

Asset Transfer

under the

**Community Empowerment
(Scotland) Act 2015**

A summary guide

1. Introduction

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

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

This summary is a short guide to help people know what asset transfer is about and whether it can help them¹.

¹ Please note this document is not a precise guide to the requirements of the legislation. Some aspects have been simplified or summarised to aid understanding.

2. More information

If your community group wants to make an asset transfer request you will need to use the full guidance. You can find this on the Scottish Government website at <http://www.gov.scot/Topics/People/engage/AssetTransfer>
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There are people who can help you understand the guidance and what you need to do. There is a list of useful websites at the end of this paper.

The authority that owns the property should also be able to help you. They may have their own guidance for making an asset transfer request. You should contact them early on to talk about your ideas.

3. Summary of Asset Transfer under the Act

An asset transfer request has to be made by a **community transfer body** to a **relevant authority**.

The community transfer body can make a request about any land or buildings which the relevant authority owns, or rents from someone else. They can ask to buy or lease the land or buildings or have other legal rights, for example to use the land.

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

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

4. Community Transfer Bodies

A community organisation has to have certain rules before it can make an asset transfer request. An organisation that meets these rules is called a “**community transfer body**”.

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

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

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

If a community group can’t change its rules to fit the requirements, it can ask the Scottish Ministers to make it a community transfer body by law. This is called being “designated”.

5. Relevant authorities

Chapter 6 of the guidance lists “**relevant authorities**”. These are all the public authorities that asset transfer requests can be made to. It includes the Scottish Government, local councils, health boards and some other Scottish public bodies.

6. Registers of land

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

The list should say where the land or building is and what it is, for example offices, a clinic or a park. Some relevant authorities may give more information as well, but they do not have to. Every authority must put their list on the internet, but they will not all look the same. Some may be a list, others may be based on a map.

Some types of land and buildings do not need to be on the list. They include roads and other transport systems, houses, water and waste systems, some Police sites and very small pieces of land. You can still make an asset transfer request for land or buildings even if they are not on the relevant authority’s list.

7. Information about land or buildings

When a community transfer body has an idea for using a piece of land or a building, the first step is to talk to the relevant authority that owns or leases it. You can ask for more information about the land or building to see whether it is right for what you want to do. The relevant authority might also help you develop your idea.

The relevant authority can only refuse to give you information about the land or building if the law allows it. You can find out more from the Scottish Information Commissioner's website

<http://www.itspublicknowledge.info/YourRights/YourRights.aspx>

8. How to make an asset transfer request

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

The address to send a request to should be on the relevant authority's website.

When a community transfer body makes an asset transfer request, it must say:

- that it is making a request under the Community Empowerment Act
- what land or building it wants
- if it wants to buy or rent or have other rights in the land or building
- how much it wants to pay
- what it plans to do with the land or building
- how it will get money to carry out its plans
- how its plans will help the community
- whether other people agree with what the community transfer body plans to do.

The request must also include:

- the community transfer body's name and address
- a copy of the community transfer body's rules, or a note that it has been designated by the Scottish Ministers.

9. How much to pay

The Act does not say how much a community organisation should pay to buy or rent something through asset transfer. Sometimes they should pay the full price, so the public authority has money to do its job. Sometimes the public authority should let them pay less, because what they do will help the community and improve people's lives.

It is not always easy to decide when community organisations should be allowed to pay less, and how much less. The guidance suggests some ways of thinking about this.

The first thing the community body needs to know is how much the full price ("market value") would be. The relevant authority needs to know this too. It is a good idea if they both ask the same person to work out the market value, and share the cost of that work.

10. What happens after making a request

Acknowledgement

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

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

Ban on sale to other people

Once an asset transfer request has been made, the relevant authority is not allowed to sell the land or building to anyone except the community transfer body, until the request has been dealt with. This does not apply if the land or building was advertised for sale or lease before the request was made. The acknowledgement must tell the community transfer body if the ban on sale to other people applies, or if any other community body has made an asset transfer request for it.

Telling people about the request

Other people may want to say what they think about the community transfer body's plans. The relevant authority must tell people who own, rent or use the land or building about the request, and put up a notice where people can see it. They should also put a copy of the request and all the papers on a website for people to see. People will have 4 weeks to tell the relevant authority what they think. The community transfer body will have a chance to reply as well.

11. Making the decision

The Act says what the relevant authority must think about to decide whether to agree to the asset transfer request or not. These include:

- how the community body's plans will help the community
- how any other plans for the land or building might help the community (other plans include how the relevant authority is already using it)
- how the plans will affect the relevant authority
- anything that would stop the relevant authority selling or renting the land to the community body
- anything that would stop the community body doing what it plans
- what other people think about the community body's plans.

The relevant authority will also check that the community body will have the money and skills to carry out its plan.

The relevant authority must agree to the asset transfer request unless it has a good reason to say no.

Then it must send a "decision notice" to the community transfer body. This says what the relevant authority has decided, and why. The relevant authority has 6 months to make its decision.

12. After agreement

If the relevant authority agrees to an asset transfer request, the decision notice will include the terms and conditions the relevant authority wants to include in the contract. The community transfer body must make an offer for the land or buildings, based on those terms and conditions. After the offer, the two sides work together to agree the final contract for the transfer.

13. Reviews and appeals

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

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

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

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

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

If the request was made to any other relevant authority, the community transfer body can appeal to the Scottish Ministers. The relevant authority will also have the chance to tell Ministers their views.

The regulations on reviews and appeals include a lot of detail to make sure they are fair and everyone can have their say. These are some of the key points:

- A community transfer body has 4 weeks after the decision notice to ask for a review or appeal
- The community transfer body must say why it thinks the decision should be changed
- Other people who commented on the asset transfer request must be asked what they think about the review or appeal.
- All the papers about the review or appeal must be put on a website so everyone can see them.

- The Scottish Ministers must appoint 3 people to review decisions made by Ministers. At least 2 of them must not work for the Scottish Government.
- The council or the Scottish Ministers can ask anyone for more information to help them make a decision. They can ask for the information in writing or hold a meeting so people can tell them their views. They can also do other things, such as visiting the land or building the request is about.

The person carrying out the review or appeal may decide the original decision was right, or may decide it should be changed. They may also change some details of the decision notice.

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

14. No contract agreed

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

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

If the community transfer body still wants to agree a contract, they can appeal to the Scottish Ministers. The Scottish Ministers can write a contract which the community transfer body and relevant authority have to agree to. In the end, the Scottish Ministers can make the relevant authority agree to the contract.

15. Annual Reports

Each relevant authority must write an annual report about asset transfer. This has to say how many asset transfer requests they have received, how many have been agreed or refused or appealed. It must also say how the relevant authority has helped community transfer bodies that want to make asset transfer requests.

Useful Websites

Scottish Government: Asset transfer

<http://www.gov.scot/Topics/People/engage/AssetTransfer>

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 Land Advisory Service Scotland

<http://sc.communitylandadvice.org.uk/>