IN THE MATTER OF THE COMMUNITY FOOD AND LAND BILL 2022

ADVICE

Introduction

1. I am asked to advise Rights : Community : Action on a proposed Community Food and Land Bill 2022 ("the Bill"). I am asked to comment on the Bill's general workability, as well as a number of discrete issues arising from it.

2. The Bill requires local authorities to maintain a list of publicly owned land which it considers suitable for community cultivation and/or environmental enhancement. Land may be included in a list in response to a community nomination. Provision is also made for future regulations to permit other forms of nomination. There is no power for a local authority to include land on its own initiative. The provisions are based on Chapter 3, Part 5, f the Localism Act 2011 which introduced the asset of community value regime.

3. Inclusion of land in a local authority's list has two effects. Firstly, qualifying community interest groups are entitled to "cultivate" any land included in a list and/or carry out "environmental enhancement" activities. To exercise this right, a group must apply for a "certificate of community cultivation" in respect of a listed site. Once in possession of a certificate, the group must notify both the landowner and the local authority. These conditions are referred to in this advice as "qualifying conditions".

4. Secondly, the Bill imposes restrictions on the disposal of listed sites. In summary, land listed as suitable for cultivation cannot be sold without first giving community interest groups a chance to bid on the land. These restrictions replicate those applied to disposal of "assets of community value" ("ACV") in the Localism Act 2011.

5. I have appended to this advice a copy of the provisions of the proposed Bill on which I have been asked to comment.

Summary

(1) In my view, the Bill presents a workable means of realising a community "right to cultivate" and the ACV regime is a suitable model for the rights proposed subject to some suggested improvements (paragraphs 7-8).

(2) While it is implicit in clause 7 that upon satisfying the qualifying conditions a community group's newly defined "right to cultivate" encompasses a right to access the land, that right should be expressly stated (paras 9-10):

    (a) One option is to articulate a right of access within the legislation (paras 11-13).

    (b) Another option is to provide that upon satisfaction of the qualifying conditions the landowner must grant the community group a licence to occupy the land for the purposes of cultivation subject to terms, some of which may be prescribed in legislation (paras 14-17).

    (c) I have considered other legislation and land law concepts that might have a bearing on the right to cultivate (paragraph 18).

(3) The proposed Bill could more clearly define what is meant by "cultivation"; "environmental enhancement"; what is meant by a "public authority" landowner and what land is "suitable" for community cultivation nor environmental enhancement (paragraphs 19-26).

(4) There are a number of details that should be set out, probably in secondary legislation including the procedure for consultation on drawing up the list, timescales for producing the list and rights of appeal (paragraph 27).

(5) There is no interference with human rights from the proposed legislation (paragraphs 28-30).

1. Is the ACV Regime an Appropriate Starting Point for the Proposed Bill?

6. Instructing solicitors ask at paragraph 5.1 of my instructions whether the ACV legislation (the Localism Act 2011) is an appropriate starting point for the Bill

7. The ACV regime in Part 5 of the Localism Act 2011 has not proved to be an especially radical or transformative piece of legislation, but for that reason it is an appropriate starting point for the Bill. It has the advantage of being in a form that has been found to be politically acceptable in the recent past. The ACV regime is structured so that inclusion of land in a local authority's list of land of community value is constitutive of rights in respect of that land for qualifying community groups. That is a straightforward and logical structure for the Bill to adopt. Further, the range of permissible corporate structures by which community groups may exercise such rights are defined, and most are relatively easy to create. Again, this represents a straightforward and logical starting point for the Bill to adopt.

2. The Nature of the Right to Cultivate and its Integration with Land Law

8. Instructing solicitors ask how the proposed right to cultivate might interact with property law and whether it is appropriate to frame the right as a property right.

9. The effect of clause 7 of the proposed Bill is that a community interest group holding a community cultivation certificate in respect of land included on a local authority's list of land suitable for community cultivation and/or environmental enhancement has "the right" to cultivate the land in question following notification of the landowner and local authority. It is perhaps implicit in the proposed right to cultivate that there is a right of access, but in my view authorisation for what would otherwise be a trespass should be spelled out expressly. I suggest this could be done in one of two ways: (a) The legislation could fashion a statutory right of access similar to that of a local inhabitant to enjoy customary rights or lawful sports and pastimes on a village green, or (b) the legislation could require the granting of a licence granting exclusive occupation.

(a) A Sui Generis Statutory Right

10. Both customary rights of recreation recognised in the common law and the implied statutory right to use land as a village green for lawful sports and pastimes provide an

appropriate model for further articulating the right of access implicit in the proposed right to cultivate. In *TW Logistics v Essex County Council* [2021] 3 All ER 395 the common law concept of customary rights to use land was explained at paragraphs 47-8 by reference to the case of *Fitch v Fitch* (1797) 2 Esp 543, (1797) 170 ER 449:

> In *Fitch v Fitch* there was an established customary right for local inhabitants to use a landowner's field at all times of the year for lawful games and pastimes. The landowner had used the field to grow grass for hay. He brought a claim in trespass against local inhabitants who he alleged had gone into the field, 'trampled down the grass, thrown the hay about and mixed gravel through it, so as to render it of no value'. The defendants argued that they were entitled to remove any obstruction to the free exercise of their right of recreation. However, Heath J rejected their argument that their right meant that the landowner could not allow the grass to grow. Instead, he said ((1797) 2 Esp 543 at 544, (1797) 170 ER 449 at 450), '[t]he rights of both parties are distinct, and may exist together'. He therefore ruled that the right of the local inhabitants had to be exercised in a lawful, fair and proper way….
>
> The rights of the landowner and of the local inhabitants existed concurrently and were exercised concurrently. The landowner was using the land for growing grass and storing hay when the local inhabitants went onto it to exercise their rights of recreation. Heath J's ruling was to the effect that the local inhabitants had to exercise their rights in a fair and reasonable way, so as to respect the concurrent reasonable and established use of the land by the landowner.

The proposed right to cultivate has some resonance with a customary right and it might be thought appropriate that it, like customary recreation rights, should be able to live alongside the rights of the landowner to use the land for other purposes not inconsistent with that right. For example, there are around London a number of covered reservoirs that appear to the eye as raised mounds covered in grass, usually fenced off to the public. A number are now being planted with trees as part of Thames Water's commitments on climate change. Responsible cultivation of the land could- indeed does - coexist with the water board's use. The Bill could therefore express, in kind with the common law principles applicable to customary rights, that where a community group enjoys a right to access and cultivate the land, the landowner would enjoy continued use for any other uses not inconsistent with that right to cultivate.

11. In the case of town or village greens (TVGs). the Commons Registration Act 1965 created a system for registration of TVGs but omitted to specify whether any rights were created by registration. The Courts have inferred the existence of an implied statutory right for local inhabitants to use land registered as a TVG for lawful sports and pastimes.

As with customary rights, those rights to use a TVG for lawful sports and pastimes co-exist with the landowner's right to use the land for other not-inconsistent purposes: see *TW Logistics* at [50]:

> The principle of the fair and proper use of rights of recreation in relation to a TVG owned by someone else, as illustrated by *Fitch v Fitch*, has been adapted in the authorities on TVGs registered under the modern legislation into a principle of 'give and take' on both sides in the exercise of the rights of the public which arise upon registration and in the exercise of the landowner's rights. As Lord Hoffmann put it in the *Trap Grounds* case at para [51], '[the landowner] still has the right to use [the land] in any way which does not interfere with the recreational rights of the inhabitants. There has to be give and take on both sides'.

12. Rather than pass legislation which might lead to litigation as to what the community right to cultivate entails, in my view it would be helpful to specify the nature of the right more directly in the draft legislation. For example, clause 7 might say (amendments underlined):

> (1)A community interest group defined under subsection 9 (3) has the right to <u>access and</u> cultivate land included in the local authority's list of land suitable for community cultivation if,
>
> (a)It has notified the local authority in writing
>
> (b)notified the landowners
>
> (c) has a valid certificate of community cultivation
>
> <u>But such right of access and cultivation shall not affect the continued right of the landowner to access and use the land for any purpose not inconsistent with cultivation of the said land.</u>

(b) Cultivation under Licence Agreement

13. Another option for clarifying the community group's access rights is to grant a licence by the landowner to the community interest group. A licence entitles a party to enter and use land for the purposes authorised by the licence without creating any property interest in the land.[1] The Bill could provide that, upon satisfaction of the qualifying conditions in clause 7, the owner of the certified land must grant the community group a licence to use the land in question for the purposes of cultivation. This would mean the community group enjoyed an established legal basis upon which they could access the land in

[1] *Street v Mountford* [1985] A.C. 809.

question. It would also achieve the aim of creating a right of use that does not interfere with existing property interests in the land, and which is capable of integration into current land law. Such a licence could be described as a "community cultivation licence".

14. Presenting the right as a licence also enables many practical matters to be dealt with through the terms of licence agreement. Such terms might include:

(1) **Duration of the right:** A licence agreement can provide for a defined period of occupation subject to either automatic renewal or renewal upon the agreement of the parties.

(2) **Termination of the right**: Termination provisions could be left for the parties to agree, or the Bill or secondary legislation could provide that a community group's licence may only be terminated in circumstances prescribed by the Bill, such as removal of the land from the list of suitability (providing that such a power is included – this is dealt with below), the landowner demonstrating that it requires the land to perform its statutory functions, or because of the conduct of the group (e.g. damage to the land, or carrying out activities beyond "cultivation"). Prescribing termination conditions would prevent unscrupulous owners terminating licences prematurely.

(3) **Defining the extent of the land to be cultivated:** clearly a licence agreement must define the land which is subject to the agreement. This brings the advantage of enabling a community group to exercise the right to cultivate in respect of part of a larger site.

(4) **Miscellaneous points:** a licence agreement has the advantage of making provision for a host of miscellaneous (but important) points regulating the relationship between an owner and a community group. For instance, a licence could usefully include terms apportioning liability between the parties on particular issues (e.g., maintenance). Further, a licence agreement can specify whether groups are entitled to erect structures for storage of tools etc. necessary for cultivation (subject to planning control).

15. In my view, legislation (probably secondary legislation) should make provision as to some of the matters that may and may not be included in the licence (duration, renewal,

termination etc) so as to avoid the effectiveness of the legislation being frustrated by a landowner and should provide a model licence agreement to minimise drafting costs (but without prohibiting bespoke terms).

16. The above approach could be given form in the Bill through amendments to clause 7 (underlined):

> (1)A community interest group defined under subsection 9 (3) has the right to cultivate land included in the local authorities list of land suitable for community cultivation if the community interest group,
>
> (a) has notified the local authority in writing.
>
> (b) notified the landowners; and
>
> (c) has a valid certificate of community cultivation
>
> <u>(2) If a community interest group defined under subsection 9(3) satisfies the conditions of subsection (1) the owner of the land must grant the community interest group a community cultivation licence granting access to the land for the purposes of cultivation and not inconsistent with fulfilment of the right to cultivate.</u>
>
> <u>(3) The appropriate authority may by regulations make further provision in relation to the form and content of a community cultivation licence.</u>

(c) Other Possible Models for the Right to Cultivate

17. For the sake of completeness, I set out some other possibilities which I have considered, or which were suggested in my instructions, but which I do not consider appropriate as a means of articulating the community right to cultivate.

    (1) An easement can only exist incidentally to the ownership of land (i.e., one must own land to hold an easement over another's land - a "dominant tenement"). An easement which purports to enable a party a joint right of occupation with the owner will generally be invalid.[2] A right to "cultivate" is perhaps insufficiently definite to exist as an easement.

    (2) It would be unhelpful to structure the right as a *profit à prendre* ("profit). While property law does recognise a right to take the products of another's land (such as turf or wild animals) without the right holder possessing any interest in a dominant

[2] *In Re Ellenborough Park* [1956] Ch 131 (CA).

tenement (known as a profit in gross), a profit cannot comprise a right to use another's land in a particular way.

(3) There is some conceptual and practical overlap between the proposed right to cultivate and rights of common and as with customary rights and recreation rights on TVGs, the owner of a common may use the land as if no rights of common existed, provided such use is not inconsistent with those rights of common. However, the law of commons is complicated and not widely known and the interaction of these new rights with those older rights could be a source of much litigation. Simpler mechanisms commend themselves.

(4) I do not see that framing the right in terms of adverse possession is of much assistance. Possession of land which is "adverse" – i.e., without the permission of the owner, and without secrecy, and without the use of force – can entitle the possessor to apply to HM Land Registry to be entered as the registered proprietor of the land in question after remaining in possession for an appropriate period of time.[3] This is at odds with the intention not to create a property right.

(5) What is proposed has some resonance with the duty on local authorities to provide allotments[4], but that is a weak duty of little practical effect - with waiting lists of up to 40 years in some areas. The proposed new legislation provides a more active mechanism for seeking out sites for cultivation. There is perhaps merit in parliament in due course exploring how this Bill would interact with allotments legislation, but that is beyond the scope of this advice. Allotments are usually operated under leases, which is a slightly different model to that envisaged in this bill.

(6) The Countryside and Rights of Way Act 2000 makes provision for public access to the countryside over "access land" which is registered on a map in conclusive form issued by Natural England or Natural Resources Wales. There is perhaps some scope for adapting some aspects of that system, particularly in terms of the mapping and registration of land.

[3] See Land Registration Act 2002, schedule 6.
[4] Section 23 of the Small Holdings and Allotments Act 1908

(7) Neighbourhood planning in its existing form has the scope to achieve some of what is envisaged in this bill, but absent the more specific provisions as to listing of sites and the rights that follow, that may be of only limited value.

3. Matters that Could be Further Defined

i. "Cultivation"

18. It might be desirable to define "cultivation" in more specific terms to avoid disputes over whether an activity is permitted in the exercise of the right. In particular, if the right does take the form of a licence as suggested above, it is important that the licence agreement can define with specificity what a community group is entitled to do on the land in question. There are existing statutory definitions of "cultivation" that might be adopted or adapted in the Bill. "Cultivation" is defined in s. 61 of the Small Holdings and Allotments Act 1908 in the following terms:

> The expressions "agriculture" and "cultivation" shall include horticulture and the use of land for any purpose of husbandry, inclusive of the keeping or breeding of livestock, poultry, or bees, and the growth of fruit, vegetables, and the like.

"Agriculture" is defined by s. 336(1) of the Town and Country Planning Act 1990 as including

> horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and agricultural shall be construed accordingly.

My impression from my instructions is that the keeping of livestock is not intended as part of the Bill, and so it would be advisable to include a specific definition of cultivation relevant to what is permitted by this Bill.

ii. "Environmental enhancement"

19. Similarly, the term "environmental enhancement" might be defined further. I would note that "horticulture" already falls within the definition of "cultivation" in the 1908 Act.

iii. "Public authority"

20. "Public authority" is a well-worn statutory concept which is usually defined either by a list of named authorities or by a functional definition, or by a combination of the two. The draft Bill currently operates on the basis of a prescribed list: a body is a "public authority" for the purposes of the Bill by virtue of its being included in clause 2(2).

21. Section 3 of the Freedom of Information Act 2000 defines a public body to mean any of the bodies listed in schedule 1, which then contains a lengthy list of bodies including many manifestations of national and local government, the NHS, the police, educational authorities, and a long list of miscellaneous bodies. The Secretary of State has power to add bodies to the list. This is similar to the currently envisaged option in the proposed Bill but seems to me to be cumbersome. There is a risk that in prescribing an exhaustive list of public authorities the list becomes out of date as bodies change or are restructured, or when new bodies are created, but if a definitive list were desired, cross-reference to schedule 1 of FOIA would be one way to achieve that.

22. Providing a functional definition of "public authority" is an alternative approach. This is a common device in modern legislation. For example, section 6(3)(b) of the Human Rights Act 1998 provides that a "public authority" is "any person certain of whose functions are functions of a public nature". In assessing whether a body is a "public authority" for the purposes of the Human Rights Act, relevant factors include the extent to which the body is publicly funded, whether it is exercising statutory powers, whether it is taking the place of central government or local authorities, and whether it is providing a public service.[5]

23. This functional definition of public authority has been adopted elsewhere in domestic legislation- recently in s. 35 of the Finance Act 2021 and s. 14(11) of the Trade Act 2021. Section 31 of the Environment Act 2021 defines "public authority" as "a person carrying out any function of a public nature that is not a devolved function, a parliamentary function or a function of any of the defined exceptions. Section s 10(5) of the Forensic Science Regulator Act 2021 defines "public authority" as meaning:

    (a) any court or tribunal,
    (b) any constable,

[5] *Aston Cantlow PCC v Wallbank* [2004] 1 A.C. 546, at [12] per Lord Nicholls.

(c) any government department,
(d) any local authority,
(e) any person discharging regulatory functions in relation to any description of activities, and
(f) any other person discharging functions of a public nature.

Bodies (c) to (f) are likely most relevant to the Bill. Defining public authority as including the bodies at (c) to (f) above offers a sufficiently wide definition for the Bill. Further bodies might be specified for the avoidance of doubt, as is done by the regulation 2(2) of the Environmental Information Regulations 2004 which provides that a "public authority" includes both specified bodies and "any other body or other person, that carries out functions of public administration".

24. I am asked whether the Bill could apply to land belonging to the Duke of Marlborough and other landed estates. It is not advisable and potentially not lawful to legislate in respect of individuals. In legal terms, applicability to areas or categories of land could be given effect by including the owners within the list of public authorities, or by specifically designating certain estates. A clause might provide a power for the Secretary of State to designate by secondary legislation further areas of land as subject to a community right to cultivate whether or not they are publicly owned. It seems to me, though, that including large estates or the possibility of designating private land may introduce an element of political controversy.

iv. Criteria for including land in the list, as set out in clause 2?

25. The range of circumstances which may or may not render a particular piece of land inappropriate for cultivation are myriad. The main criterion at clause 2(1)(b) "it is realistic to think the land can be used for cultivation and or environmental enhancement" leaves it to the discretion of the local authority whether to include land in its list and leaves wide scope for rejecting an application. In my view, further description of suitability could be given in the legislation, but an exhaustive definition is probably impossible. One solution might be to provide extra-statutory guidance as to "suitability". A presumption in favour of suitability might slightly tip the matter in favour of registration.

4. Matters for Secondary Legislation

26. There are quite a number of details that could be resolved either in primary legislation or for simplicity in secondary legislation pursuant to clauses 1(3) and 3(5). For example:

    (1) A procedure for consultation of landowners whose land has been nominated.

    (2) Timescales for production of lists; triggers for modification etc.

    (3) **A** means by which a landowner can challenge a decision to list their land as suitable for cultivation or for the community to challenge non-inclusion. The ACV regime includes a procedure by which a landowner can request the relevant local authority to review its decision to list land as an ACV and an owner may appeal a review in the First-Tier Tribunal (General Regulatory Chamber).[6] Given that the Bill replicates much of the ACV regime it would be logical to also replicate this review procedure, but in this case conferring a right on both the owner and the community.

    (4) A procedure for removal of land from the list, and appeals against any such decision.

    (5) As set out above, any provision of a model licence agreement and as to the terms of any licence agreement or else any detail of the statutory right to cultivate.

5. Interference with the Human Rights of Landowners?

27. Article 1, Protocol 1 of the European Convention on Human Rights ("A1P1") is incorporated into UK law through the Human Rights Act 1998. Paragraph 1 of A1P1 prohibits the deprivation of possessions save in the public interest and subject to tconditions provided by law. In *R v Oxfordshire CC, ex p Sunningwell Parish Council* , [2000] 1 AC 335 at 349–354 rejecting the landowner's submission in that case that registration of land as a TVG involved an infringement of its right to respect for its property under A1P1 as given effect in domestic law by the Human Rights Act 1998. Lord Hoffmann held that there was no deprivation of property for the purposes of A1P1 because 'the owner retains his title to the land and his right to use it in any way which does not prevent its use by the inhabitants for recreation'. More recently, the Court of Appeal has observed that an owner's rights "may lose some of their substance, but

[6] The Assets of Community Value (England) Regulations 2012, schedule 2.

provided that they do not disappear it is unlikely that the interference will be treated as a de facto expropriation".[7]

28. Lord Hoffman's reasoning seems to me to be applicable to the right to cultivate just as it is to the right to recreate: In my view the proposed right to cultivate does not amount to a deprivation of possessions. Further, paragraph 2 of A1P1 provides that a state may control the use of land as it wishes: the prohibition on the deprivation of possessions shall not "in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest…". That reenforces the conclusion that the right to cultivate (controlling use of the land) would not involve a breach of human rights.

29. If a precautionary approach were to be taken to interference with landowners' rights (and perhaps in any event), a mechanism for removing land from a local authority's list should be included in the Bill or in the regulations envisaged pursuant to clause 1(3) of the proposed Bill since that would help ensure the measures limiting the landowner's rights are not disproportionate.

30. I would be happy to advise further on this interesting matter.

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[7] *R. (British American Tobacco UK Ltd) v Secretary of State for Health* [2018] Q.B. 149 at [96].

ANNEX

Long Title: A Bill make provisions to provide a community right to access to land held by public authorities for community cultivation; nature enhancement; and for connected purposes.

Land for Community cultivation

1 List of land for community Cultivation

(1) A local authority must maintain a list of land in its area that is land suitable for community cultivation.

(2) The list maintained under subsection (1) by a local authority is to be known as its list of land for community cultivation.

(3) The appropriate authority may by regulations make further provision in relation to a local authority's list of assets of community value[8] including (in particular) provision about—

(a)the form in which the list is to be kept;

(b)contents of an entry in the list (including matters not to be included in an entry);

(c)modification of an entry in the list;

(d)removal of an entry from the list;

(e)cases where land is to be included in the list and—

(i)different parts of the land are in different ownership or occupation, or

(ii)there are multiple estates or interests in the land or any part or parts of it;

(f) combination of the list with the local authority's list of land nominated by unsuccessful community nominations.

(4) Subject to any provision made by or under this Chapter, it is for a local authority to decide the form and contents of its list of land suitable community cultivation.

2 Land for community cultivation and environmental enhancement

(1) For the purposes of this Act but subject to regulations under subsection (3), land in a local authority's (and/or public authorities) area is land suitable for cultivation and/or environmental enhancement if in the opinion of the authority—

(a) the land is in the ownership of a public authority, and

(b) it is realistic to think that the land can be utilised for cultivation and or environmental enhancement

[8] Should this be assets of community cultivation?

(c) there is no record/evidence that the land is unsuitable for cultivation due to contamination

(d) that development for another use will not begin within 12 months.

(2) In this section—

- "Public authorities" includes (in particular) each of the following—

  (a)

  agencies.

  (b)

  parish and towns;

  (c)

  NHS, MoD;

3 Procedure for including land in list

(1) Land in a local authority's area may be included by a local authority in its list of land suitable for community cultivation in response to a community nomination,

(2) For the purposes of this Chapter "community nomination", in relation to a local authority, means a nomination which—

(a)nominates land in the local authority's area for inclusion in the local authority's list of land suitable for community cultivation, and

(b) is made—

(i) by a parish council in respect of land in England in the parish council's area,

(ii) by a community council in respect of land in Wales in the community council's area, or

(iii)by a person that is a voluntary or community body with a local connection.

(3) Regulations under subsection (1)(b) may (in particular) permit land to be included in a local authority's list of land suitable for community cultivation in response to a nomination other than a community nomination.

(4) The appropriate authority may by regulations make provision as to—

(a)the meaning in subsection (2) of "voluntary or community body";

(b)the conditions that have to be met for a person to have a local connection for the purposes of subsections (2);

(c)the contents of community nominations;

(d)the contents of any other nominations which, as a result of regulations under subsection (1)(b), may give rise to land being included in a local authority's list of assets of community value.

(5) The appropriate authority may by regulations make provision for, or in connection with, the procedure to be followed where a local authority is considering whether land should be included in its list of land suitable for community cultivation.

4 Procedure on community nominations

(1) This section applies if a local authority receives a community nomination.

(2) The authority must consider the nomination.

(3) The authority must accept the nomination if the land nominated—

(a)is in the authority's area, and

(b) suitable for community cultivation and/or environmental enhancement

(4) If the authority is required by subsection (3) to accept the nomination, the authority must cause the land to be included in the authority's list of land suitable for community cultivation.

(5) The nomination is unsuccessful if subsection (3) does not require the authority to accept the nomination.

(6) If the nomination is unsuccessful, the authority must give, to the person who made the nomination, the authority's written reasons for its decision that the land could not be included in its list of land suitable for community cultivation.

5 Notice of inclusion or removal

(1) Subsection (2) applies where land—

(a)is included in, or

(b)removed from,

a local authority's list of land suitable for community cultivation.

(2) The authority must give written notice of the inclusion or removal to the following persons—

(a)the owner of the land,

(b)the occupier of the land if the occupier is not also the owner,

(c)if the land was included in the list in response to a community nomination, the person who made the nomination, and

(d)any person specified, or of a description specified, in regulations made by the appropriate authority,

(4)A notice under subsection (2) of removal of land from the list must state the reasons for the removal.

6 Publication and inspection of lists

(1) A local authority must publish—

(a) its list of land suitable community cultivation, and

(b) its list of land nominated by unsuccessful community nominations.

(2) A local authority must at a place in its area make available, for free inspection by any person, both—

(a)a copy of its list of land suitable for community cultivation, and

(b)a copy of its list of land nominated by unsuccessful community nominations.

(3)In this section "free" means free of charge.

7 Community right to cultivate

(1)A community interest group defined under subsection 9 (3) has the right to cultivate land included in the local authorities list of land suitable for community cultivation if,

(a)It has notified the local authority in writing

(b)notified the landowners

(c) has a valid certificate of community cultivation

8 Certificate of lawful community cultivation

(1)A local authority must issue a certificate of lawful cultivation if,

The request comes from a community interest group

The relevant land is contained within the list of land suitable for community cultivation.

(2) Regulations may make provisions for duration of the certificate..

9 Moratorium on public authorities on disposing of land suitable for community cultivation

(1) A public authority whose land is included in the local authority's list of land suitable for community cultivation must not enter into a relevant disposal of the land unless,

(a) the interim moratorium period has ended without the local authority having received during that period, from any community interest group, a written request (however expressed) for the group to be treated as a potential bidder in relation to the land, or

(b) the full moratorium period has ended.

(c) that the protected period has not ended.

(2) Subsection (1) does not apply in relation to a relevant disposal of land—

(a)if the disposal is by way of gift (including a gift to trustees of any trusts by way of settlement upon the trusts),

(3) In subsections (1) and (2)—

- "community interest group" means a person specified, or of a description specified, in regulations made by the appropriate authority,
- "the full moratorium period", in relation to a relevant disposal, means the 12 months beginning with the date on which the local authority receives notification under subsection (2) in relation to the disposal,
- "the interim moratorium period", in relation to a relevant disposal, means the six weeks beginning with the date on which the local authority receives notification under subsection (2) in relation to the disposal, and
- "the protected period", in relation to a relevant disposal, means the eighteen months beginning with the date on which the local authority receives notification under subsection (2) in relation to the disposal.

10 Meaning of "relevant disposal" etc in section 7

(1) This section applies for the purposes of section 7.

(2) A disposal of the freehold estate in land is a relevant disposal of the land if it is a disposal with vacant possession.

(3)A grant or assignment of a qualifying leasehold estate in land is a relevant disposal of the land if it is a grant or assignment with vacant possession.

(4)If a relevant disposal within subsection (2) or (3) is made in pursuance of a binding agreement to make it, the disposal is entered into when the agreement becomes binding.

11 Publicising receipt of notice under section 7(2)

(1) This section applies if a local authority receives notice under section 7(2) in respect of land included in the authority's list of assets of community value.

(2)The authority must cause the entry in the list for the land to reveal—

(a)that notice under section 7(2) has been received in respect of the land,

(b)the date when the authority received the notice, and

(c)the ends of the initial moratorium period, the full moratorium period and the protected period that apply under section 95 as a result of the notice.

(3) If the land is included in the list in response to a community nomination, the authority must give written notice, to the person who made the nomination, of the matters mentioned in subsection (2)(a), (b) and (c).

(4) The authority must make arrangements for those matters to be publicised in the area where the land is situated.

12 Informing owner of request to be treated as bidder

(1) Subsection (2) applies if—

(a) after a local authority has received notice under section 95(2) in respect of land included in the authority's list of land suitable for community cultivation, and

(b)before the end of the interim moratorium period that applies under section 7 as a result of the notice,

the authority receives from a community interest group a written request (however expressed) for the group to be treated as a potential bidder in relation to the land.

(2)The authority must, as soon after receiving the request as is practicable, either pass on the request to the owner of the land or inform the owner of the details of the request.

(3)In this section "community interest group" means a person who is a community interest group for the purposes of section 95(3) as a result of regulations made under section 95(6) by the appropriate authority.

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13 Co-operation

If different parts of any land are in different local authority areas, the local authorities concerned must co-operate with each other in carrying out functions under this Chapter in relation to the land or any part of it.

11 Advice and assistance in relation to land of community value in England

(1)The Secretary of State may do anything that the Secretary of State considers appropriate for the purpose of giving advice or assistance—

(a)to anyone in relation to doing any of the following—

(i)taking steps under or for purposes of provision contained in, or made under, this Chapter so far as applying in relation to England, or

(ii)preparing to, or considering or deciding whether to, take steps within sub-paragraph (i), or

(b)to a community interest group in relation to doing any of the following—

(i)bidding for, or acquiring, land in England that is included in a local authority's list of land suitable for community cultivation,

(ii)preparing to, or considering or deciding whether or how to, bid for or acquire land within sub-paragraph (i), or

(iii)preparing to, or considering or deciding whether or how to, bring land within sub-paragraph (i) into effective use.

(2)The things that the Secretary of State may do under this section include, in particular—

(a)the provision of financial assistance to any body or other person;

(b)the making of arrangements with a body or other person, including arrangements for things that may be done by the Secretary of State under this section to be done by that body or other person.

(3) In this section—

(a)the reference to giving advice or assistance includes providing training or education,

(b) "community interest group" means a person who is a community interest group for the purposes of section 7(3), and

(c)the reference to the provision of financial assistance is to the provision of financial assistance by any means (including the making of a loan and the giving of a guarantee or indemnity).