Part 7 of the Bill (Common Good Land)

SOLAR notes the introduction of a legislative change to the 1973 Act to put appropriation on the same footing as disposal of common good land and buildings, and welcomes it.

However, the consultation on the Bill asked some interesting questions, and it is slightly disappointing that these issues have not been taken forward. To recap on these, with SOLAR's position on them:

— Do you agree that the need for court approval for disposals or changes of use of common good property, where this currently exists, should be removed? Yes.

— If removed, what should take the place of court approval?

It could now be argued that the Community Empowerment Act will require consultation, and that should be a sufficient check and balance without the need for any further process. It would then be down to individual local authorities to decide the appropriate decision-making forum for matters concerning their common good.

— Should there be a new legal definition of common good?

Such a suggestion would be helpful, if it could be suitably framed to reflect the current common law position. SOLAR does not consider such a task impossible and should provide greater clarity than lay persons having to research the common law. It would be the opposite, therefore, of a 'feast for lawyers.'

— What might any new definition of common good look like?

To reflect the current common law. The tests are in the main set out in the Ruthin Castle case, but could be worded more clearly.

— Do you have any other comments?

The legislation might also tackle a suitable definition on what is meant by "alienable/inalienable" common good, if still relevant with other proposed changes. Again, reference to the leading case law (Murray v Forfar Magistrates) would allow a modern wording which reflected the policy behind the existing common law position.

As suggested during the Community Empowerment Act, the legislation could usefully clarify rules relating to common good moveable property and when it can be disposed of. We appreciate, however, this is not the current Bill's main focus.