

# **Asset Transfer**

**under the  
Community Empowerment (Scotland) Act 2015**

## **Guidance for Community Transfer Bodies**

**Draft Final version**

**November 2016**

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## 1. Introduction

1.1. The Scottish Government is determined to see a Scotland where community-led action is celebrated and community ownership is desirable and viable.

1.2. Ownership or control of land and buildings is a powerful tool for communities to drive change and achieve their own goals. In the first place it provides a base for activities and services that might not otherwise be accessible to members of a particular community, and can provide jobs, training and bring income to the local area. More widely, it can provide stability and sustainability for the community organisation, allowing them to develop new initiatives and support other developing groups, and it can create a stronger sense of community identity, cohesion and involvement.

1.3. Many communities in Scotland have already taken on ownership of assets, from public sector or private sellers. A baseline study carried out by the Community Ownership Support Service (COSS) in 2012 identified 2740 community assets owned by community bodies, and there has been increased interest in recent years. Many local authorities, and some public bodies, have operated successful asset transfer schemes, mainly in relation to property they have identified for disposal. There is a thriving network of community landowners, both rural and urban, as well as a range of lease, management and partnership arrangements, and plenty of examples to show the benefits communities can deliver, given the right opportunity.

1.4. The Community Empowerment (Scotland) Act 2015 moves forward from this voluntary approach by the public sector, and introduces a right for community bodies to make requests to all local authorities, Scottish Ministers and a wide-ranging list of public bodies, for any land or buildings they feel they could make better use of. Community bodies can request ownership, lease or other rights, as they wish. The Act requires those public authorities to assess requests transparently against a specified list of criteria, and to agree the request unless there are reasonable grounds for refusal. This shifts the balance of power clearly towards the community body, and ensures that asset transfer is available throughout Scotland.

1.5. Despite the introduction of a statutory scheme, much of the existing best practice will still apply. COSS, funded by the Scottish Government, has developed advice for both community bodies and public sector authorities, based on experience of supporting organisations through the existing, voluntary schemes. A range of other organisations can also provide support to community bodies in developing their proposals, depending on their location and the type of project they have in mind. Links to some helpful websites are provided in Annex C.

## 2. Status of this guidance

2.1. Part 5 of the Community Empowerment (Scotland) Act 2015 sets out the key rights and duties and provides a framework for the asset transfer process. It gives the Scottish Ministers powers to make regulations to fill in more detail of the procedures to be followed. The following regulations have been laid in the Scottish Parliament for scrutiny:

- The Asset Transfer Request (Procedure) (Scotland) Regulations 2016
- The Asset Transfer Request (Appeals) (Scotland) Regulations 2016
- The Asset Transfer Request (Review Procedure) (Scotland) Regulations 2016
- The Asset Transfer Request (Appeal Where No Contract Concluded) (Scotland) Regulations 2016
- The Community Empowerment (Registers of Land) (Scotland) Regulations 2016

2.2. The text of the Act is available at <http://www.legislation.gov.uk/asp/2015/6/part/5> . The text of the Regulations will also be available at [www.legislation.gov.uk](http://www.legislation.gov.uk) , or through [www.scottish.parliament.uk](http://www.scottish.parliament.uk) .

2.3. Subject to the agreement of the Parliament, Part 5 of the Act and the Regulations will come into force on **23 January 2017**.

2.4. This guidance has been developed in discussion with a steering group and short life working group of stakeholders, listed in Annexes A and B, and takes account of comments made in response to the consultation on draft regulations conducted from 17 March to 20 June 2016. Discussions with stakeholders at many meetings and events during development of the Bill and since the Act was passed have also informed the guidance, and we are grateful to everyone for their help.

2.5. Separate guidance is provided for relevant authorities, and you may sometimes find it helpful to refer to that as well. Relevant authorities are required, under section 96 of the Act, to have regard to guidance issued by the Scottish Ministers in carrying out their functions relating to asset transfer. Both versions of the guidance cover the whole process, but focus on the points where each party has to take action – for example, there is more guidance for community transfer bodies on completing the request form, and more for relevant authorities on the acknowledgement and notices they have to issue following receipt of a request.

2.6. This guidance is published as a “draft final” version. The statutory requirements and procedures are now fixed (subject to approval by the Scottish Parliament), and the recommended approach reflects best practice as discussed with both public sector and community sector stakeholders with experience of asset

transfer. However, there is still flexibility to adjust the wording to make the guidance clearer. Please send any comments, questions and suggestions to [assettransferguidance@gov.scot](mailto:assettransferguidance@gov.scot) . Final guidance will be published when the legislation comes into force.

2.7. More information about the development of the Act and its implementation can be found on the Scottish Government website at <http://www.gov.scot/Topics/People/engage/CommEmpowerBill>

### **3. Getting started**

3.1. This guidance deals only with the procedures for asset transfer under the Community Empowerment Act, but this is not the only way for communities to acquire land or buildings. Highlands and Islands Enterprise has a useful guide on “Routes to Ownership” <http://www.hie.co.uk/community-support/community-assets/routes-to-ownership.html>.

3.2. There are various organisations that can support community groups to develop their ideas, decide whether ownership or control of land is right for them, and help them through the process. A list of useful websites is provided at Annex C.

3.3. To get your project started you need to consider the following things:

- What are your objectives - what is it that you want to improve for your community?
- Who are your community? Do you have support within your community for your ideas?
- Do you need land or buildings to deliver those objectives?
- Is there suitable land that might be available, and who does it belong to?
- Do you want to purchase or lease the land or building, or just have rights to manage, use or occupy it?
- If you want to use asset transfer, or community right to buy, is your organisation eligible?

3.4. You should discuss your ideas with the owner of the land as soon as possible. Hopefully you will be able to work together to come up with a proposal that benefits both sides. There have been many successful voluntary asset transfer schemes already. However, remember that the Community Empowerment Act puts more power in the hands of the community body. If you cannot come to agreement with the relevant authority, a community transfer body has the right to make an asset transfer request for the land and the rights that it wants, and to receive a decision made in line with the legislation, which is subject to review or appeal.

#### **Assets and services**

3.5. Sometimes a community transfer body may wish to take over a building or land and the services which are delivered by the relevant authority from those premises. This could be addressed by an asset transfer request, or a participation request in relation to improving the outcome of the services. We do not recommend using both types of request together.

- If you want to run a service which is tied to the particular premises, and do not want to use the premises for any other purpose, this should be addressed through a participation request. A lease or other arrangement in relation to the premises can be negotiated if the transfer of the service is agreed.
- If you want to take control of the asset in order to develop the service on your own terms or use the property for other purposes, this should normally be addressed through an asset transfer request.
- An asset transfer request can be accompanied by negotiations for the public authority to contract with the community body to continue to provide a service, as a source of income.

## Some terms used in this paper

**Regulations** are a type of “secondary legislation”. An Act (“primary legislation”), which has been agreed by the Scottish Parliament, may say that the Scottish Ministers may make regulations about certain things. Those regulations also have to be considered by the Parliament before they can come into effect. Regulations are used to set out detail and technical issues, because they can be updated more quickly than an Act if changes are needed. They are law and everyone has to comply with them.

**Orders** are another type of secondary legislation, very similar to regulations. The Scottish Ministers have powers under the Community Empowerment Act to make orders to make changes to the list of relevant authorities and to designate organisations as community transfer bodies.

**Guidance** gives advice about how to do what the Act and regulations require. Guidance can give examples and suggestions about best practice and can be flexible to allow for different circumstances. It can also provide links to other helpful information and organisations, and can be updated at any time.

Some parts of the Act allow Ministers to give **Directions**. A Direction is a piece of legislation that tells certain people or organisations that they must do or not do something. It only applies to the person/people or organisation(s) it is addressed to.

### Numbering of legislation

- Acts are divided into sections. These can be divided into subsections, eg “section 81(2)”, and paragraphs, eg “section 82(6)(a)”.
- Each piece within a set of regulations is a regulation, for example “regulation 2”, and these are divided into paragraphs, eg “regulation 5(4)”.

An **asset** is something that has value to someone. In relation to “asset transfer” under the Community Empowerment Act it means land and any buildings or other structures on the land, like bridges, walls or piers. It does not include vehicles or equipment.

“**Asset transfer**” is a process to allow a community organisation to take over publicly-owned land or buildings, in a way that recognises the public benefits that the community use will bring. That may be a discounted price, a grant or other support, or simply the agreement to transfer something the public authority did not plan to sell. If the land is put up for sale or lease and a community body offers the best (or the only) bid, that is just a commercial transaction.

#### **4. Summary of asset transfer under the Community Empowerment Act**

4.1. Part 5 of the Community Empowerment (Scotland) Act 2015 allows a community transfer body to make an asset transfer request to a relevant authority. Chapter 5 of this guidance explains the requirements for being a community transfer body. A list of relevant authorities is in chapter 6.

4.2. A request can be made in relation to any land which is owned or leased by the relevant authority. (In law, “land” includes buildings and any other structure on the land, such as a bridge, wall or pier.) Chapter 7 explains the information that relevant authorities have to publish or provide on request about their property.

4.3. The community transfer body can ask to buy or lease the land, or to have other rights, for example to occupy or use the land for a particular purpose.

4.4. Chapter 8 sets out the information that a community transfer body must include in its request. This includes the reason for making the request, the benefits of the proposals, and the price they are prepared to pay. Chapter 11 gives guidance on valuation of the property and deciding on a price.

4.5. There is a process for the relevant authority to acknowledge the request, notify others who may be interested, and allow them to make representations. This is explained in chapter 9.

4.6. Where an asset transfer request has been considered and refused (including any review or appeal), the relevant authority does not have to accept another similar request for the same property if it is made within two years of the first. The relevant authority can accept a repeat request if it wishes, for example if it is from a genuinely different group or the proposal has been improved. More guidance on this point is provided in chapter 9.

4.7. Once an asset transfer request has been made, the relevant authority is not allowed to transfer the property to anyone else until that request process has been completed, including any appeals. This does not apply if the property was advertised for sale, or negotiations had started to transfer it to someone else, before the asset transfer request was made. This is explained in more detail in chapter 9.

4.8. In deciding whether to agree to or refuse the request, the relevant authority must consider the following things:

- the reasons for the request,
- any other information provided in support of the request
- whether agreeing to the request would be likely to promote or improve
  - economic development
  - regeneration

- public health
- social wellbeing
- environmental wellbeing, or
- whether agreeing to the request would be likely to reduce socio-economic inequalities
- any other benefits that might arise if the request were agreed to
- how the request relates to the relevant authority’s duties under Equalities legislation
- any obligations that may prevent, restrict or otherwise affect the authority’s ability to agree to the request

4.9. The relevant authority must compare the benefits of the proposal in the request to the benefits of any alternative proposals, whether those come from the authority itself or anyone else, and consider how the potential benefits relate to the functions and purposes of the authority, and any other matters they consider relevant. More detail is provided in chapter 10.

4.10. Chapters 11 to 13 provide some advice on how to obtain a valuation of the property, how relevant authorities might assess non-financial benefits, and on conditions to protect any discount given, if required.

4.11. When the relevant authority has made its decision, it must issue a “decision notice” setting out its reasons for agreeing or refusing. Details of what must be included in a decision notice are given in chapter 15.

4.12. If the relevant authority agrees to the request, there is a process to negotiate the final contract, which is explained in chapter 16. This can allow time for the community body to confirm funding before the final transfer takes place.

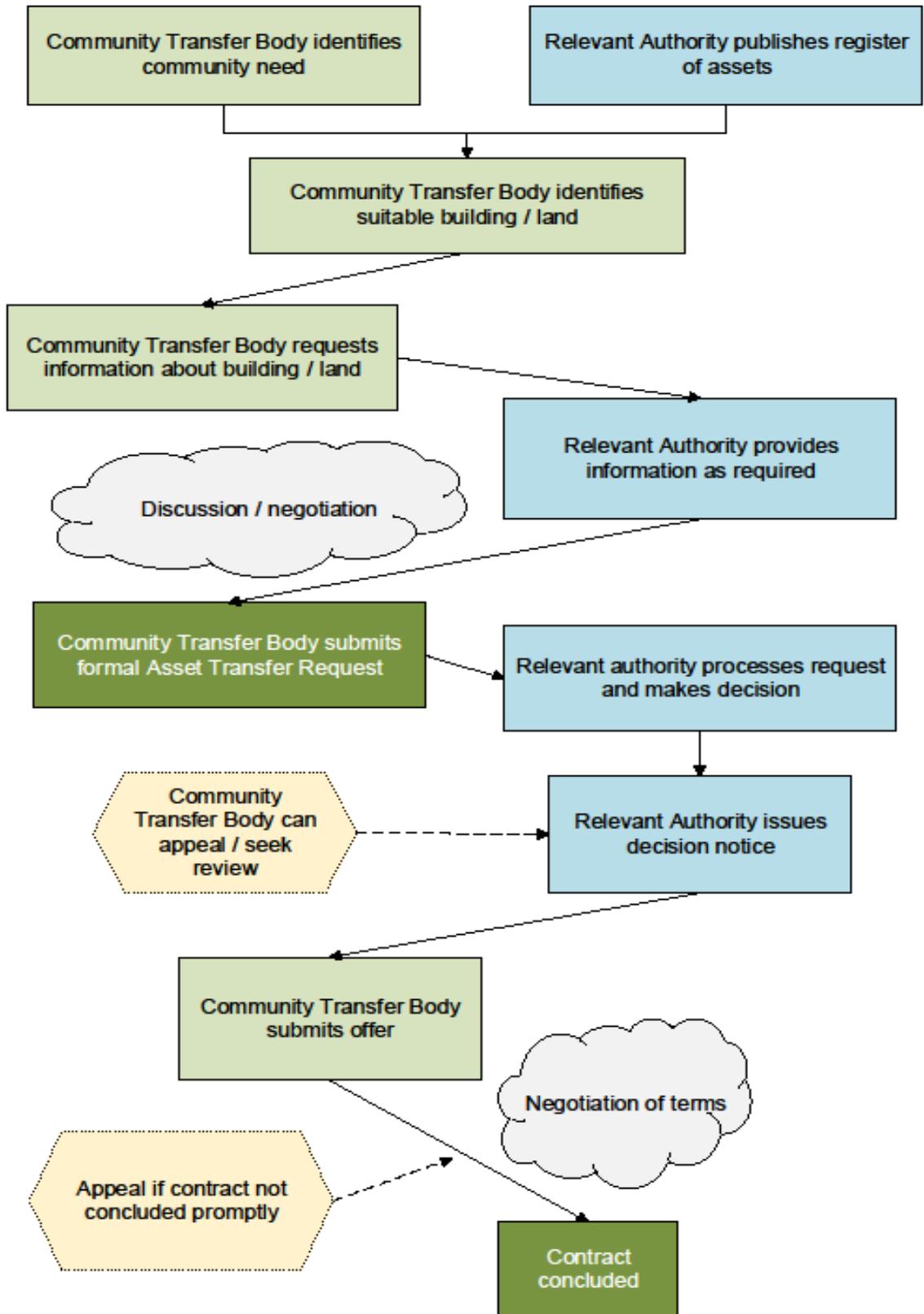
4.13. There are various options for review or appeal if:

- the request is refused,
- no decision is given within the time allowed, or
- the community transfer body does not agree with conditions imposed by the relevant authority.

Details of the review and appeal processes are set out in chapters 17 to 21

4.14. At the end of each financial year, each relevant authority must publish a report on the number of requests it has received and the number which have been agreed, refused, appealed etc. It must also report on action it has taken to promote the use of asset transfer requests and to support community transfer bodies to make requests.

### Summary of Asset Transfer process



## 5. Community Transfer Bodies

### Different types of body

5.1. To make an asset transfer request, your organisation needs to be a “community transfer body”. This is defined in section 77 of the Act. It can be either a **community controlled body** (defined in section 19) or a body **designated by the Scottish Ministers**.

5.2. A community controlled body does not have to be incorporated, but it does have to have a written constitution.

5.3. A constitution is a document which sets out what a group is for and how it is organised. It lets everyone know who can join the group, what the rules are and how decisions will be made. You will usually need to have a constitution if you want to open a bank account or apply for grants.

5.4. If a group is incorporated it is legally a single body rather than just a group of individuals. This means the body can enter into contracts or leases itself, which continue even if the membership changes. Being incorporated may protect the members from liabilities, otherwise they could be required to pay for any debts or damages incurred by the body.

5.5. If you want to buy a property through asset transfer you must be incorporated as a company, a SCIO (Scottish Charitable Incorporated Organisation) or a BenCom (Community Benefit Company). This is set out in section 80. Alternatively you may be designated by the Scottish Ministers – see paragraph 5.14.

5.6. If your request is for lease or other rights, the property remains in the ownership of the relevant authority, and they will want to be satisfied that your structure and governance is appropriate for the responsibilities you are seeking to take on. They may require you to be incorporated. Funders may also have particular requirements for their grants.

5.7. SCVO has helpful advice on its website <http://www.scvo.org.uk/setting-up-a-charity/> to help you decide what sort of organisation you want to be, including whether you should become a charity.

5.8. Whatever type of organisation you choose for your group, to qualify as a community controlled body it must have certain provisions in its constitution or other governing documents (Articles of Association for a company; registered rules for a BenCom). Model documents will be provided by the Scottish Government, which will cover all the requirements. If you are already an established group, you will need to check your existing constitution or governing documents to see if they include all the required points.

5.9. Bodies eligible for community rights to buy are also eligible for asset transfer – see paragraph 5.18.

### **Requirements for a community controlled body**

5.10. To qualify as a community controlled body, your constitution, Articles of Association or registered rules must include the following things:

(a) A definition of the community to which the body relates.

Your group may represent the community in a particular area or people who have a common interest or characteristic. (See below for more on “communities of interest”). You should make sure you define the community clearly so you can know whether a person is a member of your community or not – this is important for the membership requirements.

(b) provision that membership of the body is open to any member of that community

Membership of your body must be open to anyone who is a member of the community you have defined. There must not be any additional requirements.

Some people have queried whether a body is open to all if it charges membership fees. The legislation does not prevent charging fees to cover the costs of your activities, but generally they should be set at a level that is affordable for members of your community. Membership fees are more common for communities of interest based around a common activity, for example for a sports club to cover insurance, hall hire and registration with the sport’s governing body. Alternatively these costs could be covered by fundraising.

(c) provision that the majority of the members of the body is to consist of members of that community

It can be helpful to allow for members of your body who are not members of the community, to bring in additional skills and provide a wider base of support, for example from people who have moved away from the area or organisations who support the community body’s purposes. You may also want to have Junior Members, to help younger people get involved. However, the governing documents must require that those who are members of the community must always be in the majority. The model documents manage this by having Ordinary Members, who are members of the community, and Associate Members who are not, and requiring that there must always be more Ordinary Members than others. If the number of Ordinary Members falls below the number of other members, the Board should not be able to take any action except to seek to recruit more Ordinary Members.

If you want to buy property through asset transfer, you must also have provision that the body must have at least 20 members. This is to make sure there are enough people to take on the responsibilities of ownership and keep the body going; very small organisations can have difficulties if one or two people leave. If your community is very small and getting 20 members would be difficult, you can apply to the Scottish Ministers for designation as a community transfer body.

(d) provision that the members of the body who consist of members of that community have control of the body

Having “control of the body” means that the members of the community are in charge of the decisions made by the body. Usually only Ordinary Members can vote at General Meetings, a majority of the Board must be made up of Ordinary Members and the Chair and Vice-Chair must be Ordinary Members

(e) a statement of the body's aims and purposes, including the promotion of a benefit for that community

Your aims and purposes may include activity that goes wider than your own community, such as raising money for charity, promoting your interest to other people or sharing your experience with communities in other areas. But at least one of the purposes of the body must clearly be for the benefit of the community you represent.

(f) provision that any surplus funds or assets of the body are to be applied for the benefit of that community.

Any money or property the body has, after covering its running costs, must be used to benefit your community as a whole. Bodies incorporated as co-operatives, which distribute their profits or dividends to members of the body, are not eligible to make requests for ownership.

If you are setting up a company and want to buy property through asset transfer, your Articles of Association must include arrangements for what happens to the body's assets if it is wound up, to make sure they are passed on to another community or charitable organisation. These requirements apply after settling any liabilities or contractual agreements, which would include any arrangements to pay back part of a grant or other support. The property must be transferred:

- (i) to another community transfer body,
- (ii) to a charity,
- (iii) to such community body (within the meaning of section 34 of the Land Reform (Scotland) Act 2003) as may be approved by the Scottish Ministers,

- (iv) to such crofting community body (within the meaning of section 71 of that Act) as may be so approved, or
- (v) if no such community body or crofting community body is so approved, to the Scottish Ministers or to such charity as the Scottish Ministers may direct.

If your organisation is a SCIO or BenCom, the standard requirements for those types of body include arrangements to make sure property is transferred to another similar body.

### **Communities of interest**

5.11. The legislation on asset transfer does not define what a “community” can be. It simply requires a community transfer body to define the community it relates to, and ensure the body is open to and controlled by members of that community, and uses its assets to benefit that community. Whether an organisation is eligible to make an asset transfer request depends on their constitution meeting the requirements, not on what community it represents.

5.12. A community can be any group of people who feel they have something in common. In many cases, it is that they live in the same area. However, it can also be that they share an interest or characteristic. Communities of interest could include faith groups, ethnic or cultural groups, people affected by a particular illness or disability, sports clubs, conservation groups, clan and heritage associations, etc. They may be very specialised or local, ranging up to national or international groups with thousands of members.

5.13. An asset transfer request will be judged on the benefits it will deliver, not on the community it represents. However, if your community is a community of interest you should consider engaging with local people in the area around the property, and think about how your proposals may affect them. Relevant authorities are likely to take into account the wider benefits or impact on other groups and any potential for conflict in assessing all requests.

### **Designation**

5.14. The Scottish Ministers can designate a body to be a community transfer body. They will do this by making an order. Ministers can either designate an individual body, or could designate a class of bodies, if they decided in future that all organisations of a particular type should be able to make asset transfer requests. A designated community transfer body is only entitled to make a request for ownership, if the designation order states that it is allowed to do that.

5.15. The criteria for community controlled bodies are there to make sure the organisation truly represents the members of its community and is open and

inclusive. It must also be clear that the organisation uses its assets and resources for the benefit of that community as a whole and not, for example, for the private benefit of those individuals who are members of the organisation. Ministers will normally only designate a body (or a class of bodies) if it works in a way similar to a community-controlled body, and there is a good reason why it is not able to meet the requirements in the Act. Examples could include a charitable trust which cannot change who is on its Board, or an organisation representing a small community which could not reasonably get 20 members.

5.16. Due to the responsibilities involved in dealing with any property, it is unlikely that unconstituted organisations will be accepted for designation. Organisations seeking to be designated to buy property should be incorporated.

5.17. Ministers may consider designating a class of bodies as community transfer bodies if the rules for being that type of body are similar to, the requirements for a community controlled body. Examples could include members of an umbrella organisation, or bodies which are regulated under particular legislation. This could be used to avoid the need for other legislation, or the rules of the umbrella organisation, to be amended to match the asset transfer requirements. To propose a class of bodies to be designated, a representative of those bodies should contact the Scottish Government Asset Transfer Team to discuss the issues.

### **Bodies eligible for Community Rights to Buy**

5.18. If your organisation meets the requirements for the community right to buy or the crofting community right to buy under the Land Reform (Scotland) Act 2003, you will also be eligible to make an asset transfer request. The Scottish Ministers have made an order designating such bodies as community transfer bodies which can make asset transfer requests, including for transfer of ownership. Your constitution, articles of association or registered rules will need to meet the requirements set out in:

- subsection (1), (1A) or (1B) of section 34 of the 2003 Act (community right to buy), or
- section 71(a) to (h) of the 2003 Act (crofting community right to buy),

5.19. Further guidance and model governing documents are available at <http://www.gov.scot/Topics/farmingrural/Rural/rural-land/right-to-buy>.

5.20. If your organisation wants to use this designation to make an asset transfer request, you do **not** require a confirmation letter from the Scottish Ministers. (This letter is needed to confirm that the main purpose of the community body is consistent with sustainable development, before registering an interest in land for the purposes of community right to buy.) It is up to the relevant authority to which the request is made to decide whether a community organisation is eligible to make an asset

transfer request, either as a community controlled body or as a designated body. However, you should be aware that, if you apply to register an interest in land under the community rights to buy in future, the Scottish Ministers will make their own assessment of whether your community body meets the requirements. They will not rely on any judgement made previously by another relevant authority.

5.21. We expect that bodies eligible for the right to buy abandoned, neglected or detrimental land, or the right to buy land for sustainable development, will be designated when those parts of the legislation come into force.

### **Applying for individual designation**

To apply to be designated as a community transfer body, please write to:

[To be confirmed – you cannot apply for designation until the legislation is in force]

Your letter must include the following:

- Organisation name and address
- Company, charity or other registration number, if applicable
- Contact name, role within the organisation and contact details.
- An email address is preferred. It is also helpful to have a daytime telephone number, in case we need to clarify any points in your application.
- A copy of the organisation's constitution, trust deed or other governing documents.
- Details of which of the criteria for a community-controlled body your organisation does not meet, and an explanation of why it is not possible to change the governing documents to meet those criteria.
- If the issue is with the number of members, please explain how the community you represent is defined and provide the total number of people in that community.
- A description of how the organisation seeks to work in a community-controlled way despite the differences in its constitution. For example, how the views of members or the wider community are taken into account, even if they are not able to have a formal role in decision-making.

If you are already in discussion with a relevant authority about a possible asset transfer request, please include a brief description of the situation, and details of your contact at the relevant authority.

## **6. Relevant Authorities – who can an asset transfer request be made to?**

6.1. Asset transfer requests can be made to any “relevant authority”. Relevant authorities are listed in schedule 3 to the Act. They are:

- Local authorities
- Scottish Ministers (including agencies such as Forest Enterprise Scotland and Transport Scotland)
- Crofting Commission
- Further Education colleges which are “incorporated colleges”
- Health Boards, both regional and Special Health Boards
- Highlands and Islands Enterprise
- National Park Authorities (Cairngorms and Loch Lomond and Trossachs)
- Regional Transport Partnerships
- Scottish Canals
- Scottish Courts and Tribunals Service
- Scottish Enterprise
- Scottish Environment Protection Agency
- Scottish Fire and Rescue Service
- Scottish Natural Heritage
- Scottish Police Authority (who own all land and buildings used by Police Scotland)
- Scottish Water

6.2. Contact details for all relevant authorities will be provided on the Scottish Government website.

6.3. Section 78 of the Act says that the Scottish Ministers can add new relevant authorities or can remove relevant authorities or amend the list, for example if an organisation changes its name. Organisations which are not already on the list in Schedule 3 can only be designated as a relevant authority if they are:

- a part of the Scottish Administration
- a Scottish public authority with mixed functions or no reserved functions, or
- a publicly-owned company – this means any corporate body which is wholly owned by one or more relevant authorities already on the list.

6.4. This covers most public bodies and officers who deal with matters which are devolved to the Scottish Parliament.

6.5. An order has been laid for the Scottish Parliament's approval to designate Historic Environment Scotland as a relevant authority.

6.6. UK Government departments and agencies cannot be listed as relevant authorities, nor can private or voluntary sector organisations. For example, people have asked whether the Ministry of Defence, Network Rail or the National Trust for Scotland could be included. The Act does not allow any of these to be listed as relevant authorities.

## **7. Finding suitable assets**

7.1. In the past, asset transfer has usually only been available for land or buildings which a public authority has decided to dispose of, and has decided is suitable for community use. The Act puts more power in the hands of communities by allowing you to request whatever property you believe will be most suitable to deliver your objectives, showing how your proposals will provide benefits for the community.

7.2. You should start by thinking about what you want your project to achieve – for example, to help young people gain new skills through training, create greater community cohesion by providing a place for people to meet or hold events, or improve health and wellbeing by providing access to the natural environment.. Then you can consider whether you need an asset to deliver those aims, whether ownership or lease or other rights are suitable for you, and look for an appropriate property. This is highlighted in advice from the Community Ownership Support Service ([www.dtascommunityownership.org.uk](http://www.dtascommunityownership.org.uk) ). Community projects which focus on “saving” a building threatened with closure or demolition often run into difficulties later if they have not fully thought through what they will do with it and the costs involved.

7.3. When public authorities are changing the use of their buildings, or disposing of vacant property, they are encouraged to engage with local communities about their future use. Some relevant authorities may keep a register of organisations which are looking for property, so they can contact you if anything suitable becomes available or if they are considering the provision of new facilities.

### **Register of land**

7.4. To help community bodies to know what might be available through asset transfer, section 94 of the Act requires each relevant authority to establish, maintain and make available a register of land which it owns or leases, “to the best of its knowledge and belief”.

7.5. Public sector bodies should have asset management systems as part of their financial management duties. However, it is recognised that the ownership and boundaries of land are sometimes unclear, especially where records are old and land has changed hands by statutory powers or reorganisation of public bodies, so they are only required to publish the information they currently have. The Scottish Government has committed to improving the accuracy of information about land ownership, and is seeking to have all public sector land included on the Land Register by 2019. The process of undertaking voluntary registration will, over time, also improve the accuracy of information held by public bodies and published in their registers of land. However, the two processes are not formally linked.

7.6. The Act requires that the register must be maintained. Some registers may be updated automatically from the authority's internal systems. If not, they should be reviewed at least every three months, and the date of the last update should be shown on the register.

### **Land which need not be included in the register**

7.7. The Act allows the Scottish Ministers to make regulations specifying types of land that relevant authorities need not include in their registers. Following public consultation and discussion with various relevant authorities, a number of types of land have been specified in the Community Empowerment (Registers of Land) (Scotland) Regulations 2016.

7.8. Please note that the register of land to be produced under section 94 does not determine what may be requested by a community transfer body. You may make an asset transfer request for any land owned or leased by a relevant authority, including land which is not included in the register.

7.9. The following types of land need not be included in relevant authorities' registers:

- (a) **Roads.** Including all roads would make registers much larger for no purpose, as community bodies are unlikely to want to take over public roads. If you do, you should approach the local authority in most cases, or the body which owns the land the road (or footpath) runs through.
- (b) **Underground railways,** together with stations, entrances and other land essential to the operation of the railway. This applies only to Strathclyde Partnership for Transport (SPT), in relation to the Glasgow Subway (Network Rail, as a UK body, is not a relevant authority). It would not be practically possible for a community transfer body to take over individual parts of the Subway, since it operates as a whole. You can contact SPT directly if you are interested in using land they own in or around Subway stations.
- (c) **Canals.** Scottish Canals owns and operates the five main canals in Scotland. As with the Subway, it would not be possible for a community transfer body to take over a section of a canal, as the whole network operates together. Scottish Canals will need to list the other land and buildings it owns which are not directly connected with the operation of the canals.
- (d) **Bus stations.** Bus stations may be operated by local authorities or Regional Transport Partnerships. They need not be included in registers of land, along with roads, railways and canals.

- (e) **Houses, hostels and lodging-houses.** As with roads, including all houses would make registers much larger and more difficult to manage and search. There are also concerns about the privacy of tenants and security for accommodation for vulnerable people. Community bodies do not often want to take over houses that are occupied, and special arrangements would apply if you wanted to transfer social housing to a new landlord.

The exclusion for houses does not apply if they are surplus to the requirements of the relevant authority, which will usually mean they are empty and available for sale. In areas where there is a shortage of affordable housing, particularly in small rural communities, relevant authorities are encouraged to engage with any local community bodies before putting the house on the market.

Hostels and lodging-houses operated on a commercial basis, for example as tourist accommodation, should be on the register.

- (f) **Land used for the supply of drinking water and disposal of waste water, and certain reservoirs.** The location of these facilities is not published in the interests of national security.
- (g) **Police radio masts and sites used for covert policing.** The location of these facilities is not published in the interests of national security and the prevention and detection of crime.
- (h) **Souvenir plots.** These are areas of land that are of “inconsiderable size and no practical utility” and have never been registered, as described in section 22 of the Land Registration (Scotland) Act 2012. An asset transfer request can still be made for such small areas – for example, some groups may be interested in them for community growing. The most likely owner to approach is the local authority, for road verges, or the owner of neighbouring property.
- (i) **Mineral rights** owned or leased separately from the land to which they relate. Mineral rights are sometimes reserved to the previous owner when the land itself is sold. The ownership and exercise of such rights is likely to be complex and would need significant investigation if a community body was interested in them.

7.10. Some relevant authorities may include land of the types specified in the regulations in their registers, but they are not required to do so.

### **Information about each property**

7.11. You can expect the register to include sufficient information to identify the property and its location. This will normally provide a grid reference, the street address and postcode if there is one, any name the land or building is known by and may have a “Unique Property Reference Number” (these enable properties to be matched in different data sets). There will also usually be a basic description of the current use such as “offices”, “clinic”, “depot”, “park”.

7.12. Where a relevant authority owns an area of land with several buildings on it, such as a hospital, college campus, business park or nature reserve, it is not required to identify all the individual buildings separately.

7.13. Some authorities may include additional information on their register of land such as the status of each property, its size and any known restrictions on their disposal or use, but others may only provide this in response to enquiries.

### **Publishing the register**

7.14. There is no set format in which the register must be made available, although it must be online. It will depend on how the information is currently held by the relevant authority, the number of properties to be listed and how frequently changes are made. Some may be map-based, searchable online systems, others (where there are less than 100 properties) may just be a text-based document.

7.15. There are no plans at present to provide a single, central register for all relevant authorities, although some authorities in the same area or of similar types may choose to link their registers together. There are a number of projects already under way to improve public access to information about land, and these registers may in time be integrated with those systems. There will be an asset transfer page on the Scottish Government website, [www.gov.scot](http://www.gov.scot), with links to all relevant authorities' pages.

7.16. In addition to making the register available online, arrangements must be made for members of the public to inspect it, free of charge, at reasonable times and at such places as the authority may determine. This does not mean that a paper version must be provided, as this would be impractical for map-based systems. It may mean, for example, that you can visit an office and someone will help you find the information you want on a computer there, or that information can be sent out based on a telephone request. Information must also be provided in alternative languages and formats, on request, to meet equality requirements. If you are not able to use the register online, you should contact the relevant authority and ask how you can access the information.

## **Enquiries about land**

7.17. As mentioned above, an asset transfer request can be made for any land owned or leased by the relevant authority, even if it is not on the register. If you believe a piece of land or a building is owned or leased by a relevant authority, and it is not on their register, you should contact them and ask about it.

7.18. If the ownership of a particular property is not clear, it may take significant work and cost to investigate it. Relevant authorities should deal with such enquiries as a request under FOISA and the Environmental Information Regulations (EIRs), which set out the circumstances in which a fee may be charged for providing information, or information may be withheld. They may also advise you to contact Registers of Scotland<sup>1</sup> to investigate the ownership. Guidance on your rights under FOISA and the EIRs is available on the Scottish Information Commissioner's website <http://www.itspublicknowledge.info/home/ScottishInformationCommissioner.aspx> .

## **Further information about land**

7.19. Once you have identified one or more properties that may be suitable for your project, your community body will need further information about them. You will need to decide whether the land or building is suitable for your planned activities, what the running costs will be, and how much to offer for it. If you intend to request ownership or a lease with repairing responsibilities, you will need information about the structural condition of any building, other rights on the land, and so on.

7.20. You should make contact with the relevant authority as early as possible and there should be an open discussion about your objectives and property that may be suitable. The relevant authority should be open about the information it has, including practical knowledge about managing the property, and how other information might be obtained. Most importantly, they should ensure that the community transfer body is aware of any information that is likely to be a significant factor in the authority's decision on the request.

7.21. Although the Scottish Ministers may make regulations about information which a community body may request from a relevant authority about land for which they intend to make an asset transfer request, we have no plans to make such regulations at present. We consider that FOISA and the EIRs provide sufficient rights for community bodies to request any information they may require. The exemptions and exclusions provided by this legislation are equally appropriate in relation to asset transfer, for example the ability to withhold information on grounds of protecting personal data, commercial confidentiality or national security. These exemptions are also backed by a right to a review and appeal to the Information

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<sup>1</sup> <https://www.ros.gov.uk/>

Commissioner if information is withheld without good reason. All staff who may be dealing with enquiries should be familiar with the requirements.

7.22. You should not expect that all relevant authorities will have current, detailed information to provide you with for all their properties. Some information is only reviewed every few years, or may not be broken down for individual buildings. Reports produced for the authority in relation to their use of the building may not be appropriate for your community transfer body to rely on, and professional surveys may be confidential to the client who commissioned them. Relevant authorities should seek to make as much information available to the community body as possible, but you should check that it is relevant to your situation and proposals.

7.23. Ultimately, as a community transfer body it is your responsibility to ensure you have all the necessary and relevant information to develop your proposals. Some funding bodies may provide support for work such as surveys to develop your proposals. As a way of supporting community bodies, relevant authorities may sometimes agree to share the cost of producing or commissioning new information, and help by providing information to surveyors, facilitating access to the site, and so on. Where the authority wants to dispose of the property or supports the community's proposals, it may provide a "sales pack" with a range of useful information and reports.

## **8. How to make an Asset Transfer Request**

8.1. Before you make an asset transfer request, please make sure you have read the advice on "Getting Started" in chapter 3 and on Finding Suitable Assets in chapter 7, and have made sure your organisation is eligible, as explained in chapter 5. Whatever your plans are, you are strongly advised to contact the relevant authority and discuss your proposals with them before making the formal request. Some authorities may have a pre-application process in which they will consider outline proposals and, if approved, will support you to develop your detailed request. These approaches are often helpful, but you are not legally required to go through any such process before making an asset transfer request.

8.2. The authority may offer to agree a lease or other arrangements with you without going through asset transfer. You can also make a bid in the normal way for any property which is advertised for sale or lease. However, please be aware that you will not have the protection of the asset transfer legislation, including the right to a review or appeal, unless you make a formal asset transfer request.

8.3. The legislation requires certain information to be included in an asset transfer request. This is set out in section 79(4) of the Act and regulation 3 of the Asset Transfer Requests (Procedure) (Scotland) Regulations 2016 ("the Procedure Regulations"). In terms of regulation 5 of the Procedure Regulations, an asset transfer request is not treated as having been made until all the required information is received by the relevant authority. This chapter lists what is required and gives guidance on what you should consider including under different headings. The next chapter explains what will happen after you submit your request.

8.4. For points (k) to (o) below, covering information on areas such as the benefits of the request and how it is to be funded, only outline information is required for a request to be accepted as complete. The relevant authority may seek further detail from you during the process, and the community transfer body may provide additional information, in particular in response to any representations made about the request. The relevant authority may decide to refuse the request if it does not feel it has sufficient information on the proposals, but the level of detail required should be proportionate to the scale and nature of the request. The relevant authority should always give the community transfer body the opportunity to provide any missing information which the relevant authority considers is key to the decision.

8.5. A standard form for an asset transfer request is provided on the Scottish Government website. This is intended to help you make sure you provide all the information needed for a valid request, and can be used to make a request to any relevant authority. Individual relevant authorities may also provide their own forms in their own style, which may ask for additional information they find helpful in assessing requests. You do not need to use any particular form to make an asset transfer request, but you must provide all the required information.

### **Requests from other community transfer bodies**

8.6. If there is more than one community transfer body interested in the same land, you should try to work together to agree a single request. However, sometimes that is not practical. A community transfer body can put in an asset transfer request for any land, at any time, even if there is already a request in place from another body. You do not have to wait until an earlier request has been completed before submitting yours. All requests must be processed in accordance with the timescales in the legislation.

8.7. If the relevant authority is talking to a number of community transfer bodies about the same land, they may ask them to submit requests at the same time. This could allow all the requests to be compared together on an equal basis, rather than just in the order they arrive. But the relevant authority cannot refuse to consider a request just because it arrives after the “closing date”.

**An asset transfer request must be made in writing and must:**

- A state that it is an asset transfer request made under Part 5 of the Community Empowerment (Scotland) Act 2015
- B contain the name and contact address of the community transfer body
- C be accompanied by a copy of the constitution of the community transfer body
- D if the request is made by a body which is not a community controlled body, explain the basis on which the body is a community transfer body
- E specify the land to which the request relates
- F specify whether the request falls within paragraph (a), (b)(i) or (b)(ii) of section 79(2), ie whether it is a request for ownership, lease or other rights in the land
- G if the request is for ownership, specify the price that the community transfer body would be prepared to pay for the transfer of ownership of the land
- H if the request is for lease, specify
  - the amount of rent that the community transfer body would be prepared to pay,
  - the duration of the lease, and
  - any other terms and conditions that the community transfer body considers should be included in any lease
- I if the request is for other rights, specify the nature and extent of the rights sought
- J specify any other terms or conditions applicable to the request
- K specify the reasons for making the request
- L describe how the community transfer body proposes that the land is to be used
- M specify the benefits which the community transfer body considers will arise if the authority were to agree to the request
- N outline how it is proposed that—
  - the transfer of ownership of the land, the lease of the land or the conferral of other rights in respect of the land on the community transfer body (as the case may be); and
  - the proposed use of the land,are to be funded
- O describe the level and nature of support for the request from the community to which the community transfer body relates.

## **Guidance on the requirements for making an asset transfer request**

### **A state that it is an asset transfer request made under Part 5 of the Community Empowerment (Scotland) Act 2015**

8.5. This is included to make clear that the community transfer body intends to make an asset transfer request, even if it does not include all the required information.

### **B Name and contact address of the community transfer body**

### **C Copy of constitution**

### **D How the body is a community transfer body**

8.6. The name and contact address of the community transfer body are required. You may want to give an email address and exchange correspondence by email, but you must give a postal address as well. It can also be helpful to give a daytime phone number.

8.7. The form states that by providing an email address you agree that the relevant authority can send any correspondence relating to the request to that address. Under regulation 12 of the Procedure Regulations you are also deemed to give consent if you send any material by email (please ensure that the form is sent from the same email address that you have entered on the form). You can ask the relevant authority to stop sending correspondence by email, or change the email address to which correspondence should be sent, by telling them at any time. You must give them 5 working days' notice.

8.8. You must attach a copy of your organisation's constitution, articles of association or registered rules, so that the relevant authority can check the organisation is eligible to make an asset transfer request, and to make a request for ownership if appropriate (see paragraph 5.16.). It is helpful to provide the company number, charity number or registered number so that the authority can check the organisation's registration.

8.9. If the organisation does not qualify as a community controlled body but has been designated as a community transfer body, or is one of a class of bodies which have been designated as community transfer bodies, you must explain this. It will be helpful to refer to the relevant designation order.

### **E The land to which the request relates**

8.10. It is essential to accurately identify the land you are requesting.

8.11. If you have identified the land on the relevant authority's register of land, you should copy the details listed there.

8.12. If you have not found the land on the relevant authority’s register you should give the name by which the land or building is known, the street address (including postcode) if there is one, or a grid reference. It may be helpful to provide one or more maps or drawings showing the boundaries of the land requested.

8.13. Maps or drawings may not be necessary if the location and boundaries of the land you are requesting are clear from the description. If you are making a request for an area or rural land or for only part of a piece of land, you will probably need to provide a map or drawing and detailed description of the boundaries of the area to which your request relates. If you are requesting one building on a site, you need to identify that building and the boundaries of any land you want around it. If you want to lease or occupy part of a building you may be able to identify that part by description, such as “the first floor” or “the Mackenzie Hall”, or you may need to provide a drawing to make clear the area you mean. Remember to include any use of store rooms, kitchens, parking etc.

8.14. If you discuss your proposals with the relevant authority before making the request they may be able to help you by providing copies of existing maps or directing you to sources of mapping information, or by explaining the level of detail they require.

#### **F, G, H, I, J Type of request, payment and conditions**

8.15. You must state clearly whether your request is for:

- ownership (under section 79(2)(a))
- lease (under section 79(2)(b)(i)), or
- other rights (section 79(2)(b)(ii))

#### Request for ownership

8.16. For ownership, you must state the price that you are prepared to pay for the land. Please see chapter 11 for guidance on deciding how much to offer.

#### Request for lease

8.17. For lease, you must state

- the amount of rent you are prepared to pay
- the duration of the lease
- any other terms and conditions you want to be included in the lease.

8.18. Leases can cover a variety of arrangements, from a few months’ use of an office or piece of land to several decades with full responsibility for maintaining the

property. You should consider obtaining professional advice to help you with the terms and conditions that should be included, especially if you are seeking a lease for several years or if you will be responsible for any repairs and maintenance. In addition to the information provided elsewhere in the request, the terms and conditions should cover how the rent can be reviewed, the repairing and insuring responsibilities of each party, arrangements for any subletting, and any option to purchase at a future date.

8.19. The guidance in chapter 11 can help you decide how much rent you should offer.

#### Request for other rights

8.20. If you are requesting other rights, such as access, a management agreement or a licence to occupy, you must set out clearly the nature and extent of the rights you want. Some of this will be about the form of the agreement, and some will be about what activities you have the right to carry out.

#### Other terms or conditions

8.21. You should include in your request any other terms and conditions that are necessary to make a success of your project, so that these are clear to the relevant authority from the start(section 79(2)(h). For ownership, this is likely to include key terms which you want to be included in the contract, in addition to the information included elsewhere in the request on the extent of the land, price and proposed use. You do not need to complete this section if you do not wish to include any additional terms and conditions, and it is not required for a request to be accepted as complete.

### **K Reasons for making the request**

#### **L Proposed use of the land**

8.22. You should explain the reasons behind your project and why this land or building is necessary or particularly suitable for it. This section should also set out what you plan to do there: what will the land or building be used as and what activities will take place there? If you are requesting ownership or a substantial lease, do you plan to make any physical changes to the land, redevelop any buildings or create new ones?

#### **M Benefits of the proposals**

8.23. This is one of the most important sections of the request. It is your opportunity to explain the good things your project will make happen in your community, which are key to the relevant authority's decision. Chapter 10 explains more about how the relevant authority makes its decision and what matters it has to take into account.

8.24. The relevant authority should consider your proposals in detail, and ideally will discuss them with you, either before or after you submit the request. However, it is always helpful to set out the benefits clearly, along the lines of the issues which the authority is required to consider in making its decision. Think about referring to the outcomes you will achieve, as well as the activities you will deliver. An outcome is what you want to achieve in the long term, such as increasing healthy eating or reducing loneliness for older people. These outcomes might be achieved by activities like cookery classes, community gardening or a lunch club.

8.25. The legislation sets out a list of matters that the relevant authority must consider in reaching its decision on a request. You do not need to show that your project will deliver benefits in all these areas; rather, they are intended to be inclusive so that whatever you do will fit into one or other of these categories. Authorities must also consider “any other benefits that might arise”, so everything is covered.

8.26. The amount of detail you need to give will depend on the scale of the project and the amount of support or reduction in market value you are seeking. The relevant authority needs to understand how agreeing to your request will benefit the community, but you should keep it brief and clear so they can easily pick out the important points. It is helpful to give numbers such as how many people are expected to take part in activities or whether your project will create employment.

8.27. Authorities must consider whether agreeing to the request would be likely to:–

- promote or improve:
  - Economic development – this could cover creating new job opportunities or training opportunities, bringing more custom to existing businesses, supporting new businesses, etc
  - Regeneration – this is about making your area a better place to live and work, for example providing new housing, bringing empty buildings or unused land back into use, increasing access to services and social and leisure facilities, improving transport, etc
  - Public health – a wide range of activities can help people lead healthier lives and support people living with long-term conditions or mental health issues, as well as direct provision of care services or improving access to healthcare.
  - Social wellbeing – this covers all sorts of activities that bring people together, creating a stronger community spirit, supporting learning, cultural activities, reducing crime, etc

- Environmental wellbeing – this could include activities to improve the natural environment both locally and more widely, ranging from creating a community garden or managing local woodland to recycling or renewable energy projects.
- reduce inequalities of outcome which result from socio-economic disadvantage –this refers to tackling poverty and the other issues that often come with it, such as health problems, low quality housing and lack of access to services and employment. If your project will particularly help people on low incomes or address these kinds of issues, you should highlight it.

8.28. Authorities must also make the decision “in a manner which encourages equal opportunities” and meets their responsibilities under Equality legislation. They will therefore take into account any activities designed to support people who may be disadvantaged on the basis of age, disability, gender, gender identity/reassignment, race, religion or sexual orientation. For example, providing facilities for disabled people, improving relationships between communities from different ethnic backgrounds or religions, providing services for LGBT+ people, helping parents and carers to take part in community activities.

#### Other information you may want to include

8.29. The relevant authority will need to consider any negative consequences that might result from your proposals, as well as the benefits. When you are developing your proposals you should consider any potential drawbacks affecting particular groups of people, the local economy or the environment. You should identify these in your request and show how you plan to reduce them. If you discuss your proposals with the relevant authority before making your request, they will be able to advise you of any potential negative impacts they are aware of, and discuss options for addressing them.

8.30. If there are any restrictions on the use or development of the land, you should show that you understand these and explain how your proposals will comply with them. For example, if your project includes making changes to a listed building, you should show that you have taken account of the relevant requirements (and associated costs) in drawing up your plans. Other types of restrictions might include environmental designations such as a Site of Special Scientific Interest, controls on contaminated land, or planning restrictions.

8.31. The relevant authority will want to be confident that your organisation has the ability to actually deliver the benefits you promise. It is helpful to include information to show how you will do this. This might cover the skills and experience of members of the organisation, any track record you have of running similar projects in the past, whether you plan to use professional advisers, and how you will encourage new people to join and keep the project going in the long term. It is also helpful to

demonstrate that your organisation has governance arrangements appropriate to the scale of the project, including key roles and responsibilities, managing project finance and reporting on what your project has achieved.

## **N Funding**

8.32. You must outline how you propose to fund the price or rent you are prepared to pay for the land, and your proposed use of the land, including any development costs, ongoing maintenance and the costs of your activities.

8.33. In some cases this will be very straightforward, for example if your rent and incidental expenses are covered by the fees paid by members, or by volunteering, donations and fundraising. You may need to demonstrate that it is realistic to expect fundraising to cover the amount needed.

8.34. For large projects, especially where you are planning significant redevelopment or taking on a property with high maintenance costs, you will need to provide more detail. You may find it helpful to put it in the form of a business case, which may be required by funders as well. You should show your calculations of all the costs associated with the transfer of the land and building and your future use of it, covering running costs, maintenance, insurance, staff, equipment etc, as well as any alterations, renovation or new building, and show how you expect to cover those costs. This may be through grants, loans, fees for activities, income from commercial operations, and so on. If you intend to apply for grants or loans you should demonstrate that your proposals are eligible for the relevant scheme, according to the guidance available for applicants. You do not have to have funding in place when you make a request, but you should have a clear idea of where you expect to get it. Most funding bodies will be happy to discuss your proposals with you before you submit a request.

## **O Community support**

8.35. You must describe the support you have for your request within the community which your organisation represents ie the community defined in the community transfer body's constitution. Depending on the nature of the community, some community bodies include a large proportion of the members of that community, but many are made up of a relatively small core of enthusiastic people within a much larger community. The relevant authority will want to know that you have engaged with the community as a whole, and that the proposals have broad support.

8.36. You should start by explaining who your community is, the total number of people in the community, and how many of them are members of your organisation. If you represent a community of interest, you might only be able to estimate the total size of the community outside your organisation, but you should provide as much

information as you can, for example from the census, other surveys or information from national representative bodies.

8.37. To demonstrate the support for your proposals, you can use the results from whatever activity you have carried out to find out people's views. You should give the date of the activity, say how many people took part and how many supported the proposals. If different options were considered, you should show the results for all options.

8.38. Ways of finding out people's views might include:

- a vote taken at a public meeting
- a community survey
- results of a community action planning process or charette
- results of a community budgeting process.

The National Standards for Community Engagement<sup>2</sup> can help you to make sure that your engagement is effective and includes all groups of people within your community. You may carry out a full community ballot if you wish, but it is not required. You will not be able to access the assistance from the Scottish Government that is available for community right to buy applications, where a ballot is compulsory.

8.39. As well as support from the community which your organisation represents, you may want to refer to support from other communities. This is particularly important if you are a community of interest; you should engage with local people in the area around the property your request relates to, and other communities that may be affected by your proposals. Similarly if you are a geographic community and plan to deliver services or activities that will benefit people from a particular group, you may have support from that community of interest. You may also refer to support from organisations such as a sport governing body or national umbrella body for your type of organisation.

8.40. Not every community that may be affected by your proposals may agree with them, and there are often differences of opinion within communities as well. Relevant authorities will not expect unanimous support for a proposal, but they are unlikely to agree to a request if there is substantial opposition from other groups. If concerns are raised during your engagement with your community and others, you should try to address them and show how you have done this. If you are aware of other community bodies who are interested in the same property, you should try to work together and see if it is possible to agree a single request.

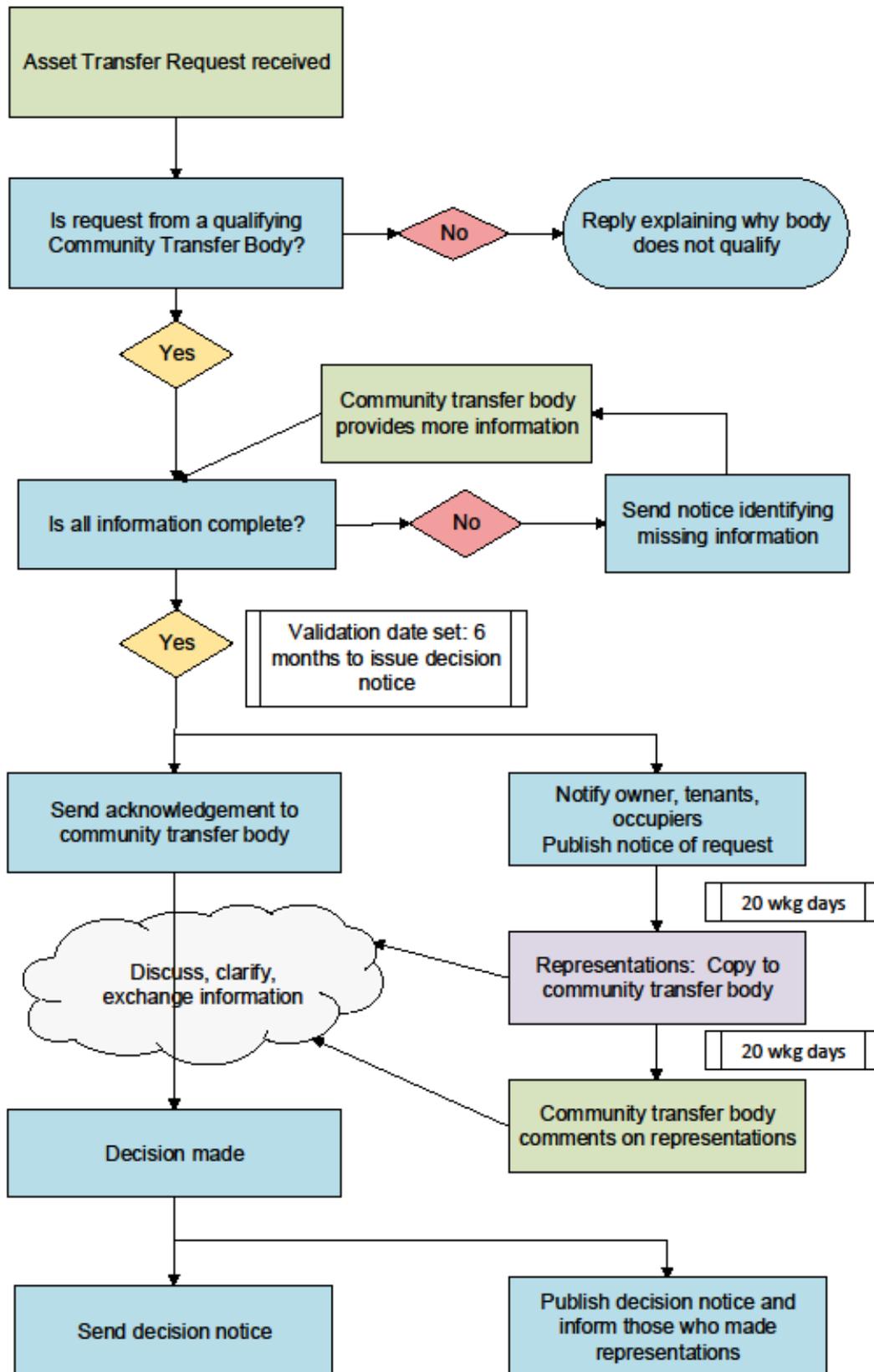
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<sup>2</sup> <http://www.scdc.org.uk/what/national-standards/>

## **Signatures**

8.41. The standard application form requires two signatures from officers of the community transfer body, with their full names and addresses. This is not a requirement of the asset transfer legislation, but will be required by all relevant authorities before they can agree to the request, under regulations to prevent fraud.

Procedure following receipt of an asset transfer request



## **9. Procedure following receipt of an asset transfer request**

9.1. When the relevant authority receives your request, they will check it contains all the required information, and that your organisation qualifies as a community transfer body (and is eligible to make a request for ownership, if appropriate).

9.2. If your organisation is not eligible to make the request you have submitted, technically it is not an asset transfer request and the relevant authority is not required to take any further action. As a matter of good practice, they should normally reply explaining why they consider you are not eligible.

9.3. If you are eligible but the request is not complete, the relevant authority is required to send you a notice saying what is missing. This only applies if you have made the request in writing and it contains a minimum of the community transfer body's name and contact address, and a statement that it is an asset transfer request under part 5 of the Act. The relevant authority will not start processing your request until you have provided all the required information, as set out in chapter 8.

9.4. Only outline information under each heading is required for a request to be accepted for processing, but you should be aware that this may not necessarily be enough for the relevant authority to base its decision on. They may ask for more information at a later stage.

### **Power to decline repeat requests**

9.5. Section 93 of the Act allows a relevant authority to choose not to consider a request which is the same or very similar to a previous request which was refused. This applies if the new request relates to the same land or building, and seeks the same type of transfer, as a request made in the previous two years, which was refused. It does not matter if the new request is made by the same body or a different one. For example, if one community transfer body requests to lease a particular building, and is refused, and another body requests to lease the same building for very similar purposes within two years, the relevant authority may decline to consider that second request. On the other hand, if the second request was for transfer of ownership instead of a lease, the relevant authority would have to consider it. Declining to consider a request under these circumstances does not count as a refusal of the request and therefore is not eligible for appeal or review.

9.6. This is intended to help relevant authorities deal with repeated requests which are unlikely to have a different outcome. They can still choose to consider a repeated request if they wish. If the community transfer body has worked to improve its proposal, or other circumstances have changed, or the new request is from a different organisation, it may well be appropriate for the relevant authority to consider it. If you have had a request refused and want to submit a new request within two years, it is particularly important to discuss it with the relevant authority first.

9.7. Where a repeat request is declined, the relevant authority should write to the community transfer body to advise you of the situation and the reason for declining the request.

### **Acknowledgement**

9.8. Once the relevant authority is satisfied that all the required information has been provided, they will send you an acknowledgement. This will include the following information:

- the validation date for your request – this is the date on which the last of the required information was received by the relevant authority (the date the request was received if it was complete). This is the date from which other time limits will be calculated.
- the time period for the relevant authority to notify you of its decision – this is 6 months from the validation date.
- information about the right to appeal to the Scottish Ministers or request a review, as appropriate. This is required at the outset because of the option to appeal if no decision is made within the time limit – see chapter 17.
- whether another asset transfer request has already been made to the relevant authority in respect of the same land (or part of the same land).
- whether the relevant authority considers that it is now prohibited from disposing of the land to any other person (see below).

### **Publication, notification and representations**

9.9. The relevant authority must make copies of your asset transfer request and any documents or information accompanying it available to be viewed online, until the request process is completed. Any representations made about the request must also be put online. Any personal information will be deleted or blacked out before the documents are published.

9.10. The relevant authority must also make other people aware that an asset transfer request has been made, and of how they can make representations about it. This must be done as soon as practicable after the validation date (the date the completed request was received). They must:

- notify any tenant occupier of the land the request relates to. This would include any group which has an agreement for regular use of the land or building.
- notify the owner, if the relevant authority leases the land
- publish a notice online

- put up a notice near the land.

9.11. A notice must “be displayed at a public place in the vicinity of the land to which the asset transfer request relates”. The relevant authority may ask the community transfer body to do this for them if necessary, to save staff having to travel to the site. They will tell you or discuss with you where it should be placed.

9.12. If the request relates to a building or area of land in a settlement, the notice should normally be placed on the building or land, or on an object close to it. However, it is more important that the notice is put up where interested people will see it than that it is on or adjacent to the land in question. It could be displayed in a village shop, on a community noticeboard or an information point in a car park – wherever local events and notices are normally advertised.

9.13. You will probably let people know that the community transfer body has submitted the request, as part of your usual activities to keep people informed... However, it is the responsibility of the relevant authority to formally give notice that a request has been received and to invite representations.

9.14. The notices will explain how the asset transfer request and associated documents can be inspected, and how people can make representations about the request. They must have at least 20 working days to make representations after the notice is given or published.

9.15. If any representations are received in response to these notices, the relevant authority must send copies to the community transfer body and inform you how and by what date you can make comments about them. The date must be at least 20 working days from the date on which the copy is sent.

### **Prohibition on disposal of land**

9.16. Once an asset transfer request has been made, the relevant authority is not normally allowed to sell, lease or otherwise dispose of the land it relates to, to anyone other than the community transfer body that made the request, until the whole process is completed. This is set out in section 84 of the Act. In these circumstances, any contract requiring the relevant authority to dispose of the property to any other person has no effect.

9.17. In summary, the request process is completed when:

- a contract for the transfer is concluded
- the request is refused and the community transfer body has followed all routes of appeal without success, or

- the community transfer body fails to take the next action in the process within the time required. For example, if you do not make an offer, or do not request a review or appeal if the request is refused.

9.18. The prohibition on disposal does not apply if, before the asset transfer request is made, the land has already been advertised for sale or lease, or the relevant authority has entered into negotiations or begun proceedings to transfer or lease the land to another person. In these cases, an asset transfer request can still be made, but it will not prevent negotiations or proceedings continuing with, or bids being made by, any other person. Making an asset transfer is not considered to be “entering negotiations” or “beginning proceedings” in this context.

9.19. There is no specific definition of “entering into negotiations”, but the relevant authority should be able to show evidence of discussions that go further than a preliminary enquiry.

9.20. The relevant authority has to tell you when they acknowledge your request if they consider they are prohibited from disposing of the land, under section 84. They should keep you informed of the progress of the advertisement or negotiations, so that you know how it might affect your request – for example, how many bids have been received, or whether they have agreed to sell the property. Your asset transfer request must still be processed according to the legislation, but the relevant authority’s decision would take into account the other offer(s) or negotiations and whether these would restrict the authority’s ability to agree to the request.

9.21. The Scottish Ministers can also make a direction to say that the prohibition does not apply. Ministers will require an explanation of why the prohibition should be lifted.

## **10. Decision-making process**

10.1. Each relevant authority will have its own process for making decisions on asset transfer requests, depending on their internal management structures and responsibilities. They should make information available to community transfer bodies on their process, including at what level the decision will be made and expected timings for each stage.

10.2. The relevant authority should continue dialogue with the community transfer body throughout the process. They may ask for clarification or more detail on any issues they feel are necessary for their decision. This will help to avoid situations where a request is refused on the basis of a lack of information which the community transfer body could have provided if they had been asked. The type of information and level of detail expected should be appropriate and proportionate to the individual request.

10.3. Sometimes the relevant authority may indicate that it is more likely to agree to your proposals if you make some changes, and suggest that you submit a new request. However, you have a right to continue your original request and receive a formal decision, which is open to review or appeal.

### **Matters to be considered**

10.4. Section 82 of the Act states that, “where an asset transfer request is made by a community transfer body to a relevant authority ... the authority must decide whether to agree to or refuse the request”. Under subsection (5), “the authority must agree to the request unless there are reasonable grounds for refusing it”.

10.5. It is not possible to give detailed guidance on what may be reasonable grounds for refusal, as this must be determined in the circumstances of each individual case. However, they are likely to include cases where the benefits of the asset transfer request are judged to be less than the benefits of an alternative proposal, where agreeing to the request would restrict the relevant authority’s ability to carry out its functions, or where another obligation on the relevant authority prevents or restricts its ability to agree to the request.

### **Benefits**

10.6. In reaching its decision the authority must consider the reasons for the request and the information provided in the request and in support of the request, and compare the benefits of the community transfer body’s proposals with the benefits that might arise from any alternative proposal. Alternative proposals may be another asset transfer request, or another proposal made by the authority, or by any other person. If the relevant authority does not consider the property to be surplus, continuing the existing use would be treated as an alternative proposal; if the

property has been identified for disposal, disposal on the open market could be an alternative.

10.7. In assessing the benefits of the request the relevant authority must consider whether agreeing to it would be likely to:

- promote or improve
  - economic development
  - regeneration
  - public health
  - social wellbeing
  - environmental wellbeing, or
- reduce inequalities of outcome which result from socio-economic disadvantage

10.8. The authority must also make the decision in a manner which encourages equal opportunities and the observance of the equal opportunities requirements.

10.9. When comparing the benefits of other proposals to the benefits of the asset transfer request, the relevant authority should consider non-financial benefits of the other proposals, where possible, as they are for the asset transfer request. The price offered for the transfer will also be considered alongside the non-financial benefits. In its simplest form, the relevant authority should consider what it could achieve with any profit or savings it might make, or what impact any financial loss might have, compared with the benefits offered by the community project or alternative proposals.

10.10. Further guidance on the assessment of benefits and price is provided in chapter 11.

#### Ability to deliver

10.11. As noted in chapter 8, the relevant authority will want to be confident that your organisation has the ability to actually deliver the benefits you promise. They may consider issues such as:

- has the community transfer body identified all the relevant costs of the project or activities?
- have you identified appropriate and realistic sources of funding – for example, will you be eligible for any suggested grants, are any fees for activities affordable for their target market, do you have a viable business plan for any proposed commercial activities?
- where relevant, have you identified how the project will be funded in the longer term?

- do members have appropriate skills, experience and qualifications to deliver the project, or does the body have a plan for engaging people who do?
- does the community transfer body have suitable governance arrangements for the scale of the project?
- where relevant, do you have succession plans in place for recruiting new Board members / Trustees in future?

10.12. The information required on these issues should always be proportionate and appropriate to the scale and type of project involved. A proposal to buy and redevelop a building to provide new facilities for a range of users will be a complex and long-term project which requires clear planning for several years and a range of professional skills. A proposal to provide sport activities for young people in school grounds in the evening may not need long-term planning, but you will still need to consider whether people with appropriate skills are available and potential additional costs such as affiliation to governing bodies or Disclosure checks.

### **Relevant authority's functions**

10.13. The relevant authority must consider how any benefits relate to other matters the authority considers relevant, including, in particular, the functions and purposes that the authority is established to deliver. In many cases, the proposed benefits of an asset transfer request will contribute to achieving the relevant authority's outcomes, or to national outcomes more generally. However, there may be cases in which agreeing to the request would have an unacceptable impact on the relevant authority's ability to deliver its functions. This could be a direct impact, for example because the community activities would physically interfere with the relevant authority carrying out its operations, or require them to put alternative arrangements in place that substantially increase the costs. There may also be cases where the community transfer body's proposals conflict with a policy of the relevant authority. And affordability may be a factor, if the cost of the transfer would affect the relevant authority's budget to the extent that it reduced its ability to deliver its functions, even after taking account of the value of the proposed benefits.

10.14. You should make sure you are aware of the relevant authority's key functions and purposes (these can usually be found on their website or in a Corporate Plan) and how they use the land you are requesting. If there is likely to be any conflict you should recognise this in your request and suggest solutions, if possible. Relevant authorities are encouraged to work with community bodies to find a solution that suits both sides. Ideally this should be dealt with in discussion before you make your request.

## **Obligations and restrictions**

10.15. Another matter to be considered is any obligations that may prevent, restrict or otherwise affect the authority's ability to agree to the request, whether these arise from legislation or otherwise. For example, legislation may require a relevant authority to obtain special permission to dispose of certain property, or title conditions or planning restrictions may say that it cannot be used for certain purposes. The Act does not over-ride or alter any such obligations. The relevant authority should explain them to the community transfer body at the earliest possible stage, as they may influence your decision on what property may be suitable for your needs.

10.16. If an obligation imposes an absolute ban on the transfer of the rights sought by the community transfer body, or on the use you propose for the land, that would be reasonable grounds for refusal. However, in many cases there are mechanisms available for amending or removing the restrictions, for example by getting permission from the Scottish Ministers or the courts. The relevant authority should consider the benefits of the asset transfer request first. If it would be inclined to agree to the request, it can then investigate the possibility of removing the restriction. It may take some time to do this, which could mean that either an extension to the decision period is needed, or the agreement to the request might be made conditional on the restriction being removed. The relevant authority should keep you informed of progress regularly.

## **Lease restrictions**

10.17. If your request is for land which is leased to the relevant authority, there may be conditions in the lease which prevent them from agreeing to the request, for example if they are not allowed to sub-let. However, if the landlord is another relevant authority, in certain circumstances restrictions in the lease do not apply, as set out in section 92 of the Act. The circumstances are that:

- the land is leased by one relevant authority, or a company wholly owned by a relevant authority, to another relevant authority
- the request is for lease or a right of occupancy of the land, and
- no other person is entitled to occupy the land.

10.18. In this case, any restrictions in the lease which restrict the ability of the relevant authority to sub-let or share occupancy of the land, or restrict how the land may be used, do not prevent the relevant authority agreeing to lease the land to the community transfer body or allow them to occupy the land. This does not affect any restrictions on the power of the relevant authority to assign or transfer rights and liabilities under the lease, and the relevant authority continues to be subject to any obligations under the lease. For example, if the lease said sub-letting was not allowed, the relevant authority could agree to an asset transfer request for a sub-let,

but would still be responsible to the landlord for any maintenance requirements included in the lease between them.

**“Other matters” and community support**

10.19. The final paragraph of section 82(3) requires the relevant authority to consider “such other matters (whether or not included in or arising out of the request) as the authority considers relevant”. This is the heading under which we recommend relevant authorities consider community support for the proposals and any potential impact on other community groups.

## **11. Price, Valuation and Non-financial benefits**

11.1. The Act does not say how much should be paid to purchase an asset or in rent, whether it should be at market value or at a discount. The community transfer body has to state in the asset transfer request how much they are prepared to pay, alongside the benefits the project will deliver, and the relevant authority has to decide whether to accept that price. This can be a difficult area for both sides. The Scottish Government brought together a Short-Life Working Group to look at the issues of Valuation and Assessment of Non-Financial Benefits, and they have developed the guidance in this chapter. Details of the group's membership and a link to its papers are provided at Annex B.

11.2. All relevant authorities have a duty to secure Best Value in their operations, including when disposing of or letting property. However, it has long been recognised that best value does not always mean the highest possible price, and all authorities have the ability to dispose of property at less than market value where there are wider public benefits to be gained. This is set out in the Disposal of Land by Local Authorities (Scotland) Regulations 2010, and in the Scottish Public Finance Manual for other relevant authorities. It is a question of balancing the financial and non-financial impacts, both positive and negative, of the different options.

11.3. The likely price of the asset is something the community transfer body will need to consider at an early stage in developing its proposals, along with the initial and ongoing costs of the project. Advice on developing feasibility studies and business cases is available from COSS and other organisations listed in annex C. Early discussion with the relevant authority will also help you to understand their expectations and perhaps agree a price before submitting your asset transfer request. Community transfer bodies should not assume that asset transfers will be at a nominal sum. You will also need to consider how you will secure funding for the price you offer.

11.4. When deciding how much to offer for an asset, it is helpful to start by having an idea of the "market value" - how much could the relevant authority expect to get if they sold, leased or hired out the property on a commercial basis, with no additional benefits involved? For purchase or lease, both parties are likely to need a formal valuation for accounting and funding purposes. Chapter 12 explains how this could be done on a joint basis. For other rights such as hire of rooms or use of land, if the relevant authority does not have a list of fees, you may be able to compare with similar property in the area. You should also enquire whether the relevant authority offers discounts for particular types of organisation, which you may be eligible for.

11.5. The relevant authority will also need to take into account any additional costs to them that may arise as a result of agreeing to the request. Most asset transfer requests are for property which is unused or to be closed. If you want to request a building or site which is in use, there may be significant costs to the relevant

authority for relocating staff and services, which may offset the value of the non-financial benefits of your proposal. On the other hand, there may be savings from the community transfer body taking over maintenance or other responsibilities. Similarly, a request for use of a property outside normal hours, for example, may incur additional costs such as safety and security arrangements. It will help you to decide what property may be suitable and to make your case, if you are aware of these kinds of issues. In some cases it may be possible to make joint arrangements with the authority to reduce costs, for example by leasing part of the space back to them. .

11.6. If the community transfer body decides to offer a price that is less than the market value, the relevant authority will need to assess whether the non-financial benefits offered by the proposals justify that reduced price. If the authority is likely to incur additional costs, greater benefits may be required to justify agreeing to the request. Chapter 13 provides guidance for relevant authorities in doing this. You may want to carry out some analysis yourself and put forward your views of the value of the benefits the project will provide in your request.

11.7. If the relevant authority does agree to transfer the property at less than market value, it may seek to “protect” the reduction by placing conditions in the contract. This means that if the project fails or does not deliver the benefits expected over a certain period, or if property sold to the community transfer body is sold on at a profit, the community transfer body may have to make an additional payment to the relevant authority, of all or part of the amount by which the price was reduced. Chapter 13 provides more guidance on this. Such arrangements should always be proportionate to the relevant authority’s interest in the project, and community transfer bodies should always examine them carefully, as they may affect your ability to obtain funding from some sources.

## **State Aid**

11.8. EU State Aid Rules are in place to regulate financial assistance from public authorities that could distort competition between EU Member States. It applies to any type of financial assistance, including grants and discounts, and any organisation carrying out “economic activity”, even if it is not for profit. “Economic activity” covers offering any goods or services that could, in principle, be carried out by someone for payment. The relevant authority will have to consider whether any reduction from market value is allowed under the State Aid Rules. However, if any assistance is found to have breached the Rules, it is the organisation that received it that has to pay it back, so you should understand how it might affect you. There is also a “de minimis” rule that allows small amounts of assistance to be given over a rolling 3-year period. If you receive funding from different sources on a “de minimis” basis, you need to keep a record of that rolling total.

11.9. COSS has a useful introductory briefing on State Aid, <http://www.dtascommunityownership.org.uk/resources/finances/eu-state-aid-rules-and-community-transfer> and further guidance can be found on the Scottish Government website <http://www.gov.scot/Topics/Government/State-Aid> .

## **12. Obtaining a joint valuation of the asset**

### **Introduction**

12.1. The Act does not say how much should be paid to rent or purchase an asset, and there is no requirement to obtain a valuation for the purposes of the Act. However, both the relevant authority and the community transfer body are likely to need to understand the “market value” of the asset, for accounting, borrowing or funding purposes, and to ensure transparency about the amount of any reduction from market value. A market value is also required for Best Value and State Aid assessments.

12.2. To reduce overall costs and provide a common starting point, we would encourage the relevant authority and community transfer body to obtain a joint valuation, and to agree that this will give the figure on which discussions will be based. If at any stage the relevant authority and the community transfer body are unable to agree on the approach, they may need to obtain separate valuations instead. This would then lead to negotiations on the value to be used as a basis for any consideration of discount.

### **What is “market value”?**

12.3. Market value is an important measure which is used widely for financial accounting purposes as well as in property transactions. The concept is set out in International Valuation Standards and incorporated into the professional standards set out by the professional bodies governing valuers, such as the Royal Institution of Chartered Surveyors (RICS) Valuation – Professional Standards (known as “the Red Book”). Valuers who are suitably qualified to practice in Scotland are required to comply with these professional standards.

12.4. Market Value is currently defined in the Red Book as “the estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm’s length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion.”

12.5. Market Rent is currently defined in the Red Book as “The estimated amount for which an interest in real property should be leased on the valuation date between a willing lessor and a willing lessee on appropriate lease terms in an arm’s-length transaction after proper marketing where the parties had each acted knowledgeably, prudently and without compulsion”.

12.6. These definitions may be revised from time to time. The most up-to-date version should always be used.

## **When should the valuation be undertaken?**

12.7. There are two points within the process where discussion on the value of the property are needed:

- Stage 1 – initial enquiry. When the community transfer body requests information about the property, if an approximate indication of the market value is known to the relevant authority this should be made available to the community body. This should be caveated to the extent that it is an indicative value only, and it may be given as a range of values. This would be very helpful to community bodies, particularly where they are considering options across more than one property.
- Stage 2 – confirmed proposals. Once the community transfer body has confirmed their interest and the property has been clearly defined, then the formal assessment of market value should be instructed. This is likely to be prior to the date of the Asset Transfer Request, during pre-application discussions. If the valuation takes place after the request is received, the community transfer body may wish to revise their offered price on that basis, or a revised price may be included in the decision notice.

12.8. The formal valuation can be undertaken when the relevant information about the property has been assembled. This includes defining the exact boundaries, layout plans, information about the property, legal rights and burdens, etc. In the event that material information is unavailable when the valuation is undertaken then it may require to be re-valued at a future date. Where that is the case, where possible, this should be made clear to both parties and the valuer at that stage.

12.9. The valuation report will qualify how long the valuation is valid. This may be only at the date of the report, or may be for some time (typically six months) unless market circumstances change or further information comes to light which would cause a revised opinion of value. Despite this, when agreeing to instruct a valuation jointly, the relevant authority and the community transfer body should agree the time period within which they are able, or are prepared, to proceed to conclude the transaction at a price based upon the valuation to be obtained, taking into account the time required to process an asset transfer request. Any such agreement will nonetheless be subject to any material change within the agreed time period which may affect the valuation and require a revaluation. The community transfer body should also consider the requirements of funders or other organisations involved, in relation to the date of the valuation.

## **Who should value the property?**

12.10. Stage 1 valuations are likely to be provided by an in-house Estate Management team, or retained advisers. The valuation should be provided by the relevant authority with no costs charged to the community transfer body, provided

the requests are reasonable in nature. This value should be provided from existing information, where appropriate information is available, and should not require a valuation to be instructed. It may be provided on the basis of a range of values

12.11. Stage 2 valuations should be provided by either

- a) the Valuation Office Agency (VOA) (the “District Valuer”), or
- b) a suitably qualified and experienced independent valuer, registered with an appropriate professional body (such as RICS).

12.12. For Stage 2 valuation, if the relevant authority and the community transfer body agree to obtain a joint valuation, they must first agree who will be asked to determine the market value. Either party may provide additional information to the valuer if they consider it relevant to the assessment of market value, and this information must be disclosed to the other party.. However, it is for the valuer, acting as an independent expert, to determine what information is pertinent in their assessment of value and they may choose to disregard any such submissions, if they deem it appropriate.

#### **How should the valuation be instructed?**

12.13. If a joint valuation is to be obtained, the parties should issue a joint letter of instruction to the valuer. This must state clearly the basis of valuation and the extent of the property. The wording of the letter is to be agreed between the parties. A suggested template letter is provided below, based on the information required under Terms of Engagement in the Red Book. The draft letter is a guide only and its use is not mandatory.

12.14. The parties may instruct the valuer to make special assumptions in relation to the valuation. If the valuation is for lease, they should set out the main terms of lease required, or provide sufficient information to enable the valuer to form an opinion on the nature of the rental market relating to that type of property in that area.

12.15. The parties should share the cost of a joint valuation equally.

#### **The basis of value**

12.16. The basis of value in most cases will be the market value as defined in the Red Book. This valuation should include any development potential and any rights or burdens that run with the land/property as well as any reduction in the value of any remaining land as a result of the fact that only part of the land is being acquired by the community body.

12.17. Whilst it is expected that the vast majority of valuations will be on the basis of market value, in some situations it may not be appropriate to use the market value of an asset but instead to use a different basis of value. The situations where alternative bases of valuation would be used are likely to be very specific, possibly where a specialist building for which no market would otherwise exist, is to be transferred subject to a restriction on use which prevents it from being used for another purpose. The parties must agree the most appropriate basis in order to instruct the valuer.

12.18. Whatever basis of valuation is used to assess the value it must be one of the recognised bases set out in the Red Book.

**Suggested Template for joint letter of instruction to assess value of asset subject to Asset Transfer**

Dear Sir,

**[Name of Relevant Authority]**

**[Name of Community Transfer Body]**

The above parties wish to jointly appoint you to provide a valuation of the property **[description of property]**, shown in heavy black outline on the attached plan ref xx. The valuation is required to assess the value of the property for its possible sale to **[Name of Community Transfer Body]**.

The valuation should be carried out in accordance with the RICS Valuation Professional Standards (The 'Red Book'). The basis of value will be **[market value]/[market rent valuation]/[other agreed basis of valuation]** as defined in The 'Red Book'.

This valuation should include any development potential, any rights or burdens that run with the land/property (as provided by **[Name of relevant authority]** and such other agreed facts as are set out. Please set out clearly details of your assumptions.

**[ (for lease)** The lease terms to be assumed should be those that reflect current practice in the market in which the property is situated. Please set out clearly the principal lease terms assumed when providing your opinion of market rent. **]**

When writing to confirm this instruction, please advise the fee for undertaking this work.

In order to arrange access to the property please contact **[contact name]**, Tel **[phone number]**. We confirm that the parties are to be equally responsible for the valuation fees and request that you forward an invoice in respect of half those fees to our office, and the other half to **[contact details of other party]**.

Annex 1 – Joint statement of Agreed Facts (this should include items such as area / lease terms / condition report / planning situation / burdens / restrictions on title / handling of fixtures and fittings.)

Annex 2 – Further information provided by the RA (not forming part of the agreed facts)

Annex 3 – Further information provided by the community body (not forming part of the agreed facts)

## **13. Assessment of asset transfer requests**

### **Introduction**

13.1. When the price offered in an asset transfer request is less than the market value of the property, the relevant authority will need to consider whether the proposed benefits to be delivered by the community transfer body justify the proposed discount (which will be accounted for as a “gift”). This will be based solely on the analysis of the information included in the request. The benefits of the request should be proportionate to the value of the asset and the level of discount, with an appropriate level of information to support the application. Any decision to transfer an asset must represent good use of public resources.

13.2. This chapter is included to inform community transfer bodies of how relevant authorities may approach the assessment of requests.

### **Criteria for Assessing Requests**

13.3. A way to demonstrate resources are being put to good use is to demonstrate Best Value<sup>3</sup>. Best Value is the requirement to make arrangements to secure continuous improvement in performance whilst maintaining an appropriate balance between effectiveness and economy. It also requires due regard to equal opportunities requirements, and to contribute to the achievement of sustainable development.

13.4. There are seven Best Value themes (see the table at page 60) and public bodies across Scotland have a duty to secure Best Value for public money and can sell, or lease, at less than market value where there are wider public benefits to be gained from a transaction. In making a case for the transfer of an asset, the Best Value themes will be evident, to a greater or lesser extent, in the community transfer body and the related benefits that will accrue in pursuing positive outcomes for a more prosperous and fairer Scotland. The matters which the relevant authority must consider include the following types of benefit:

- Economic development
- Regeneration
- Public health
- Social wellbeing
- Environmental wellbeing
- Reducing inequalities of outcome from socio-economic disadvantage

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<sup>3</sup> <http://www.gov.scot/Topics/Government/Finance/spfm/BestValue>

- Any other benefits that might arise through the alternative use of the asset.

13.5. Asset transfer at less than market value is justified when these additional benefits empower communities and align with local and national priorities to enable the delivery of Best Value across the public sector as a whole. Such benefits are likely to align with one or more of the Scottish Government’s National Outcomes<sup>4</sup>, which all Scottish public authorities are required to have regard to in carrying out their functions (under Part 1 of the Act). They may also contribute to the relevant authority’s policy objectives or local priorities determined through Community Planning, but the value of benefits should be judged on a broad basis, not only in relation to the particular authority to which the request is made.

### Considering the Request

13.6. The information provided in the asset transfer request should demonstrate that the project has clear objectives, including the projected outcomes and impacts sought by the community transfer body alongside any associated dependencies, constraints and risks identified. The benefits of the request should be proportionate to the value of the asset and the level of discount sought.

13.7. Each one of the seven Best Value themes should be explored with the evidence provided used to evaluate the strength of the case being made, including the sustainability of the proposal in the longer-term (see table at page 60). The request must also include the benefits that will be delivered as part of the proposal (see paragraph 13.4) which can come in a variety of forms:

<b>Benefit</b>	<b>Example</b>	<b>Assessment</b>
Financial	Reduction in public sector costs or enhancement of provision due to the proposal.	e.g. the costs associated with volunteers’ time or where intervention can reduce pressure on municipal services through the people that can be reached, such as alleviating alcohol/drug/ smoking dependency.
Outcomes - quantitative	Contribution towards local or national priorities e.g. improved standards of healthcare; contribution towards alleviating homelessness; supporting local employment etc.	e.g. the increase in local engagement in physical activity for a particular group or groups; the reduction in numbers of homeless through intervention/advocacy; the hours of vocational training provided to help develop skills that are in demand.

<sup>4</sup> <http://www.gov.scot/About/Performance/scotPerforms/outcome>

Outcomes - qualitative	Improved community cohesion; enhanced local services etc.	e.g. the improvement in local wellbeing from reducing anti-social behaviour; the increase in participation from a marginalised group or groups, such as providing online access or financial independence.
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13.8. In reviewing each request the following matters, though not exhaustive, should be considered:

- a) Value to relevant authority in existing use
  - feasibility and cost of relocation of services elsewhere
  - potential revenue savings arising from transfer
- b) Value for alternative use/redevelopment
- c) Value for proposed and other community purposes
- d) Level of community benefits
  - extent of community served
  - Nature of benefits to be delivered
  - links to relevant authority’s corporate priorities and outcomes
  - community need/demand for the services
- e) Likelihood that benefits will be delivered over a 5-year period
  - strength of organisation
  - sustainability of business plan/project
  - sources and level of funding support
- f) Impact of project failure
  - to surrounding local environment
  - to reputation of the parties
  - to the service users/relevant authority’s objectives

13.9. The request will then be assessed in terms of the evidence provided:

Evidence	Overview
Very strong	Governance and financial arrangements are strong and sustainable. Best Value characteristics are evidenced and contained throughout the overall approach. Related projected benefits are very robust and demonstrate value for money: suitability, effectiveness, prudence, quality, value and the avoidance of error and other waste.
Strong	Governance and financial arrangements are sound and sustainable. Best Value characteristics are in evidence in the proposal. Related projected benefits are demonstrated well and represent value for money.
Moderate	Governance and financial arrangements are in place and acceptable. Best Value characteristics have been considered as part of the proposal. Related projected benefits are acceptable and could lead to value for money.
Weak	Governance and financial arrangements are weak. Best Value characteristics are not well demonstrated in the proposal. Related projected benefits are not based on robust information and demonstrates questionable value for money.
Poor	Governance and financial arrangements are poor. There is little evidence of Best Value characteristics in the proposal. Related projected benefits are ill defined and/or unrealistic and do not demonstrate value for money.

13.10. The strength of the proposals will then be considered against the financial implications of any decision both for short-term budget planning and long-term asset strategies. This will include the consideration of the current use of the asset and any consequent implications that could arise from the transfer of the asset. A larger discount will require a stronger case to be made with an appropriate level of benefits demonstrated effectively.

### **Asset Transfer Request Recommendation**

13.11. Following a detailed review and assessment of the information provided in an asset transfer request, a recommendation can then be made on the strength of the case to the relevant accountable officer. It may be appropriate for a relevant authority to consider weighting the various matters in its consideration of an asset transfer request in order for it to reach a clear judgement.

13.12. Depending on the nature of a request, expert opinion may need to be sought to assess effectively the financial implications, the Best Value considerations and/or the proposed benefits.

13.13. The community transfer body needs to provide a proportionate request that demonstrates clear benefits with the appropriate level of information to support the application – commensurate to the value of the asset and the level of discount.

13.14. Any asset transfer request should be assessed alongside any other proposals for the related asset to enable a Best Value judgement to be made. This will be a judgment that takes into account the financial implications alongside the wider benefits that will accrue in pursuing local or national priorities to deliver improved outcomes for Scotland.

Asset Transfer Guidance for Relevant Authorities – Draft Final

Best Value Theme	Summary	Information Required
Vision and Leadership	An organisation will have in place a clear vision and plan for what it will do to contribute to the delivery of improved outcomes for Scotland. This may be linked to one or more local or national priorities e.g. the Scottish Government’s National Outcomes.	A clear plan for achieving the intended outcomes, ideally showing links to local or national priorities. Members of the community transfer body would also show that they have the relevant skills and experience to deliver the intended objectives.
<ul style="list-style-type: none"> <li>Effective Partnerships</li> </ul>	An organisation will show how it, and its partnerships, provides a collaborative approach to the challenges that communities face.	The detail of any partnerships in place to help ensure successful delivery of the intended benefits. Community support is vital and can be shown through a variety of metrics such as surveys, consultations or ballots.
<ul style="list-style-type: none"> <li>Governance and Accountability</li> </ul>	An organisation will be able to demonstrate structures, policies and leadership behaviours that support the application of good standards of governance and accountability.	An outline to illustrate that the appropriate structures and policies are in place to help ensure success in the longer-term.

Asset Transfer Guidance for Relevant Authorities – Draft Final

<ul style="list-style-type: none"> <li>• Use of Resources</li> </ul>	<p>An organisation will show how its effective management of all resources (including staff, assets, and information) is contributing to the delivery of specific outcomes, highlighted in the national outcomes.</p>	<p>Explain how the body’s current and future resources will be used as part of a medium to long term plan (5-10 years). This could include the numbers of employees or volunteers and the maintenance of any asset. This could also include the funding requirements of the group and the sources of funding already in place.</p>
<ul style="list-style-type: none"> <li>• Performance Management</li> </ul>	<p>An organisation will ensure that robust arrangements are in place to monitor the achievement of its desired outcomes as well as any reporting arrangements.</p>	<p>Outline the way in which a community transfer body will be able to monitor the achievement of its objectives, whether that be recording volunteers time or the amount of benefit achieved as part of the overarching vision. To demonstrate openness and transparency it will be important to report performance to the community.</p>
<ul style="list-style-type: none"> <li>• Sustainability</li> </ul>	<p>An organisation will demonstrate an effective use of resources in the short-term and an informed prioritisation of the use of resources in the longer-term in order to contribute to sustainable development. The goal of Sustainable Development is to enable all people throughout the world to satisfy their basic needs and enjoy a better quality of life without compromising the quality of life of future generations.</p>	<p>There are five broad principles of sustainability:</p> <ul style="list-style-type: none"> <li>• promoting good governance;</li> <li>• living within environmental limits;</li> <li>• achieving a sustainable economy;</li> <li>• ensuring a stronger healthier society; and</li> <li>• using sound science responsibly.</li> </ul> <p>A community transfer body could demonstrate how its future funding or self-financing arrangements are to be achieved. Any proposal could also include any positive impact on the natural environment.</p>
<ul style="list-style-type: none"> <li>• Equality</li> </ul>	<p>An organisation will demonstrate that consideration of equality issues is embedded in its vision and strategic direction and throughout all of its work.</p>	<p>The community transfer body should establish that the different groups within the community have had their different needs taken into account. Any request should include where a proposal may be reducing inequalities of outcome from socio-economic disadvantage.</p>

## 14. Use of conditions to protect discount

14.1. As explained in previous sections, public sector organisations are required to achieve Best Value in their property transactions. In the case of asset transfer to community bodies, disposal at less than market value, or with other support or concessions, may be justified by reference to the expected benefits to be delivered by the project. In that situation, relevant authorities sometimes seek to protect themselves against the risk that the benefits may not be delivered by including clauses in the contract requiring some form of restitution if the project fails.

14.2. It is for relevant authorities to determine whether it is appropriate to include such conditions in the contract (and for community transfer bodies to decide whether to accept the transfer on those terms). The aim of this guidance is to ensure that, if conditions are used, it is done in an appropriate and proportionate way. This form of protection may be supplemented by maintaining relationships with the community transfer body and supporting it to develop its capacity and deliver the project effectively.

14.3. Any conditions which the relevant authority proposes to impose to protect discount should be included in the decision notice, in sufficient detail that the community transfer body is able to decide whether they are acceptable or not. As a result, the community transfer body could seek to challenge them through the review and appeal process.

14.4. Where ownership of the asset is transferred, the main ways of protecting the discount are:

- where a reduced price was agreed in recognition of the benefits to be delivered, the community body may be required to repay the difference in price if the benefits are not delivered.
- where the price was based on a lower valuation for a particular use, conditions may be imposed to return any increase in value to the authority, if the use of the property is changed or the expected benefits are not delivered.
- if the property itself is important to the community, for example due to its heritage or location, arrangements may be made to enable the authority to recover the property if it is no longer used by the community body for the agreed purpose (or the community body is wound up).

14.5. The usual triggers for the implementation of these protections are if the project fails, the community transfer body is wound up, or it seeks to dispose of the property, either by sale or lease, for a purpose other than was expected at the time of transfer. The terms set out in the contract must be clear, setting out the trigger points for the condition to be activated and the basis for calculating any repayment.

14.6. Relevant authorities should note that the constitution of a community transfer body must include provision that its surplus funds or assets must be applied for the benefit of the community. A community transfer body eligible for ownership must have provision that on winding up any surplus property, after the satisfaction of liabilities, passes to another charity or community body (the details depend on the legal form of the community transfer body). This means that any property acquired by asset transfer cannot be used or sold for the private profit of the members of the group. A community transfer body's constitution could, however, allow property to be sold to raise money for the group's activities, if the property is no longer needed or appropriate for delivering those activities. In some cases this is a planned part of the original proposals, that part of the land will be sold to provide funding for other developments, and any conditions would need to recognise this.

### **Mechanisms used**

14.7. A range of legal mechanisms are used by authorities seeking to protect their interests, including standard securities, and minutes of agreement, which may contain a range of provisions and be linked to standard securities. Some relevant authorities also have powers to create certain types of real burden on title, under the Title Conditions (Scotland) Act 2003. A different range of options will be needed to reflect the individual circumstances of each case.

14.8. Any relevant authority seeking to create a real burden should consider carefully whether it will be appropriate and effective in achieving the desired result.

Guidance is available from Registers of Scotland

<https://rosdev.atlassian.net/wiki/display/2ARM/Types+of+Personal+Real+Burdens+-+Real+Burdens+Part+1>

14.9. In most asset transfer cases, there will be other organisations providing funding to the project in addition to any concession given by the relevant authority. Like relevant authorities, funders have a responsibility to ensure that their grants are used effectively and in accordance with the purpose for which they are granted, and they seek to secure this through a range of legal agreements. Where there are multiple contributors each requiring security for their investment then there is likely to be the need for a ranking agreement so that each party understands its position should the project fail, recognising that such a position may not enable each party to recover in full what it has funded.

14.10. OSCR has confirmed that protective mechanisms as described above do not conflict with the requirements for charities. The charity's trustees would need to be satisfied that the arrangements were in the best interests of the charity before agreeing to them. However, on winding up, such arrangements would be dealt with as liabilities or contractual obligations to be settled before any remaining assets are distributed for charitable purposes.

14.11. If the relevant authority has a long-term interest in retaining the property, or does not have the power to sell it, a lease may be appropriate. Long leases (which can be up to 175 years in Scots law) are common for commercial property and may be appropriate for community bodies in such cases. Shorter leases may also be appropriate for a community body that wants to develop its capacity before taking on the responsibilities of ownership. However, relevant authorities should keep in mind the Scottish Government's ambition to increase community ownership, and the fact that key funding programmes may not provide grants for leasing.

### **Proportionality**

14.12. Any mechanisms used to protect the relevant authority's interest must be appropriate and proportionate. Excessive requirements for repayment or conditions on development or change of use could make a project unviable, or restrict the ability of the community transfer body to increase its capacity and develop new projects over time. Proportionality should take into account:

- the value of the concession granted
- the scale of the authority's contribution within the overall project, and
- the time within which benefits are expected to be delivered.

14.13. In some cases the contribution provided by funding bodies may be substantially greater than the value of the concession granted by the relevant authority, or even greater than the value of the property, especially when there is significant redevelopment or new-build planned. Any mechanisms used should therefore recognise the scale of the relevant authority's interest within the overall project.

14.14. The duration of the protection mechanism should reflect the amount of discount compared to the expected benefits. It may be appropriate for the amount to be returned to reduce over the period within which the benefits are expected to be delivered. Any mechanism which restricts the use of the property should take account of the community body's need to develop in the longer term; for example, it should not last longer than the expected remaining life of a building which is transferred.

14.15. Authorities must also consider the level of risk that the benefits will not be delivered, and how effective the chosen mechanism is likely to be in enabling the authority to recover its investment. If the risk of non-delivery is considered to be particularly high, it may be necessary to revisit the decision to agree the asset transfer request. (Any conditions on the transfer should be included in the Decision Notice, and therefore considered before the decision to agree the request is final.) The community body may need to provide more assurance of its ability to deliver, or more support may need to be provided. In the case of a project failure where it is not

possible to recover the full amount funded, a robust, documented process will help to show that the initial decision was taken appropriately.

### **Collaboration and monitoring**

14.16. It will often be helpful for the relevant authority to work directly with funders to agree a balance of legal mechanisms to secure the interests of all those involved. There can be misunderstandings about the requirements of different organisations which are best clarified by making direct contact. While these discussions are likely to take place between lawyers, community bodies should be reassured that the aim is to produce a better result for them, with fewer overlapping conditions.

14.17. Where any mechanism is put in place, by a relevant authority or a funding organisation, to ensure that benefits are delivered or property is used for a particular purpose, monitoring of those requirements is also essential. If difficulties arise with a project, support may also be necessary to help the community body get back on track. Where there are several organisations with similar interests, it may be possible to establish an agreement whereby one partner undertakes monitoring on behalf of all, providing other partners with sufficient confidence to reduce the need to impose multiple protective mechanisms. This would also benefit the community body, in reducing duplication of monitoring.

## 15. Decision notice

15.1. Having made its decision, the relevant authority must issue a decision notice to the community transfer body, under section 82(7) of the Act, setting out its decision and the reasons for it. This must be done within six months from the validation date, or a longer period if agreed between the relevant authority and the community transfer body. If no decision notice is issued within this time, the community transfer body has the right to request a review or appeal to the Scottish Ministers, as appropriate.

15.2. The time taken by the relevant authority to make its decision will depend on various factors. It may be possible to make a decision in less than six months if the request is straightforward or you have discussed your proposals in detail before submitting the request. On the other hand, a longer period may be required for complex requests or where the relevant authority has to seek permission from someone else to agree to the transfer. There may also be timing issues if requests have to be considered by a Committee at its regular meetings. Relevant authorities are encouraged to let the community transfer body know about any potential delays as soon as possible.

15.3. If the relevant authority asks you to agree to a short extension to the timescale to make a decision, in most cases it will be in your best interests to agree. The alternative is to apply for a review or appeal, which is likely to take more time and effort before reaching a conclusion. Of course, it is for you to decide in the individual circumstances of each case. You can agree an extension more than once, but just because you have agreed to one extension does not mean you have to agree to more. An extension should be agreed before the prescribed (or previously extended) period expires.

15.4. The information to be provided in a decision notice is set out in sections 82(7) and 83(2) of the Act, and regulation 11 of the Procedure Regulations. It must do the following:

- A. state the date on which the asset transfer request was made
- B. identify the community transfer body which made the request
- C. identify the land to which the request relates
- D. set out the authority's decision to agree to or refuse the request
- E. set out the authority's reasons for its decision
- F. contain notification of the right of appeal or review, how an appeal or application for review may be made, and the date by which it must be made.

and if the request is agreed:

- G. specify the terms and conditions on which the authority is prepared to transfer ownership, lease the land or confer the rights requested
- H. state that, to proceed with the process, the community transfer body must submit an offer,
- I. specify the period within which the offer must be submitted (this must be at least 6 months from the date of the decision notice)

**A, B, C – date of the asset transfer request, community transfer body and land to which it relates**

15.5. This information is simply to identify the request to which the decision notice relates.

**D, E – the authority’s decision and reasons**

15.6. The requirement for the relevant authority to give reasons for its decision is a key part of the legislation. An asset transfer request must be agreed unless there are reasonable grounds for refusal: it is the decision notice that will set out those grounds. The reasons should be as transparent as possible, whether the request has been refused because an alternative proposal is preferred, or because of weaknesses in the community transfer body’s case.

15.7. If the request is agreed, the reasons may simply be that there were no reasonable grounds for refusal. However, if there were alternative proposals for the property, or objections to the transfer, the reasons might set out why the community transfer body’s proposals were favoured.

**F. Notification of the right of appeal or review**

15.8. The decision notice should tell you what your rights are to appeal or apply for a review, depending on the relevant authority to which the request is made, and the decision which has been made. It should say who the appeal or application for review should be made to, with the address it should be sent to, and refer to the guidance on how to make the application (see chapters 17 to 20). You should also be given the date by which the appeal or application for review must be made – this is 20 working days beginning with the date of the decision notice.

**G. Terms and conditions for transfer**

15.9. The decision notice should set out the terms and conditions (including price or rent) on which the relevant authority would be prepared to agree to the transfer. These may be the same as or different from any terms and conditions set out in the

asset transfer request, or may add to those in the request. However, if they are significantly different you may apply for a review or appeal against them.

15.10. The terms and conditions set out in the decision notice form the basis of the offer which the community transfer body has to make to proceed with the transfer, and for subsequent negotiations to conclude the contract. The terms and conditions should be detailed enough for you to decide whether or not you are willing to agree, and to write a meaningful offer. They should set out anything the relevant authority considers essential to be included in the contract, and should be clear about anything that may affect the community transfer body's ability to deliver their proposals or secure funding, such as any restrictions on use or conditions requiring repayment if benefits are not delivered.

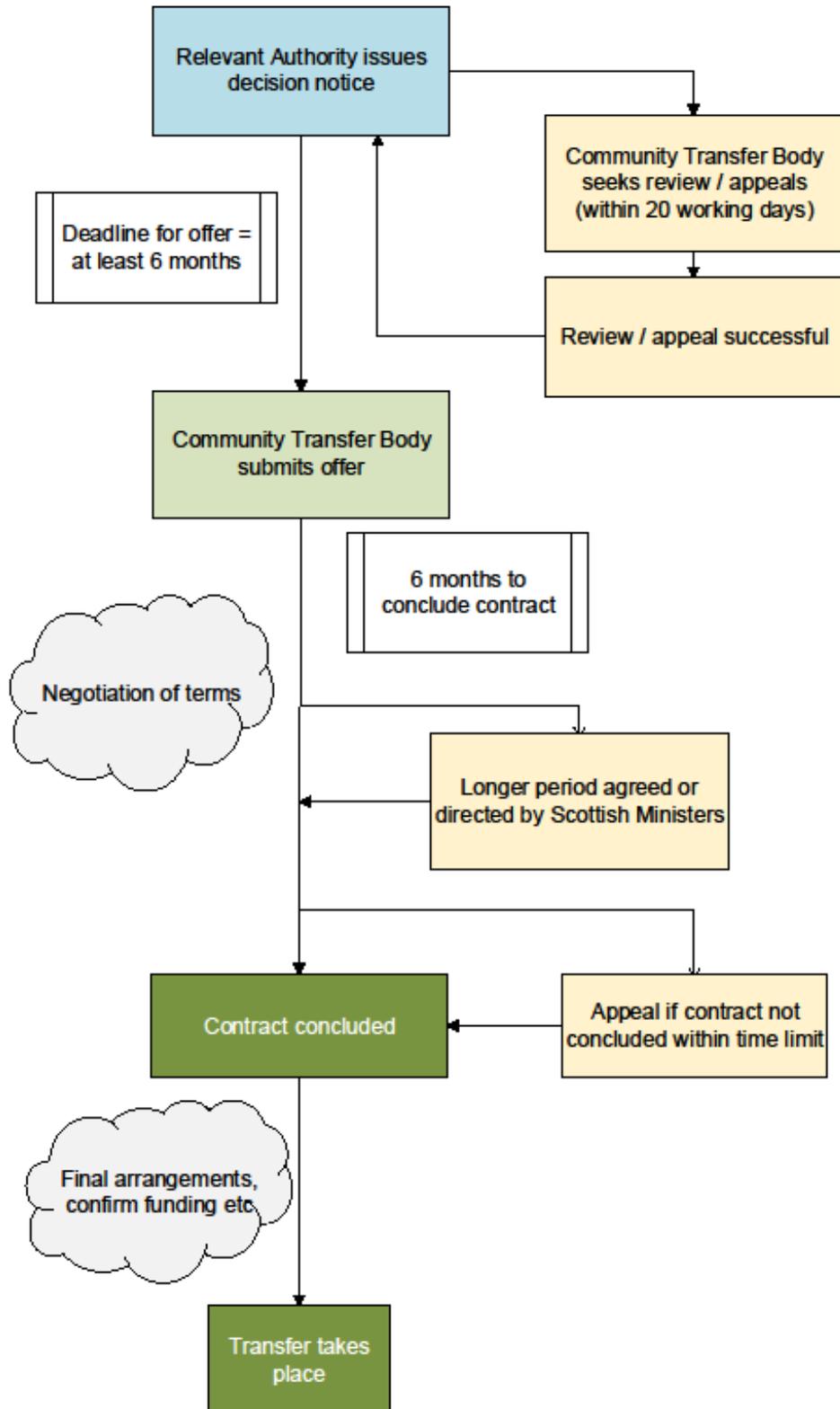
#### **H. Requirement to submit an offer, and date**

15.11. As the next stage in the process, if the community transfer body wishes to proceed, you must submit an offer to the relevant authority. This offer must reflect the terms and conditions in the decision notice, and may include any other reasonable terms and conditions that are necessary or helpful to secure the transfer of the rights requested in a reasonable time. The decision notice must set out this requirement, and tell you the date by which the offer must be submitted. It is for the relevant authority to set that date, but it must be at least 6 months from the date of the decision notice.

#### **Notification and Publishing**

15.12. The decision notice must be sent to the community transfer body at the contact address, and published online. The relevant authority must inform anyone who made representations (and provided an address) of its decision and where the decision notice can be seen.

After agreement



## **16. After Agreement**

### **Community Transfer Body's Offer**

16.1. Section 83 of the Act sets out the next steps after a relevant authority has issued a decision notice agreeing to an asset transfer request. The same process applies whether the request was agreed to initially or following a review or appeal.

16.2. In response to the decision notice, the community transfer body must submit an offer to take ownership of the land, lease it or take up the rights covered by the request. You must do this by the date stated in the decision notice, which has to be at least 6 months from the date of the decision notice. Your offer must reflect the terms and conditions set out in the decision notice; if those terms and conditions are significantly different from those included in the request, and are not acceptable to the community transfer body, they can appeal or request a review (see chapter 17). The offer can also include other reasonable terms and conditions that may be needed to make sure the transfer goes ahead within a reasonable time.

16.3. As you are seeking a transfer of ownership or other rights in land, you will probably need to engage a solicitor (if you haven't already) to advise you about the terms and conditions proposed by the relevant authority, and to represent you in negotiating the contract.

16.4. You can continue to discuss your proposals with the relevant authority while preparing your offer. This is also the time to be confirming applications for funding and making other preparations, now that you have agreement to your request.

16.5. If you do not make your offer by the date set by the relevant authority (and you have not appealed or requested a review in relation to the terms and conditions), the process is at an end. The relevant authority's agreement to transfer the property to the community transfer body has no further effect, and the authority is free to keep it or dispose of it as it wishes.

16.6. Of course, there is no need to wait until the date set to submit your offer. It can be done as soon as you are ready, and may take much less than six months in straightforward cases.

### **Conclusion of contract**

16.7. Once the community transfer body has submitted an offer, there can be further negotiations with the relevant authority to conclude the contract. If the request is for ownership or lease this will be like any other property transaction, with exchanges between lawyers to agree the final wording, although for other rights the process may be simpler.

16.8. The contract must normally be concluded within 6 months of the date of the community transfer body's offer. This does not mean the transfer has to take place within that time, but the date for the transfer, the price or rent and any other terms and conditions must be agreed. The contract may be conditional on other factors that are needed to allow the community proposals to go ahead, such as confirmation of funding or planning permission.

### **No contract concluded**

16.9. If no contract is concluded within 6 months of your offer, and no other action is taken, the process is at an end. The community transfer body has no further claim on the property, and the relevant authority can keep it or dispose of it as they wish. Sometimes this is by mutual consent – perhaps circumstances change, or things don't come together in the way you hoped, and the only sensible option may be to walk away. However, if you are approaching the 6 month deadline and you think there is still progress to be made, you must take action. The community transfer body is in control at this point.

16.10. There are three options available to keep the asset transfer request going beyond 6 months after the offer date:

- agree an extension with the relevant authority,
- apply to the Scottish Ministers for an extension, or
- appeal to the Scottish Ministers, under section 83(6) to determine the terms and conditions of the contract, which the relevant authority can be required to accept.

16.11. An application to the Scottish Ministers for an extension must be made between 6 weeks and 4 weeks before the end of the 6 month period. You should try first to agree an extension with the relevant authority, so you should start discussing that in good time – around 4 months into your negotiations. If the authority is willing, the extension can be agreed at any point, and need not be used if the contract is concluded sooner than expected. There is no limit on how long the extension may be, but there must be an end date.

16.12. If you reach the end of the period, either the original 6 months or an extended period, and no contract has been concluded, the community transfer body can appeal to the Scottish Ministers. This must be done within 10 working days of the end of the period. (This is short, but it is expected that by this time you will have a clear idea of what you want in the contract.) Procedures for making an appeal are set out in chapter 21.

### **Application to Scottish Ministers for an extension**

16.13. The community transfer body can apply to the Scottish Ministers for a direction to extend the time allowed to conclude a contract in relation to an asset transfer request. The community transfer body must make its application between 30 working days (6 weeks) and 20 working days (4 weeks) before the end of the period of 6 months from the date of the community transfer body's offer.

16.14. The application for a direction must include the following information:

- A. the name and contact address of the community transfer body
- B. the name and contact address of the relevant authority
- C. the land to which the asset transfer request relates
- D. a statement setting out details of the steps taken by the community transfer body and the relevant authority
  - (i) to conclude a contract on the basis of the community transfer body's offer, and
  - (ii) to agree to an extension to the period to conclude a contract.
- E. the community body's reasons why a direction should be given
- F. the period which, in the community body's view, should be specified in the direction

and must be accompanied by:

- G. a copy of the decision notice issued in respect of the asset transfer request
- H. a copy of the community transfer body's offer.

#### **A, B, C – names and addresses, and the land to which the request relates**

16.15. This information is simply to identify the asset transfer request and provide Scottish Ministers with the necessary contact details.

#### **D – statement of steps taken**

16.16. The Scottish Ministers will want to understand why the community transfer body and the relevant authority have not yet been able to conclude a contract, and why they have not agreed to an extension. This section should outline the correspondence and meetings which have taken place and any action taken to address particular concerns in relation to the contract. If external factors such as securing funding or planning permission have an impact on the timing, these should

be explained. You should also set out how you have approached the authority to seek an extension of the time limit, and their response.

**E, F - reason for making a direction, and period requested**

16.17. You must explain why you think Ministers should issue a direction to extend the period, and how long that extension should be. This should show why you believe it is still possible to agree a contract with the relevant authority, how any outstanding issues can be addressed, and how long you expect that to take, taking into account any external factors or processes that have to be completed.

**G, H – copy of decision notice and offer**

16.18. These documents will help Ministers understand the main issues to be included in the contract. The latest version may be attached under D, if you feel this is helpful.

**Relevant authority's response, and decision**

16.19. At the same time as making the application to the Scottish Ministers, the community transfer body must send a copy of the application to the relevant authority. They have 10 working days to send any comments to the Scottish Ministers and the community transfer body.

16.20. Having considered the application and any comments made by the relevant authority, the Scottish Ministers will decide whether or not to make the direction as requested. The direction will be copied to both the relevant authority and the community transfer body, and will state the period within which the contract must be concluded.

## 17. Reviews and Appeals - Introduction

17.1. A community transfer body can seek a review or appeal if:

- the request is refused,
- the request is agreed, but the terms and conditions in the decision notice are significantly different from those in the request, or
- no decision notice is issued within the required period.

17.2. The process depends on which relevant authority the request was made to.

- If the request was made to a local authority, the community transfer body can apply for an internal review by the authority, as set out in section 86 of the Act. This may also apply in future to requests made to other relevant authorities that are designated by the Scottish Ministers, for example if they are bodies closely related to local authorities. If the outcome of the review does not resolve the issue, or if no decision is made within the required period, the community transfer body can then appeal to the Scottish Ministers under section 88.
- If the request is made to the Scottish Ministers, the community transfer body can apply for a review by the Scottish Ministers under section 87.
- If the request is made to any other relevant authority, the community transfer body can appeal to the Scottish Ministers under section 85 of the Act.

17.3. Section 91 of the Act provides that a community transfer body cannot seek a review or appeal in relation to the terms and conditions in the decision notice if it has already made an offer, unless it first withdraws that offer. If the community transfer body makes an offer after submitting an appeal or application for review, the appeal or review is treated as having been withdrawn.

17.4. A community transfer body can also appeal to the Scottish Ministers if a request is agreed, but no contract is concluded within the required time limit – see chapter 21.

17.5. In all cases the final decision lies with the Scottish Ministers. There is no further route of appeal beyond them (except by judicial review).

## **18. Local authority review**

18.1. If your asset transfer request was made to a local authority, the community transfer body can apply for an internal review by the authority, as set out in section 86 of the Act. Procedures for such reviews are set out in the Asset Transfer Request (Review Procedure) (Scotland) Regulations 2016 (excluding Part 4 of the Regulations, which applies to reviews by the Scottish Ministers). The procedures may seem complicated, but they are intended to make sure that everyone involved with the review has a chance to see and comment on all the information submitted at each stage.

18.2. Section 89 of the Act allows Ministers to designate additional relevant authorities to which this route of review will apply. This could be the case, for example, if ALEOs are designated as relevant authorities in future. The acknowledgement of your request, and the decision notice, will tell you who you can apply to for review.

18.3. A local authority review of an asset transfer decision must be carried out by Councillors, it cannot be delegated to officers.

### **Application for review**

18.4. Your application for review must be made in writing to the local authority within 20 working days beginning with the date of the decision notice, or if no decision has been made, within 20 working days beginning with the date of the deadline for the decision (6 months from the validation date, as given in the acknowledgement of the request).

18.5. The application must include the name and contact address of your community transfer body, and specify the land to which the asset transfer request relates. It must also include a statement setting out your reasons for requiring a review. This should normally be based on the information provided in connection with your request and the reasons given by the local authority for their decision, for example if you feel they have not given enough weight to certain benefits, or there may be ways around certain restrictions. If you are seeking a review on the basis of the terms and conditions in the decision notice, you should be clear which particular items you would want to change, and why.

18.6. Your statement of reasons must cover all matters which your community transfer body intends to raise in the review. You may only bring forward further matters or evidence in response to representations on the application, or if the local authority request it.

18.7. You can also state by what procedure the community transfer body considers the review should be conducted. This is an opportunity to say whether you think the review can be decided on the basis of written submissions or if there

should be a hearing session or another procedure, such as a site visit. This is a proposal, in the end it is up to the local authority to decide what procedure to use.

18.8. The application must be accompanied by a list of documents and other evidence supporting the case, and you must provide copies of any of those documents or evidence the local authority does not already have (for example because they were provided as part of the request, or they are local authority documents such as policy statements). The local authority will publish all these documents on their website. Any personal information will be removed before publication.

18.9. The local authority will send you an acknowledgement of the application for review within 10 working days of receiving it. The acknowledgement will state the date on which the application was made, and tell you how the review documents can be inspected.

### **Notification of interested parties**

18.10. The local authority will also give notice of the review to anyone who made representations on the original asset transfer request. These people are described as “interested parties”. Their original representations will be considered by the local authority when determining the review. The notice will advise them how and by what date any further representations can be made, and how documents relating to the review can be inspected.

18.11. If the requirements for notification and publication of the original asset transfer request were not fully met at the time, the local authority must complete this before determining the review.

18.12. Interested parties may make representations to the local authority within 10 working days of the date of the notice. After this they may not bring forward any further matters or evidence unless the local authority requests it.

18.13. The local authority will send a copy of any representations received in relation to the review to the community transfer body, and inform you how and by what date you may make comments to the local authority. This must be at least 10 working days from the date of sending the copy.

18.14. The local authority may require the community transfer body or anyone else who has submitted any documents or other material in connection with the review to provide additional copies to the local authority or to any other person.

### **Further representations**

18.15. Once they have the initial evidence, any representations from interested parties and comments on those representations, the local authority may consider

they have enough information to determine the appeal. If not, they may decide what further procedure to use to get more information. This could be by written submissions, a hearing session, or other procedures such as a visit to the land to which the asset transfer request relates or to another relevant site (for example the community transfer body's existing premises or another similar community project). Anyone may be asked to provide further information by written submissions, or by attending a hearing session, including people not previously involved in the case.

18.16. If further written submissions are required, the local authority must send a notice to the community transfer body and any other person they want information from. The notice must set out the matters on which further representations are required, and the date by which they are to be sent to the local authority. It must also give the name and address of each person the notice is sent to. Any information provided to the local authority in response to the notice must be copied to everyone else the notice was sent to. Those other people then have 10 working days to send any comments to the relevant authority, again copied to everyone else.

### **Hearing session rules**

18.17. The rules for arranging and conducting a hearing session are set out in the Schedule to the Regulations.

18.18. If the local authority decides they should hold a hearing session to get more information on particular matters, they must send a notice to the community transfer body, any interested parties, and any other person they want to provide further information. The notice must set out the matters to be considered at the hearing session. Apart from the community transfer body, the people invited must confirm within 10 working days if they plan to attend the hearing session. The community transfer body is automatically entitled to appear at the hearing session. The local authority must inform you of the date, time and place when the session will be held, giving as much notice as they consider reasonable in the circumstances. This also applies if the date, time or place of the hearing session is changed.

18.19. If they wish, the local authority may ask people who plan to attend the hearing session to submit a written statement of the case they plan to make, in relation to the matters specified to be considered at the hearing. They must send a notice requesting this, specifying the date by which hearing statements must be submitted. As with the application for review, the hearing statement must be accompanied by a list of documents you intend to rely on, and a copy of any of those documents which has not already been submitted and published in connection with the review. The statement must also list any other person who will be asked to speak on the case, setting out the matters which those people are to address and their qualifications for doing so.

18.20. The notice requesting a hearing statement may also require you to copy it to other people who are entitled to appear at the hearing. All hearing statements from other people must be copied to the community transfer body. The local authority must also publish them online. The local authority may request further information about matters contained in a hearing statement; that further information must also be copied to anyone else the hearing statement was sent to.

18.21. The hearing session is intended to be a discussion, led by the local authority, on the particular matters set out in the notice of the session. The people attending will not normally be allowed to question each other on their statements, and the local authority will be able to stop anything being raised if they consider it is not relevant or is repeating previous points. Anyone who is entitled to appear at the hearing session may be represented by someone else, if they wish. Apart from the points set out in the Hearing Session Rules, the local authority can determine how the hearing is conducted.

### **Additional evidence**

18.22. If the local authority proposes to take into consideration any new evidence that was not obtained through the process for written representations or hearing sessions, they must not reach a decision on the review without giving the community transfer body and other “relevant parties” an opportunity to comment on that evidence. “Relevant parties” are anyone who was entitled to appear at a hearing session, if the evidence relates to matters considered at the hearing session, or anyone who was sent a notice requesting further information in writing, if the evidence relates to matters covered by that notice.

### **Decision**

18.23. Section 86(8) of the Act states that section 82, subsections (3) to (5) apply to a review as they apply to an original asset transfer request. This means that, in carrying out a review, the local authority must consider the request in the same way as the original process, taking into account the same factors and benefits of the request and alternative proposals.

18.24. Having carried out the review, the local authority may confirm the original decision, modify it or any part of it (including the terms and conditions set out in the decision notice) or substitute a different decision. They must issue a new decision notice, which replaces the previous decision notice. The decision notice must be given within 6 months of the date the application for review was made, or a longer period if agreed with the community transfer body. If the request is agreed following the review, the process continues as set out in chapter 16. If it is refused (or no decision is made within the time limit, or the terms and conditions are not acceptable) the community transfer body can appeal to the Scottish Ministers – see chapter 20.

18.25. In addition to sending the decision notice to the community transfer body, the local authority must publish it online and inform every person who made written representations in relation to the review of the decision and where the notice can be inspected.

## **19. Scottish Ministers review**

19.1. If the asset transfer request was made to the Scottish Ministers, the community transfer body can apply for a review by Ministers, as set out in section 87 of the Act. Procedures for such reviews are set out in the Asset Transfer Request (Review Procedure) (Scotland) Regulations 2016. The majority of the regulations refer to local authorities, but Part 4 of the Regulations sets out how they apply to reviews by the Scottish Ministers. The procedures may seem complicated, but they are intended to make sure that everyone involved with the review has a chance to see and comment on all the information submitted at each stage.

19.2. The Scottish Ministers must appoint a panel of 3 people to consider the review and report back to Ministers on their findings and recommendations. The panel will be appointed from a pool of people with appropriate experience in relation to community asset transfer and public sector asset management; no more than one of them may be a civil servant.

### **Application for review**

19.3. Your application for review must be made in writing to the Scottish Ministers within 20 working days beginning with the date of the decision notice, or if no decision has been made, within 20 working days beginning with the date of the deadline for the decision (6 months from the validation date, as given in the acknowledgement of the request, or a later date if agreed between you).

19.4. The application must include the name and contact address of your community transfer body, and specify the land to which the asset transfer request relates. It must also include a statement setting out your reasons for requiring a review. This should normally be based on the information provided in connection with your request and the reasons given by the Scottish Ministers for their decision, for example if you feel they have not given enough weight to certain benefits, or there may be ways around certain restrictions. If you are seeking a review on the basis of the terms and conditions in the decision notice, you should be clear which particular items you would want to change, and why.

19.5. Your statement of reasons must cover all matters which your community transfer body intends to raise in the review. You may only bring forward further matters or evidence in response to representations on the application, or if the panel request it.

19.6. You can also state by what procedure the community transfer body considers the review should be conducted. This is an opportunity to say whether you think the review can be decided on the basis of written submissions or if there should be a hearing session or another procedure, such as a site visit. The final decision on what procedure to use will be up to the review panel.

19.7. The application must be accompanied by a list of any documents and other material or evidence you want to refer to in supporting your case, and you must provide copies of any of those documents or evidence the Scottish Ministers do not already have (for example because they were provided as part of the request, or they are Scottish Government documents such as policy statements). The Scottish Ministers will publish all these documents on their website.

19.8. The Scottish Ministers will send you an acknowledgement of the application for review within 10 working days of receiving it. The acknowledgement will state the date on which the application was made, and tell you how the review documents can be inspected.

### **Notification of interested parties**

19.9. The Scottish Ministers will also give notice of the review to anyone who made representations on the original asset transfer request. These people are described as “interested parties”. Their original representations will be considered by the Scottish Ministers when determining the review. The notice will advise them how and by what date any further representations can be made, and how documents relating to the review can be inspected.

19.10. If the requirements for notification and publication of the original asset transfer request were not fully met at the time, the Scottish Ministers must complete this before determining the review.

19.11. Interested parties may make representations to the Scottish Ministers within 10 working days of the date of the notice. After this they may not bring forward any further matters or evidence unless the review panel requests it.

19.12. The Scottish Ministers will send a copy of any representations received in relation to the review to the community transfer body, and inform you how and by what date you may make comments on those representations to the Scottish Ministers. This must be at least 10 working days from the date of sending the copy.

19.13. The Scottish Ministers may require the community transfer body or anyone else who has submitted any documents or other material in connection with the review to provide additional copies to the Scottish Ministers or to any other person.

### **Further representations**

19.14. Once they have the initial evidence, any representations from interested parties and comments on those representations, the review panel may consider they have enough information to produce their report. If not, they will decide what further procedure to use to get more information. This could be by written submissions, a hearing session, or other procedures such as a visit to the land to which the asset transfer request relates or to another relevant site (for example the community

transfer body's existing premises or another similar community project). Anyone may be asked to provide further information by written submissions, or by attending a hearing session, including people not previously involved in the case.

19.15. If further written submissions are required, the panel will send a notice to the community transfer body and any other person they want information from. The notice must set out the matters on which further representations are required, and the date by which they are to be sent to the panel. It must also give the name and address of each person the notice is sent to. Any information provided to the panel in response to the notice must be copied to everyone else the notice was sent to. Those other people then have 10 working days to send any comments to the panel, again copied to everyone else.

### **Hearing session rules**

19.16. The rules for arranging and conducting a hearing session are set out in the Schedule to the Regulations.

19.17. If the panel decides they should hold a hearing session to get more information on particular matters, they must send a notice to the community transfer body, any interested parties, and any other person they want to provide further information. The notice must set out the matters to be considered at the hearing session. Apart from the community transfer body, the people invited must confirm within 10 working days if they plan to attend the hearing session. The community transfer body is automatically entitled to appear at the hearing session. The panel must inform you of the date, time and place when the session will be held, giving as much notice as they consider reasonable in the circumstances. This also applies if the date, time or place of the hearing session is changed.

19.18. If they wish, the panel may ask people who plan to attend the hearing session to submit a written statement of the case they plan to make, in relation to the matters specified to be considered at the hearing. They must send a notice requesting this, specifying the date by which those statements must be submitted. As with the application for review, the hearing statement must be accompanied by a list of documents you intend to rely on, and a copy of any of those documents which has not already been submitted and published in connection with the review. You may ask other people to speak on your case, such as experts on particular issues or people who will be affected by the asset transfer. Your statement must list anyone you want to speak on your case, setting out the matters which they are to address and their qualifications for doing so.

19.19. The notice requesting a hearing statement may also require you to copy it to other people who are entitled to appear at the hearing. All hearing statements from other people must be copied to the community transfer body. The panel must also publish them online. The panel may request further information about matters

contained in a hearing statement; that further information must also be copied to anyone else the hearing statement was sent to.

19.20. The hearing session is intended to be a discussion, led by the panel, on the particular matters set out in the notice of the session. The people attending will not normally be allowed to question each other on their statements, and the panel will be able to stop anything being raised if they consider it is not relevant or is repeating previous points. Anyone who is entitled to appear at the hearing session may be represented by someone else, if they wish. One representative may speak for a group of people who have similar interests in the case.

### **Additional evidence**

19.21. If the Scottish Ministers propose to take into consideration any new evidence that was not obtained through the process for written representations or hearing sessions, they must not reach a decision on the review without giving the community transfer body and other “relevant parties” an opportunity to comment on that evidence. “Relevant parties” are anyone who was entitled to appear at a hearing session, if the evidence relates to matters considered at the hearing session, or anyone who was sent a notice requesting further information in writing, if the evidence relates to matters covered by that notice.

### **Decision**

19.22. Section 87(8) of the Act states that section 82, subsections (3) to (5) apply to a review as they apply to an original asset transfer request. This means that, in carrying out a review, the Scottish Ministers must consider the request in the same way as the original process, taking into account the same factors and benefits of the request and alternative proposals.

19.23. Having carried out the review, the Scottish Ministers may confirm the original decision, modify it or any part of it (including the terms and conditions set out in the decision notice) or substitute a different decision. They must issue a new decision notice, which replaces the previous decision notice. If the request is agreed following the review, the process continues as set out in chapter 16. If it is refused, there is no further option for appeal.

19.24. In addition to sending the decision notice to the community transfer body, the Scottish Ministers must publish it online and inform every person who made written representations in relation to the review of the decision and where the notice can be inspected.

## **20. Appeal to the Scottish Ministers**

20.1. If the asset transfer request was made to any relevant authority other than the Scottish Ministers or a local authority, the community transfer body can appeal to the Scottish Ministers, as set out in section 85 of the Act. Procedures for such appeals are set out in the Asset Transfer Request (Appeals) (Scotland) Regulations 2016.

20.2. You can also appeal to the Scottish Ministers following a review by a local authority, as provided by section 88 of the Act. The procedure is the same in both cases. Part 4 of the regulations sets out the technical differences in how they refer back to section 88 instead of section 85.

20.3. The procedures may seem complicated, but they are intended to make sure that everyone involved with the appeal has a chance to see and comment on all the information submitted at each stage.

### **Notice of appeal and local authority response**

20.4. You must send a notice of appeal in writing to the Scottish Ministers within 20 working days beginning with the date of the decision notice, or if no decision has been made, within 20 working days beginning with the date of the deadline for the decision (6 months from the validation date, as given in the acknowledgement of the request, or a later date if agreed between you). For appeals following a local authority review, this relates to the date of the decision on the review, or the deadline for that decision.

20.5. The notice of appeal must include the name and contact address of your community transfer body, and specify the land to which the asset transfer request relates. It must also include a statement setting out why you are appealing and the matters which you consider should be taken into account in determining the appeal. This should normally be based on the information provided in connection with your request and the reasons given by the relevant authority for their decision, for example if you feel they have not given enough weight to certain benefits, or there may be ways around certain restrictions. If you are appealing on the basis of the terms and conditions in the decision notice, you should be clear which particular items you would want to change, and why.

20.6. The Scottish Ministers may consider any aspect of the decision in their appeal, including issues not raised by the community transfer body, but they will mainly focus on the matters covered in the notice of appeal.

20.7. Your notice of appeal must cover all matters which your community transfer body intends to raise in the appeal, and be accompanied by all documents or other evidence you intend to refer to. You may only bring forward further matters or

evidence in response to representations on the application, or if the Scottish Ministers request it.

20.8. You can also state by what procedure the community transfer body considers the appeal should be conducted. This is an opportunity to say whether you think the appeal can be decided on the basis of written submissions or if there should be a hearing session or another procedure, such as a site visit. The final decision on what procedure to use will be up to the Scottish Ministers.

20.9. The notice of appeal must be accompanied by a copy of the original asset transfer request, and all documents provided by the community transfer body the relevant authority in connection with the request (and review, if appropriate). If a decision notice has been issued, this must also be attached. The Scottish Ministers will publish all these documents on their website.

20.10. At the same time as sending the notice of appeal to the Scottish Ministers, you must send a copy to the relevant authority. This must be accompanied by a list of all the documents and evidence sent to the Scottish Ministers, and copies of anything the relevant authority does not already have.

20.11. The relevant authority will have 15 working days to send its response to the Scottish Ministers. This must set out the matters they consider should be taken into account in the appeal and the procedure they consider should be used. The relevant authority must also send to the Scottish Ministers copies of any documents that were taken into account in reaching its decision on the request (or review), which were not included with the community transfer body's notice of appeal. The relevant authority will not be allowed to bring forward any further issues or evidence after submitting its response, unless the Scottish Ministers request it.

20.12. If the relevant authority raises any issues in its response that were not covered in its decision notice, or in your notice of appeal, the community transfer body will have 15 working days to send the Scottish Ministers any comments on those issues, together with any related documents or evidence. All this material will be published on the Scottish Ministers' website.

### **Notification of interested parties**

20.13. Within 10 working days of receiving the notice of appeal, the relevant authority must also give notice of the appeal to anyone who made representations on the original asset transfer request (or review). These people are described as "interested parties". The relevant authority must also send copies of the original representations to the Scottish Ministers, to be considered when determining the appeal. The notice to interested parties will advise them how and by what date any further representations can be made, and how documents relating to the appeal can be inspected.

20.14. If the requirements for notification and publication of the original asset transfer request were not fully met at the time, the Scottish Ministers must complete this before determining the appeal.

20.15. Interested parties may make representations to the Scottish Ministers within 10 working days of the date of the notice. After this they may not bring forward any further matters or evidence unless the Scottish Ministers request it.

20.16. The Scottish Ministers will send a copy of any representations received in relation to the appeal to the community transfer body and the relevant authority, and inform you how and by what date you may make comments on those representations to the Scottish Ministers. This must be at least 10 working days from the date of sending the copy.

20.17. The Scottish Ministers may require the community transfer body or anyone else who has submitted any documents or other material in connection with the appeal to provide additional copies to the Scottish Ministers or to any other person. They may require the relevant authority to make copies of such material available for inspection at an office, for example if it is not practical to view them online.

### **Further representations**

20.18. Once they have the initial evidence, any representations from interested parties and comments on those representations, the Scottish Ministers may consider they have enough information to determine the appeal. If not, they will decide what further procedure to use to get more information. This could be by written submissions, a hearing session, or other procedures such as a visit to the land to which the asset transfer request relates or to another relevant site (for example the community transfer body's existing premises or another similar community project). Anyone may be asked to provide further information by written submissions, or by attending a hearing session, including people not previously involved in the case.

20.19. If further written submissions are required, the Scottish Ministers will send a notice to the community transfer body, the relevant authority, and any other person they want information from. The notice must set out the matters on which further representations are required, and the date by which they are to be sent to the Scottish Ministers. It must also give the name and address of each person the notice is sent to. Any information provided to the Scottish Ministers in response to the notice must be copied to everyone else the notice was sent to. Those other people then have 10 working days to send any comments to the Scottish Ministers, again copied to everyone else.

## Hearing session rules

20.20. The rules for arranging and conducting a hearing session are set out in the Schedule to the Regulations.

20.21. If the Scottish Ministers decide they should hold a hearing session to get more information on particular matters, they must send a notice to the community transfer body, the relevant authority, any interested parties, and any other person they want to provide further information. The notice must set out the matters to be considered at the hearing session. Apart from the community transfer body and the relevant authority, who are automatically entitled to appear, the people invited must confirm within 10 working days if they plan to attend the hearing session. The Scottish Ministers must inform you of the date, time and place when the session will be held, giving as much notice as they consider reasonable in the circumstances. This also applies if the date, time or place of the hearing session is changed.

20.22. If they wish, the Scottish Ministers may ask people who plan to attend the hearing session to submit a written statement of the case they plan to make, in relation to the matters specified to be considered at the hearing. They must send a notice requesting this, specifying the date by which those statements must be submitted. As with the notice of appeal, the hearing statement must be accompanied by a list of documents you intend to rely on, and a copy of any of those documents which has not already been submitted and published in connection with the appeal. You may ask other people to speak on your case, such as experts on particular issues or people who will be affected by the asset transfer. Your statement must list anyone you want to speak on your case, setting out the matters which they are to address and their qualifications for doing so.

20.23. The notice requesting a hearing statement may also require you to copy it to other people who are entitled to appear at the hearing. All hearing statements from other people must be copied to the community transfer body and the relevant authority. The Scottish Ministers must also publish them online. The Scottish Ministers may request further information about matters contained in a hearing statement; that further information must also be copied to anyone else the hearing statement was sent to.

20.24. The hearing session is intended to be a discussion, led by the Scottish Ministers, on the particular matters set out in the notice of the session. The people attending will not normally be allowed to question each other on their statements, and the Scottish Ministers will be able to stop anything being raised if they consider it is not relevant or is repeating previous points. Anyone who is entitled to appear at the hearing session may be represented by someone else, if they wish. One representative may speak for a group of people who have similar interests in the case.

### **Additional evidence**

20.25. If the Scottish Ministers propose to take into consideration any new evidence that was not obtained through the process for written representations or hearing sessions, they must not reach a decision on the appeal without giving the community transfer body, the relevant authority and other “relevant parties” an opportunity to comment on that evidence. “Relevant parties” are anyone who was entitled to appear at a hearing session, if the evidence relates to matters considered at the hearing session, or anyone who was sent a notice requesting further information in writing, if the evidence relates to matters covered by that notice.

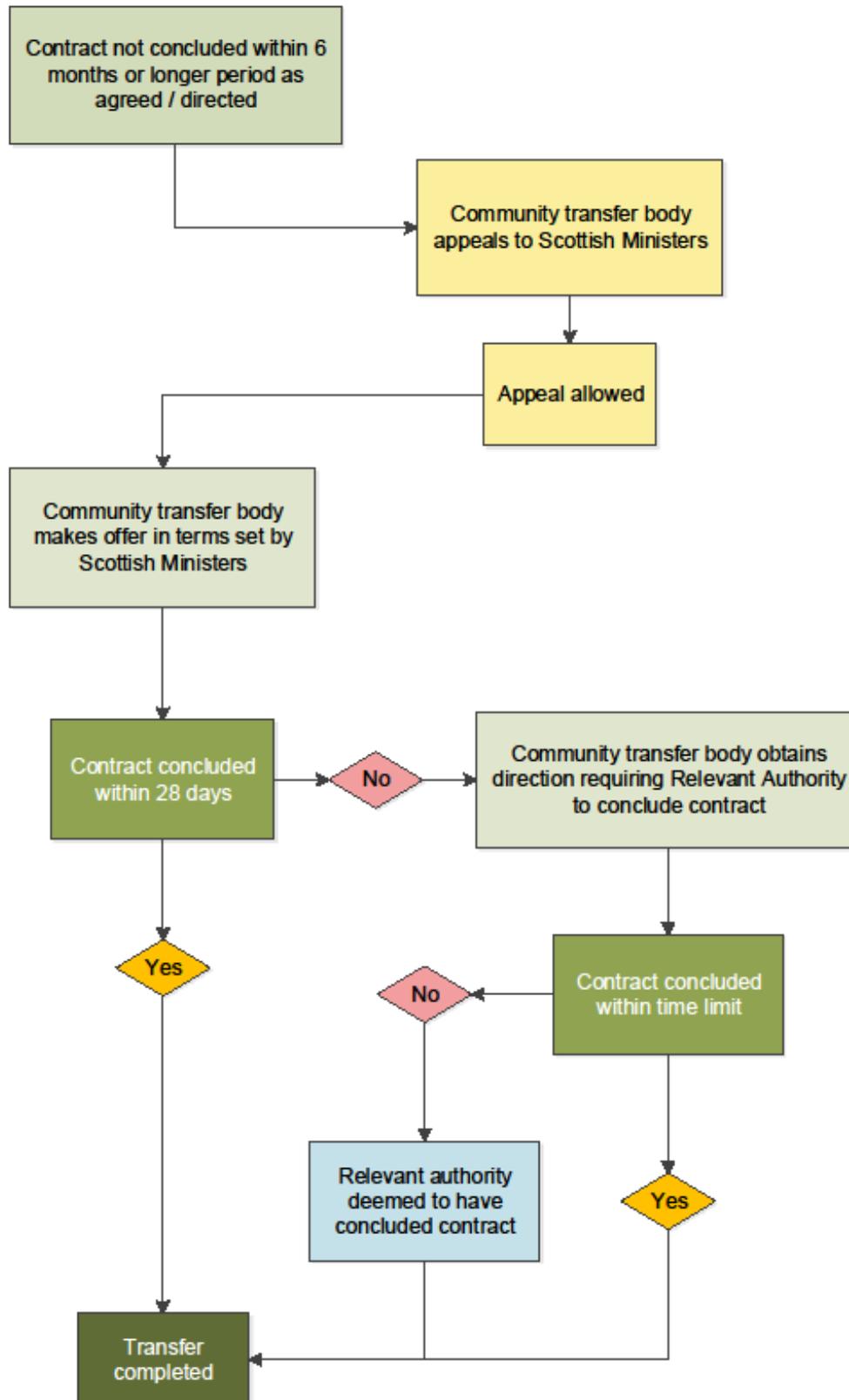
### **Decision**

20.26. Having carried out the appeal, the Scottish Ministers may allow the appeal (agree with the community transfer body’s case), or dismiss (reject) it. They may reverse or change any part of the original decision by the relevant authority, even if that part was not mentioned in the appeal, including changing the terms and conditions set out in the decision notice.

20.27. If the outcome of the appeal is that the asset is to be transferred, or any terms and conditions in the decision notice are to be changed, the Scottish Ministers must issue a direction to the relevant authority requiring them to issue a new decision notice on those terms. This decision notice replaces any previous decision notice in relation to the asset transfer request.

20.28. The Scottish Ministers must notify the community transfer body and the relevant authority of its decision, and send the community transfer body a copy of any direction issued to the relevant authority. They must also publish their decision and any direction online and inform every person who made written representations in relation to the appeal of the decision and where the notice can be inspected.

**Appeal where no contract concluded**



## **21. Appeals where no contract is concluded**

21.1. Once an asset transfer request has been agreed, if you reach the end of the period allowed to conclude a contract without agreement, the community transfer body can appeal to the Scottish Ministers under section 83(6) of the Act. Procedures for such appeals are set out in the Asset Transfer Request (Appeal Where No Contract Concluded) (Scotland) Regulations 2016. You cannot appeal in these circumstances if the original request was made to the Scottish Ministers.

21.2. Chapter 16 explains the timescale allowed for concluding a contract. These Regulations also cover the procedure for applying for a direction to extend the period.

21.3. Unlike appeals and reviews over the decision whether or not to agree to the asset transfer request, appeals where no contract has been concluded do not allow for any publication of documents or representations from people other than the community transfer body and the relevant authority. This is because the negotiation of a contract is likely to be complex and involve discussion of sensitive or commercially confidential issues.

21.4. The Scottish Ministers must appoint a panel of 3 people to consider the appeal and report back to Ministers on their findings and recommendations. The panel will be appointed from a pool of people with appropriate experience in relation to community asset transfer and property contracts; no more than one of them may be a civil servant.

### **Notice of appeal and relevant authority response**

21.5. You must send a notice of appeal in writing to the Scottish Ministers within 10 working days beginning with the date of end of the period for concluding a contract.

21.6. The notice of appeal must include the name and contact address of your community transfer body, and specify the land to which the asset transfer request relates. It must also include a statement setting out why you are appealing and the matters which you consider should be taken into account in determining the appeal. This is likely to outline how negotiations have progressed so far and why it has not been possible to conclude a contract. You must also provide a statement of the terms and conditions on which the community transfer body considers the land should be transferred, and how this differs from the terms and conditions set out in the decision notice.

21.7. Along with the appeal you must send copies of the original decision notice, the community transfer body's offer to the relevant authority, and all correspondence between the community transfer body and the relevant authority in relation to the negotiation of the contract.

21.8. Your notice of appeal must cover all matters which your community transfer body intends to raise in the appeal, and be accompanied by all documents or other evidence you intend to refer to. You may only bring forward further matters or evidence in response to the relevant authority's response, or if the review panel request it.

21.9. You can also state by what procedure the community transfer body considers the appeal should be conducted. This is an opportunity to say whether you think the appeal can be decided on the basis of written submissions or if there should be a hearing session or another procedure, such as a site visit. The final decision on what procedure to use will be up to the review panel.

21.10. At the same time as sending the notice of appeal to the Scottish Ministers, you must send a copy to the relevant authority. This must be accompanied by a list of all the documents and evidence sent to the Scottish Ministers, and copies of anything the relevant authority does not already have.

21.11. The relevant authority will have 15 working days to send its response to the Scottish Ministers. This must set out the matters it considers should be taken into account in the appeal, the procedure it considers should be used, and the terms and conditions on which it considers the land should be transferred. The relevant authority will not be allowed to bring forward any further issues or evidence after submitting its response, unless the review panel request it.

21.12. The community transfer body will have 15 working days to send the Scottish Ministers any comments on the relevant authority's response, including its proposed terms and conditions for the contract.

21.13. The Scottish Ministers may require the community transfer body or anyone else who has submitted any documents or other material in connection with the appeal to provide additional copies to the Scottish Ministers or to any other person.

### **Further representations**

21.14. The review panel may consider they have enough information in the notice of appeal, the relevant authority's response and the community transfer body's comments to determine the appeal. If not, they will decide what further procedure to use to get more information. This could be by written submissions, a hearing session, or other procedures such as a visit to the land to which the asset transfer request relates or to another relevant site (for example the community transfer body's existing premises or another similar community project). The review panel may ask other people to provide further information on the case. This allows them to include experts on particular issues or people who may be affected by the transfer.

21.15. If further written submissions are required, the panel will send a notice to the community transfer body, the relevant authority, and any other person they want

information from. The notice must set out the matters on which further representations are required, and the date by which they are to be sent to the panel. It must also give the name and address of each person the notice is sent to. Any information provided to the panel in response to the notice must be copied to everyone else the notice was sent to. Those other people then have 10 working days to send any comments to the panel, again copied to everyone else.

### **Hearing session rules**

21.16. The rules for arranging and conducting a hearing session are set out in the Schedule to the Regulations.

21.17. If the panel decide they should hold a hearing session to get more information on particular matters, they must send a notice to the community transfer body, the relevant authority, any interested parties, and any other person they want to provide further information. The notice must set out the matters to be considered at the hearing session. Apart from the community transfer body and the relevant authority, who are automatically entitled to appear, the people invited must confirm within 10 working days if they plan to attend the hearing session. The panel must inform you of the date, time and place when the session will be held, giving as much notice as they consider reasonable in the circumstances. This also applies if the date, time or place of the hearing session is changed.

21.18. If they wish, the panel may ask people who plan to attend the hearing session to submit a written statement of the case they plan to make, in relation to the matters specified to be considered at the hearing. They must send a notice requesting this, specifying the date by which those statements must be submitted. As with the notice of appeal, the hearing statement must be accompanied by a list of documents you intend to rely on, and a copy of any of those documents which has not already been submitted and published in connection with the appeal. You may ask other people to speak on your case, such as experts on particular issues or people who will be affected by the asset transfer. Your statement must list anyone you want to speak on your case, setting out the matters which they are to address and their qualifications for doing so.

21.19. The notice requesting a hearing statement may also require you to copy it to other people who are entitled to appear at the hearing. All hearing statements from other people must be copied to the community transfer body and the relevant authority. The panel may request further information about matters contained in a hearing statement; that further information must also be copied to anyone else the hearing statement was sent to.

21.20. The hearing session is intended to be a discussion, led by the panel, on the particular matters set out in the notice of the session. The people attending will not normally be allowed to question each other on their statements, and the panel will be

able to stop anything being raised if they consider it is not relevant or is repeating previous points. Anyone who is entitled to appear at the hearing session may be represented by someone else, if they wish. One representative may speak for a group of people who have similar interests in the case.

### **Additional evidence**

21.21. If the Scottish Ministers propose to take into consideration any new evidence that was not obtained through the process for written representations or hearing sessions, they must not reach a decision on the appeal without giving the community transfer body and the relevant authority an opportunity to comment on that evidence.

### **Decision**

21.22. Having carried out the appeal, the Scottish Ministers may allow the appeal (agree with the community transfer body's case), or dismiss (reject) it. If they allow it, they must issue a notice to the community transfer body and the relevant authority setting out details of the terms and conditions of an offer which the community transfer body may make to the relevant authority in relation to the asset transfer request, and the date by which any such offer is to be made. In effect, the Scottish Ministers will write the contract which they expect the parties to agree.

21.23. If the appeal is dismissed, the asset transfer request process comes to an end and the relevant authority is free to keep or sell the property as it wishes.

21.24. If the appeal is allowed, the community transfer body is not required to make an offer based on the Scottish Minister's notice. You may decide not to proceed, or you might agree a contract with the relevant authority on different terms. However, if you do not make an offer in the terms of the notice within the specified period, the asset transfer request process comes to an end and you have no further rights under the legislation in relation to that request.

### **Offer and conclusion**

21.25. If you want to proceed, the community transfer body must, within the period specified in the appeal decision notice, submit an offer to the relevant authority containing "all and only" the terms and conditions set out in the appeal decision notice.

21.26. The relevant authority must conclude a contract with the community transfer body, on the basis of that offer, within 20 working days of the offer being submitted. If they do not, the community transfer body can apply to the Scottish Ministers for a direction under section 90(5) of the Act, requiring the relevant authority to conclude the contract.

21.27. An application for a direction under section 90(5) must be sent to the Scottish Ministers within 20 working days beginning with the date of the deadline for the contract to be concluded (which is 28 days after the offer is made). The application must include the name and contact address of the community transfer body and the relevant authority, and the land to which the asset transfer request relates. You must include a statement of the steps taken by the community transfer body and the relevant authority to conclude a contract, the reasons why you think a direction should be given, and the period within which the relevant authority should be required to conclude the contract. You must attach copies of the appeal decision notice and your subsequent offer.

21.28. At the same time as making the application to the Scottish Ministers you must send a copy to the relevant authority. They will have 10 working days to send comments to the Scottish Ministers.

21.29. If the Scottish Ministers approve the application, they will give a direction to the relevant authority (copied to the community transfer body) requiring them to conclude a contract within a specified time. If they do not, they will automatically be deemed to have accepted the offer and concluded the contract with the community transfer body, and the transfer will go ahead (unless, in the meantime, the parties have concluded a contract on other terms or the community transfer body has withdrawn its offer).

21.30. If the contract is not concluded within the original 28 days and you do not apply for a direction under section 90(5), or the application is refused, the asset transfer process comes to an end.

## **Annex A: Asset Transfer Implementation Steering Group**

### **Members:**

Joanne Forbes	ACES, South Lanarkshire Council
Alison Fraser	SOLAR, Glasgow City Council
Linda Gillespie	Community Ownership Support Service
Angus Hardie	Scottish Community Alliance
Shona Harper	Scottish Government Property Division
Jon Hollingdale	Community Woodlands Association
Peter Peacock	Community Land Scotland
Brian Taylor	Scottish Government Finance Division
Ian Turner	Scottish Government Community Empowerment Team
Jean Waddie	Scottish Government Community Empowerment Team
Malcolm Wield	Forestry Commission Scotland
Rebecca Carr	Forestry Commission Scotland

Notes of the Steering Group's meetings can be found on the Scottish Government website at <http://www.gov.scot/Topics/People/engage/AssetTransfer>

## **Annex B: Short-Life Working Group on Valuation and Assessment of Non-Financial Benefits**

### **Members:**

Nick Allan	
Jim Boyle	Director of Finance, Stirling Council (replaced David Robertson)
Tim Bridle	Audit Scotland (Observer)
Gareth Evans	NHS Grampian
Joanne Forbes	ACES, South Lanarkshire Council
Alison Fraser	SOLAR, Glasgow City Council
Paul Furbank	West Lothian Council
Linda Gillespie	Community Ownership Support Service
Angus Hardie	Scottish Community Alliance
Shona Harper	Scottish Government Property Division
Jon Hollingdale	Community Woodlands Association
Sandra Holmes	Highlands and Islands Enterprise
Robin Johnston	Historic Environment Scotland
Donald McLellan	Forest Enterprise Scotland
Pauline Megson	Historic Environment Scotland
Peter Peacock	Community Land Scotland
Susan Robinson	CIPFA
Eric Samuel	Big Lottery Fund / Scottish Funders' Forum
David Robertson	Director of Finance, Scottish Borders Council (initially)
Brian Taylor	Scottish Government Finance Division
Ian Turner	Scottish Government Community Empowerment Team
Jean Waddie	Scottish Government Community Empowerment Team
Malcolm Wield	Forestry Commission Scotland
Rebecca Carr	Forestry Commission Scotland

Notes of the Working Group's meetings can be found on the Scottish Government website at <http://www.gov.scot/Topics/People/engage/AssetTransfer>

## **Annex C: Useful Websites**

Community Ownership Support Service <http://www.dtascommunityownership.org.uk/>

Highlands and Islands Enterprise (for bodies in the Highlands and Islands area)  
<http://www.hie.co.uk/community-support/community-assets/>

Community Woodlands Association [www.communitywoods.org](http://www.communitywoods.org)

Community Energy Scotland <http://www.communityenergyscotland.org.uk/>

Community Land Advisory Service Scotland <http://sc.communitylandadvice.org.uk/>

Forestry Commission Scotland <http://scotland.forestry.gov.uk/managing/get-involved/communities>

National Standards for Community Engagement  
<http://www.scdc.org.uk/what/national-standards/>

Communities Channel Scotland <http://www.scdc.org.uk/what/national-standards/>

Community Land Scotland <http://www.communitylandscotland.org.uk/>

Community Funds <http://www.gov.scot/Topics/Built-Environment/regeneration/communityfunds>



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