2	26
Other (public)	6	0	6
Voluntary and community bodies	41	3	44
Business	15	1	16
Landowners	7	2	9
Other	11	4	15
<b>Total</b>	<b>163</b>	<b>34</b>	<b>197</b>
<b>Total (%)</b>	<b>82.7</b>	<b>17.3</b>	<b>100</b>

### Question 10(b)

	Yes	No	Total
Local authorities	38	39	77
Parish/town councils	5	21	26
Other (public)	0	4	4
Voluntary and community bodies	7	30	37
Business	2	10	12
Landowners	1	6	7
Other	3	10	13
<b>Total</b>	<b>56</b>	<b>120</b>	<b>176</b>
<b>Total (%)</b>	<b>31.8</b>	<b>68.2</b>	<b>100</b>

A majority of respondents to Question 10(a) felt that the regulations should specify the minimum information that should be included in a community nomination. Over two thirds of respondents to Question 10(b) did not agree that local authorities should be given discretion to decide what information should be included in a community nomination.

There was consensus across all sectors on both questions, including almost 73 per cent of local authorities who felt that the regulations should specify this information (Question 10(a)), and just over half not in favour of deciding this for themselves (Question 10(b)).

One hundred and twenty-six respondents made additional comments to Question 10(a) and 81 made additional comments to Question 10(b), but the comments are covered together here as they address the same point:

- There was strong support for the regulations to specify the minimum information to be included in a community nomination. Seventy respondents to Question 10(a) and 31 respondents to Question 10(b) were in favour of this. The main reason for this was to ensure clarity about the process and consistency between local authorities.

*“We see some value in regulations setting out minimum information requirements for a nomination as this has the advantage of reducing potential disparities in approach between local authorities. Councils operate a number of national legislative regimes – for example, licensing and planning – requiring certain minimum information and/or documents in order for applications to be validated, and this certainty and consistency can be helpful both to the Council and to the public.”*

Local authority

- However, there was also support for local authorities to have the discretion to ask for additional information, if required, with 17 respondents to Question 10(a) and 26 respondents to Question 10(b) proposing this
- Eleven respondents felt that it should be left to the local authority to determine the minimum requirements and seven felt that the minimum requirements should be set out in guidance, not regulations
- Ten respondents thought that the nomination process should not be too onerous on community groups and local authorities, in terms of the information that is required
- Issues were also raised around obtaining the required information with some suggestions that the onus should fall on the nominator to provide the information and make the case for listing. Others felt that local authorities should work with and support community groups to help them find the relevant information or, in some cases, the onus should fall on them to provide the information

- A small number of respondents also suggested that it could be left to local authority discretion to decide whether to accept a community nomination, if it did not include all of the required information.

### **Question 11**

If you think the regulations should specify the contents of a community nomination, is there other information that should be included?

There were 101 responses to this question. In addition to the proposed information in the consultation document, a range of other suggestions were made, including the following key themes:

- information about the proposed community use of the asset (17 responses)
- evidence that the nominator and their potential bid are financially viable, thereby demonstrating their commitment to the process (13 responses)
- reasons/evidence why the asset is of community value (11 responses)
- details about the nominating organisation, key named individuals and their constitution (eight responses)
- a site location plan with the building and/or land in question outlined in red (similar to the requirement for a planning application site location plan (eight responses)
- evidence of wider community support for listing the asset (six responses)
- evidence that demonstrates the local connection of the nominator (six responses)
- a statement by the nominator declaring any secondary or commercial interest they or any unidentified partners may have in the asset (five responses).

Other suggestions included details of other similar facilities or alternative provision in the area; evidence of local need that the asset helps to meet; an assessment of the current physical state of the asset and its open market value; evidence of consultation or agreement with the owner of the asset; and a reference from an independent individual or local councillor who does not have an interest in the asset themselves.

# The procedure for listing assets

## Question 12

Do you agree that owners should be informed before the local authority makes a decision whether to list the asset or not?

There were 208 responses to Question 12, as follows:

	Yes	No	Total
Local authorities	80	1	81
Parish/town councils	26	1	27
Other (public)	8	0	8
Voluntary and Community Bodies	43	3	46
Business	22	0	22
Landowners	8	0	8
Other	16	0	16
<b>Total</b>	<b>203</b>	<b>5</b>	<b>208</b>
<b>Total (%)</b>	<b>97.6</b>	<b>2.4</b>	<b>100</b>

An overwhelming majority of respondents, from all sectors, agreed that the owner should be notified by the local authority before listing an asset of community value.

Sixty-seven respondents made additional comments to Question 12:

- Forty-three respondents felt that it is essential that the owner should be given enough notice to be able to challenge the proposal, with some respondents suggesting a minimum notice period. The majority of responses cited property rights, human rights and minimising the risk of challenge through lack of transparency as important reasons for notifying the owner

*"It is only reasonable to give owners the opportunity to make representations on a proposal to list their property. It would also minimise the chance that listing would be found to be a violation of Convention rights."*

Local authority

- Twelve thought that notification should be extended more widely at this stage to other parties, such as the parish council and those with an interest in the land, including lessees and mortgager

- Ten respondents were concerned about the burden and cost to the local authority of notifying the owner and some of those felt that it should be incumbent on the nominating body to notify the owner, rather than the local authority
- Seven respondents expressed some concern that early notification may prompt the owner to either sell, convert or demolish the asset before the council can make a decision to protect it and that there should be provisions in place to deal with this.

Other comments expressed reservations about listing private property because of the impact on private property rights and stressed the importance of making the process as transparent as possible.

### Question 13

Should the local authority be required to follow any other procedures when deciding whether to list an asset?

There were 171 responses to Question 13, as follows:

	Yes	No	Total
Local authorities	19	53	72
Parish/town councils	16	8	24
Other (public)	5	2	7
Voluntary and community bodies	28	9	37
Business	12	3	15
Landowners	4	2	6
Other	9	1	10
<b>Total</b>	<b>93</b>	<b>78</b>	<b>171</b>
<b>Total (%)</b>	<b>54.4</b>	<b>45.6</b>	<b>100</b>

Over half of respondents felt that there were additional procedures that local authorities should follow when deciding whether to list an asset. All sectors agreed on this point except for local authorities, who felt that they should not be required to follow further procedures.

*“The procedures outlined are acceptable, but we would ask that procedures stipulated through regulations are kept to a minimum as to allow some local flexibility.”*

Local authority

One-hundred and thirteen respondents made additional comments to Question 13 and made the following suggestions:

- Twenty-five respondents felt that notification of possible listing should be advertised as widely as possible on websites/through local media, etc, and local authorities should publish their criteria and reasons for deciding to list or not list, so that this information is publicly available
- Twenty-two reinforced the view that local authorities must make efforts to contact the owner of the asset and take their representations into consideration before deciding to list. One respondent suggested that the nominating group should also be informed when an owner makes a representation and what the outcome is
- Twenty-one were in favour of local authorities consulting with other partners, such as parish councils, county councils and the wider community
- Eleven thought that the proposal in the consultation document was sufficient and that any additional procedures should be left to the local authority's discretion
- Five felt that there should be a right of appeal against the local authority's decision – for community groups and asset owners.

Other comments referred to factors that the local authority should consider, rather than additional processes they should follow, such as consideration of the local development framework or neighbourhood plan; the impact on equalities; whether the asset is already subject to asset transfer proceedings; whether the nomination is vexatious; and whether it is appropriate to list the asset. Other comments also reinforced the importance of a transparent listing process and one suggested that local authorities should appoint a named officer as a point of contact for communities and owners.



## Notification about inclusion and removal of a listed asset

### Question 14

Is there anyone else (other than the owner, occupier and nominator) the local authority should inform of inclusion or removal of a community asset from the list?

There were 183 responses to Question 14, as follows:

	Yes	No	Total
Local authorities	44	34	78
Parish/town councils	23	3	26
Other (public)	3	3	6
Voluntary and community bodies	37	5	42
Business	13	2	15
Landowners	4	2	6
Other	8	2	10
<b>Total</b>	<b>132</b>	<b>51</b>	<b>183</b>
<b>Total (%)</b>	<b>72.1</b>	<b>27.9</b>	<b>100</b>

Of those who responded, a majority felt that there were others who should be notified of the inclusion or removal of a community asset from the list by the local authority. Most groups agreed, except for the 'Other (public)' category and local authorities were split with just over half suggesting that others should be notified about inclusion and removal of a listed asset.

One-hundred and forty-nine respondents made additional comments, as follows:

- respondents were strongly in favour of notifying parish and town councils, with 71 responses supporting this (mainly from parish councils, local authorities and voluntary and community bodies).

*“Parish councils and parish meetings would like to be informed as appropriate as well as the owner, occupier and the nominator, by the principal local authority, of the relevant inclusion or exclusion of a community asset in the parish from a given list.”*

Parish/town council

- thirty-four thought that notices of inclusion or removal should be published on the local authority website, so notification is in the public domain
- twenty-three felt that the mortgager or others with a registered interest in the asset should be informed
- twenty-two respondents thought that the wider local community should be notified
- thirteen wanted owners of neighbouring properties to be informed
- seven felt that other local community organisations should be informed, such as the local community and voluntary sector network
- five thought the county council should be informed, in instances where they are not administering the list.

A small number of respondents thought that property managing agents should be notified; and a small number felt that it should be up to local authorities to decide who to inform and that this should not be specified in regulations.

### Question 15

Is there other information (other than that listed in paragraph 7.3) that should be included in the notification of inclusion of an asset on the list?

There were 175 responses to Question 15, as follows:

	Yes	No	Total
Local authorities	22	55	77
Parish/town councils	3	22	25
Other (public)	3	4	7
Voluntary and community bodies	19	21	40
Business	6	4	10
Landowners	5	2	7
Other	5	4	9
<b>Total</b>	<b>63</b>	<b>112</b>	<b>175</b>
<b>Total (%)</b>	<b>36.0</b>	<b>64.0</b>	<b>100</b>

About two-thirds of respondents agreed with the proposed list in the consultation document, suggesting that they did not feel that there was additional information that should be included in a notification of inclusion of an asset on the list. Opinion on this point was split across the sectors, with local authorities and parish and town councils not in favour of including further information in the notification.

Sixty-three respondents made additional comments, with wide ranging suggestions:

- thirty-seven respondents felt that the notice should also include information about the asset, the nominator, the evidence of community value, the intended use of the asset and the reasons for listing
- nine respondents felt that the notification should also include details of how the owner can challenge the decision through the appeals process
- four felt that the notice should include details of any enforcement or compensation scheme for landowners
- three felt that the notice should outline the statutory responsibilities and obligations of the landowner
- three felt that the notice should include the date of listing and the duration of the effective listing.

Other comments suggested including the process for disposal of a listed asset; cross-reference to land registry and local authority searches; details of any other restrictions on the asset (e.g. designation as a heritage asset); a suggestion that a negotiated sale should be pursued between landowner and community groups; and contact details of the relevant local authority officer who is administering the scheme.

### Question 16

Do you agree that an asset should be removed from the list once the local authority knows that it has been sold as a result of a relevant disposal?

There were 216 responses to the closed part of Question 16, as follows:

	Yes	No	Total
Local authorities	49	30	79
Parish/town councils	18	7	25
Other (public)	6	0	6
Voluntary and community bodies	21	26	47
Business	17	2	19
Landowners	7	1	8
Other	27	5	32
<b>Total</b>	<b>145</b>	<b>71</b>	<b>216</b>
<b>Total (%)</b>	<b>67.1</b>	<b>32.9</b>	<b>100</b>

Approximately two-thirds of those who responded to the question agreed that an asset should be removed from the list of assets of community value once it has been sold as the result of a relevant disposal, with consensus across all sectors except for the voluntary sector.

*“It would be for the community, recently furnished of the opportunity to bid for the asset and having either been unsuccessful in their bid, or having declined to bid, to decide afresh whether there is a case for listing the property again.”*

Business

One hundred and six respondents made further comments:

- Of those who disagreed with the proposal in Question 16 there was a clear view from 55 respondents, that a disposal or change of owner did not stop an asset being of community value and therefore it should not be removed from the list once sold. This view was expressed mainly by local authorities and voluntary groups.

*“Assets are not on the list because they are going to be sold but because of their community value, so why remove it when it is sold?”*

Local authority

- Seven respondents suggested that the point of disposal could be an opportunity for local authorities to review an asset’s inclusion on the list.

Other issues were raised, such as concerns about property blight if the asset is retained on the list; that the asset could be removed from the list if it is sold to a private organisation or individual, but not if sold to the community; that it should be made clear whether/how the asset could be re-listed at a later date; that information about the listed asset should be archived, once removed from the list; and concerns about adding bureaucratic burdens on local authorities as a result of maintaining and modifying the list.

### **Question 17**

Should local authorities be able to remove an asset from the list if it is no longer considered to be of community value?

There were 193 responses to Question 17, as follows:

	Yes	No	Total
Local authorities	77	1	78
Parish/town councils	22	3	25
Other (public)	6	0	6
Voluntary and community bodies	31	16	47
Business	16	1	17
Landowners	7	0	7
Other	13	0	13
<b>Total</b>	<b>172</b>	<b>21</b>	<b>193</b>
<b>Total (%)</b>	<b>89.1</b>	<b>10.9</b>	<b>100</b>

The vast majority of respondents agreed that an asset should be removed from the list if it is no longer considered to be an asset of community value, with consensus across all sectors, with nearly 100 per cent of local authorities and businesses and 100 per cent of landowners and the 'Other' categories in support of this.

One hundred and twenty-two respondents made further comments. Most of the comments focused on what the process should be for deciding whether an asset is no longer of community value as well as the need for transparency in the process:

*"This depends on who judges whether it is no longer of community value. If it is a statement from the community that they no longer intend to pursue acquisition of the site due to lack of a viable business plan or, because of other local contextual factors, it is no longer required for community use, then a local authority should be free to remove the asset from the list. If the request for de-listing comes from the site-owner because of change of circumstances, then the case should be judged against the criteria for refusing a listing in the first place. The community group nominating the site should be informed of the intended de-listing and given the opportunity to object, particularly if it is still actively pursuing finance to acquire the site."*

Voluntary and community body

- There was concern expressed, mainly by voluntary and community sector bodies, around the process for establishing whether an asset is no longer of community value and who would decide whether an asset is no longer of community value. There was a strong view from 53 respondents that local authorities should not be able to remove assets from the list at their discretion and that they should consult with the nominator and/or wider community and/or the parish/town council before taking a decision

*“Local authorities should consult locally to best understand and assess what assets have community value. . . Local authorities should not have the power to remove an asset from the list without prior consultation.”*

Voluntary and community body

- Twelve respondents felt that an asset should only be removed from the list if there were very clear reasons for it no longer having community value, such as a change in planning use (although a small number of respondents felt that a change in planning use would not automatically be a reason to de-list an asset)
- Seven respondents felt that the asset owner should be able to seek a review of the listing at any time by applying to the local authority with reasons why the asset is no longer of community value (e.g. if suitable provisions become available elsewhere in the locality). However, a small number of respondents thought that the local authority should only review the list at set periods, e.g. on an annual basis, or at the end of the five year listing period
- Six respondents felt there should be a right of appeal for the nominator to challenge a decision to remove the asset from the list
- Six respondents suggested that the reasons for de-listing an asset should be clearly set out in regulations (although a small number suggested it should be left to the local authority’s discretion).

Other comments stressed the need for a formal, transparent process. A small number of respondents raised concerns about possible burdens on local authorities in maintaining and modifying the list and one respondent suggested that there should be a fixed time period before the asset could be re-nominated for listing by the community.

### **Question 18**

Is there other information that should be included in the notification of removal of an asset from the list of assets of community value?

There were 165 responses to Question 18, as follows:

	Yes	No	Total
Local authorities	19	56	75
Parish/town councils	7	16	23
Other (public)	0	4	4
Voluntary and community bodies	20	17	37
Business	1	10	11
Landowners	1	5	6
Other	3	6	9
<b>Total</b>	<b>51</b>	<b>114</b>	<b>165</b>
<b>Total (%)</b>	<b>31.0</b>	<b>69.0</b>	<b>100</b>

A majority of respondents did not feel that additional information should be included in a notification of removal from the list of assets of community value, suggesting that they agreed with the list of requirements in the consultation document. All sectors were in agreement on this point, except for voluntary groups who were concerned that local authorities should give clear reasons for removing an asset from the list.

Sixty respondents made additional comments, as follows:

- there was support for the proposal in the consultation document that notifications should include the reasons for removal of the asset from the list, with 22 respondents in favour of this
- five respondents felt the notification should include information about how to appeal against the decision
- five respondents felt that the notification should also include information about the protected period (if applicable) and when and how the asset may be re-nominated.

Other comments suggested that the notification should include evidence that the local authority has consulted individuals and groups likely to be affected by the decision to remove the asset from the list; details of the new owners and their reasons for changing the use of the land; details about how the community owners can be contacted (if the asset is removed as the result of a community acquisition); that the list and any revisions to it should be advertised widely; and that all tiers of local government in the area should be identified and informed if an asset is no longer considered to be of community value.

**Question 19**

Are there other ways (in addition to those listed in paragraph 7.11) in which an unknown landowner, or an owner whose current address is not known, might be contacted and notified that their land has been included on or removed from the list of assets of community value?

There were 148 responses to Question 19, as follows:

	Yes	No	Total
Local authorities	21	51	72
Parish/town councils	6	15	21
Other (public)	0	3	3
Voluntary and community bodies	10	18	28
Business	7	5	12
Landowners	4	2	6
Other	3	3	6
<b>Total</b>	<b>51</b>	<b>97</b>	<b>148</b>
<b>Total (%)</b>	<b>34.5</b>	<b>65.5</b>	<b>100</b>

Over two-thirds answered 'no' – i.e. that they did not consider that there were additional ways to contact unknown landowners or an owner whose current address is unknown. There was a difference of opinion across sectors, with primarily businesses and landowners suggesting other ways of contacting owners.

Seventy-four respondents made additional comments. There was broad support for the suggestions in the consultation document, particularly posting notices on the site of the asset and placing notices in the local paper or websites. Various other suggestions were made for contacting asset owners, including:

- The expected or required (rather than discretionary) use of s. 16 of the Local Government (Miscellaneous Provisions) Act 1976 (seven responses)
- Notifying the premises licence holder in respect of licensed premises (five responses)
- That local authorities should contact the Land Registry or undertake a Land Registry search for owners of registered land (four responses)
- Contacting the occupier of the asset to find out contact details for the owner (three responses)



- The use of similar processes outlined by existing legislation or provisions, such as Compulsory Purchase Orders, Empty Dwelling Management Orders and s. 16 of the Local Government (Miscellaneous Provisions) Act 1976 (two responses)
- One respondent also suggested the use of social networking sites to contact the owner
- There was a general feeling that local authorities should be required to take reasonable steps to contact the asset owner, although a small number felt it should be left to the local authority's discretion. Thirteen respondents (mainly local authorities) thought that notification should take place only by amendment of the list of assets of community value, rather than requiring local authorities to take other steps to contact owners. Similarly, three local authorities were of the view that if the nomination did not contain information about land ownership or, if the land is not registered and the community does not know who owns it, then the nomination and listing process should not continue.

# Content and publication of the list of assets of community value and the list of land nominated by unsuccessful community nominations

## Question 20

- (a) Do you agree that local authorities should decide the most appropriate ways to publicise the lists and bring them to the attention of the community and other interested parties, beyond what is set out in the Bill?
- (b) If not, what further requirements should be set out in the regulations?

There were 186 responses to Question 20(a), as follows:

	Yes	No	Total
Local authorities	76	6	82
Parish/town councils	17	10	27
Other (public)	2	1	3
Voluntary and community bodies	28	16	44
Business	11	2	13
Landowners	6	3	9
Other	8	0	8
<b>Total</b>	<b>148</b>	<b>38</b>	<b>186</b>
<b>Total (%)</b>	<b>79.6</b>	<b>20.4</b>	<b>100</b>

A large majority of respondents to Question 20(a) agreed that local authorities should decide the most appropriate ways to publicise the lists, rather than putting requirements into regulations, with a consensus on this from all sectors.

There were 83 responses to Question 20(b).

- of those who responded to Question 20(b), there was support for the method of publicising both lists to be set out in the regulations – with 21 respondents expressly in favour of this
- thirty-six respondents also felt that there should be consistency across local authorities on the method of publication, with two respondents suggesting that regulations should specify a timeframe within which the local authority should notify communities.

There was support for widespread publication and proactive promotion of the lists by local authorities and responses suggested various methods of publication, such as:

- adverts in the local press or publication or in a written format for isolated communities where internet access is limited (14 responses)
- a centrally developed internet based mapping tool, to provide a more accessible and interactive way of finding and nominating assets of community value (nine responses)
- publishing both lists on the local authority's website (seven responses) and
- emails to parish councils and community groups (three responses).

## Right of appeal for landowners

### Question 21

Do you agree with the suggested period (28 days) for requesting an internal review?

There were 187 responses to Question 21, as follows:

	Yes	No	Total
Local authorities	68	10	78
Parish/town councils	26	1	27
Other (public)	6	0	6
Voluntary and community bodies	36	3	39
Business	15	3	18
Landowners	4	4	8
Other	9	2	11
<b>Total</b>	<b>164</b>	<b>23</b>	<b>187</b>
<b>Total (%)</b>	<b>87.7</b>	<b>12.3</b>	<b>100</b>

A large majority of respondents agreed with the proposed timescale of 28 days for a landowner to request an internal review of a local authority's decision to list an asset. There was a clear consensus across all sectors on this question.

Fifty-two respondents made additional comments:

- nineteen respondents qualified their support for the proposed timescale in Question 21 with concerns about whether this would be sufficiently long enough in certain cases, such as where there are absentee landowners or large complex organisations who would need longer to prepare a response
- fifteen respondents felt that the timeframe should be flexible and that local authorities should be able to extend the time period in response to specific circumstances, e.g. if the landowner cannot be contacted
- eight respondents suggested that the time period given to landowners should be comparable to the six week window that is being proposed for communities to decide on whether to bid for an asset.

Other respondents suggested alternative timescales of eight weeks and 12 weeks; whilst others suggested that the timescale should be consistent with other types of appeals processes. One respondent also suggested that the right to request an internal review should be extended to occupiers or service providers operating within an asset.

**Question 22**

Is there any other information (in addition to what is listed in paragraph 9.3) the owner should provide?

There were 169 responses to Question 22, as follows:

	Yes	No	Total
Local authorities	16	58	74
Parish/town councils	2	25	27
Other (public)	1	3	4
Voluntary and community bodies	13	22	35
Business	6	6	12
Landowners	4	3	7
Other	4	6	10
<b>Total</b>	<b>46</b>	<b>123</b>	<b>169</b>
<b>Total (%)</b>	<b>27.2</b>	<b>72.8</b>	<b>100</b>

Nearly three quarters of respondents to the question felt that the owner should not be required to submit additional information to that listed in the consultation document and there was broad agreement across all sectors on this point, except for businesses and landowners who were split on the issue.

Sixty-three respondents made further comments to Question 22:

- Eighteen respondents felt that there should be no restrictions on the types of information that landowners can present

*“Given the potential impact of listing on a property, we consider that it should be a matter for the owner to decide what relevant information should be submitted to the local authority in support of the appeal against a listing decision”*

Other

- Ten respondents felt that landowners should be able to present evidence of the proposed future use of the asset and how this might be of benefit to the community. For example, if the service or other purpose for which the asset is used is relocated within the local area, or whether the proposed use of the asset is integral to job creation. It was also suggested that business owners should be able to demonstrate whether they are selling the business as a ‘going concern’

- Five respondents thought that owners should be able to present evidence of the impact of the provisions on owners' property rights.

*"There should be scope for the owner to provide evidence of the potential adverse impact listing would have, such as impairing the operation of a business or social enterprise."*

Voluntary and community body

Other suggestions included information about legal restrictions on the asset, such as restrictive covenants, land charges or health and safety considerations; the landowner's assessment of whether the asset is of community value; whether there are other comparable amenities in the locality; evidence that the listed land or building has been incorrectly identified; if there was important information that was not previously available to the owner before the asset was listed; proof of ownership of the asset; evidence of a vexatious or frivolous nomination; and the value of the property, which could show that it is likely to be 'out of reach' for the community.

A small number of respondents also felt that it should be incumbent on the owner to back up any claims that the asset is not commercially viable with details of previous trading activity and evidence of active marketing within the previous 12 months.

### Question 23

Do you agree with the proposed timescale of six weeks for the local authority to complete the internal review?

There were 179 responses to Question 23, as follows:

	Yes	No	Total
Local authorities	55	20	75
Parish/town councils	23	4	27
Other (public)	4	1	5
Voluntary and community bodies	35	3	38
Business	15	1	16
Landowners	3	5	8
Other	9	1	10
<b>Total</b>	<b>144</b>	<b>35</b>	<b>179</b>
<b>Total (%)</b>	<b>80.0</b>	<b>20.0</b>	<b>100</b>

A large majority of respondents agreed with the proposed time limit of six weeks for local authorities to complete an internal review, with agreement across all sectors, except landowners.

Sixty-three respondents made further comments:

- Thirteen respondents were concerned that six weeks would not be sufficient in the more complex cases and therefore local authorities should be able to extend the time period where necessary. This would allow for variations in local authority timescales for involving senior officers and elected members

*“Six weeks should normally be sufficient. However there may be cases that require a longer period and there should be a provision allowing for an extended period to be agreed in writing by both parties.”*

Business

- Eight respondents felt that the period should be longer than six weeks (but did not specify a timescale) in order to allow nominees and landowners to comment during the review. This would also enable local authorities to conduct the review thoroughly at a time when resources are limited. An equal number expressly stated that six weeks should be sufficient
- Ten respondents thought the timescale for completing the review should be shorter than six weeks, suggesting four weeks or 28 days
- Six respondents thought the internal review should take up to eight weeks or two months
- Four respondents thought the internal review should take up to 12 weeks or three months.

One respondent suggested 13 weeks; and others cautioned that there could be more appeals during the first year of the Community Right to Buy scheme than later in its operation, which should be taken into consideration when deciding how long the internal review should take.

#### **Question 24**

Do you agree that the review should normally be undertaken by an officer in the local authority who is equal in rank to or more senior than the officer who took the decision to list the asset and who was not involved in the original decision-making?

There were 178 responses to Question 24, as follows:

	Yes	No	Total
Local authorities	57	20	77
Parish/town councils	22	4	26
Other (public)	5	1	6
Voluntary and community bodies	33	3	36
Business	11	4	15
Landowners	4	4	8
Other	9	1	10
<b>Total</b>	<b>141</b>	<b>37</b>	<b>178</b>
<b>Total (%)</b>	<b>79.2</b>	<b>20.8</b>	<b>100</b>

Over three quarters of respondents agreed that the internal review should be undertaken by an officer who was not involved in the decision to list and who is the equivalent grade, or senior to, the listing officer and there was agreement on this from all sectors.

Seventy-one further comments were received:

- There was a strong view that there should be no conflict of interest by the local authority when undertaking the internal review. Thirty-two respondents were in favour of the internal review being undertaken by independent or external reviewers, such as a panel of elected council members or the planning inspectorate, rather than a local authority official (there was a fairly strong feeling that elected members would wish to be involved). Ten respondents were content for an official to undertake the review as long as they were not involved in the original decision-making process
- Twelve respondents felt that it should be left to the discretion of the local authority to decide how to conduct the internal review
- Five respondents expressed concern about the capacity of senior local authority officials to conduct a review and thought it might be particularly difficult for smaller councils to manage this.

Other comments suggested that the review could be undertaken by the local authority Chief Executive or Assistant Chief Executive, the Director of Services or an Executive Member. Others suggested that it did not matter, as long as the individual had the appropriate expertise and knowledge to conduct the review and the criteria for listing were clear.



**Question 25**

Do you think that the landowner should be entitled to an oral hearing as part of the internal review, and if so in what circumstances?

There were 179 responses to Question 25, as follows:

	Yes	No	Total
Local authorities	49	28	77
Parish/town councils	21	5	26
Other (public)	5	1	6
Voluntary and community bodies	28	4	32
Business	18	1	19
Landowners	9	0	9
Other	8	2	10
<b>Total</b>	<b>138</b>	<b>41</b>	<b>179</b>
<b>Total (%)</b>	<b>77.1</b>	<b>22.9</b>	<b>100</b>

There was strong support across all sectors for landowners having an entitlement to an oral hearing as part of the internal review process.

One hundred and twenty-eight respondents made further comments:

- There was a strong feeling that an oral hearing should form an automatic part of the review process and should be available to landowners in all circumstances (47 respondents were in favour of this). Eighteen respondents felt that an oral hearing should be offered on the request of the landowner

*“As the listing of an asset could have potentially serious consequences, we believe that the landowner should be entitled to an oral hearing as a matter of course as part of an internal review. This would help to ensure transparency of process, and allow their views on the reasons for the listing to be properly considered. The landowner should also be able to have relevant legal representation at the hearing as appropriate.”*

Business

- Seventeen respondents felt that an oral hearing should only be offered in certain circumstances. For example, where it is not possible to make a decision based on the written evidence alone; or in the case of complex legal disputes; or in the case of disability, illiteracy or language difficulties on the part of the owner

- Sixteen respondents thought that the nominator should also be allowed to attend any oral hearing

*“Any oral hearing under an internal review of a listing decision should enable the nominator of the site to confirm or supplement their case for listing the asset.”*

Voluntary and community body

- Of those who disagreed with landowners being entitled to an oral hearing, nine expressed concerns about the additional costs and burdens on local authorities – particularly if the internal review is to be completed within a six week timescale. A small number disagreed with having an oral hearing, but thought that landowners should have the right to an independent appeal against the outcome of the internal review
- Five respondents felt that the decision to hold an oral hearing should be left to the discretion of the local authority.

Other comments suggested that an oral hearing should only be permitted in the following circumstances: where the landowner is an individual rather than a company; where the value of the asset exceeds a pre-defined threshold; or where the cost of keeping an asset redundant for the duration of the window of opportunity is prohibitive. Others referred to the process used in the Scottish Community Right to Buy scheme and existing planning appeals procedures.

### Question 26

Should anything else be included in the internal review process?

There were 161 responses to Question 26, as follows:

	Yes	No	Total
Local authorities	17	55	72
Parish/town councils	7	16	23
Other (public)	2	3	5
Voluntary and community bodies	15	18	33
Business	5	7	12
Landowners	4	2	6
Other	6	4	10
<b>Total</b>	<b>56</b>	<b>105</b>	<b>161</b>
<b>Total (%)</b>	<b>34.8</b>	<b>65.2</b>	<b>100</b>

Over two thirds did not think that any other stages should be added to the internal review process beyond what was listed in the consultation document. There was a broad consensus on this across the sectors, apart from the landowners, more of whom felt that additional stages should be included in the internal review process than did not.

Sixty-three respondents made further comments:

- Nineteen respondents felt that the groups that nominated the asset for listing should also have a right to take part in the internal review

*“Our concern with the review process overall is that it would seem that the Local Authority can change their original assessment on the basis of the information provided by the Landowner. Whilst this may be correct in some cases, in others it will mean that a correct decision may be overturned. We would therefore support the process to be strengthened so that community groups would have the opportunity to respond to any concerns or issues raised by the Landowner in the internal review before a change of decision is made.”*

Voluntary and community body

- Seven respondents felt that it should be up to the local authority to decide whether to include further stages in the internal review process. It was also suggested that local authorities should be able to ask the landowner for further information and the ability to award costs to the owner if the listing was made as the result of a vexatious nomination
- Five respondents suggested that local authorities should be required to publish the findings of the internal review and give clear reasons for their decision.

Other comments suggested that elected members should be included in the process; that local authorities should consult with other parts of local government, such as parish and county councils; that there should be some independent arbitration of the process; that those with other interests in the land (such as tenants or those with adjoining assets) should be allowed to take part in the review; that local authorities should be required to keep both the landowners and nominators informed throughout the process; and that nominators should provide evidence of their ability to bid for the asset.

### **Question 27**

Should formal provision be made for land owners to appeal to a court or tribunal if they are dissatisfied with the outcome of the local authority’s internal review?

There were 188 responses to Question 27, as follows:

	Yes	No	Total
Local authorities	50	25	75
Parish/town councils	18	9	27
Other (public)	6	0	6
Voluntary and community bodies	32	9	41
Business	19	0	19
Landowners	8	0	8
Other	10	2	12
<b>Total</b>	<b>143</b>	<b>45</b>	<b>188</b>
<b>Total (%)</b>	<b>76.0</b>	<b>24.0</b>	<b>100</b>

A significant majority of respondents supported the right of landowners to appeal to a court or tribunal if dissatisfied with the outcome of the local authority's internal review, with a clear consensus across all groups.

One hundred and nine respondents made further comments:

- Thirty respondents fully supported the right of the landowner to an independent appeal against the outcome of the internal review
- However, 25 respondents expressed concern about the costs of an independent appeal and the impact on local authority resources. It was suggested that any appeal process should be as streamlined and economical as possible and that additional costs should be covered by central government
- Fifteen suggested that instead of recourse to a court or tribunal, appeals should be made through existing processes, such as Judicial Review, the Local Government Ombudsman or reviewed by an independent Planning Inspector or neighbouring local authority. However, an equal number suggested that the appeal should be conducted through a tribunal, such as the Lands Tribunal or the County Court – with some suggesting that Judicial Review would be insufficient (as it only focuses on process and not outcome) and costly
- Seven respondents felt that a right of independent appeal was disproportionate and unnecessary as the Community Right to Buy does not offer a right of first refusal to community groups and that owners are entitled to sell to whomever they wish, at whatever price

- Seven respondents felt that the nominating body should be entitled to give evidence at an external appeal and should have their own right of appeal against a local authority's decision not to list an asset.

Other comments suggested that:

- an external appeal should only be permitted if new evidence becomes available or if there is evidence of failures in the internal review process;
- there should be a right of appeal for other interested parties, such as leaseholders or occupiers of the asset
- that there should be a time limit within which the appeal should take place, as there were concerns about the length of time that the judicial process can take; and
- that 'Alternative Dispute Resolution' might be a better alternative than recourse to a court or tribunal.

# Length of the windows of opportunity and protected period

## Question 28

Do you agree with the proposed length of the interim period (six weeks)?

There were 201 responses to Question 28, as follows:

	Yes	No	Total
Local authorities	70	9	79
Parish/town councils	19	8	27
Other (public)	3	3	6
Voluntary and community bodies	25	22	47
Business	13	6	19
Landowners	4	4	8
Other	11	4	15
<b>Total</b>	<b>145</b>	<b>56</b>	<b>201</b>
<b>Total (%)</b>	<b>72.1</b>	<b>27.9</b>	<b>100</b>

A majority of respondents indicated that they agreed with the proposed six week length of the interim moratorium period. There appears to be a broad consensus on this across the sectors, although voluntary sector groups and landowners were split on the issue.

Ninety respondents made further comments:

- Of the 28 respondents who said 'yes' to Question 28 and made further comments, there was broad agreement that 6 weeks was a reasonable period of time for community groups to express an interest in bidding for the asset, without unduly inconveniencing landowners. However, a small number suggested that it should be possible for local authorities to extend this period, if necessary; others suggested that it was important that community groups were notified as soon as possible once an asset came up for sale; and a small number suggested that the interim period should be no longer than six weeks
- Of the 56 respondents who said 'no' to Question 28 and made further comments, 36 felt that the interim period should be longer and 17 thought it should be shorter

- Those who felt that the interim period should be longer were mainly voluntary and community groups and parish councils and were concerned that it would not offer enough time for some community groups to establish themselves as incorporated groups in order to be eligible to trigger the full window of opportunity. There were also concerns that community groups would not be notified early enough by the local authority, which would decrease the time available to them.

*“The proposed length of the interim period for communities to express interest is too tight at only six weeks. This start date is the time the Local Authority receives notice from the asset owner that they are going to dispose of it, and with the best will in the world it is unlikely that the community will be made aware of that decision on the same day. Therefore it could be a week before the community is aware and for a Parish Council which is used to just having monthly meetings this would be difficult to achieve a response in just 42 days...”*

Parish/town council

- A range of longer timescales were proposed:
  - seventeen respondents proposed that the interim period should be extended to 90 days or three months
  - ten suggested that the interim period should be longer than six weeks or the requirement for community groups to be incorporated should be dropped
  - others suggested a range of timescales between eight weeks and 12 months, with a few respondents suggesting that local authorities should have discretion to extend the six week period, if necessary.
- Those who felt the interim period should be shorter expressed concern about the possible impact of delay on an owner’s commercial interests. Fourteen respondents were in favour of the interim period being reduced to four weeks or 28 days, with a small number suggesting two weeks or even no interim period at all. There was also one suggestion that community groups should pay a deposit of £1,000 as a sign of their commitment, in order to trigger the full moratorium period.

### **Question 29**

Are there any other kinds of groups that should be allowed to make a request to be treated as a potential buyer during the interim window of opportunity period, thereby triggering the full period?

There were 170 responses to Question 29, as follows:

	Yes	No	Total
Local authorities	25	47	72
Parish/town councils	7	17	24
Other (public)	2	4	6
Voluntary and community bodies	25	14	39
Business	3	10	13
Landowners	1	6	7
Other	7	2	9
<b>Total</b>	<b>70</b>	<b>100</b>	<b>170</b>
<b>Total (%)</b>	<b>41.1</b>	<b>58.9</b>	<b>100</b>

Just over half of those who responded to Question 29 indicated that they were content with the proposed list of organisations that should be allowed to make a request to be treated as a potential buyer during the interim window of opportunity. Voluntary sector groups were more clearly in favour of other groups being allowed to trigger the window of opportunity period.

*“We do not agree that groups must be charitable and incorporated by the end of the interim window. We think that it will be sufficient to complete this process during the longer full window. The process is otherwise too restrictive and would be likely to exclude start-up groups or those who prefer to remain unincorporated for as long as possible.”*

Voluntary and community body

Ninety-six respondents made further comments:

- Of these 31 said that, in certain circumstances, unincorporated groups should be treated as potential buyers during the interim window of opportunity period. Examples given included:
  - groups that are working in partnership with the local town/parish council or another incorporated group
  - groups that are progressing towards becoming a charity, company limited by guarantee or social enterprise in order to bid for and run the asset on behalf of the local community
  - groups that can provide evidence of a formal constitution and can demonstrate they are actively working on plans to acquire the asset; and
  - community groups that have the support of 20 individuals with a local connection.



- eleven respondents suggested that District and County Councils should be allowed to express interest as potential buyers during the interim window of opportunity
- ten respondents were in favour of parish councils being allowed to express interest in an asset of community value.

Other suggestions included national special interest charities with a local connection; local residents' co-operatives or associations; social housing providers with a local connection; churches and school governors; Neighbourhood forums; public sector organisations; companies or individuals who pledge to retain the current use of the community asset.

### Question 30

Do you prefer option (a) three months, option (b) six months, or option (c) a different length?

There were 213 responses to Question 30, as follows:

	Three months	Six months	Other	Total
Local authorities	31	34	15	81
Parish/town councils	9	17	4	30
Other (public)	6	1	0	7
Voluntary and community bodies	6	22	27	55
Business	10	3	5	18
Landowners	7	0	1	8
Other	3	9	3	15
<b>Total</b>	<b>72</b>	<b>86</b>	<b>55</b>	<b>213</b>
<b>Total (%)</b>	<b>33.8</b>	<b>40.4</b>	<b>25.8</b>	<b>100</b>

Just over 40 per cent of respondents were in favour of the full moratorium being six months; just over a third were in favour of the moratorium being three months; and just over a quarter felt that the moratorium should be a different length.

Of the 55 respondents who responded "other":

- twenty-seven supported the full window of opportunity being a minimum of six months or longer, with some proposing nine or 12 months as a preference, or the possibility for local authorities to extend the six month period if the community interest group needed more time to raise funds

- thirteen supported the full window of opportunity being less than six months, with proposals ranging between 28 days and two months
- fifteen made no suggestions as to the length of the window of opportunity.

Of the nine respondents who did not respond to the closed part of Question 30, but made further comments:

- two were in favour of the window of opportunity period being a minimum of six months
- three were in favour of the window of opportunity period being three months or less, or as short as possible
- four expressed no view on the length of the window, but a couple did suggest that it should be left to local authority discretion.

Therefore, of all those who responded to Question 30 (222 – including those who only made a comment and did not respond to the closed part of the question), 115 respondents (51.8%) supported the full window of opportunity being a minimum of six months long and 88 (39.6%) supported the full window of opportunity being less than six months long. The remaining 19 (8.5%) respondents expressed no preference.

Respondents from the voluntary and community sector were most strongly in favour of the window of opportunity being six months or longer, with over 90 per cent of voluntary sector respondents supporting this. There was also some support from local authorities and parish councils for a six month window of opportunity.

*“It is clear from our support to communities looking to take over village shops and pubs that six months should be the absolute minimum window of opportunity if the intention is to give communities a chance of saving their local shop or pub. Only three community-owned village shops have ever opened within three months and this has been because they were extremely well resourced people in terms of skills and finance. In comparison, 30 of the most recent 50 community-owned shops to open have done so by six months.”*

Voluntary and community body

Landowners and businesses were strongly in favour of the moratorium being three months or shorter, in order to minimise the impact of any delay on businesses and property values:

*“We would support shorter rather than longer timescales for the interim and full windows of opportunity in order to reduce costs arising from the ‘freezing’ of properties. Clearly, we will have to continue to pay rates and bear the cost of keeping such properties open during these periods.”*

Landowner

**Question 31**

Do you agree with the proposed length of the protected period (18 months)?

There were 187 responses to Question 31, as follows:

	Yes	No	Total
Local authorities	41	34	75
Parish/town councils	27	0	25
Other (public)	4	3	7
Voluntary and community bodies	37	4	41
Business	10	7	17
Landowners	2	6	8
Other	7	5	12
<b>Total</b>	<b>128</b>	<b>59</b>	<b>187</b>
<b>Total (%)</b>	<b>67.5</b>	<b>32.5</b>	<b>100</b>

Of those who responded, over two thirds agreed with the proposed length of the protected period (18 months), suggesting that this was a reasonable period of time. All sectors were in agreement except for landowners, who broadly did not agree with the proposed length and felt it should be longer.

Seventy-two respondents made further comments:

- Forty-three respondents (mainly local authorities, businesses and landowners) were in favour of the protected period being longer than 18 months, with many suggesting two years as a preferred timescale. A small number suggested timescales ranging from three to five years. It was also suggested by some that the protected period should start at the end of the full window of opportunity, rather than at the beginning

*“We believe that this period should be longer and suggest two years. In some difficult property markets or with unusual properties it may take many months to achieve a sale. Potential purchasers may wish to consider alternative uses and be engaged in negotiations with planning authorities, or they may have difficulty raising funds... If community groups have had an opportunity to bid and have not pursued it or have not been successful, the asset owner should be free to dispose of the asset without further delay by third parties within the following two years.”*

Other

- Five respondents thought that the protected period should be shorter than 18 months and some suggested that there should be parity with the full window of opportunity period
- A small number of responses suggested that the length of the protected period should be determined locally by local authorities.

Other respondents commented that there needed to be further clarity about the protected period and what activity could be undertaken by the asset owner in that period; others disagreed with removing the asset from the list after a sale.

# Exempt disposals and permitted sales within the full window of opportunity

## Question 32

To what extent should we allow for such cases of partial occupation (as set out in paragraph 11.3)?

There were 142 responses to Question 32.

- eighty-eight respondents were in favour of regulations allowing partial occupation, with many (21) in favour of existing tenants' rights or sub-leases being respected:
  - twenty were in favour of allowing partial occupations in instances such as the example given in the consultation document
  - ten were in favour of allowing partial occupation where the part of the site in question has benefit to the community
  - nine thought that the regulations could specify a maximum percentage of the site that could be sub-let, with suggestions ranging from 10-40 per cent
  - six felt it was important to allow partial occupation, otherwise owners could subvert or frustrate the scheme by disposing of the asset without vacant possession
  - six felt that allowing community groups to partially occupy a site could be important for the financial viability of the group (i.e. by renting the premises to a tenant)
  - others thought this should only be allowed where it is possible to divide the land or where there are multiple interests in the land, or where it would not be detrimental to the viability of the asset.
- twenty-seven respondents were opposed to allowing partial occupation in the regulations, citing complexity and potential impact on the value of the asset and its future viability.

*“This would be overly complicated to legislate for or for a Local Authority to determine – the provisions need to be easily understood and transparent and therefore the provisions of the Bill should be followed and relate to disposal of vacant possession only.”*

Landowner

- eighteen respondents felt that decisions relating to this should be taken on a case by case basis and left to the discretion of the local authority
- ten responded to the question, but did not express a particular view.

### Question 33

Are there other disposals (in addition to those listed in paragraph 11.4) that should be exempt?

There were 148 responses to Question 33, as follows:

	Yes	No	Total
Local authorities	29	38	67
Parish/town councils	4	20	24
Other (public)	1	2	3
Voluntary and community bodies	13	17	30
Business	9	2	11
Landowners	5	0	5
Other	3	5	8
<b>Total</b>	<b>64</b>	<b>84</b>	<b>148</b>
<b>Total (%)</b>	<b>43.2</b>	<b>56.8</b>	<b>100</b>

Over half of those who responded to this question, did not suggest other types of relevant disposals that should be exempted from the moratorium process, which suggested they were content with the proposed list in the consultation document. However, businesses and landowners clearly felt that additional exemptions should be included.

Eighty-six respondents made further comments to Question 33.

Of those who felt that other types of relevant disposals should be added to the list, a wide range of suggestions were made, with several themes emerging – some of which were reinforced in responses to other questions – such as the following:

- that all transfers between public bodies should be classed as exempt disposals (10 responses)
- that disposals of land for planning and regeneration purposes should be exempted, in order to prevent the community right to buy being used to frustrate legitimate development (nine responses)
- that disposals made as a bona fide gift or to members of the same family should be exempted (eight responses)

- that the disposal of a viable business as a going concern or an asset where the continuation of the use of the asset is not at risk should be exempt (eight responses)
- that all transfers between associated companies or companies in the same trading group should be exempt (seven responses). likewise, transfers between trustees should be exempt (three responses)
- that land disposed of under a compulsory purchase order should be exempt (four responses)
- that land disposed of in order to fund or purchase another facility that will provide a community benefit should be exempt (four responses)
- that disposals made as a result of bankruptcy proceedings or any other form of administration or financial difficulty should be exempt (five responses)
- four respondents also gave examples of other existing statutory provisions that should be considered and possibly exempted:
  - Section 36 of the Charities Act 1993 (disposal by a charity to another charity with similar charitable objectives)
  - The Pastoral Measure 1983 (which governs the process for disposal of closed Church of England buildings); and
  - Section 162 of the Taxation of Chargeable Gains Act 1992 (disposals in which a business is transferred to a company in exchange for shares).
- Other comments suggested exempting all transfers made under court orders; pre-existing contracts to purchase the land; the sale of portfolio properties or where the asset forms part of a larger business of development; transfers of land to statutory undertakers; transfers between trusts and beneficiary; transfers of land which has a restrictive covenant upon it
- A small number of those who did not think that further disposals should be made exempt did, however, query some of the proposed exemptions listed in the consultation document, such as disposals made by a lender and disposals made under bankruptcy proceedings. Some also expressed concern about landowners using these exemptions as possible loopholes to avoid complying with the requirements of the scheme.

### Question 34

Are there other circumstances (in addition to those in paragraph 11.7) under which sales should be permitted within the window of opportunity?

There were 150 responses to Question 34, as follows:

	Yes	No	Total
Local authorities	22	50	72
Parish/town councils	2	23	25
Other (public)	1	2	3
Voluntary and community bodies	8	21	29
Business	6	4	10
Landowners	3	2	5
Other	3	3	6
<b>Total</b>	<b>45</b>	<b>105</b>	<b>150</b>
<b>Total (%)</b>	<b>30.0</b>	<b>70.0</b>	<b>100</b>

Over two thirds of respondents did not think that there were other circumstances in which sales should be permitted during the window of opportunity. Again, businesses and landowners were more likely to suggest other sales that should be permitted during the window of opportunity.

Fifty-seven respondents made further comments (many of whom raised more than one issue).

It was suggested that the following types of sales should be permitted during the window of opportunity:

- Twelve respondents thought that sales should be permitted if the owner was in financial difficulties or became bankrupt or in other personal circumstances that necessitated a quick sale (such as ill health)
- Seven suggested that sales could be permitted if the community group that had triggered the window of opportunity withdrew their interest or were clearly unable to raise the funds in time
- Six felt that business owners should be able to sell their business as a going concern or if the future use of the asset was not at risk
- Others suggested permitting sales where the owner 'offsets' the sale of the asset by creating another benefit to the community (for example, by compensating the community in some way); permitting sales from one public body to another during the window of opportunity; permitting sales of land or property that has been already earmarked in local plans for development



- A small number commented that local authorities should still be allowed to transfer assets to community groups; and one suggested that there should be a right of first refusal for the group that nominated the asset in the first place
- There were some concerns (from 13 respondents) that allowing a sale to a community interest group during the moratorium period would be unfair on other local groups. For example, smaller groups might be unable to raise funds as quickly as larger organisations, or the nominating group itself might be ‘pipped to the post’ by another group, which could cause tensions.

### Question 35

Do you agree with the list of groups in paragraph 11.7 that could be eligible to purchase an asset during the window of opportunity?

There were 165 responses to Question 35, as follows:

	Yes	No	Total
Local authorities	59	14	73
Parish/town councils	23	3	26
Other (public)	3	0	3
Voluntary and community bodies	21	17	38
Business	7	5	12
Landowners	5	0	5
Other	5	3	8
<b>Total</b>	<b>123</b>	<b>42</b>	<b>165</b>
<b>Total (%)</b>	<b>74.5</b>	<b>25.5</b>	<b>100</b>

Nearly three quarters of those who responded agreed with the list of groups in paragraph 11.7 that could be eligible to purchase an asset during the window of opportunity. There was a consensus on this across sectors, although voluntary sector groups were split on the issue, as some felt that unincorporated groups should be included in the list.

Sixty-five respondents made further comments on Question 35:

- of these, 12 said that groups that do not yet meet the criteria in their own right but that are making proxy bids through or in partnership with another group, or who are actively working towards one of the designated structures, should be listed as eligible to purchase an asset during the interim window of opportunity period.

*“Established groups will be in a stronger position to take on assets, however if a group intends to apply or is in the process of applying for charitable status for example, therefore making it an eligible body, this should be considered in the interim period.”*

Local authority

- nine respondents suggested that local authorities should also be eligible to purchase during the window of opportunity.

Other comments suggested that sales should also be permitted to Neighbourhood Forums, national charitable organisations, local public bodies, or companies or individuals who pledge to retain the current use of the asset or who are able to bring wider social benefits to the community. The idea of the group having a local connection was also generally supported.

## Compensation for landowners

### Question 36

Do you agree with the proposal in paragraphs 12.3 and 12.4 (that compensation should be based on costs incurred as a result of the procedural requirements of the scheme)?

There were 177 responses to Question 36, as follows:

	Yes	No	Total
Local authorities	53	22	75
Parish/town councils	25	1	26
Other (public)	4	2	6
Voluntary and community bodies	30	8	38
Business	8	8	16
Landowners	2	4	6
Other	8	2	10
<b>Total</b>	<b>130</b>	<b>47</b>	<b>177</b>
<b>Total (%)</b>	<b>73.4</b>	<b>26.6</b>	<b>100</b>

Nearly three quarters of the respondents supported the proposed compensation scheme in the document, with agreement across most sectors except businesses and landowners, who were more likely to disagree.

*“[We agree] that compensation should be payment to owners to cover expenses incurred as a result of listing. [We] also consider that compensation should be considered for any potential loss in value that has been incurred as a result of delay and any costs associated with a ‘lost’ buyer”.*

Business

Ninety-three respondents made further comments.

- Fifty-one of those who made further comments felt that the compensation scheme should include other losses or costs, not just reimbursement of expenses. This was the clear view of most businesses and landowners. The following costs were suggested:
  - loss of value where an asset depreciates in value, for example, because of fluctuations in the market during the window of opportunity

- loss of capital interest on potential sale proceeds
  - costs incurred (e.g. aborted fees) or losses due to a sale falling through
  - additional mortgage or loan payments, rates, utilities or service charges
  - developers costs (e.g. where a listing has stopped or delayed a development that was already in train).
- Twelve (mainly local authorities) mentioned the extra burdens and costs on local authorities of administering a compensation scheme and thought that the costs of compensation must be fully covered by the New Burdens or central government funding. It was also suggested that a compensation scheme administered by local authorities might act as a disincentive to local authorities to list assets in the first place
  - Ten felt that there needed to be further clarity about what costs would be covered by the compensation scheme and that these should be clearly set out in regulations
  - Eight felt that there should be no compensation scheme at all, with suggestions that the owner should foot the bill; the level of compensation could be capped to prevent unreasonable claims; or the successful community group could pay costs to the landowner.

Other comments suggested that the compensation scheme should be reviewed a year after implementation once the level of compensation claims is better understood; that owners should provide clear evidence of reasonable costs; and that there should be a cap on compensation claims in order to prevent claims for unreasonable costs.

**Question 37**

Do you agree that compensation claims should be considered and paid for by the local authority?

There were 178 responses to Question 37, as follows:

	Yes	No	Total
Local authorities	19	55	74
Parish/town councils	18	9	27
Other (public)	2	3	5
Voluntary and community bodies	30	6	36
Business	15	2	17
Landowners	8	1	9
Other	8	2	10
<b>Total</b>	<b>100</b>	<b>78</b>	<b>178</b>
<b>Total (%)</b>	<b>56.2</b>	<b>43.8</b>	<b>100</b>

Just over half of respondents agreed with the proposal in the consultation document, and thought it was reasonable for local authorities to administer the compensation scheme. However, the majority of local authorities were not in agreement with this.

*“Although maintaining and administering the assets register is proposed to be a duty of local authorities, compensation for loss as a result of the procedure is a proposed burden entirely unrelated to the direct responsibilities of local authorities and could lead to significant pressures on already overburdened local authority resources.”*

Local authority

One-hundred and thirteen respondents made further comments.

- Eighty-seven respondents disagreed that local authorities should consider and pay compensation claims because it would impose additional costs and burdens on local authorities. In particular, they were concerned about the difficulty of budgeting for an unknown cost, which could be particularly difficult for smaller authorities to handle. Of those, 75 thought that the scheme should be administered or, at the very least, funded by central government and there were concerns that the New Burdens assessment would be insufficient to reimburse local authorities fully
- A further 15 agreed that local authorities should administer the scheme, but only if there was sufficient funding in the New Burdens award to fund the full cost of compensation

*“The New Burdens Assessment is unlikely to reflect the actual cost to each authority as they tend to be a generalised average. If there is to be a compensation scheme then actual costs paid out should be reimbursed.”*

Local authority

- Seven respondents felt that there would be a disincentive for local authorities to list assets if they would also be expected to pay for compensation claims
- Seven respondents thought that the community group that had nominated the asset or failed to make a bid for the asset should be liable for compensation costs – particularly if the claim was made as a result of a vexatious nomination.

Other comments suggested that compensation claims should be considered by an independent body, such as the District Valuer; that compensation should only be paid by local authorities where they have been responsible for an error or irregularity; others did not agree that there should be a compensation scheme at all and that owners should carry the costs.

**Question 38**

- (a) Do you agree that only private landowners should be entitled to claim compensation?
- (b) What do you think the definition of 'private landowner' should be?

There were 177 responses to Question 38, as follows:

	Yes	No	Total
Local authorities	13	61	74
Parish/town councils	15	10	25
Other (public)	2	5	7
Voluntary and community bodies	20	16	36
Business	13	3	16
Landowners	2	5	7
Other	5	7	12
<b>Total</b>	<b>70</b>	<b>107</b>	<b>177</b>
<b>Total (%)</b>	<b>39.6</b>	<b>60.4</b>	<b>100</b>

**38 (a) Do you agree that only private landowners should be entitled to claim compensation?**

A majority of respondents thought compensation should not be restricted to private landlords only, but there was a difference of opinion amongst respondents on this question. Local authorities were strongly opposed to this proposal, with landowners and 'other' categories also split – whereas other sectors, such as parish councils, voluntary groups and businesses were more supportive.

One-hundred and six respondents made further comments.

Of those who disagreed with the proposal in Question 38(a):

- Eighty-three respondents thought that all landowners who incur costs as a result of the provisions should be entitled to claim compensation. It was felt that local authorities and parish councils were likely to incur the same costs as private landowners and in order to be equitable the compensation scheme should extend to public landowners (particularly as the majority of listed assets were considered likely to be public sector assets). However, a small number of respondents suggested that local authorities should not pay themselves compensation and that compensation for local authorities could come from central government

*“Public bodies run to budgets and have finite resources as much as private landowners. If there is a principle that these provisions can cause costs to be run up, compensation should be paid equally to the injured party, regardless of whether that injured party is public or private.”*

Voluntary and community body

- Seven respondents thought that the compensation scheme should extend to assets owned by charities and non-profit making organisations
- Others suggested that tenants or occupiers of the asset should also be eligible for compensation; that it should be left to local authority discretion to decide how to award compensation; that there should be no compensation scheme at all; and that private assets should be excluded from being listed in the first place
- Those who agreed with the proposal in Question 38(a) and made further comments felt that private landowners were more likely to be at risk and it was not appropriate for public organisations to compensate other public organisations, hence the compensation scheme should focus on private landowners.

*“Yes – otherwise the public purse would be compensating itself.”*

Landowner

### **Question 38(b) What do you think the definition of ‘private landowner’ should be?**

There were 102 responses to Question 38b, as follows:

- Thirty-eight thought that the definition of ‘private landowner’ should apply to any landowner that is not a public or statutory body, is not using public funds or delivering a public service. Several suggestions were made as to how this might be defined:

*“‘Private landowner’ should mean an owner of land listed under the regulations who is not a local authority, parish council, or other public authority as defined under the Freedom of Information Act”*

Other

*“Any body without tax raising powers or wholly funded by the exchequer”*

Parish/town council

*“Private individual or non-statutory body, including private companies, charities, voluntary organisations and social enterprises.”*

Voluntary and community body

- Twenty-one respondents thought that the question was irrelevant as all landowners should be eligible for compensation
- Ten respondents thought the definition of private owner should include registered charities and community interest groups
- Eight thought that the definition of private landowner should refer to the outright owner of the land (rather than the tenant or lessee).

Other suggestions included any owner of an asset of community value; local residents and businesses; and anyone who owns or has an interest in property.

**Question 39**

Do you agree with the proposed time limit of 90 days for making a compensation claim? If not, how long do you think the time limit for making a compensation claim should be?

There were 177 responses to Question 39, as follows:

	Yes	No	Total
Local authorities	62	14	76
Parish/town councils	25	2	27
Other (public)	4	2	6
Voluntary and community bodies	29	4	33
Business	14	2	16
Landowners	5	3	8
Other	11	0	11
<b>Total</b>	<b>150</b>	<b>27</b>	<b>177</b>
<b>Total (%)</b>	<b>84.7</b>	<b>15.3</b>	<b>100</b>

A large majority of respondents were in favour of 90 days as the time period within which to make a claim and there was consensus across all sectors on this.

Thirty-six respondents made further comments.

- Of those who disagreed with the proposed time limit of 90 days, 10 felt that it should be shorter, with suggestions from 28 days to six to eight weeks. Some respondents thought it was unfair that this period should be longer than the proposed interim window of opportunity period of six weeks



- Nine thought that this timescale should be longer, with suggestions from six months to two years and one respondent suggested there should be no time limit, if the costs are justified. Several suggested that the true costs may only emerge at a later date, after the 90 day period, therefore the period should be longer
- Of the nine respondents who agreed with the timescale and commented, a small number suggested that local authorities could be given flexibility to extend the period if necessary. It was also suggested that any interest paid on compensation costs should be made from a specified date, such as the date that the claim is received by the local authority.

Others disagreed that there should be a compensation scheme at all and some respondents were concerned about the additional burdens of the compensation scheme on local authorities.

#### Question 40

Do you agree with the proposal in paragraph 12.8?

*(12.8 It is envisaged that an owner should submit a claim for compensation in writing to the local authority within the specified time limit, providing proof of the loss or expense incurred. Beyond this, local authorities may determine the procedure they will follow when considering whether to award compensation.)*

There were 164 responses to Question 40, as follows:

	Yes	No	Total
Local authorities	53	20	73
Parish/town councils	25	0	25
Other (public)	3	3	6
Voluntary and community bodies	27	4	31
Business	7	5	12
Landowners	4	3	7
Other	6	4	10
<b>Total</b>	<b>125</b>	<b>39</b>	<b>164</b>
<b>Total (%)</b>	<b>76.2</b>	<b>23.8</b>	<b>100</b>

Over three quarters agreed with the proposed procedure for claiming compensation and there was a consensus across all groups.

Fifty-two additional comments were made.

- Twenty respondents felt that there ought to be a consistent approach to awarding compensation, by setting out the process in regulations or in guidance. It was also felt that clarity about the compensation scheme would help to prevent multiple appeals and disputes
- Thirteen respondents either felt that local authorities should not administer the compensation scheme or that they should be reimbursed by central Government
- A small number of respondents had concerns that local authorities would not be impartial if they were in charge of the decision to list an asset and paying out compensation. Some suggested that the scheme should be administered by an independent third party
- A small number of respondents suggested that the process should be consistent with the Lands Tribunal procedures and that there should be a right of appeal to the Lands Tribunal.

Others suggested that local authorities should publish their compensation procedures and make clear the basis on which they award compensation; that claims for costs must be measurable and evidenced; that the compensations scheme should cover loss as well as expense; or that there should be no compensation scheme at all.

**Question 41**

Do you agree with the proposal in paragraph 12.10?

*(12.10 Local authorities could consider whether a claim is justified and how much compensation to offer.)*

There were 162 responses to Q41, as follows:

	Yes	No	Total
Local authorities	54	19	73
Parish/town councils	21	3	24
Other (public)	3	3	6
Voluntary and community bodies	24	6	30
Business	7	6	13
Landowners	2	5	7
Other	5	4	9
<b>Total</b>	<b>116</b>	<b>46</b>	<b>162</b>
<b>Total (%)</b>	<b>71.6</b>	<b>28.4</b>	<b>100</b>

Just over 71 per cent of respondents agreed with the proposal for calculating costs of compensation, however, landowners tended to disagree with the proposal.

Sixty-six respondents made further comments.

- Eighteen respondents were concerned that the process outlined in paragraph 12.10 was too subjective and would lead to claims being paid or rejected at the local authority's discretion, and hence to variation across the country. It was felt that there needed to be a consistent approach and there was some support for setting national levels of payment, in line with Compulsory Purchase Orders or other similar schemes. It was also suggested that local authorities should only pay 'reasonable expenses'

*"There needs to be a consistent approach to dealing with compensation claims across all local authorities in order to avoid the possibility of some landowners receiving less compensation than might be the case in other areas. This would be grossly unfair. Ideally, the compensation procedure would be covered by regulations, but if that is not the case then guidance must be given to local authorities on criteria to inform decision making and levels of compensation."*

Business

- Thirteen respondents thought that local authorities should not administer the scheme and that it should be run by central government or an independent body, or that local authorities' costs should be reimbursed by central government
- Seven thought that there must be a mechanism for owners to appeal against the compensation decision
- Five thought that the basis for compensation claims was too narrow and should include loss as well as expenses.

Other comments suggested that there should be a cap on the level of compensation paid; that compensation could be calculated using a market value mechanism; and that legal fees for appealing against listing should not be included in compensation costs.

**Question 42**

- (a) Should landowners be entitled to appeal against a local authority's decision about compensation?
- (b) If yes, on what basis?

There were 167 responses to Question 42(a), as follows:

	Yes	No	Total
Local authorities	48	25	73
Parish/town councils	23	3	26
Other (public)	6	0	6
Voluntary and community bodies	23	4	27
Business	16	0	16
Landowners	8	0	8
Other	8	3	11
<b>Total</b>	<b>132</b>	<b>35</b>	<b>167</b>
<b>Total (%)</b>	<b>79.0</b>	<b>21.0</b>	<b>100</b>

**Question 42(a) Should landowners be entitled to appeal against a local authority's decision about compensation?**

A large majority of respondents were in favour of landowners being able to appeal against the level of compensation offered, with fairly strong agreement across all sectors. One hundred per cent of businesses, landowners and other public bodies who responded were in agreement.

**Question 42(b) If yes, on what basis?**

One hundred and twenty-five respondents made further comments.

- seventeen of them thought that landowners should be able to appeal on the basis that the local authority had been unreasonable or unfair in their decision
- sixteen respondents suggested that the basis for appeal should be the level of compensation offered by the local authority
- thirteen thought that landowners should be able to appeal on the basis that the decision taken by the local authority was based on misinformation or failure to take account of new or relevant information
- seven thought that the basis of an appeal should be whether the local authority had failed to follow procedure, as set out in the regulations.

Other comments focused on other issues relating to the right of appeal for landowners:

- Twenty agreed that such an appeal should be heard by the Lands Chamber of the Upper Tribunal, or another court or tribunal. However, nine thought that it could be handled by another body, such as the local authority's complaints procedure, the Local Government Ombudsman, or an independent professional body
- Eleven were concerned about the costs of appeal to local authorities and the public purse, and that these should be covered in the Government's New Burdens assessment. It was also suggested that the compensation scheme should be reviewed one year after implementation to assess the financial risk to local authorities
- Six felt that the right of appeal for landowners should be unrestricted.

Other comments were broadly supportive of the right of appeal for landowners, whilst others disagreed that an appeals mechanism was required, or that it should be available to both the landowner and the nominating community group.

# Enforcement of the regulations

## Question 43

Do you agree that an enforcement regime is required?

There were 176 responses to Question 43, as follows:

	Yes	No	Total
Local authorities	66	5	71
Parish/town councils	25	2	27
Other (public)	4	0	4
Voluntary and community bodies	38	4	42
Business	13	1	14
Landowners	4	2	6
Other	12	0	12
<b>Total</b>	<b>162</b>	<b>14</b>	<b>176</b>
<b>Total (%)</b>	<b>92.0</b>	<b>8.0</b>	<b>100</b>

The vast majority of respondents (over 90%) agreed that an enforcement regime was required, with consensus across all sectors.

*“Ignoring the rules and selling a listed asset without community opportunity should see some penalty to ensure the new Right has a clear impact on what happens”*

Local authority

## Question 44

Do you have any comments on the process of enforcement?

## Question 45

Are there alternative approaches to enforcement that you would propose?

There were 136 responses to Question 45, as follows:

	Yes	No	Total
Local authorities	19	42	61
Parish/town councils	3	19	22
Other (public)	0	4	4
Voluntary and community bodies	8	21	29
Business	1	8	9
Landowners	0	4	4
Other	0	7	7
<b>Total</b>	<b>31</b>	<b>105</b>	<b>136</b>
<b>Total (%)</b>	<b>22.8</b>	<b>77.2</b>	<b>100</b>

In total, 114 respondents commented on Question 44 and there were 37 responses to Question 45. The responses to these two questions covered similar ground and have been considered together.

- Eighteen respondents were content with the scheme as described
- However, concern was voiced by some respondents that the proposal was too costly and unwieldy and may deter a community group from making a claim. Seventeen respondents were concerned about the responsibility of enforcement being left to community groups, as the process could be quite daunting and expensive

*“As knowledge of civil courts is required, this may put community groups at a disadvantage. Given that this process is supposed to empower community groups, providing a means to enforce their rights that they may not have the understanding to apply seems inappropriate.”*

Voluntary and community body

- Nineteen respondents flagged the importance of encouraging pre-sale compliance, to minimise the number of non-compliant cases and having a compliance information plan. Suggestions included:
  - a clear role for local authorities in disseminating information
  - the local land charges register
  - through solicitors and conveyancers
  - placing restrictions on private owners’ Land Registry titles preventing registration of disposals unless the local authority had confirmed compliance with the Community Right To Buy provisions
  - publishing information on enforcement activity.

*“... a compliance strategy should complement a tough enforcement strategy. The compliance strategy should include an information plan which outlines the rights and responsibilities of buyers and sellers and convince them that it is better to operate within the system than outside it. The key to this is both buyer and seller believing that swift and appropriate actions will be taken against those who do not comply.”*

Local authority

*“It should be a requirement that local authorities always publish details about the enforcement process alongside their Lists to act as a deterrent.”*

Voluntary and community body

- Eleven respondents expressed the view that a strong deterrent was needed and supported a non compliant sale being void and therefore set aside

*“A voidable transfer would deter a sale that does not comply with the procedures and would probably prevent the purchaser receiving funds from a lending institution.”*

Local authority

*“Compensation won’t bring an asset back. If this scheme is to be enforceable then non compliant transfers should be voided.”*

Business

- However, 10 disagreed with the use of void or voidable as a penalty, believing it to be disproportionate on the owner of the asset, as there is no obligation to sell to the community group. It was also suggested that the enforcement process should take account of whether there would have been an alternative sale
- Thirteen respondents were concerned that the timescales for making a claim could potentially be very long (i.e. if community groups are able to make a claim up to 6 months after finding out about a non-compliant sale, rather than from the time of sale). It was suggested that the length of time should be restricted in some way
- It was suggested that a local authority should also be able to trigger a claim, and have a larger role in the challenge either by leading (three comments) or supporting (one comment) a claimant community group. However, four respondents (local authorities) did not believe the local authority should be involved in the enforcement process
- Four respondents suggested that a clearly defined tariff of fines should be established.

Other suggested processes for enforcement included dispute resolution or mediation or recourse to the Ombudsman. Others suggested that the approach could be piloted and then reviewed.



# Support and guidance

## Question 46

What support would be most helpful?

One hundred and sixty-five respondents made comments on support and guidance, highlighting the following themes:

### National guidance

Seventy-six respondents supported the provision of national guidance. A number of respondents suggested that the guidance should be tailored for different sectors and could be developed by sector-led organisations. There was also strong support for integrating guidance with the other community rights, and signposting other relevant existing guidance. A number of respondents encouraged the use of plain English and the inclusion of case studies.

### Technical support

Sixty-six respondents highlighted the importance of making technical support available to community groups to enable them to take up the Right. It was felt that technical support would be particularly crucial at the development stage, when groups were undertaking preparatory work in order to put themselves in a position to bid for and successfully take over, the management of an asset. A number of respondents also suggested that access to technical support should continue once an asset has been purchased in order to ensure its long-term viability.

The types of support identified included:

- business planning and budgeting; effective financial modelling and forecasting; identifying sources of financial support
- property management; staff management; and
- contract negotiations.
- It was also suggested that support should be provided at the local level by a range of existing ‘trusted’ providers, although there could also be a role for a national expert intermediary body to provide signposting. Eighteen respondents also suggested mentoring and peer support from sector-led and local networks. Twelve respondents also felt that the support package should include training for community groups and parish council staff.

## Financial assistance

Twenty-five respondents said that support should include the provision of financial assistance, in the form of direct funding to community groups, in order to help them take up the Right. A number of respondents commented that this would be particularly important in the preparatory stages, and would help community groups to leverage other sources of investment. Suggestions on the types of financial support that should be made available included grants, capital loans and endowments. It was also suggested that funding could be made available to communities through existing funding programmes. It was commented that expert intermediaries may also need funding in order to support communities to take up the Right.

## Funding for local authorities

Thirteen respondents said that funding should be made available to local authorities, in order to help them effectively deliver the scheme. A number of respondents commented that the scheme could prove to be resource intensive for local authorities and that the appeals process and compensation procedure could add additional burdens.

## Website and advice line

Twelve respondents supported the provision of a web-based central portal and advice line that was integrated with other community rights. Respondents suggested that the web portal could provide useful templates and toolkits for business planning and budgeting, etc. It was also suggested that it should include a regularly updated database of assets that have been listed across the country, as well as data on appeals and successful sales to communities. Respondents felt that it would be important to keep a web portal regularly updated with new case studies.

## Promotion and awareness raising

Ten respondents felt that it was important for the successful take-up of the Community Right to Buy that communities are made aware of the Right, including what it does and does not offer to communities. It was suggested that this could be organised locally, possibly by local authorities.

## Other comments

The consultation document asked respondents if they had any additional comments they wanted to make about the proposals. One hundred and fifty-two respondents made additional comments, which were extensive and wide-ranging, and a summary of the key issues raised is set out below. These issues were also raised at the consultation events, which were attended by over 150 representatives from local government, the voluntary and community sector and business.

### Burdens on local authorities

Forty-three respondents expressed concern about the potential burdens and costs of the Community Right to Buy on local authorities and felt that there should be more flexibility for local authorities. A significant majority who expressed this view were local authorities.

*“The principle that local communities should be involved with – and potentially run – the local services they value is an important one. However, this proposal places a new, untested and complex burden on local authorities involving significant additional costs. .... Given the scope of the proposal to include private sector assets, this presents large risks, including potential for costly and time-consuming challenge. This, combined with the administrative complexity of the process (including reviews and appeals) may actually divert Council resources...”*

Local authority

### Name of the Right

Thirty-nine respondents felt that the name of the Right ‘Community Right to Buy’ is misleading, as the policy actually offers the community a ‘Right to Bid’. There were concerns that this could lead to raised expectations amongst community groups. This view was also widely expressed at the consultation events.

*“The title of the consultation is misleading, in that the legislation would not confer any ‘right to buy’ or even, technically, a right to bid. It simply puts in place a series of moratoriums on open sale on certain types of property. It is important that in subsequent guidance or publicity on the matter, a more accurate title is used. The risk with the current title is that it will raise false expectations and thus result in disappointment when people realise they do not have the ‘right’ to purchase a property.”*

Local authority

## Impact on businesses and property owners

Thirty respondents had concerns about the impact of the provisions on businesses and property owners, which could distort local markets and lead to blight, with some respondents suggesting that businesses sold as a going concern should be exempted from the provisions. Some respondents (six) felt that the provisions could act as a disincentive for property owners to open their properties to community groups on an occasional basis as it will open them to a risk of becoming a community asset and that there should be adequate safeguards in place against this.

Twenty-three respondents felt that the provisions for compensation for landowners should include loss of property value and should take account of costs for local authorities.

*"[There should be] scope for compensation claims that goes beyond just cost of engaging in the process, but also includes loss of earnings where commercial deals are scuppered."*

Business

## Support for community groups

Thirty felt that there needed to be adequate support or guidance and funding to enable community groups to take up the Right and to ensure that they take on assets, not liabilities. Five also said it was essential that the length of the window of opportunity needed to be long enough to help community groups raise funds to buy an asset. This view was expressed strongly in the consultation events, where the issue of support and guidance were discussed in depth.

*"Generally [we] support the intention to assist community organisations (including town and parish councils) who wish to purchase assets of community value. However, there has to be sufficient time for the organisations to put together a business plan and identify potential funding. There needs to be a period of at least six months, for communities to prepare a bid. Also, support has to be available in terms of technical and legal advice..." – Parish/town council*

## Links to the planning process

Twelve respondents expressed concern that the Community Right to Buy could be used to frustrate legitimate development and 15 suggested that links to the planning process could be strengthened in order to make use of existing planning restrictions for preserving local assets.

*“We are concerned, however, that this provision may be used, on occasion, to stymie the proper planning process by identifying a site as a community asset at a time when a proposal to develop that site is being made – or has been decided on. These provisions of the Bill need to be used in a positive way and we believe that this may best be done if land of community value is identified only through the process of preparing a local development framework (or amendment to an LDF) or a neighbourhood development plan.”*

Voluntary and community body

## Eligibility of nominators

Fourteen respondents raised concerns about vexatious nominations or listing as a result of individuals being allowed to nominate. This view was also expressed at the consultation events, although many people at the events expressed the opposite view – that nominations should be open to everyone and that unincorporated groups should be able to trigger the window of opportunity, with support.

## Assets and services

Ten respondents suggested that the Community Right to Buy is really about services rather than assets, for example, a group may acquire an asset when what they really want to retain is the service that was delivered from the asset.

*“The Community Right to Buy places property on a list, not the businesses itself. For many local communities it is the service that the business provides (e.g. a pub or local shop) that is the asset rather than the property. There is no guarantee that restricting a sale of property to allow the local community time to bid for it will preserve the asset itself.”*

Business

## Length of the window of opportunity

There was a clear view expressed at the consultation events that the length of the window of opportunity should be at least six months, in order to give voluntary groups a chance to raise funds. It was generally felt that this was the minimum amount of time needed.

## Definition of asset of community value

Attendees at the consultation events were strongly in favour of the definition of asset of community value to include the potential use of a piece of land, as well as its current and former use. They were also in favour of the definition being set out nationally in legislation rather than being left entirely to local authorities' discretion. This was echoed by three respondents who made additional comments.

## Other comments

A small number of respondents highlighted the role of parish and town councils, suggesting that they needed to be involved more in the process. Some respondents expressed concern that the Community Right to Buy might prevent local authorities from disposing of assets to community groups at an under value. A small number of respondents also felt that there should be a right of appeal for community groups against the local authority's decision not to list an asset.

# Annex A

## List of respondents

1. Accessible Retail, Orb Support Limited
2. Adventure Capital Fund and Social Investment Business
3. Action with Communities in Rural England
4. Action for Market Towns
5. Age UK
6. Private individual
7. Anthony Collins Solicitors LLP
8. Archbishops' Council of the Church of England
9. Private individual
10. Association of British Insurers
11. Association of North East Councils
12. Association of Consultant Architects
13. Association of Convenience Stores
14. Association of Council Solicitors and Secretaries
15. Barratt Developments plc
16. Basingstoke and Deane Borough Council
17. Bath & North East Somerset Council
18. BCSC
19. Bedford Borough Council
20. Berkeley Group
21. Private individual
22. Birmingham City Council
23. Bishop's Itchington Parish Council
24. Bodmin Town Council
25. Private individual
26. Bracknell Forest Borough Council
27. Bridport Area Development Trust
28. Bridport Local Area Partnership

29. Bridport Town Council
30. Brighton & Hove City Council
31. Bristol City Council
32. British Beer and Pub Association
33. British Chamber of Commerce
34. British Property Federation
35. British Retail Consortium
36. Broadland District Council
37. Buckingham Town Council
38. Buckland Parish Council
39. Bury Council
40. Business in Sport & Leisure
41. Cambridge City Council
42. Cambridgeshire County Council
43. Campaign for Real Ale – Reading and Mid Berkshire branch
44. Campaign to Protect Rural England
45. Campaign for Real Ale
46. Canterbury City Council
47. Central Association of Agricultural Valuers
48. CGMS (on behalf of the Metropolitan Police Authority)
49. Charles Wells Pub Company
50. Chelsworth Parish Meeting
51. Cheshire West and Chester Council
52. Chideock Parish Council
53. Chief Fire Officers Association
54. Children England
55. Citizens Advice Bureau
56. City of Lincoln Council
57. City of Wakefield MDC
58. City of York Council
59. Civic Voice
60. Community Action Milton Keynes
61. Community Council of Devon



62. Community Development Foundation
63. Community First
64. Community Impact Bucks
65. Community Matters
66. Consumer Focus
67. Cornwall County Council
68. Council of Mortgage Lenders
69. Country Land and Business Association
70. Private individual
71. Daventry District Council
72. Derbyshire Fire and Rescue Service
73. Devon & Somerset Fire & Rescue Authority
74. Devon Association of Local Councils
75. Devon County Council
76. Dorset County Council
77. DS Research and Education (personal view)
78. Durham County Council
79. E.on
80. East Devon District Council
81. East Riding of Yorkshire Council
82. East Riding of Yorkshire Rural Partnership
83. Ellesmere Town Council
84. Enfield Council
85. English Heritage
86. Erewash Borough Council
87. Essex CC
88. Estates Business Group
89. Ethical Property Foundation
90. Evangelical Alliance
91. Eversheds LLP
92. Federation of Small Businesses
93. Forest Heath District Council
94. Frederic Robinson Ltd

95. Gatwick Airport Ltd
96. Gloucestershire Rural Community Council
97. Grandborough Parish Council
98. Greater Manchester Fire and Rescue Authority
99. GreenSpace Forum Ltd
100. GWK LLP
101. Herefordshire Association of Local Councils
102. Hampshire Association of Local Councils
103. Hampshire County Council
104. Haringey Association of Voluntary and Community Organisations
105. Harrow Council
106. Harvest Housing Group
107. Hastoe Housing Association
108. Private individual
109. Herefordshire Council
110. Hertfordshire County Council
111. Hertfordshire Association of Parish & Town Councils
112. Historic Houses Association
113. Historic Towns Forum
114. HM Land Registry
115. Humber & Wolds Rural Community Council
116. Institute for Archaeologists
117. Institute of Historic Building Conservation
118. Isle of Wight Council
119. Ivybridge Town Council
120. Keep Britain Tidy
121. Kent County Council
122. Kirklees Council
123. Kirkwells Town Planning Consultants
124. Lambeth Council
125. Lancashire County Council
126. Law Society
127. Lawn Tennis Association and The Tennis Foundation

128. London Borough of Harrow
129. Leeds City Council
130. Leicester, Leicestershire and Rutland Combined Fire Authority
131. Lighthorne Heath Parish Council
132. Lincolnshire County Council
133. Little Houghton Parish Council
134. Liverpool City Council
135. Local Government Group
136. Locality
137. London Borough of Camden
138. London Borough of Hackney
139. London Borough of Merton
140. London First
141. Luton Borough Council
142. Maidstone Borough Council
143. Maldon District Council
144. Mary Tavy Parish Council
145. Milton Keynes Council
146. Mineral Products Association
147. Minstead Parish Council
148. Musbury Parish Council
149. National Association of Local Councils
150. National Council for Voluntary Organisations
151. National Day Nurseries Association
152. National Farmers Union
153. National Housing Federation
154. National Society of Allotment & Leisure Gardeners Limited
155. National Association for Voluntary and Community Action
156. Newton Regis, Seckington & No Man's Heath Parish Council
157. Newark and Sherwood Community Sports Network
158. Private individual
159. Newcastle City Council
160. Newcastle-under-Lyme Borough Council

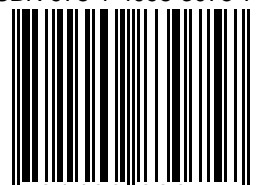
161. Newton Abbot Town Council
162. Norfolk Rural Community Council
163. North Norfolk District Council
164. North Somerset Council
165. North Warwickshire Borough Council
166. North Yorkshire County Council
167. Northamptonshire Council Council
168. Norwich City Council
169. Nottingham City Council
170. Nottinghamshire County Council
171. Oldham Council
172. Private individual
173. Oxfordshire County Council
174. Oxfordshire Community & Voluntary Action
175. Oxfordshire Rural Community Council
176. Passenger Transport Executive Group
177. Pastoral & Closed Churches Dept, Church Commissioners
178. Places for People
179. Plunkett Foundation
180. Plymouth City Council
181. Private individual
182. Post Office Ltd & Royal Mail Group Ltd
183. Preston City Council
184. Pub is the Hub
185. Punch Taverns
186. Railway Paths Limited
187. RenewableUK
188. Royal Berkshire Fire Authority
189. Royal Town Planning Institute
190. Rural Community Action East Midlands
191. Rural Community Council of Essex
192. Rural Shops Alliance
193. Salford City council

194. Sefton Metropolitan Borough Council
195. Sevenoaks District Council
196. Shepherd Neame Brewery
197. Shildon Town Council
198. Shropshire Council on behalf of Voluntary Sector Task group representing voluntary and community bodies and council interests
199. Social Enterprise Richmond
200. Solihull Metropolitan Borough Council
201. South Gloucestershire Council
202. South Lakeland District Council
203. South Oxfordshire District Council
204. South Somerset District Council.
205. South West Rural Affairs Forum
206. South Woodham Ferrers Town Council
207. Southern Planning Practice Ltd
208. Sport and Recreation Alliance
209. St Albans City & District Council
210. St Edmundsbury Borough Council
211. St Ives Town Council
212. St John Ambulance
213. St Stephen-in-Brannel Parish Council
214. Stevenage Borough Council
215. Stoke on Trent and Staffordshire Fire Authority
216. Stroud District Council
217. Suffolk Association of Local Councils
218. Suffolk County Council
219. Sunderland City Council
220. Supporters Direct
221. Private individual
222. Talaton Parish Council
223. Tanworth In Arden Parish Council
224. Taunton Deane Borough Council
225. Tees Valley Community Council

226. TerraQuest Solutions Ltd
227. The Association of Licenced Multiple Retailers
228. The Home Builders Federation
229. The National Trust
230. The Theatres Trust
231. The Wildlife Trusts
232. Tonbridge & Malling Borough Council
233. Private individual
234. UK Business Council for Sustainable Energy together with the Association of Electricity Producers, the energy Networks Association, the Gas Forum, the Renewable Energy Association and Renewable UK
235. Private individual
236. Urban Forum
237. Vale of White Horse District Council
238. Voluntary Action Calderdale
239. West End Community Network
240. West Hallam Parish Council
241. West Sussex County Council
242. Whitnash Town Council
243. Wimborne Minster Town Council
244. Wolston Parish Council
245. Woodland Trust
246. Worcestershire County Council.
247. Wycombe District Council
248. Wyre Forest District Council
249. YMCA Central Herts
250. Yorkshire and Humber Rural Network
251. Yorkshire Local Councils Associations
252. Private individual
253. Private individual
254. Private individual
255. Private individual
256. Private individual

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