



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

Wednesday 19 May 2010

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**LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE**  
**15<sup>th</sup> Meeting 2010, Session 3**

**CONVENER**

\*Duncan McNeil (Greenock and Inverclyde) (Lab)

**DEPUTY CONVENER**

\*Alasdair Allan (Western Isles) (SNP)

**COMMITTEE MEMBERS**

\*Bob Doris (Glasgow) (SNP)

\*Patricia Ferguson (Glasgow Maryhill) (Lab)

\*David McLetchie (Edinburgh Pentlands) (Con)

\*Mary Mulligan (Linlithgow) (Lab)

\*Jim Tolson (Dunfermline West) (LD)

\*John Wilson (Central Scotland) (SNP)

**COMMITTEE SUBSTITUTES**

Brian Adam (Aberdeen North) (SNP)

Margaret Curran (Glasgow Baillieston) (Lab)

Alison McInnes (North East Scotland) (LD)

Margaret Mitchell (Central Scotland) (Con)

\*attended

**THE FOLLOWING GAVE EVIDENCE:**

Christine Gresswell (Scottish Government Public Service Reform Directorate)

David Henderson (Scottish Government Public Service Reform Directorate)

**CLERK TO THE COMMITTEE**

Susan Duffy

**LOCATION**

Committee Room 4



# Scottish Parliament

## Local Government and Communities Committee

*Wednesday 19 May 2010*

[The Convener opened the meeting at 10:00]

### Subordinate Legislation

#### Disposal of Land by Local Authorities (Scotland) Regulations 2010 (SSI 2010/160)

**The Convener (Duncan McNeil):** Good morning and welcome to the 15<sup>th</sup> meeting of the Local Government and Communities Committee in 2010. I remind members and the public to turn off all mobile phones and BlackBerrys.

Agenda item 1 is to take oral evidence on the Disposal of Land by Local Authorities (Scotland) Regulations 2010. When we considered the Scottish statutory instrument last week, we agreed to invite Scottish Government officials along to answer questions. We have also received a written response from the officials to the questions that we raised last week, which has been very helpful and is much appreciated.

I welcome the Scottish Government witnesses: David Henderson, head of local government finance in the local government division; Christine Gresswell, a policy officer in the local government division; and Colin Brown, a senior principal legal officer. David McLetchie has some further questions of clarification.

**David McLetchie (Edinburgh Pentlands) (Con):** Good morning, everyone. I thank the witnesses for coming along today and for the very helpful letter of 14 May. I want to explore a couple of points about the extent to which “best consideration” is, in practice, market tested before the 25 per cent discount is applied. To what extent will a local authority have received bids resulting from exposure of the property for sale on an open market? Should those bids then be assessed for “best consideration” before a decision is taken to sell the property to one of the bidders at a discounted rate?

**David Henderson (Scottish Government Public Service Reform Directorate):** I am not sure that I can answer that question comprehensively because we do not get involved in the detail of what local authorities do. The regulations stipulate that the valuation must be provided by a qualified valuer. We know that some councils do what Mr McLetchie suggests because we are aware of some circumstances in which

they have done that. However, I could not say that that happens as a matter of course. The matter is for local authorities. Whether local authorities obey the current regulations and the current statute is our main concern. That is where we get involved.

**David McLetchie:** For instance, if a local authority wanted to sell a piece of land for housing development to a favoured acquirer—for example, a housing association—as part of its affordable housing investment programme, would the local authority in practice ask the valuer to provide a “best consideration” value and then apply the discount to that value when the land is sold on to the favoured acquirer?

**David Henderson:** My colleague Christine Gresswell might be able to add to this, but my understanding is that councils are required to abide by best value, which takes into account price as well as the full range of other things under best value such as community need and what is appropriate. A council may sell land at less than the best price if there are other factors that balance up. A council will take all that into account in making its decision.

**David McLetchie:** With respect, the words are kind of sliding here. We start off with best price and then move to best consideration, which is broader than just price, and now we have best value. Is best value broader than best consideration, which is broader than best price?

**David Henderson:** It all fits in. The statute and guidance on best value set out all those things. I could read out what best value requires, and best consideration is part of that.

**Christine Gresswell (Scottish Government Public Service Reform Directorate):** A local authority can put the land on the open market. Having had a valuation from the valuer as to the worth of the land, when bids are received, the local authority will determine whether a bid that is less than the best consideration given by the valuer should be considered. The matter would depend on how many bids the local authority has received and whether those are above the price. It is up to the local authority to decide what it then considers is the best value in financial terms—

**David McLetchie:** The best consideration, not the best value.

**Christine Gresswell:** Yes, the best consideration.

**David McLetchie:** That is the point—it is a rather elastic concept. At first glance, a lay person might read the rules and ask, “What’s the best price we can get—how much money can we get—and will we knock up to 25 per cent off it?” That is the kind of lay way of looking at it. However, the baseline might be not the maximum amount of

money but a more nebulous concept, such as the best consideration or best value, to which a 25 per cent discount is then applied. The local authority is the planning authority so, in framing the best consideration, it will already have determined much of the framework around the development capacity and value of the site before it even exposes it for sale to a third party. Do you see what I mean? The baseline is not quite as clear-cut a market-level figure as the regulations would at first glance seem to suggest. That is the point that I am making.

**David Henderson:** I take your point. What we have tried to do in the regulations is in a sense reflect the current system and take account of current statute. However, regulation 3 refers to

“disposal of land for a consideration less than the best that can reasonably be obtained”.

A council will take a whole range of things into account—the regulations require that they do so—but they must also take account of other statute that sits behind the regulations.

**David McLetchie:** Exactly. To my mind, there is almost a double discount. There is a discount that starts with the nebulous concept of what is best consideration, which establishes the baseline, a large part of which the council can determine before we even get to first base—I refer to its indicators in relation to planning, for example. The second discount relates to what is in the regulations. In other words, there is potentially a two-tier discounting process. Is that correct?

**David Henderson:** Yes, except I would not refer to it as a discount. We are talking about councils’ discretion within the law.

**David McLetchie:** Indeed, but it is a discretion that, if exercised in the way that I suggest, would result in a significantly higher reduction in the amount of money received by the local authority.

**David Henderson:** That can be the case. There are examples of councils disposing of land for £1, or sometimes for nothing.

**David McLetchie:** Yes, but not under these rules, because £1 is unlikely to be 75 per cent of the best consideration is it?

**David Henderson:** No, but a market value of less than £10,000 would be below the threshold. The Local Government (Scotland) Act 1973 is the primary legislation and it stipulates a bottom level below which councils would not come to us and a range at the top end. Those are the two levels that are set out in the regulations.

**David McLetchie:** Thank you.

**The Convener:** There are no more questions. I thank the witnesses for their attendance.

Under agenda item 2, I seek members’ agreement that they do not wish to make any recommendation on the regulations. Is that agreed?

**Members indicated agreement.**

**The Convener:** We agreed at previous meetings to take items 3 and 4 in private.

10:09

*Meeting continued in private until 12:16.*

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