**Asset Transfer**

**under the**

**Community Empowerment (Scotland) Act 2015**

**Consultation on Draft Regulations**

**A summary guide**

**1. Introduction**

Having their own land or buildings can help communities be stronger. They can develop local services and activities and make their area a better place to live. The government wants to help more communities do this.

Local councils, the Scottish Government and other public authorities own or rent lots of land and buildings, like schools, hospitals, parks and forests. Sometimes the community has an idea for a better way of using something. The Community Empowerment Act gives community organisations a right to ask to take over control of the land or building. If the community organisation’s plan is better for local people, they will be allowed to buy, rent or have the use of it. This is called **asset transfer**.

**Consultation**

The law on asset transfer is not finished yet. The Scottish Government still needs to make detailed rules about how it will work in real life. We have asked people who have done asset transfer before how the law should work. Now we are asking everyone if they agree, or what they would do differently.

The rules will be made by Regulations. These use legal words and can be difficult to understand, but the detail is important. This summary is to help people know what is in the consultation paper and find the parts they are interested in.

You can read the full consultation and tell us your views at <https://consult.scotland.gov.uk/community-empowerment-unit/asset-transfer-procedures>

If your community group wants to have its own building or land there are people who can help you. There is a list of websites in Annex C of the consultation paper.

**2. How much to pay**

The Act does not say how much a community organisation should pay to buy or rent something through asset transfer. Sometimes they should pay the full price, so the public authority has money to do its job. Sometimes the public authority should let them pay less, because what they do will help the community. It is not always easy to decide when community organisations should be allowed to pay less, and how much less. The Scottish Government has asked a group of people to think about this and write guidance on it.

**3. Summary of Asset Transfer under the Act**

An asset transfer request has to be made by a **community transfer body** to a **relevant authority**. The community transfer body can make a request about any land or buildings which the relevant authority owns, or rents from someone else. They can ask to buy or rent the land or buildings or have other legal rights, for example to occupy or use the land.

The relevant authority must listen to what the community transfer body wants to do with the land or building. If their plan will help people more than other ways of using the land, they will be allowed to do it.

If the relevant authority does not agree to the request, the community transfer body can ask for the decision to be looked at again. Scottish Ministers have the final say.

**4. Relevant authorities**

Chapter 4 of the consultation paper lists “relevant authorities”. These are all the public authorities that asset transfer requests can be made to. It includes the Scottish Government, local councils, health boards and some other Scottish public bodies.

**5. Community Transfer Bodies**

Chapter 5 says what rules a community organisation has to have before it can make an asset transfer request. An organisation that meets these rules is called a community transfer body.

The organisation’s rules must say what **community** it speaks for. All people who are part of that community must be allowed to be members of the organisation. Most of the members of the organisation must be from that community and they must decide what the organisation does. Any money the organisation makes must be used to help that community.

A community can be any group of people who have something in common. They may live in the same area (“a geographic community”) or may enjoy doing the same thing, or have similar backgrounds (“a community of interest”).

If a community transfer body wants to buy land or a building through asset transfer, they must become a company, a Scottish Charitable Incorporated Organisation (SCIO) or a Community Benefit Society. These are different ways of setting up a group to deal with the responsibilities of owning land.

**6. Registers of land**

The Act says all relevant authorities must make a list of all the land and buildings they own or rent, and let everyone see it. This will help community transfer bodies know what they could make an asset transfer request for.

We think the list should just say where the land or building is and what it is, for example offices, a clinic or a park. Every authority must put their list on the internet, but they will not all have to look the same.

Regulations can be made to say that some types of land and buildings do not need to be on the list. We think relevant authorities should not have to put the following things on the list:

* roads
* the Glasgow Subway
* canals
* bus stations
* houses
* some large reservoirs

This is because

* community bodies are not very likely to want to take these things over
* it is easy to know who owns roads, canals, bus stations and the Subway
* information about rented houses and some reservoirs should not be made public.

**7. Information about land or buildings**

Community transfer bodies will need more information about the land or building, so they can decide if it is right for what they want to do.

Regulations can be made to say what information community transfer bodies could ask relevant authorities to provide. But anyone can already ask for information under the Freedom of Information (Scotland) Act 2002. We think community transfer bodies will be able to get all the information they need under Freedom of Information. So we don’t plan to make any regulations on this at the moment.

**8. Making and dealing with requests**

The Act says some things about how to make an asset transfer request, and what relevant authorities should do when they get one. Regulations need to be made to give more detail. Chapter 8 explains what is in the Act and what we think should be in the regulations.

**How to make a request**

When a community transfer body wants to make a request, it must say:

* what land or building it wants
* if it wants to buy or rent or have other rights in the land or building
* how much it wants to pay
* what it plans to do with the land or building
* how its plans will help the community.

We think the request should also include:

* the community transfer body’s name and address
* a copy of the community transfer body’s rules
* how the community transfer body will get money to carry out its plans
* whether other people agree with what the community transfer body plans to do.

The request must be made in writing. This includes email or any electronic form that the relevant authority can understand and save.

**Acknowledgement**

When a relevant authority gets a request, it needs to check the request is complete. If not, we think the relevant authority should write to the community transfer body to tell them what is missing.

If the request is complete, the relevant authority should send the community transfer body an acknowledgement. This should say when the request was received, when the relevant authority will make its decision, and how the community transfer body can appeal if necessary.

**Telling people about the request**

Other people may want to say what they think about the community transfer body’s plans. We think the relevant authority should tell people who own, rent or use the land or building about the request. They should also put all the papers on a website for people to see. People should have 4 weeks to tell the relevant authority what they think. The community transfer body should have a chance to reply as well.

**Decision notice**

The Act says what the relevant authority must think about to decide whether to agree to the asset transfer request or not. Then it must send a “decision notice” to the community transfer body. This says what the relevant authority has decided, and why.

We think relevant authorities should have 6 months to make their decision.

**9. After agreement**

Chapter 9 explains what happens if the relevant authority agrees to an asset transfer request.

The relevant authority sends the decision notice. This includes the terms and conditions the relevant authority wants to include in the contract. Then the community transfer body must make an offer for the land or buildings. After the offer, the two sides work together to agree the final contract for the transfer.

**10. Reviews and appeals**

Reviews and appeals are ways of asking someone to look again at a decision. A community transfer body can ask for a review or appeal if:

* the relevant authority does not agree to their asset transfer request
* the relevant authority does not make a decision by the time it should have
* the community transfer body does not agree with the terms and conditions in the decision notice.

There are different types of review and appeal, depending which relevant authority the request was made to.

If the request was made to a local council, the community transfer body can ask the council to review their decision. This review must be done by elected Councillors. If the community transfer body is still not happy after the review, they can appeal to the Scottish Ministers.

If the request was made to the Scottish Ministers, the community transfer body can ask Ministers to review their decision.

If the request was made to any other relevant authority, the community transfer body can appeal to the Scottish Ministers.

Chapter 10 includes 2 sets of draft regulations about how we think Reviews and Appeals should work. They are the same in many ways. The regulations include a lot of detail to make sure they are fair and everyone can have their say. These are some of the key points:

* A community transfer body should have 4 weeks to ask for a review or appeal.
* The community transfer body must say why it thinks the decision should be changed.
* In an appeal, the relevant authority should have 3 weeks to send the Scottish Ministers their views on what the community transfer body has said.
* Other people who commented on the asset transfer request should be asked what they think about the review or appeal. They should have 2 weeks to send in their views.
* All the papers about the review or appeal should be put on a website so everyone can see them.
* We think the Scottish Ministers should appoint 3 people to review decisions made by Ministers. At least 2 of them must not work for the Scottish Government.
* The council or the Scottish Ministers can ask anyone for more information to help them make a decision. They can ask for the information in writing or hold a meeting so people can tell them their views. They can also do other things, such as visiting the land or building the request is about.

At the end of a review or appeal, the relevant authority has to send the community transfer body a new decision notice, saying what the review or appeal decided.

**11. No contract agreed**

The relevant authority and the community transfer body must agree a contract within 6 months after the community transfer body makes its offer. If they don’t, the process ends and the community transfer body does not get the land or building.

The relevant authority and the community transfer body can agree to allow more time to finish the contract. Or the community transfer can ask the Scottish Ministers to tell the relevant authority to allow more time.

If the contract is still not agreed in the longer time, the community transfer body can appeal to the Scottish Ministers. The Scottish Ministers can write a contract which the community transfer body and relevant authority have to agree to. In the end, the Scottish Ministers can make the relevant authority agree to the contract.

Chapter 11 includes draft regulations about how the community transfer body can ask the Scottish Ministers to do these things.

To ask for more time to finish the contract, the community transfer body should write to the Scottish Ministers explaining why they need more time. We think they should do this between 6 weeks and 4 weeks before the date the contract has to be agreed. The relevant authority should have 2 weeks to send its views to the Scottish Ministers.

For an appeal to the Scottish Ministers to write a final contract, we think the community transfer body should appeal within 14 days of the date when the contract should have been agreed. The appeal process is like the others in chapter 10, but we don’t think the details of the contract should be public. The papers should not be put on the website, and nobody else should be invited to give views.

If the Scottish Ministers tell the relevant authority and the community transfer body to agree a contract, they must set a date for it to be agreed. If they don’t, the community transfer body can ask Ministers to make the relevant authority agree. We think they should do this within 4 weeks of the date Ministers set. The relevant authority should have 2 weeks to send its views to the Scottish Ministers.

**12. Annual Reports**

Each relevant authority must write an annual report about asset transfer. Chapter 12 explains what has to be in that report.