



Proposals to introduce a Community Right to Buy –
Assets of Community Value
Consultation paper



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The Consultation Process and How to Respond

Scope of the consultation

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| Topic of this consultation: | Assets of community value |
| Scope of this consultation: | The statutory framework for the Community Right to Buy is provided in Part 4, Chapter 4 of the Localism Bill. This Bill was introduced on 13 December 2010 and is outside the scope of this consultation. However, the Bill includes a number of powers to specify further detail underpinning the Community Right to Buy in regulations. This consultation invites views on these aspects. |
| Related consultation: | <p>Alongside this consultation, we have published a consultation on the Community Right to Challenge. This is available at www.communities.gov.uk/corporate/publications/consultations</p> <p>For all enquiries, and to respond to the Community Right to Challenge consultation, please email crchallenge@communities.gsi.gov.uk or write to:</p> <p>Community Right to Challenge Consultation Team Department for Communities and Local Government 5/A3 Eland House Bressenden Place London SW1E 5DU</p> |
| Geographical scope: | England |
| Impact Assessment: | The impact assessment for this policy has been published on the DCLG website at: www.communities.gov.uk/publications/localgovernment/localismrighttobuy |

Basic Information

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| To: | This consultation is aimed primarily at local government, parish councils, voluntary, community and social enterprise (VCSE) sector organisations, private businesses, landowners and those involved in conveyancing law and land registry. |
| Body responsible for the consultation: | The Department for Communities and Local Government is responsible for this consultation. |
| Duration: | This consultation will be open for 12 weeks, from 4 February 2011 to 5pm on 3 May 2011. |
| Enquiries and how to respond: | <p>For enquiries, and to respond to this consultation, please email crtbuy@communities.gsi.gov.uk or write to:</p> <p>Community Right to Buy Consultation Team Department for Communities and Local Government 5/A3 Eland House Bressenden Place London SW1E 5DU</p> <p>For more information, please see www.communities.gov.uk</p> |
| Additional ways to become involved: | <p>Throughout the consultation period we will be speaking to a wide range of interested parties. We will be organising consultation events which will be publicised on the Department's website: www.communities.gov.uk</p> <p>If you would be interested in attending a consultation event, please email crtbuy@communities.gsi.gov.uk or write to the consultation team at the above address.</p> |
| After the consultation: | A summary of the responses to the consultation will be published on the Department's website within three months of the closing date of the consultation. |
| Compliance with the Code of Practice on Consultation: | This consultation complies with the Code of Practice on Consultation (a summary of which is at Annex B). |

Background

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| <p>Getting to this stage:</p> | <p>Under existing legislation, local authorities can transfer assets to community groups at below market value and approximately one third of local authorities have done so. The Asset Transfer Unit is funded by DCLG to support local people and community groups to take over under-used land and buildings from the public sector and transform them into thriving community spaces.</p> <p>The <i>Coalition Programme for Government</i>¹ committed to ‘introduce new powers to help communities save local facilities threatened with closure.’</p> <p>Parliament is in the process of considering the Localism Bill which sets the framework for this policy and was introduced to Parliament on 13 December 2010.</p> |
| <p>Previous engagement:</p> | <p>Initial discussions have been held with representatives from local government, voluntary and community bodies, businesses and conveyancing bodies.</p> |

How to respond

1. Questions on which we are seeking input are raised throughout this document. These are repeated at Annex A. We encourage you to use the Word format questionnaire associated with this consultation paper. Responses to this consultation must be received by 5pm on 3 May 2011.
2. You can respond by email to crtbuy@communities.gsi.gov.uk or write to:

Community Right to Buy Consultation Team
 Department for Communities and Local Government
 5/A3 Eland House
 Bressenden Place
 London SW1E 5DU
3. When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please give a summary of the people and organisations it represents and, where relevant, who else you have consulted in reaching your conclusions.

¹ www.cabinetoffice.gov.uk/news/coalition-documents

Additional copies

4. This consultation paper, complete with electronic response form, is available on the Department for Communities and Local Government website at www.communities.gov.uk/corporate/publications/consultations You may obtain a hard copy of this consultation paper from the address given at paragraph 2 above.
5. If you require this publication in an alternative format please email crtbuy@communities.gsi.gov.uk

Or online via the website at www.communities.gov.uk

Confidentiality and data protection

6. Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).
7. If you want the information that you provide to be treated as confidential, please be aware that, under the Freedom of Information Act 2000, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, in itself, be regarded as binding on the department.
8. DCLG will process your personal data in accordance with the Data Protection Act 1998 and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties. Individual responses will not be acknowledged unless specifically requested.
9. Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Help with queries

10. Questions about the policy issues raised in the document can be sent to the address given at paragraph 2 above.
11. A copy of the consultation criteria from the Code of Practice on Consultation is at Annex B. Are you satisfied that this consultation has followed these criteria? If not or you have any other observations about how we can improve the process please email:

consultationcoordinator@communities.gsi.gov.uk or write to:

DCLG Consultation Co-ordinator
Zone 8/J6
Eland House
Bressenden Place
London SW1E 5DU

Ministerial foreword

"...we've got to get rid of the centralised bureaucracy that wastes money and undermines morale and in its place... open up public services to new providers... so we get more innovation, diversity and responsiveness to public need. We need to create communities with oomph – neighbourhoods who are in charge of their own destiny, who feel if they club together and get involved they can shape the world around them."

Prime Minister, Liverpool, 19 July 2010.

In the early days of the new Government, the Prime Minister gave a speech in Liverpool, setting out one of the major shared principles uniting the two parties in power. That principle is localism. For too long, decision-makers have sought to improve public services by exercising power and influence from central government. Central targets and directions create bureaucracy and swallow up public money; they stifle local innovation, and stop people making their own decisions about things that matter to them.

This Government has a different vision. We want to restore power to local people and their democratically elected representatives. We want to help them make their own decisions. And we want to give free rein to the creativity, ingenuity and initiative of communities up and down the country.

Since May, we have started putting that vision into practice. We have cut back town hall bureaucracy and given councils more flexibility to decide how best to spend taxpayers' money. We've laid the foundations for a new generation of free schools, and set out our plans to make the police more responsive to local people's needs. But this is only a start. The Localism Bill, published in December 2010, represents a further step forward.

The Localism Bill has the potential to transform national life. It will give town halls far more discretion to get on with the job of responding to what local people want. It will make the planning system more responsive to communities and allow for much greater local control over social housing. Crucially, it will also pass new rights and powers direct to local communities.

Under the Bill, it will become easier for local people to give the green light to the building of shops, businesses and homes where they are most needed. Voluntary groups and social enterprises will be able to ask to take over the running of local public services. And when important local amenities and buildings - such as community centres, old town halls, village shops or pubs - come up for sale, communities will have extra time to prepare a bid to take them over, making it easier to keep much-loved assets in public use and part of local life.

In order to make the most of the Bill’s potential to achieve swift, widespread and lasting change, the Government is beginning consultation now on how the provisions in the Bill could be used to best effect.

This consultation is about the provisions designed to make it easier for community groups to take over buildings and land. Development trusts across the country, in the North and South, and in both rural and urban areas, have shown the difference that community ownership can make to local life.

If we are to help other people follow their example, it’s vital to draw on their experience as we draft the detailed regulations that will put the Community Right to Buy into practice. We want to hear their thoughts, and the thoughts of local authorities, community groups, conveyancers, private businesses and others, on the questions set out in this document, which explore exactly how the new right might operate.

We look forward to hearing your comments on how we can make this new right work effectively in practice, and put real power in the hands of local people.

Greg Clark
Minister for Decentralisation

Glossary

Asset

Land and buildings. The term does not include services.

List

The list of assets of community value that local authorities will be required to maintain under the proposed Community Right to Buy scheme.

Interim window of opportunity

The proposed initial period of time which will apply once the owner of an asset notifies the local authority that they wish to sell the asset. During this period, if a qualifying community group informs the local authority or the owner that they wish to be treated as a potential bidder to buy the asset, this will trigger the full window of opportunity period. The term used in the Localism Bill is 'interim moratorium'. The proposed length of this period is set out in Section 10 of this document.

Full window of opportunity

The proposed period of time that community groups will have to develop a viable bid to purchase an asset of community value. The length of this period will also run from the date the asset owner notifies the local authority of their intention to sell, and so will include the interim window of opportunity period. Once a community group expresses interest in making a bid, the remaining balance of the full window of opportunity period will be available to them to finalise their bid. The term used in the Localism Bill is 'full moratorium'. The proposed length of this period is set out in Section 10 of this document.

Protected period

The proposed 18 month period that will also run from the date the owner notifies the local authority of their intention to sell and will encompass the interim and full window of opportunity periods. If the asset owner does not sell their asset at the end of the interim or full window of opportunity period, there will be the remainder of the protected period in which they are permitted to sell without triggering another delay.

Owner

Either the person who owns the freehold of an asset or the person who owns a lease granted for at least 25 years who is most distant from the freehold estate. For the window of opportunity rules to apply to an owner, they must intend to make a relevant disposal, which means they would also need to be giving vacant possession of the asset on disposal.

Local authority

The Localism Bill defines 'local authority' separately for England and Wales. It is intended that responsibility for the scheme will rest with the local authority which is also the local planning authority. In England it will mean:

- (a) a district council,
- (b) a county council for an area in England for which there are no district councils,
- (c) a London borough council,
- (d) the Common Council of the City of London, or
- (e) the Council of the Isles of Scilly.

Regulations

This refers to the secondary legislation, which will set out more details relating to the scheme.

Appropriate authority

The Localism Bill gives a power to the 'appropriate authority' to make amendments to the primary legislation by order or to make further provisions in regulations. This means the Secretary of State with regard to England.

Relevant disposal

A relevant disposal of listed land will take place when an owner either sells the freehold or grants or assigns a lease granted for at least 25 years (or surrenders the lease to the landlord). In addition, it will only be a relevant disposal if the disposal gives vacant possession.

Freehold estate

The freehold estate is effectively absolute ownership, and is not limited in time.

Leasehold estate

A leasehold estate provides possession of land for a limited duration, and will have been granted by either the freeholder or the owner of a superior lease.

Community interest group

The definition of a community interest group will be set out in regulations following the conclusion of this consultation. Their significance in the Community Right to Buy is that community interest groups are the groups or bodies which may trigger the full window of opportunity by requesting to be treated as a potential bidder in relation to the land (see Section 10 for more details).

Section 1:

Introduction: What is the Community Right to Buy?

- 1.1 The Coalition Programme for Government committed to giving communities new powers to help them save local facilities threatened with closure – the ‘Community Right to Buy’. We have introduced provisions in the Localism Bill, published in December 2010, to give effect to this commitment. These provisions apply to both England and Wales, but this consultation document only relates to the regulations that will be necessary to commence the legislation in England. The Welsh Assembly Government will conduct a separate consultation.
- 1.2 As part of our determination to shift power to local neighbourhoods, the Community Right to Buy will ensure that community organisations have a fair chance to bid to take over assets and facilities that are important to them. These facilities could include their village shop or the last remaining pub in the village, their community centre, children’s centre or library building.
- 1.3 Over the last decade, there have been closures of numerous community facilities and assets that bring members of the community together and from which key community services are delivered. According to the Valuation Office Agency Rating data, the number of public libraries in England has fallen from 3,066 in 1998 to 2,820 in October 2010. Furthermore, since 2002 an average of 8,743 pubs have failed every year.²
- 1.4 The reason for closure of a community building or facility may affect the viability of an alternative community ownership proposal. However, community ownership can allow the adoption of a different business model and therefore make the asset viable again (e.g. through the use of volunteers, access to charitable funding or community share investment, or through a more enterprising pattern of service provision) which would not be open to the current private or public sector owners/operators.
- 1.5 Not only will these powers help community groups to save facilities that are under threat, we also want this legislation to drive behaviour change, so that existing owners of assets that are important to communities – including public bodies – see selling or transferring that asset to a community group as a viable, positive option.

² Office of National Statistics release on Business Demography. The data contains the count of enterprise deaths of public houses for 2002-2007.

- 1.6 This consultation document sets out the legislative framework for the Community Right to Buy scheme, which is currently being considered in Parliament as part of the Localism Bill. It invites views on proposals for the detailed workings of the scheme, which will be set out later in regulations. Subject to Parliamentary approval, it is expected that the provisions will be commenced from either April or October 2012.
- 1.7 In this consultation document, we have sought to identify which elements of the Community Right to Buy scheme ought to be applied consistently across all local authorities and should be prescribed in the regulations, such as the provisions for giving compensation to landowners and enforcement of the scheme. However, wherever possible, we consider it right for local authorities and communities to decide how to implement the new scheme in a way that best meets their local circumstances. For example, we are proposing that local authorities should have some flexibility to decide what constitutes an asset of community value in their local areas. As far as possible, we would also prefer not to be prescriptive about how some procedural elements of the scheme should be run, such as the process for nomination, or the layout of the list, as this is best left up to local authorities to determine.
- 1.8 We are particularly interested to hear views on whether these proposals achieve the appropriate balance between ensuring that communities everywhere can expect an effective process, whilst leaving local authorities the flexibility to operate the scheme in the way they judge best meets local circumstances. We would also welcome views on where advice to local authorities would be helpful.
- 1.9 In developing the primary legislation, and considering the options for regulations, we have considered carefully the balance between the rights of property owners and the public interest in retaining for community use assets that are important to community life. Getting this balance right will be dependent on a number of factors. These include:
- the length of the window of opportunity period - which should give community groups reasonable time to develop a viable bid without disproportionately interfering with an owner's property rights
 - the right set out in the Bill for asset owners to appeal against the local authority's decision to list their asset; and
 - the opportunity for owners to claim compensation for costs arising as a direct result of the operation of the scheme.

We would welcome your views on whether our proposals achieve this balance.

1.10 We have also considered what sort of support may be required to help communities use the Community Right to Buy and the other powers conferred on them through the Localism Bill. In particular, there will be important links to be made between the Community Right to Buy and other community rights, such as the new Neighbourhood Planning, Community Right to Build, and Community Right to Challenge proposals in the Localism Bill and it is important that communities understand how these can fit together. Further detail on the approach we are considering to providing advice and technical expertise is set out in Section 14 of this document.

Existing Powers

- 1.11 Under the Local Government Act 1972 (General Disposal Consent 2003), local authorities and certain other public bodies can transfer assets to community ownership at less than market value (up to an under-value of £2m) to further local social, economic and environmental wellbeing, without seeking the Secretary of State's consent.
- 1.12 This power has been increasingly used by local authorities in recent years in developing and implementing community asset transfer strategies and there are many successful examples of this.

Case Study: Battersea Arts Centre, London

To help restore and repair the old council offices building, Wandsworth Borough Council agreed to transfer the asset to Battersea Arts Centre (BAC) under lease for 125 years with the first 10 years provided rent free. The market rate for leasing the building is £150,000 and following the first £1.5m phase of BAC's capital fundraising campaign the Council has extended the rent free period of the lease for a further 10 years running up until 2028. From then onwards, rent reviews will take place every 10 years.

Battersea Arts Centre encourages participation from community groups in its programme of community and public events. These range from mother and toddler classes, to anti-gun and knife crime events for young people, to tea dances for older people and theatre events. Voluntary and Community sector partners include: Share Community, the Katherine Low Settlement, Battersea United Charities and the National Childbirth Trust. BAC aims to welcome a diverse audience base, keep ticket prices low and target some of their services to children and young people from low income backgrounds. Their Beatbox Academy attracts a diverse range of young people (particularly Black and Minority Ethnic young boys who are not in education, employment or training) to positive activities in their local arts centre. BAC delivers an artists' support programme that helps emerging artists on low incomes to generate new work in free rehearsal space that has led to BAC being a world leader in the creation of new cutting edge theatre. BAC welcomes large audiences and community visits totalling around 220,000 visits per year from 100,000 people.

The ongoing refurbishment programme will increase the number of beneficiaries significantly over the medium term. The project has completed Phase One of a five year programme of works.

- 1.13 An independent survey of 113 local authorities carried out by SQW Consulting in December 2010 found that 87 local authorities (77% of survey respondents) were engaged in transferring assets to communities, with more than 350 asset transfers in the pipeline, equating to potentially about 1,000 transfers across all authorities in England.
- 1.14 However, the use of the General Disposal Consent 2003 is entirely at the discretion of the local authority and confers no rights on a community organisation in itself. The Community Right to Buy builds on continuing local authority asset transfer activity, by extending the scope to private as well as public assets, and giving communities the initiative to identify assets of community value and the time to prepare to bid for them on the open market.

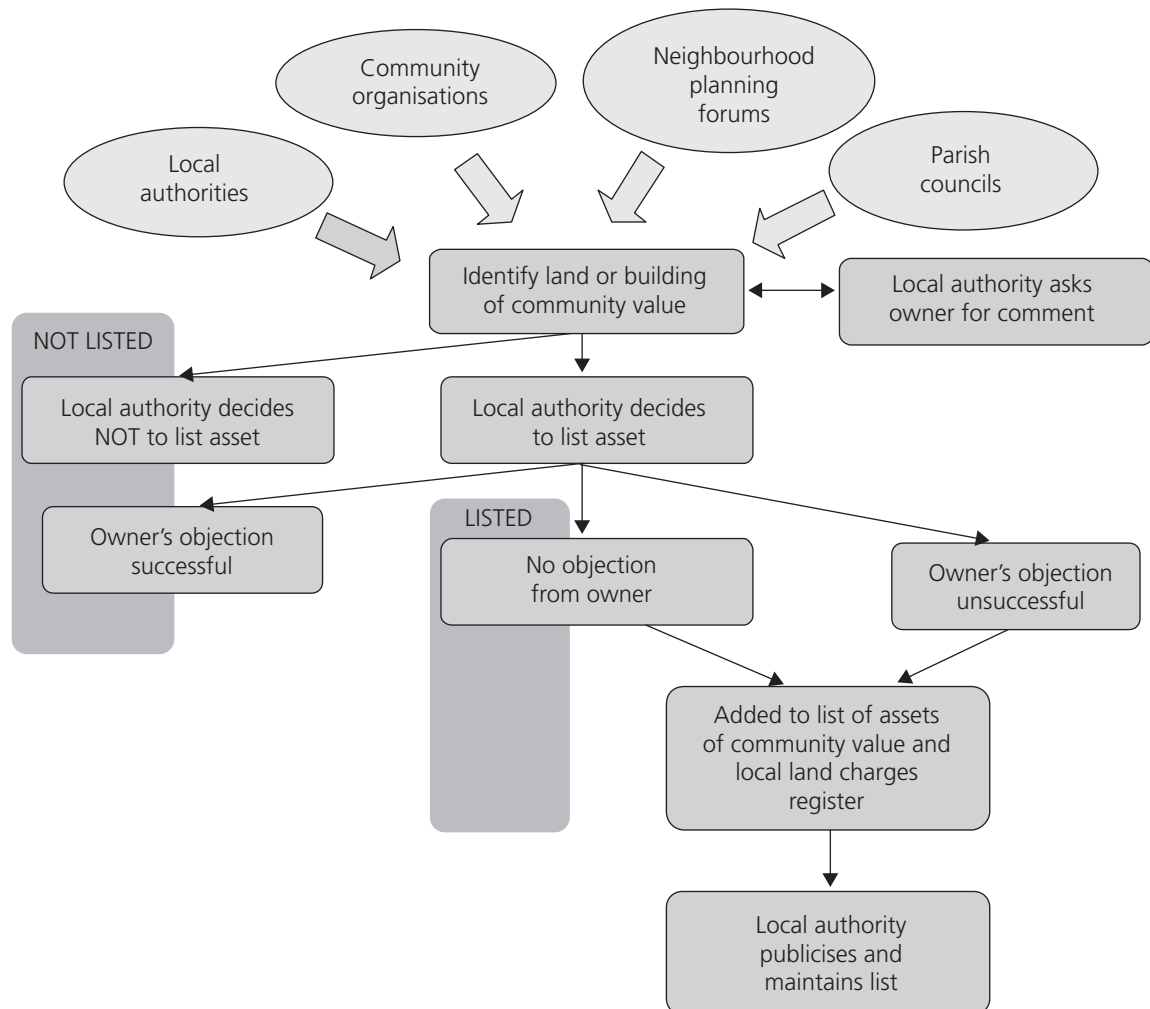
- 1.15 The process of asset transfer can be time consuming. However, the length of time can be reduced where there is expert advice and support available to help groups with important activities like fundraising, developing business plans and constituting themselves as an incorporated body or registered charity. Where this has not been available, community groups remain disadvantaged and unable to produce effective business plans. This has led to a failure in obtaining funding and the loss of assets considered as important to their communities.
- 1.16 Further to this, many assets that could be bought by the community are lost because they are either privately owned or owned by other public bodies, and communities do not know they are being sold or do not have enough time to prepare a strong bid. Time is a critical factor for community organisations looking to put together a credible bid. They do not have access to funds as readily as other types of organisations and will need time to put together a business case and raise funds.

Case Study: Hebden Bridge Adult Education building

In 2003/04, Calderdale Metropolitan Borough Council decided to sell the building housing their adult education centre, which was a valued asset to the community. They did this by an auction which took place very shortly after publicising the sale. When the community found out about the auction, there was a great deal of interest in acquiring the building, but no time for community groups to put together a business plan or raise the funding to make a viable bid. This lack of a proper opportunity for the community to bid for the valued asset caused some resentment. The building was sold and not only was it lost to the community, but it was allowed to fall into disuse for some years before recently being redeveloped as modern residential apartments.

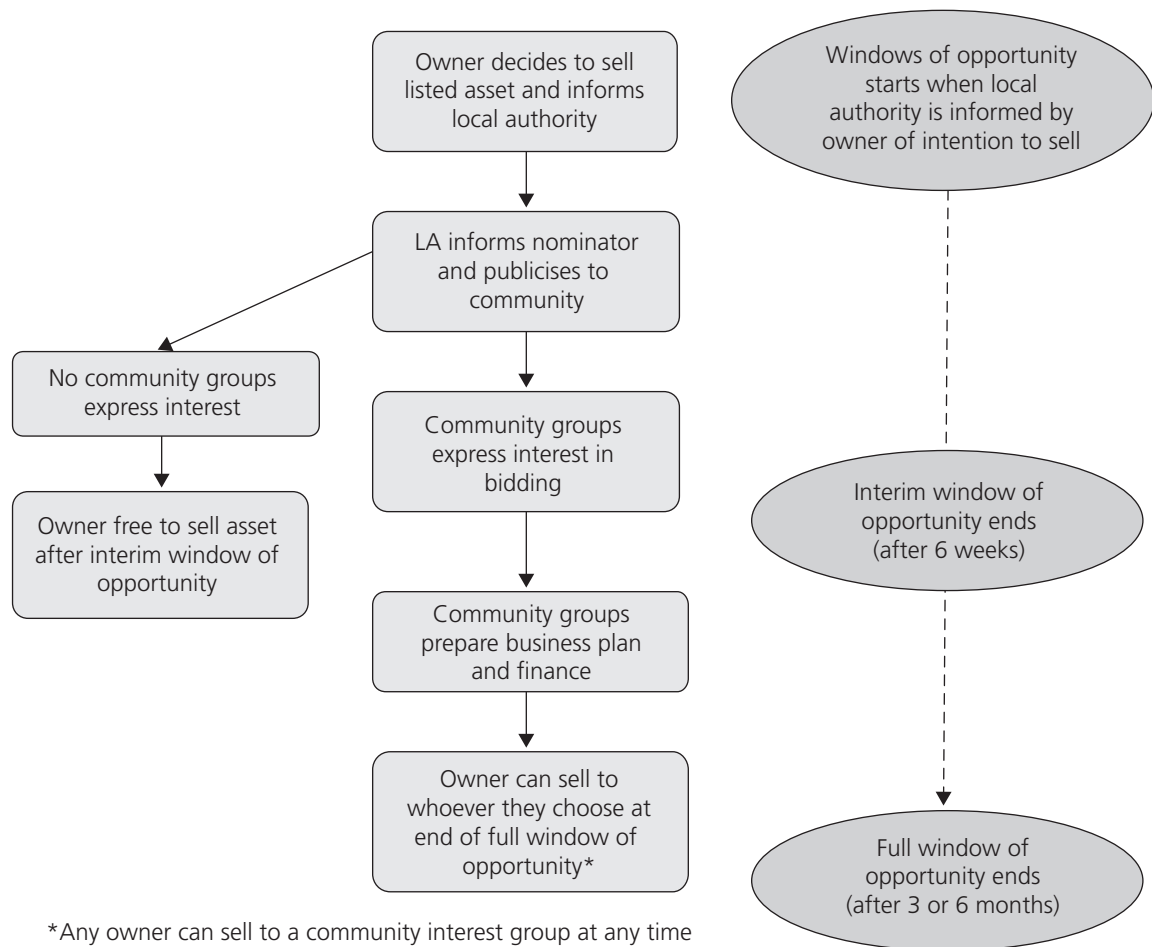
This incident contributed to the council changing their policy towards the disposal of public assets. It also helped to inspire the formation of the Hebden Bridge Community Association which later successfully acquired the ownership of Hebden Bridge Town Hall, one of the first communities in Britain to take direct control of their town hall.

What we are proposing



- 1.17 The Community Right to Buy provisions in the Localism Bill (entitled 'Assets of Community Value') will entitle community groups to identify and nominate public or private assets of community value in their local area to be included by the local authority on its list of assets of community value. The provisions also introduce a window of opportunity for community groups, once a listed asset comes up for sale, in order to give them valuable time to organise and fundraise, so putting them in a better position to compete with other potential buyers. It is important to note that nominating land to go on the list will not commit the nominating organisation to bid for it if it is put up for sale.
- 1.18 Some types of asset will be excluded from being listed, such as residential properties and other types of land that may be specified in regulations as a result of this consultation.

- 1.19 Once an asset is nominated by an eligible person or group, the local authority will consider whether the nominated asset meets the definition of ‘community value’ (which will be set out in regulations and may allow the local authority to take specified factors into account). If it does, it must be placed on the list. Regulations may require that before making the decision local authorities should contact the landowner to inform them of the nomination and to seek their views.
- 1.20 If an asset is placed on the list, local authorities must then notify the landowner that their property has been designated as an asset of community value and add the asset to the Local Land Charges Register. They must also notify the occupier of the land (if different from the owner) and the nominator. Following a decision by the authority to list the land the owner will have a right to request that the authority carry out an internal review of that decision.
- 1.21 Local authorities will be required to publish their list, as well as a list of assets that are unsuccessfully nominated. Once placed on the list, an asset will remain on it for a period of five years (unless it is removed by the local authority within that period for reasons that may be specified in regulations). Where an asset is removed from the list, the local authority is required to notify the group or individual who made the nomination, as well as the owner.
- 1.22 If an asset is placed on the list, this means that when the owner comes to sell their property (or make a relevant disposal, as defined in the Bill), they must inform the local authority of their intention to do so. The local authority must then notify the nominating community group and publicise in the local area that the asset has come up for sale, and amend the list to show this.
- 1.23 Community interest groups (to be defined in regulations) would then have an interim window of opportunity to put forward their intention to bid for the asset. If such a group requests to be treated as a potential bidder within this initial period, the full window of opportunity period will apply; if not, the owner may proceed with the sale at the end of the interim window of opportunity. The full window of opportunity will allow community groups time to put a bid together for the asset and will mean that the asset owner is unable to enter into a binding agreement to dispose of the asset until that period is over (except perhaps to a community interest group – see Section 11 for more details). At the end of the full window of opportunity, the landowner will be free to sell to any bidder. There will be no obligation to sell to a community interest group at any time.



- 1.24 There is also a longer 'protected period' which will enable the owner to sell during that period without further delays. To enable certainty of dates, it will be timed from the same start date as the interim and full window of opportunity periods (i.e. when the owner notifies the local authority that they wish to sell their asset). However, it will only become relevant once the window of opportunity has ended. If the owner does not sell the asset within the relevant window of opportunity, they will be permitted to sell without triggering another delay for the remainder of the protected period.
- 1.25 We envisage that some types of disposal will be exempted from the requirements of the scheme (for instance transfers under court orders or in insolvency proceedings). We also envisage that sales may be permitted during the window of opportunity period by any owner to an eligible community interest group – thus offering community groups a 'right of first offer'. If more than one community interest group make a bid for an asset, it will be up to the asset owner to decide whom they will sell to.
- 1.26 We also envisage that there will be a compensation scheme for landowners for costs directly incurred as a result of complying with the procedural requirements of the scheme.

1.27 Regulations will also set out the provisions for enforcement of the scheme.

Assets and services

1.28 The proposed Community Right to Buy scheme in England and Wales applies to assets only (that is, land and buildings), not services. Community groups may therefore be able to nominate a building to be listed as an asset of community value, but not the service that operates from within that building. For example, a post office is a contractual service and whilst community groups may be able to nominate the building from which the postal service operates, this would not guarantee the continuation of the post office service but that this could be something for the community to take on separately if it so wished. This could also be the case with library services.

1.29 Communities seeking to buy a building or other land under the Community Right to Buy scheme will need to consider how they are going to access resources to maintain the asset. In the case of local authority services, such as children's centres or libraries, the prospect of a continuing income stream in the shape of a contract to deliver the service may therefore be very important. The Community Right to Challenge, also included in the Localism Bill, will complement the Community Right to Buy by giving community groups the opportunity to express an interest in running services currently provided by local authorities. A consultation on the Community Right to Challenge is being run in parallel with this consultation and further information can be found on the DCLG website.

Restrictive covenants

1.30 We are aware that some types of land or buildings may have a restrictive covenant placed on them by the owner, which may limit how the property can be used once it has been sold (for example, that a pub may not be used as a pub once sold). These actions can potentially deprive communities of local assets and prevent them from having the opportunity to take over or develop the asset themselves. In order for communities to make the most of the Community Right to Buy provisions in the Localism Bill, the Government has announced that DCLG will be running a consultation on the issue of restrictive covenants and how they are used, with a particular emphasis on pubs. This consultation is due to be completed over the summer of 2011 (see the DCLG website for further details).

The Public Forest Estate

- 1.31 The Department for the Environment, Food and Rural Affairs (Defra) is currently consulting on a new approach to the ownership and management of the public forest estate in England. This includes the proposal that community and civil society groups should be offered first the right to buy or lease parts of the Public Forest Estate. This recognises the important role which they could have, bringing high levels of expertise and local knowledge to the management and protection of woods and forests (see consultation document on the Future of the Public Forest Estate in England on the Defra website: www.defra.gov.uk).

The Scottish Community Right to Buy Scheme

- 1.32 A Community Right to Buy scheme was established in Scotland under the Land Reform Act in 2003, which sought to support land reform in rural areas. The provisions set out in this document differ in several respects from the Scottish system – mainly that the Scottish model is largely confined to rural areas and it gives a right of first refusal to approved community groups wishing to purchase a particular listed asset. The scheme is also run directly by the Scottish Government, whereas the proposals in this document for England would be delivered by local authorities as part of this Government's commitment to decentralisation.
- 1.33 However, the Scottish Community Right to Buy scheme has provided an important point of reference in developing the Community Right to Buy in England and there are similarities between several elements of both schemes, including the proposed length of the window of opportunity (which in Scotland covers the period within which community groups should put forward their offer, in accordance with the independent valuation); the length of time for which an asset is listed; the proposed compensation scheme; and the entitlement for landowners to appeal against the decision to list their property as an asset of community value.

Section 2:

The legislative framework for the Community Right to Buy

Primary Legislation

2.1 The framework for the Community Right to Buy is set out in Part 4, Chapter 4 of the Localism Bill ('Assets of Community Value') – which is currently being debated in Parliament and is summarised below. This consultation is not seeking views on the content of the primary legislation. Further explanation of each aspect of these provisions in the Bill is set out in later sections of this document.

2.2 The Bill, as introduced, contains the following provisions:

2.3 **List of assets of community value**

The Bill places a duty on local authorities to maintain a list of assets (land and buildings) of community value (throughout this document, the word asset refers to land and buildings). It specifies that assets will be removed from the list after five years (unless already removed) with a power for the 'appropriate authority' (the Secretary of State for England and the Welsh Ministers for Wales) to amend that period. The listing period of five years is the same as the listing period under the Scottish Community Right to Buy scheme and is considered to be a reasonable period of time for an asset to be listed. The local authority can determine the form and content of the list, subject to any specific requirements set out in regulations³.

2.4 **Definition of asset of community value**

The Bill provides for regulations to define what constitutes an asset of community value and to specify any particular assets, or types of asset, to be excluded from being listed⁴. One possible approach to defining community value will be for the local authority (or another person or body) to decide whether a general description of local benefit is satisfied, and if that approach is used, the regulations may also specify factors that the local authority should or should not take into account when deciding this. The Bill states that Crown land is not exempt⁵.

³ Localism Bill, Part 4, Chapter 4, Clause 71 – 'List of assets of community value'

⁴ Localism Bill, Part 4, Chapter 4, Clause 72 – 'Land of community value'

⁵ Localism Bill, Part 4, Chapter 4, Clause 85 – 'Crown application'

2.5 Procedures for including land on the list

The Bill requires a local authority to consider a community nomination, and to accept it if it meets the definition of an asset of community value. It also requires the local authority to give the nominator written reasons if it decides not to list the land⁶.

The Bill provides that assets may be included on the list by community nomination or as specified in regulations (which may also specify details regarding nominations and listing by the local authority on its own initiative). It also provides for regulations to set out procedures that local authorities would be required to follow in considering nominations – which could include a requirement for the authority to inform the owner before deciding to list the land⁷.

Local authorities will be required to give notice to groups or individuals specified in the regulations of inclusion or removal of assets from the list together with a description of the statutory provisions. The Bill also gives a power for the appropriate authority to make additional provisions about how notice should be given, including in situations where owners' names and addresses are not known⁸.

2.6 Review of decision to include land in list

The Bill gives the owner of the land a right to have the decision to list it reviewed by the local authority; specifies what the local authority must do if the review reverses the decision; and provides for regulations to set out the procedure for carrying out such reviews⁹. It also includes a power to provide for an appeal against the review decision. The Bill includes this provision in order to mitigate interference with owners' property rights, and it also provides an opportunity for an owner to draw matters of fact to the local authority's attention. For example, the owner may know of a reason why a piece of land may not be suitable for continuing its current use (such as a change of planning use).

2.7 List of land nominated by unsuccessful community nominations

The Bill requires local authorities to maintain a list of assets that have been nominated unsuccessfully through the community nomination process, and specifies that it should include the reasons why the nomination was unsuccessful. This will give communities the power to see how local authorities are approaching the new Right and challenge them, if necessary. It will also help communities to consider other nominations they may wish to make and the chances of these being successful. The local authority can determine the form and content of the list, subject to any specific requirements set out in regulations¹⁰.

⁶ Localism Bill, Part 4, Chapter 4, Clause 74 – 'Procedure on community nominations'

⁷ Localism Bill, Part 4, Chapter 4, Clause 73 – 'Procedure for including land in list'

⁸ Localism Bill, Part 4, Chapter 4, Clause 75 – 'Notice of inclusion or removal'

⁹ Localism Bill, Part 4, Chapter 4, Clause 76 – 'Review of decision to include land in list'

¹⁰ Localism Bill, Part 4, Chapter 4, Clause 77 – 'List of land nominated by unsuccessful community nominations'

2.8 Publication and inspection of the lists

The Bill places a duty on local authorities to publish both lists, to make them available for free inspection within its area, and to provide one copy, free of charge, to anyone who asks for one. This is to encourage openness and transparency of the Community Right to Buy scheme and to help make communities aware of listed assets in their area. Further details about how this duty is carried out can be specified in regulations¹¹.

2.9 Windows of opportunity for community groups to express an interest and make a bid for a listed asset

In order to prevent communities from finding that assets they consider important to community life have been sold with no, or very limited, opportunity for them to place a bid, the proposed primary legislation prohibits an owner of listed land from making a relevant disposal of it except where all the specified conditions are satisfied.

These conditions are that to be able to enter into a binding contract to sell the land:

- the owner must have notified the authority of an intention to make a ‘relevant disposal’ (see paragraph 2.10); and
- either –
 - the *interim window of opportunity* period has elapsed without a community interest group asking to be treated as a bidder; or
 - such a request has been received and the *full window of opportunity* period has elapsed; and
- the owner is within a *protected period* when no further period of delay will apply.

The lengths of these three periods will be specified in regulations¹².

2.10 Meaning of ‘relevant disposal’

The Bill defines a relevant disposal as being of a freehold estate, or the grant, assignment or surrender of a lease that had at least 25 years to run when granted – and in either case giving vacant possession. This is to allow community groups to have long term access to suitable assets that they can use for their own purposes. Power is included for the appropriate authority to amend the definition¹³.

2.11 Action by the local authority on receipt of a notice of the owner’s wish to make a relevant disposal

The Bill sets out what the authority must do on receiving notice from the owner of an intention to make a relevant disposal. It must amend the list to show this intention

¹¹ Localism Bill, Part 4, Chapter 4, Clause 78 – ‘Publication and inspection of lists’

¹² Localism Bill, Part 4, Chapter 4, Clause 79 – ‘Moratorium’

¹³ Localism Bill, Part 4, Chapter 4, Clause 80 – ‘Meaning of “relevant disposal” etc in section 79’

and to give both the interim and full window of opportunity end dates (and the end date of the protected period), and must provide the same information to a nominating community group or individual. It must also publicise all these matters in the neighbourhood of the asset in question, but how a local authority chooses to do so is left to their discretion¹⁴.

2.12 Compensation

The Bill gives the appropriate authority power to provide for payment of compensation by local authorities to landowners in connection with the operation of the provisions, which will be set out in more detail in regulations (see Section 12 of this document for more details about the proposed basis and limits of a possible compensation scheme)¹⁵.

2.13 Local land charge

The Bill makes the listing of an asset of community value a local land charge, administered by the listing authority. This means that whether land is registered or unregistered, a prospective buyer will be alerted that the land has been listed and that any relevant disposal must take place in line with the requirements of the Community Right to Buy scheme¹⁶.

2.14 Enforcement

The Bill enables regulations to be made in order to reduce or prevent contravention of the provisions, and particularly mentions the possibility that sales in breach of the provisions will either be ineffective from the start, or may be set aside later. Details of enforcement procedures will be set out in regulations¹⁷.

2.15 Meaning of 'local authority'

The Bill defines 'local authority' separately for England and Wales. In England it will mean:

- (a) a district council,
- (b) a county council for an area in England for which there are no district councils,
- (c) a London borough council,
- (d) the Common Council of the City of London, or
- (e) the Council of the Isles of Scilly.

¹⁴ Localism Bill, Part 4, Chapter 4, Clause 81 – 'Publicising receipt of notice under section 79(2)'

¹⁵ Localism Bill, Part 4, Chapter 4, Clause 82 – 'Compensation'

¹⁶ Localism Bill, Part 4, Chapter 4, Clause 83 – 'Local land charge'

¹⁷ Localism Bill, Part 4, Chapter 4, Clause 84 – 'Enforcement'

In Wales it will mean:

- (a) a county council, or
- (b) a county borough council.

Power is given to the Secretary of State in relation to England and to the Welsh Ministers in relation to Wales to amend these definitions¹⁸.

The definition of local authority given above is different to that given for the Community Right to Challenge scheme, as it only includes local authorities that have responsibility for planning in their area. The definition also does not include planning authorities like the Broads Authority, for example, as it is not a local authority and it was considered that the Community Right to Buy scheme should be run by local authorities.

2.16 **Meaning of ‘owner’**

For any listed asset there may be several owners – due either to ‘layers’ of ownership (e.g. freeholder, leaseholder, sub-leaseholder), or to joint ownership at any level, or both in combination. However not all these owners will necessarily be subject to the requirements of the scheme, since the window of opportunity provisions will only apply where an owner makes a relevant disposal. A qualifying leasehold estate must have been granted for at least 25 years¹⁹. The effect of the combination of the definitions of owner and relevant disposal is that it will be possible in some cases that the window of opportunity rules will not apply to a sale of listed land.

Content of Secondary Legislation

2.17 This document seeks to consult on the detailed workings of the Community Right to Buy scheme, as set out below, which may be included in regulations. These are considered in more detail in the later sections of this document.

2.18 **Definition of an asset of community value**

How land of community value should be determined, how much discretion the local authority should have in deciding this, and what factors it should take into account.

2.19 **Ways in which an asset may be nominated and listed**

Who should be allowed to make a community nomination in addition to parish councils (as set out in the Bill), and in what other ways assets may be nominated.

¹⁸ Localism Bill, Part 4, Chapter 4, Clause 86 – ‘Meaning of “local authority”’

¹⁹ Localism Bill, Part 4, Chapter 4, Clause 87 – ‘Meaning of “owner”’

2.20 Information to be included in community nominations

What information should be included in a nomination, including situations where the land in question is unregistered or the owner is unknown.

2.21 The procedure for listing assets

The procedures that local authorities should follow when considering whether to list an asset.

2.22 Notification about inclusion and removal of a listed asset

Whom the local authority should notify about inclusion and removal of an asset from the list of assets of community value, when an asset could be removed from the list by the local authority, and how notice should be given, particularly where the local authority does not have both the name and address of the owner.

2.23 The content and publication of the list of assets of community value and the list of unsuccessful community nominations

How the lists should be kept and how local authorities should publish them.

2.24 Rights of review and appeal for landowners

The process for an internal review of a local authority's decision to list an asset, and whether there should be provision for an appeal to a court or tribunal.

2.25 Length of the window of opportunity periods and the protected period

The options for the lengths of the two different window of opportunity stages, and of the protected period in which no further period of delay will apply.

2.26 Exempt disposals and permitted sales in the full window of opportunity period

When disposal of an asset should be exempt from the requirements of the scheme and when sales may be permitted during the full window of opportunity.

2.27 Compensation

The proposed basis (and limits) for a compensation scheme for landowners.

2.28 Enforcement of the regulations

How the regulations should be enforced – what action may be taken as a consequence of the regulations being breached.

Section 3:

Definition of an asset of community value

- 3.1 The Bill provides for the definition of ‘land of community value’ to be determined in regulations²⁰. It allows for two possible approaches to doing this.
- 3.2 Under the first approach, regulations could set out what types of building or other land are included and excluded. This could entail listing types of asset according to their existing or past community uses. For example, community centres, land and buildings owned by a local authority or the last remaining pub or shop within a specified area.
- 3.3 Under the second approach, regulations could give the local authority or some other person (such as a parish council for example) a role in deciding what constitutes ‘community value’ and may in addition set out what factors they should take into account when considering whether a piece of land is an asset of community value. Using this option would be more likely to consist of a general description of benefit to the community that the local authority (or some other person) considers that the land or building provides.
- 3.4 **We propose that a combination of both approaches should be adopted in the regulations.**
- 3.5 The regulations could list types of land and buildings that do not constitute assets of community value and should be excluded from the listing process, but could also give local authorities the discretion to determine what constitutes an asset of community value, in line with some criteria or factors for consideration.
- 3.6 We do not envisage listing in the regulations all types of land and buildings that are assets of community value as we consider this could be too prescriptive and would not take into the account the views of local communities in relation to what should be considered an asset of community value. However, there are certain types of land and buildings that should definitely be excluded from the listing process and could be set out in the regulations (see paragraph 3.10 below for more details).

²⁰ Localism Bill, Part 4, Chapter 4, Clause 72 – ‘Land of community value’

Criteria for deciding what is an asset of community value

- 3.7 When considering whether a nominated building or piece of land constitutes an asset of community value, a local authority could consider whether the nominated land or building *'furthers the social, economic, or environmental wellbeing or interests of the local community'*.
- 3.8 In addition, the local authority could consider the following factors, in addition to any others they think appropriate, to help them decide whether a nominated land or building is an asset of community value:
- The ownership of the land; for instance, local authorities may wish to consider whether land constitutes an asset of community value because it is publicly owned (for example, by the local authority or a government department).
 - The occupier of the land (where this is not the same as the owner), for example, if there were a key statutory service, such as the Police, occupying a building as a leaseholder.
 - The current or former use of the land (i.e. if a building is currently unused but has recently been used as an asset of community value) as this will be an important factor for local authorities in considering whether a piece of land or a building is an asset of community value.
 - Evidence of the strength of community feeling supporting the asset being maintained for community use.
 - The price, or value, of the land, which could perhaps allow the local authority to refuse a nomination on the grounds that it was beyond the realistic reach of a community organisation.
 - Statutory provisions that relate to the land, which would allow for specific reference to be included for land that is subject to restrictions on its sale, e.g. there are statutory provisions governing the sale of trust ports and statutory allotments.

Q1. 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 'local community benefit' and a list of excluded assets?

Q2. If yes, (a) do you agree with the factors listed above that the local authority should take into consideration when deciding whether a piece of land or building is an asset of community value? (b) Should these be set out in regulations?

Q3. 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 former or current use – do you agree?

3.9 Although it is outside the scope of the regulations for the Community Right to Buy, we are interested in considering other ways in which assets of community value could be safeguarded. For example, at present most of these assets can be demolished without the community having a say in their fate. Changes to planning legislation could be made, to give local authorities greater control over the demolition of these assets. One consequence of listing a property as an asset of community value could then be to protect it from demolition without planning permission from the local authority.

Q4. Are there other areas that you believe should be explored further to strengthen the Community Right to Buy?

Excluded land

3.10 We propose that the regulations should specify 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. For example, where a pub or shop has accommodation included as part of the freehold or leasehold.

Q5. 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?

Q6. Are there other types of land or buildings that should be excluded from being listed as assets of community value?

3.11 Some types of land and buildings are governed by existing statutory provisions which control how they can be disposed of, often requiring Government approval. For example:

- trust ports
- ancient monuments
- statutory allotments
- school playing fields.

3.12 It is not intended that these types of land or buildings would be automatically excluded from being listed, but that when disposal of them is proposed we expect that the provisions under the Community Right to Buy will work alongside the existing statutory provisions that govern those assets.

- 3.13 For example, under separate allotment legislation, statutory allotment sites (i.e. the whole site containing individual allotment plots) can only be sold if the Secretary of State's consent to dispose has been sought and granted. Disposals are only granted if certain criteria have been met. If a statutory allotment was listed as an asset of community value by a local authority and the owner (in most cases, the local authority) then wanted to dispose of it, the owner would need to ensure that they had sought permission from the Secretary of State first. Once the allotment was put up for sale, community groups would be able to express interest in bidding for the asset and then be given extra time to make a bid. At the end of the full window of opportunity, the owner of the allotment site would then be able to sell the land to whoever they choose.
- 3.14 It is envisaged that existing statutory provisions would take precedence if in any way they clash with those under the Community Right to Buy. For example, if existing statutory provisions specify a timescale in which the disposal must take place which does not fit with the length of the window of opportunity under the Community Right to Buy provisions.

Section 4:

Ways in which assets may be nominated and listed

- 4.1 The Bill provides that a local authority may include a piece of land or a building in its list of assets of community value in response either to a ‘community nomination’ or to a nomination made in some other way as set out in regulations²¹. How this might link with the neighbourhood planning process is considered below.
- 4.2 A community nomination is defined in the Bill as one which is made by:
- a) a parish council in England
 - b) any other individual, or type of person or body, specified in secondary legislation.

Who may nominate an asset to be listed

- 4.3 There are two possible approaches to what the regulations should provide as to who else can nominate land or buildings for listing under (b) above:
- a) restrict who can make a nomination to community groups which meet certain criteria, including, for example, incorporated groups and/or those with a local connection; or
 - b) allow nominations by any person or group with a local connection.
- 4.4 We are minded to keep the nomination process open to any groups or individuals that have a ‘local connection’. We think it is an important part of the Community Right to Buy scheme that only local groups or individuals should be allowed to list assets, as we do not think it would be in the spirit of the aim of the scheme to allow people or organisations with no connection to an area to list an asset. We also propose to apply the ‘local connection’ restriction throughout the Community Right to Buy process, in terms of who is eligible to express an interest in bidding; and also for provision which may be included in regulations on who is eligible to make a bid during the window of opportunity; and who is eligible to challenge a disposal that is in breach of the regulations (see Section 13 of this document for further details).

21 Localism Bill, Part 4, Chapter 4, Clause 73 – ‘Procedure for including land in list’

- 4.5 Opening up the nomination process to any groups or individuals would also allow unincorporated local community groups, neighbourhood forums and newly formed groups set up specifically to save an existing asset from closure to nominate an asset for inclusion on the list.

Q7. Do you agree that the nomination process should be open to any group or individual and that they should have a 'local connection'?

- 4.6 The proposed requirement that groups or individuals should have a local connection could be determined as follows:
- whether the local authority area is explicitly included in the organisation's purposes or area of benefit
 - whether the group or individual is based within the local authority area or within a specified proximity of the nominated asset, or in the case of a group, has a local branch based in the local authority area
 - whether the organisation has a certain number of members who live in the local authority area or within a specified proximity of the nominated asset.

Q8. How else could an individual or group be defined as having a 'local connection'?

Other ways that an asset may be listed

- 4.7 In addition to listing an asset in response to a community nomination, local authorities could add assets to the list on their own initiative. For example, they could choose to list anything that is publicly owned (providing it meets the definition of an asset of community value), or they could choose to list land that has been identified through the new neighbourhood planning process (providing that, in either case, it meets the definition of an asset of community value).
- 4.8 Under the new neighbourhood planning provisions set out in the Localism Bill, parish councils and neighbourhood forums may put forward a neighbourhood plan to the local planning authority, which can specify planning policies that apply to a particular site or area.
- 4.9 We envisage that neighbourhood planning could be an important route for communities to collectively identify assets of community value that they wish to preserve. It would be straightforward for them to nominate such assets for listing, based on the deliberations within the neighbourhood planning process. We believe that this is the most appropriate way to ensure that neighbourhood planning

contributes to the effective operation of the Community Right to Buy scheme (rather than establishing a formal link) because it recognises that the first is about planning policies which affect the use of a site, whereas the Community Right to Buy concerns the ownership of particular assets.

Q9. Are there other processes by which an asset of community value should be listed?

Section 5:

Information to be included in community nominations

- 5.1 The Bill states that the appropriate authority may make provision in regulations as to the content of nominations made by community groups and other specified persons/groups²².
- 5.2 Local authorities will need to ensure that they have sufficient information in order to make a judgement on whether a nominated building or piece of land is an asset of community value, as defined in the regulations.
- 5.3 At a minimum, it is envisaged that regulations may specify that a community nomination must be made in writing and contain the following details:
 - a) a description of the land sufficient to identify its boundaries.
 - b) a statement by the nominator of the information they have about the current owner(s) and their address(es) and other legal interests in the land – probably with a copy of the current land register entry in the case of registered land.
 - c) reasons for considering that the land or building is, or has recently been, an asset of community value.
 - d) evidence that the nominator is eligible to make a nomination (i.e. meets the ‘local connection’ criterion).
- 5.4 Where a nomination does not include information about the owner(s) and other legal interests in the land, local authorities do have the power to obtain this information under section 16 of the Local Government (Miscellaneous Provisions) Act 1976. However, whether local authorities choose to make use of these powers would be at their discretion.
- 5.5 Local authorities could also request additional information that they consider to be relevant.

²² Localism Bill, Part 4, Chapter 4, Clause 73 – ‘Procedure for including land in list’

Q10. 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?

Q11. If you think the regulations should specify the contents of a community nomination, is there other information that should be included?

Section 6:

The procedure for listing assets

- 6.1 Once a request has been made for a piece of land to be listed, the local authority is required to consider whether the land should be included on the list²³. The Bill gives a power for regulations to set out the procedure that local authorities should follow when deciding whether to list an asset²⁴.
- 6.2 The Bill states that the local authority must accept a community nomination if the land nominated is within the local authority's area and meets the definition of an asset of community value²⁵.
- 6.3 If a community nomination is unsuccessful, the Bill requires the local authority to give the nominator its reasons for deciding not to list the land²⁶.
- 6.4 We propose that one of the procedural requirements should be that the local authority must, if possible, notify the owner(s) of the land before deciding whether to list the nominated asset. This would give the owner(s) an opportunity to make representations at this stage, within a deadline, which could be specified by the local authority.
- 6.5 If the local authority is unable to identify the owner of the land, they should attempt to make contact with them by the means set out in Section 7 (paragraph 7.11). If the owner does not identify themselves or make any representations, we do not expect this to prevent the local authority from going ahead with listing the asset, if that is what they decide.

Q12. Do you agree that owners should be informed before the local authority makes a decision whether to list the asset or not?

Q13. Should the local authority be required to follow any other procedures when deciding whether to list an asset?

²³ Localism Bill, Part 4, Chapter 4, Clause 74 – 'Procedure on community nominations'

²⁴ Localism Bill, Part 4, Chapter 4, Clause 73 – 'Procedure for including land in list'

²⁵ Localism Bill, Part 4, Chapter 4, Clause 74 – 'Procedure on community nominations'

²⁶ Localism Bill, Part 4, Chapter 4, Clause 74 – 'Procedure on community nominations'

Section 7:

Notification about inclusion and removal of a listed asset

- 7.1 The Bill provides that the local authority must inform the following individuals or groups, in writing, of inclusion on or removal of an asset of community value from the list:
- a) the owner(s) of the land
 - b) the occupier of the land (if the occupier is not also the owner)
 - c) the nominator where the land was listed in response to a community nomination.
- 7.2 The appropriate authority may also specify in regulations others who should be informed²⁷.

Q14. 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?

Notification of nomination and inclusion of an asset in the list

- 7.3 The Bill requires that where the local authority notifies the owner that their land has been listed, the notice must include the following:
- a) a description of the Community Right to Buy scheme and the requirements placed on local authorities and landowners under it
 - b) the consequences for the land and its owner of the land's inclusion in the list
 - c) the landowner's right to ask for an internal review.
- 7.4 There is also a power in the Bill for the regulations to make further provision about notice to owners, occupiers and nominators. This includes setting out how a local authority should proceed where the name and address of the owner are not known²⁸.

²⁷ Localism Bill, Part 4, Chapter 4, Clause 75 – 'Notice of inclusion or removal'

²⁸ Localism Bill, Part 4, Chapter 4, Clause 75 – 'Notice of inclusion or removal'

Q15. 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?

Notification of removal of an asset from the list

- 7.5 The Bill provides that a local authority must remove an asset from the list:
- a) at the end of the specified listing period²⁹ (currently set at five years in the Bill); and
 - b) if an internal review judges that an asset has been wrongly listed.³⁰
- 7.6 We also expect that local authorities would remove an asset from the list if an appeal against the outcome of an internal review of the decision to list the asset judges that the asset has been wrongly listed.
- 7.7 In addition, we envisage that regulations will specify that an asset should be removed from the list of assets of community value once the local authority has been informed that a *relevant disposal* has taken place. The reason for this is that if an asset is sold as a result of a relevant disposal, then local community groups will have been given the opportunity to make a bid for that asset. They will either have been successful or unsuccessful in their bid, or no local community groups will have expressed an interest in bidding for the asset in the first place, but they will have been given the opportunity to do so. The process of listing is an essential first step for allowing a window of opportunity, which gives community groups the advantage of extra time to develop a bid. However, there is nothing to stop a community group from nominating the asset again for listing, in which case the local authority would need to consider all relevant factors at that point in time.
- 7.8 We envisage that the person who would inform the local authority that a relevant disposal has taken place and would therefore ask them to remove the asset from the list would in practice be the new owner, as it would be in their interest to do so.

Q16. 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?

- 7.9 The regulations could also give local authorities the power to remove an asset from the list if it considers that the asset is no longer of community value. For example,

²⁹ Localism Bill, Part 4, Chapter 4, Clause 71 – ‘List of assets of community value’

³⁰ Localism Bill, Part 4, Chapter 4, Clause 76 – ‘Review of decision to include land in list’

this could be the result of a change in planning use or the owner might be able to request de-listing as a result of a change of circumstances.

Q17. Should local authorities be able to remove an asset from the list if it is no longer considered to be of community value?

7.10 Local authorities are required by the Bill to notify the individuals listed in paragraph 7.1 in writing that the asset has been removed from the list and they must also state the reasons why³¹.

Q18. Is there other information that should be included in the notification of removal of an asset from the list of assets of community value?

Notifying an owner for whom the local authority has no known name or address

7.11 Where the owner of a listed piece of land is not known, or if the name of the owner is known but not their current address, it will be necessary to specify ways in which the local authority can fulfil its duties to give notice under these provisions. It is therefore proposed that regulations should state that local authorities may if necessary give notice in the following ways:

- a) by placing a notice on the land or building itself; and/or
- b) by placing a notice in the local newspaper; and/or
- c) by posting a notice on their own website.

7.12 In addition, local authorities do have the power to obtain this information under section 16 of the Local Government (Miscellaneous Provisions) Act 1976. However, whether local authorities choose to make use of these powers would be at their discretion.

Q19. 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?

7.13 In all cases it is proposed that the notice should include a deadline for the owner to come forward and make any representation. The length of the deadline could be left to local authorities to determine.

³¹ Localism Bill, Part 4, Chapter 4, Clause 75 – ‘Notice of inclusion or removal’

Section 8:

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

8.1 The Bill requires local authorities to maintain and publish a list of assets of community value³² and a list of unsuccessful community nominations³³. It makes provision for regulations to set out the detailed nature of both lists and how they should be published. This section seeks views on the requirements that might apply to the maintenance, publication and availability of the lists.

Maintenance of the lists

8.2 The Bill provides that it is for a local authority to decide the form and content of its *list of assets of community value*, subject to the following requirements set out in proposed primary legislation, which have a bearing on the maintenance of the list³⁴:

- The local authority must add an asset to their list if it is in their area and is an asset of community value.³⁵
- The local authority must remove an asset from their list at the end of the specified 5 year period.³⁶
- The local authority must remove an asset from their list if an internal review judges that the asset has been wrongly listed.³⁷
- The local authority must update the list once it has received a written notice from the asset owner that they wish to enter into a relevant disposal (usually a sale) of the land. This entry must include the date that the local authority received the notice and the dates of the interim window of opportunity period; the full window of opportunity period; and the protected period.³⁸

³² Localism Bill, Part 4, Chapter 4, Clause 71 – ‘List of assets of community value’

³³ Localism Bill, Part 4, Chapter 4, Clause 77 – ‘List of land nominated by unsuccessful community nominations’

³⁴ Localism Bill, Part 4, Chapter 4, Clause 71 – ‘List of assets of community value’

³⁵ Localism Bill, Part 4, Chapter 4, Clause 74 – ‘Procedure on community nominations’

³⁶ Localism Bill, Part 4, Chapter 4, Clause 71 – ‘List of assets of community value’

³⁷ Localism Bill, Part 4, Chapter 4, Clause 76 – ‘Review of decision to include land in list’

³⁸ Localism Bill, Part 4, Chapter 4, Clause 81 – ‘Publicising receipt of notice under section 79(2)’

- 8.3 We are also proposing that regulations will specify that an asset should be removed from the list of assets of community value once it has been notified that there has been a relevant disposal (see Section 7 for more details on this). If this is included in the regulations, then local authorities would also need to amend the list on this basis.
- 8.4 The Bill also states that it is for a local authority to decide the form and contents of its *list of land nominated by unsuccessful community nominations*, subject to the following requirement in the proposed primary legislation:
- An entry in the list of land nominated by unsuccessful community nominations must include the reasons for not including the asset in the list of assets of community value.³⁹

Publication and inspection of the lists

- 8.5 The Bill states that local authorities are required to publish both lists and to make them available for free inspection by anyone who asks to see them. Local authorities are also required to provide one free copy of either list to anyone who asks for them, but are not obliged to provide more than one copy of the same list to one person (although there is nothing to stop them doing so if they wish).⁴⁰
- 8.6 There is a power in the Bill to provide in regulations how the duty to publish the lists is to be carried out. However it could substantially be left for local authorities themselves to determine how they publish the lists (for instance this could be done on the authority's website, and/or by printing hard copies).
- 8.7 When a local authority receives notice from the asset owner that they wish to enter into a relevant disposal of their land, it is required to make arrangements to publicise the fact that the asset has come up for sale.
- 8.8 We think it is fundamental to the effective operation of the Community Right to Buy that community groups are made aware when assets are listed and when they come up for sale, so that they have an opportunity to express an interest in bidding.

Q20(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?

³⁹ Localism Bill, Part 4, Chapter 4, Clause 77 – 'List of land nominated by unsuccessful community nominations'

⁴⁰ Localism Bill, Part 4, Chapter 4, Clause 78 – 'Publication and inspection of lists'

Section 9:

Right of appeal for landowners

9.1 Once a local authority makes the decision to list an asset, the Bill requires it to notify the asset owner that their asset has been listed and that they are entitled to seek an internal review by the local authority of its decision⁴¹. We think it is important to have a consistent approach to some elements of the internal review process in order to ensure that owners have a fair and equal right to appeal. Therefore we propose specifying certain elements of the process, such as timescales, and this section seeks views on what these should be.

Notification of request for internal review

9.2 If the asset owner wishes to request an internal review, we propose that they should send their request in writing to the local authority within a specified time period. The deadline should be stated by the local authority in their notification of listing to the owner. Under the Scottish system, landowners have 28 days to make a request for an appeal from the date that Ministers decide to enter land onto the Community Interest Register. We therefore propose that the deadline for owners to make a request for an internal review should be **28 days** from the date that the local authority notifies the owner that the asset has been listed. We consider that this provides sufficient time for owners to make representation to the local authority.

Q21. Do you agree with the suggested period (28 days) for requesting an internal review?

Procedure for internal review

9.3 We propose that an asset owner should be able to present any relevant evidence for consideration by the local authority in reviewing the listing decision, including evidence which has come to light since the original decision was made. For example this could include:

- the eligibility of the asset (e.g. whether their property falls within the list of excluded land set out in the regulations)

⁴¹ Localism Bill, Part 4, Chapter 4, Clause 75 – ‘Notice of inclusion or removal’

- the eligibility of the nominator (e.g. if they are not local or do not have a local connection)
- any new factors which have come to light since the original decision was made (e.g. if the owner can provide further relevant information that would demonstrate why the asset does not constitute an asset of community value)
- any irrelevant matter on which the local authority might have based its original decision.

Q22. Is there any other information (in addition to what is listed in paragraph 9.3) the owner should provide?

Timescale for internal review

9.4 We propose that there ought to be a consistent timescale for the internal review to take place and we suggest that this should be completed within **6 weeks** of the local authority receiving a written request for an internal review by the landowner. We consider this to be a reasonable period of time for the local authority to consider the evidence listed above.

Q23. Do you agree with the proposed timescale of 6 weeks for the local authority to complete the internal review?

Who should undertake the review

9.5 We envisage 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. So, for example, if a Director of Planning made the decision to list an asset, an appropriate individual to undertake the internal review could be the Assistant Chief Executive.

Q24. Do you agree with the proposal above?

Entitlement to an oral hearing

- 9.6 The Bill states that the regulations may make provision about circumstances in which the landowner would be entitled to an oral hearing as part of the internal review and whether they may be represented at the hearing, and by whom⁴².

Q25. 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?

Q26. Should anything else be included in the internal review process?

Right of appeal against the internal review decision

- 9.7 The Bill also allows for the regulations to make formal provision for landowners to appeal against the decision of the internal review in order to ensure access to a fair and public hearing (as required by Article 6 of the Human Rights Act). This right of appeal could be to a court or tribunal⁴³.
- 9.8 Decisions made by all public bodies are subject to judicial review and a decision made by the local authority in connection with any aspect of the scheme could be judicially reviewed. However, judicial review does not necessarily involve hearing evidence as to the facts of the case.

Q27. Should formal provision be made for landowners to appeal to a court or tribunal if they are dissatisfied with the outcome of the local authority's internal review?

⁴² Localism Bill, Part 4, Chapter 4, Clause 76 – 'Review of decision to include land in list'

⁴³ Localism Bill, Part 4, Chapter 4, Clause 76 – 'Review of decision to include land in list'

Section 10:

Length of the windows of opportunity and protected period

- 10.1 The Bill sets out that there will be three different periods relevant to this process if the owner decides to dispose of their asset⁴⁴, as follows:
- a) Interim window of opportunity (when community groups may express an interest in being treated as a potential buyer of the asset).
 - b) Full window of opportunity (the total period of time that community groups would have to express an interest in bidding and to pull together a bid to buy the asset).
 - c) Protected period.
- 10.2 The end date for all three periods is calculated from the date that the local authority receives notice from the asset owner that they intend to enter into a relevant disposal of their property, because this date will be definitely established and known to all concerned.
- 10.3 This section seeks views on the appropriate length for each of these periods, and who should be eligible to trigger the full window of opportunity.

Interim window of opportunity

- 10.4 Once an owner decides to sell their asset and informs the local authority of their intention to sell, the Bill provides that an interim moratorium or window of opportunity period then arises. If during that period an eligible 'community interest group' requests in writing to be treated as a potential bidder for the asset, this will then trigger the full period. **We propose that this interim period should be six weeks.**
- 10.5 If no eligible community interest groups come forward with a written expression of interest, then no further window of opportunity period would apply and the asset owner would be free to dispose of the asset (but see paragraph 10.11).

⁴⁴ Localism Bill, Part 4, Chapter 4, Clause 79 – 'Moratorium'

- 10.6 We consider that six weeks provides sufficient time for community groups to be made aware of the impending disposal and to consider the case for bidding, whilst not disproportionately interfering with the vendor's ability to sell the asset if no community group comes forward.

Q28. Do you agree with the proposed length of the interim period (6 weeks)?

Definition of community interest group

- 10.7 We propose that the regulations restrict who is eligible to express an intention to bid for the asset to the following groups:
- a) the local parish council
 - b) or a group with a local connection which satisfies two or more of the following requirements:
 - that they are incorporated
 - that they have charitable status
 - that they have an asset lock in another legal form⁴⁵
 - that they include in their constitution that they are non-profit-distributing.⁴⁶
- 10.8 Since the request to be treated as a potential bidder triggers the full window of opportunity, it is considered reasonable to restrict groups which can do so to those which have a strong local community interest, and have taken initial steps to prepare for bidding to buy – in particular by adopting an appropriate formal structure. It is likely that an incorporated group or registered charity will have a greater chance of attracting support, including funding, and making a viable bid than an unincorporated group.
- 10.9 The requirements envisaged would exclude less formal (unincorporated) local groups, which are not registered charities, including those which are moving to adopt a formal structure but have not yet done so before the end of the six week interim window of opportunity period. However, if such a group nominated the asset to be listed in the first place and intended to prepare a bid to purchase it, then it could be argued that they would have sufficient time to meet the requirements between the time that the asset was listed and any future decision to sell by the asset owner.

⁴⁵ An asset lock is designed to ensure that the assets of the organisation (including any profits or other surpluses generated by its activities) are used to support the aims and objectives of their mission statement. The organisations that are subject to an asset lock are: Trusts; Community Interest Companies (CICs); Industrial & Provident Societies (IPS) and Charitable companies.

⁴⁶ It is intended that the criteria above would include a range of community and voluntary sector organisations, including social enterprises (social enterprises are profit-making organisations, but do not distribute their profit to shareholders or owners, but re-invest it in the organisation or the community).

10.10 Alternatively, it might be possible for an unincorporated group to make their request to be treated as a bidder via their parish council or in partnership with an incorporated body, such as another VCS organisation. They could be sponsored by the parish council or VCS partner until they had set themselves up as an incorporated body. There is no requirement that a group which requests to be treated as a bidder must subsequently make a bid.

Q29. 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?

Full window of opportunity

10.11 This is the longer period that will be triggered by an eligible group expressing an interest in bidding for the asset. As with the interim period, the asset owner will not be permitted to dispose of the asset, except in certain circumstances (see Section 11 of this consultation document).

10.12 It is intended that the full window of opportunity period should be a reasonable time to enable community groups to put a viable bid together in order to compete on a level playing field with other interested parties at the end of the window of opportunity. We recognise that there will be strong views on the length of the window of opportunity from different interested parties and it is therefore important to strike a balance between providing a window of opportunity that is long enough to be of benefit to community groups wishing to put a bid together and public and private landowners who may wish to dispose of their assets as quickly as possible.

10.13 Human Rights considerations suggest that providing a window of opportunity period which is long enough to support the aims of the policy is important if the interference in private property rights is to be justified. It should be noted that the full window of opportunity period includes the shorter, interim period of six weeks. Community groups would therefore have the balance of the full window of opportunity to finish putting their bids together.

10.14 **We propose the two following options of (a) three months or (b) six months for the full window of opportunity period.** This would mean that after the interim period of six weeks, community groups would have either (a) an additional six weeks or (b) an additional 20 weeks to finalise their bids.

Q30. Do you prefer option (a) or option (b) or do you think the full window of opportunity should be a different length (option (c))?

Protected period

10.15 The protected period will be calculated from the date when the asset owner notifies the local authority that they intend to enter into a relevant disposal of their asset, but will only come into effect after the end of the interim or full window of opportunity period. If the asset owner does not sell their asset at the end of the interim or full window of opportunity period, there will be the remainder of the protected period in which they are permitted to sell without triggering another delay. **We propose that the protected period should last for 18 months.** So, if an asset owner does not manage to sell the asset after complying with the rules of the scheme, and a full window of opportunity, they would have 15 months (under option (a) above) or a year (under option (b) above) to dispose of the asset before another period of delay would again need to apply to a planned disposal – assuming the asset remains listed.

10.16 Where a relevant disposal does take place, whether during or after a window of opportunity (i.e. to a community interest group or to any other buyer), we do not envisage that the balance of the protected period would apply to the new owner. It would be up to the new owner to notify the local authority that they have purchased the asset and to request that the local authority removes the asset from their list (where the sale was a relevant disposal).

Q31. Do you agree with the proposed length of the protected period?

Section 11:

Exempt disposals and permitted sales within the full window of opportunity

11.1 The Bill makes provision for the regulations to specify relevant disposals that are exempt from the requirements of the scheme⁴⁷. This could include cases where a landowner may enter into a relevant disposal of their land within the window of opportunity periods, as well as situations where a window of opportunity would not apply at all. This section seeks views on the kinds of disposals which should be exempt from these provisions, and on the organisations that should be permitted to buy an asset during the window of opportunity.

Vacant possession

11.2 A relevant disposal is defined in the Bill as the disposal of the freehold estate or grant, assignment or surrender of a qualifying leasehold estate in the land with vacant possession (a qualifying leasehold means a lease that was granted for at least 25 years). Where an owner is unable to give vacant possession, this does not qualify as a relevant disposal.

11.3 We are aware that there may be some cases where a site is not completely vacant but could be appropriate for sale to a community interest group – say where an office on a small part of the site is let separately. In such a situation, if the leaseholder is assigning a lease of the whole building, and occupies most of the building, but one part is sub-let to a tenant with a short fixed-term sub-lease, it would be possible for the community group to buy and use the main part of the site, but with the sub-tenant of the one part remaining in place and paying them rent.

Q32. To what extent should we allow for such cases of partial occupation?

Exempt disposals

11.4 It is envisaged that the following disposals would be exempt from triggering the window of opportunity:

⁴⁷ Localism Bill, Part 4, Chapter 4, Clause 79 – ‘Moratorium’

- a) return to a previous owner under the Crichel Down Rules⁴⁸
- b) exercise of a pre-existing option, nomination right, pre-emption right or right of first refusal
- c) sale by a lender, either through the lender being in possession or through exercise of a power of sale
- d) disposal under a court order in family or children proceedings
- e) disposal under bankruptcy proceedings
- f) transfer resulting from inheritance of the land
- g) transfer where assets and resources that are tied to ongoing service delivery are shifted.

11.5 It should be noted that a transfer from one part of the Crown to another, e.g. between government departments, would in any case not be a disposal at all, since ownership by the Crown remains the same.

Q33. Are there other disposals (in addition to those listed in paragraph 11.4) that should be exempt?

Permitted sales within the window of opportunity

11.6 Under the requirements of the scheme, the owner of a listed asset may not enter into a binding agreement to sell the asset until the relevant window of opportunity period has ended. However, the regulations may specify some circumstances in which it is possible to dispose of an asset within the window of opportunity. We propose that the regulations should permit sales to community interest groups within the window of opportunity, in order to maximise the benefit of the scheme to community groups – giving a right to make the first offer.

11.7 It is envisaged that any owner may sell their asset within the window of opportunity to:

- a) The local parish council

⁴⁸ The Crichel Down rules are non-statutory arrangements under which surplus Government land acquired by, or under threat of, compulsion should be offered back to former owners, their successors, or to sitting tenants. They are also recommended to local authorities and other public bodies. The Rules are published in ODPM Circular06/2004 "Compulsory Purchase and the Crichel Down Rules" and are available on the Department's website at <http://www.communities.gov.uk/publications/planningandbuilding/circularcompulsorypurchase2>

- b) Or a community interest group that meets the criterion of having a local connection and that satisfies two or more of the following requirements:
- that they are incorporated
 - that they have charitable status
 - that they have an asset lock in another legal form⁴⁹
 - that they include in their constitution that they are non-profit-distributing.⁵⁰

11.8 Such a disposal would be a sale at an agreed price between the two parties and in particular this would ensure that local authorities and other public bodies could continue to engage in asset transfer at less than market value using existing powers, without being affected by these provisions. When explaining how the scheme works the local authority would already have notified the owner of the land that such a sale within the window of opportunity period is permitted.

Q34. Are there other circumstances (in addition to those in paragraph 11.6) under which sales should be permitted within the window of opportunity?

Q35. 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?

⁴⁹ An asset lock is designed to ensure that the assets of the organisation (including any profits or other surpluses generated by its activities) are used to support the aims and objectives of their mission statement. The organisations that are subject to an asset lock are: Trusts; Community Interest Companies (CICs); Industrial & Provident Societies (IPS) and Charitable companies.

⁵⁰ It is intended that the criteria above would include a range of community and voluntary sector organisations, including social enterprises (social enterprises are profit-making organisations, but do not distribute their profit to shareholders or owners, but re-invest it in the organisation or the community).

Section 12:

Compensation for landowners

- 12.1 The Bill allows for the regulations to make provision for the payment of compensation to landowners⁵¹. The provision of a compensation scheme for private owners will be important in mitigating the interference with owners' property rights. This consultation seeks views on how a compensation scheme should work in England.
- 12.2 Under the Scottish Community Right to Buy scheme, landowners are entitled to claim compensation for loss or expense incurred in complying with the procedural requirements of the Community Right to Buy legislation. This includes situations where loss or expense from compliance with the rules regarding timing and price would be likely not to have been incurred in a sale of the land to a person who would not have had the benefit of those provisions. Landowners must submit their fully vouched claim within 90 days of a date specified in the legislation (which varies according to the circumstances of the individual right of first refusal process). Scottish landowners are also entitled to claim compensation in some situations where a community group has not complied with the requirements of the scheme, but we consider that this would not be a basis for compensation under the Community Right to Buy in England as the scheme does not offer community groups a right of first refusal.

In respect of what costs compensation should be paid

- 12.3 We propose that the basis for compensation under the proposed Community Right to Buy scheme in England should be reimbursement of expenses incurred by the landowner as a result of complying with the procedural requirements of the scheme. For example, if the owner had to pay additional security or maintenance costs for an empty building as a result of the proposed delay.
- 12.4 Claims for compensation should only relate to the costs incurred as a direct result of the requirements of the legislation and claimants would need to provide proof that the loss or expense had been incurred.

⁵¹ Localism Bill, Part 4, Chapter 4, Clause 82 – 'Compensation'

Q36. Do you agree with the proposal in paragraphs 12.3 and 12.4?

Who should pay compensation

12.5 It is envisaged that compensation claims would be considered and paid by the local authority. This would be considered and budgeted for in the Government's New Burdens Assessment.

Q37. Do you agree that compensation claims should be considered and paid for by the local authority?

Who is entitled to compensation

12.6 We propose that private landowners subject to a period of delay resulting from these provisions should be entitled to compensation for proved expenses incurred. This would exclude property owned by public bodies.

Q38(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?

Whether to make entitlement to claim subject to a time limit

12.7 As in the Scottish system, we propose that landowners should have to make a claim for compensation within a specified time period, such as **90 days** after the end of the full window of opportunity period (or of the interim period, where the full period did not apply). There would be no power for a local authority to pay compensation claimed after that time.

Q39(a). Do you agree with the proposed time limit of 90 days for making a compensation claim? (b) If not, how long do you think the time limit should be?

The procedure to be followed when claiming compensation

- 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.

Q40. Do you agree with the proposal in paragraph 12.8?

How much compensation should be paid, or how it should be calculated

- 12.9 We propose that compensation should be paid based on expenses incurred through compliance with the provisions of the scheme.
- 12.10 Under the proposed scheme in England, local authorities could consider whether a claim is justified and how much compensation to offer.

Q41. Do you agree with the proposal in paragraph 12.10?

How/whether decisions about compensation should be subject to review

- 12.11 The Bill makes provision for the regulations to set out whether an owner should be entitled to a review of a decision made by the local authority about compensation⁵². A decision about compensation made by the local authority would in any case be subject to judicial review. However, judicial review does not necessarily involve hearing evidence as to the facts of the case and it may be appropriate for landowners to have the right of appeal to a court or tribunal, such as the Lands Chamber of the Upper Tribunal, which reviews land compensation cases.

Q42(a). Should landowners be entitled to appeal against a local authority's decision about compensation? (b) If yes, on what basis?

⁵² Localism Bill, Part 4, Chapter 4, Clause 82 – 'Compensation'

Section 13:

Enforcement of the regulations

- 13.1 The Bill allows for regulations to make provision to enforce compliance with the scheme, both in terms of preventing a breach of the statutory requirements and what action should be taken as a consequence of a breach⁵³.
- 13.2 The Bill also states that inclusion of land on the list will be a local land charge, which means that there will be an entry to that effect in the local land charges register kept by the local authority⁵⁴. It is envisaged that this should be a preventative measure, as it will alert potential buyers that the land has been listed and that any relevant disposal must take place in line with the requirements of the Community Right to Buy scheme. The local authority will also be required to inform owners of a listed asset that it has been included in the list.
- 13.3 We want to establish an enforcement regime that provides sufficient disincentive to an owner to ignore the requirements of the Community Right to Buy but is proportionate and manageable.
- 13.4 There are three possible options for enforcement where a relevant disposal has been made in breach of the requirements, as follows:
- a) providing that a non-compliant transfer will be void
 - b) enabling non-compliant land transfers to be set aside (i.e. a voidable transfer)
 - c) imposing a compensation payment or other remedies as determined by a court or tribunal.
- 13.5 Although it would be possible to provide that a non compliant sale has not legally occurred but is void from the outset, we are of the view that this would be a disproportionately heavy handed approach. We do not therefore seek to pursue this option.

Enforcement process

- 13.6 We propose to develop the details of an enforcement approach that will be based on the model described below.

⁵³ Localism Bill, Part 4, Chapter 4, Clause 84 – ‘Enforcement’

⁵⁴ Localism Bill, Part 4, Chapter 4, Clause 83 – ‘Local land charge’

- 13.7 A community interest group who would have been entitled to request to be treated as a potential bidder can lodge a complaint with the civil court on the grounds that the owner has not complied with the statutory requirements of the scheme.
- 13.8 We do not want to allow excessively retrospective penalties to be imposed, but appreciate that it may be some time before an interested community group or other eligible body is made aware of a sale. We would therefore propose limiting the period in which a claim could be made for a sale to be deemed voidable to **6 months** from the sale, or from the date on which the group became aware of the sale. This would minimise the chances of there being one or more further owners since the original disputed sale. We envisage providing that the claim must in all cases be made against both the original owner and the owner whom the original owner has sold to. The current owner, if different, would also be a defendant to the claim.
- 13.9 Although the Bill does not require them to do so, it would be good practice for the local authority to provide information about the enforcement process as part of publicising the list of community assets.
- 13.10 It would be for the community interest group or other eligible group (the claimants) to seek redress from the previous and current owner of the asset through the civil courts. Before approaching the court the community interest group would be expected to have made efforts to reach agreement with the owners. We are interested to explore how best this negotiation process could be supported.
- 13.11 The courts would consider the claim and we envisage providing that if the claim were upheld, the court would be able to impose an appropriate sanction on the defendants – the previous and current owners. This may be paying compensation to the plaintiffs or if the court believed it to be appropriate, they could order that the sale be set aside, rendering the transaction ineffective.
- 13.12 At the end of the case, we would envisage the usual rules on payment of costs to apply. In most circumstances this would mean that if a case was upheld, the defendants would pay the claimant's costs (as well as their own), but if the claim was unsuccessful the claimants would pay the defendant's costs (as well as their own). This would be subject to the detailed provisions on costs in the Civil Procedure Rules.
- 13.13 As would be usual in claims with civil courts, we envisage that there would be a right of appeal.
- 13.14 We believe this approach would offer a strong deterrent to breaching the regulations, for both the buyer and seller. It would, however, require a commitment from the eligible organisation to progress the claim.

Q43. Do you agree that an enforcement regime is required?

If so:

Q44. Do you have any comments on the process of enforcement?

Q45. Are there alternative approaches to enforcement that you would propose?

Section 14 :

Support and guidance

- 14.1 The Community Right to Buy aims to give local voluntary sector and community groups the opportunity to take on assets of community value in order to protect land, buildings and facilities that are of importance to them. We have learned from the experience of Voluntary and Community Sector organisations involved in the transfer of assets from public bodies that many small or new voluntary and community sector organisations may benefit from support to improve their skills or expertise or to raise the funds necessary to make a successful bid to purchase a community asset, in competition with other bidders (particularly from the private sector).
- 14.2 Subject to Parliamentary approval we anticipate that the Localism Bill will obtain Royal Assent in Autumn 2011, and that the Community Right to Buy will be commenced from April 2012 at the earliest. The Bill is introducing a range of new community rights alongside the Community Right to Buy – the Right to Challenge, to Build and to develop neighbourhood plans. These also link to the Cabinet Office Rights to Provide for public sector workers to form mutuals.
- 14.3 We are considering what support measures could be made available to help people in communities, as well as local authorities, other public bodies, and private businesses understand what each right can and cannot do, how they can be used together, and what further support could be made available for groups wanting to use them.
- 14.4 We would welcome views on whether there are any issues on which advice or non-statutory guidance could usefully be provided.

Q46. What support would be most helpful?

Annex A:

Summary of consultation questions

Section 3 – Definition of asset of community value

- Q1. 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 'local community benefit' and a list of excluded assets?
- Q2. If yes, (a) do you agree with the factors listed above that the local authority should take into consideration when deciding whether a piece of land or building is an asset of community value? (b) Should these be set out in regulations?
- Q3. 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 former or current use – do you agree?
- Q4. Are there other areas that you believe should be explored further to strengthen the Community Right to Buy?
- Q5. 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?
- Q6. Are there other types of land or buildings that should be excluded from being listed as assets of community value?

Section 4 – Ways in which assets may be nominated and listed

- Q7. Do you agree that the nomination process should be open to any group or individual and that they should have a 'local connection'?
- Q8. How else could an individual or group be defined as having a 'local connection'?
- Q9. Are there other process(es) by which an asset of community value should be listed?

Section 5 – Information to be included in community nominations

- Q10. 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?

Q11. If you think the regulations should specify the contents of a community nomination, is there other information that should be included?

Section 6 – The procedure for listing assets

Q12. Do you agree that owners should be informed before the local authority makes a decision whether to list the asset or not?

Q13. Should the local authority be required to follow any other procedures when deciding whether to list an asset?

Section 7 – Notification about inclusion and removal of a listed asset

Q14. 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?

Q15. 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?

Q16. Do you agree that an asset should be removed from the list of assets of community value once the local authority knows that it has been sold as a result of a relevant disposal?

Q17. Should local authorities be able to remove an asset from the list if it is no longer considered to be of community value?

Q18. Is there other information that should be included in the notification of removal of an asset from the list of assets of community value?

Q19. 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?

Section 8 – Content and publication of the list of assets of community value and the list of land nominated by unsuccessful community nominations

Q20a. 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 regulations?

Section 9 – Right of appeal for landowners

- Q21. Do you agree with the suggested period (28 days) for requesting an internal review?
- Q22. Is there any other information (in addition to what is listed in paragraph 9.3) the owner should provide?
- Q23. Do you agree with the proposed timescale of 6 weeks for the local authority to complete the internal review?
- Q24. 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?
- Q25. 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?
- Q26. Should anything else be included in the internal review process?
- Q27. Should formal provision be made for landowners to appeal to a court or tribunal if they are dissatisfied with the outcome of the local authority's internal review?

Section 10 – Length of the windows of opportunity and protected period

- Q28. Do you agree with the proposed length of the interim period (6 weeks)?
- Q29. 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?
- Q30. Do you prefer option (a) 3 months or option (b) 6 months or do you think the full window of opportunity should be a different length (option (c))?
- Q31. Do you agree with the proposed length of the protected period (18 months)?

Section 11 – Exempt disposals and permitted sales within the full window of opportunity

- Q32. To what extent should we allow for such cases of partial occupation (as set out in paragraph 11.3)?
- Q33. Are there other disposals (in addition to those listed in paragraph 11.4) that should be exempt?

- Q34. Are there other circumstances (in addition to those in paragraph 11.6) under which sales should be permitted within the window of opportunity?
- Q35. 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?

Section 12 – Compensation for landowners

- Q36. 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)?
- Q37. Do you agree that compensation claims should be considered and paid for by the local authority?
- Q38a. 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?
- Q39. 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?
- Q40. Do you agree with the proposal in paragraph 12.8?
- Q41. Do you agree with the proposal in paragraph 12.10?
- Q42a. Should landowners be entitled to appeal against a local authority’s decision about compensation? (b) If yes, on what basis?

Section 13 – Enforcement of the regulations

- Q43. Do you agree that an enforcement regime is required?

If so:

- Q44. Do you have any comments on the process of enforcement?
- Q45. Are there alternative approaches to enforcement that you would propose?

Section 14 – Support and Guidance

- Q46. What support would be most helpful?

Annex B:

Consultation criteria

The Government has a code of practice on consultations. The criteria below apply to all UK public consultations on the basis of a document in electronic or printed form, and will often be relevant to other sorts of consultation.

Though they have no legal force, and cannot prevail over statutory or other mandatory external requirements, the instructions below should otherwise generally be regarded as binding on UK departments and their agencies, unless Ministers conclude that exceptional circumstances require a departure.

1. Formal consultation should take place at a stage when there is scope to influence the policy outcome
2. Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible
3. Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals
4. Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach
5. Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained
6. Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation
7. Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience

The full consultation code may be viewed at:
www.bis.gov.uk/policies/better-regulation/consultation-guidance

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