

**The Highland Council**  
**Communities and Partnerships Committee**  
**9 June 2016**

Agenda Item	11 (c)
Report No	CP 18/16

**Community Empowerment Act 2015: Part 5 Asset Transfer**

**Report by Acting Head of Policy**

**Summary**

This report outlines the draft response to the Scottish Government consultation on the draft regulations for Asset Transfer under the Community Empowerment Act. The Committee is invited to consider the response, suggest any amendments and agree a final submission.

**1. Background**

- 1.1 The Community Empowerment Act (Scotland) 2015 introduces a suite of measures to support communities to improve outcomes in their community. A key measure is Part 5 of the Act-Asset Transfer Requests.

**2. Asset Transfer Requests**

- 2.1 The Community Empowerment (Scotland) Act 2015 provides for community bodies to request ownership, lease, management or use of publicly owned buildings or land whether or not they are available for sale or deemed surplus to requirements by the owning body. It applies to assets held by 17 listed bodies.
- 2.2 The public bodies in scope of this part of the Act are: *Boards of management of a college of further education and higher education; the British Waterways Board; the Crofting Commission; a Health Board; HIE; a local authority; National Park Authority; Scottish Courts and Tribunals Service; Scottish Enterprise; SEPA; SFRS; Scottish Ministers; SNH; Scottish Police Authority; Scottish Water; a Special Health Board; a Regional Transport Authority.*
- 2.3 The initiative is placed with community bodies and they are to specify the benefit that would come from the asset transfer.
- 2.4 In considering asset transfer requests The asset owning body is to consider whether the transfer would promote or improve:
- Economic development;
  - Regeneration;
  - Public health;
  - Social wellbeing;
  - Environmental wellbeing; and/or
  - Reduce inequalities; and
  - Involve people experiencing disadvantage

### **3. The Process**

3.1 Once a community body make an asset transfer request with all the required information such as –

- The land or building being requested and the basis it is being requested on i.e. ownership, or lease
- The reasons for making the request
- The benefits which the community body considers will arise if the transfer is agreed.
- The price the community body is willing to pay

The request must then be considered and a decision made by the public body in 6 months unless the community body and public authority agree to an extension.

3.2 Public bodies are encouraged to take the wider benefits of community proposals into account when considering disposal at or below market value. The price for sale can take into account the need to receive a certain level of capital receipts to fund other developments and the benefits of those developments can be taken into account in comparing benefits to a disposal at less than market value.

3.3 Public bodies must also respond to information requested about the assets it holds. They must also establish and maintain a register of land that is owned or leased by them. Annual reports are also to be published (by 30 June for the previous financial year) setting out the number of requests received, agreed to and refused, the number that resulted in transferring ownership or leases, the number of appeals made and their outcome, the action taken to promote asset transfer requests and the support offered to community bodies in making requests.

### **4. Proposed Council Response**

4.1 The provisions outlined above are set out in the Act and are not subject to consultation however regulations to support the provisions contained in the Act on asset transfer are now out to consultation. The consultation document seeks views on a number of key elements of the regulations-

- The types of land and buildings that are in scope
- The requirement for public bodies to develop and maintain a register of assets and what this register might include.
- Information public bodies could provide to community transfer bodies.
- The information a community transfer body should provide with a request
- The process and timelines for public bodies dealing with and making a decision on a request – 6 months to make a decision once a completed request has been received
- The review and appeals process available – proposal for 6 months for a Local Authority to review a decision

4.2 A draft response is attached as **Appendix 1**. It seeks to ensure that elements of the regulations are appropriate and workable in a Highland context. The suggested responses deal with the following issues-

- Types of land/buildings in scope-it seeks to clarify the status of Common Good, Housing Revenue Account and land leased to public bodies by the private landlords.
- Highlight the potential cost of compiling and maintaining a register of land.
- The desirability of a mapping based register of land and for it to be published electronically.
- Assisting communities with the provision of information and ensuring confidentiality where necessary.
- A suitable route for communities obtaining independent advice.
- The timescale for public bodies making a decision on complete asset transfer requests-6 months-this is viewed as being reasonable to carry out all the required governance.
- The review and appeal process-suggesting a 3 month appeal review process rather than 6 months. It is felt 3 months is the shortest practicable in terms of governance.
- The cost of running appeals and the scope of information they consider.

## **5 Implications**

5.1 Resource: There is no new or additional funding to support the implementation of asset transfer requests. It is anticipated that some additional work will be required compiling and maintaining a register of land, and creating and supporting an appeals process.

5.2 Legal: The guidance sets out how the Government wishes Community Planning Partnerships to meet the duties contained within the Community Empowerment Act.

5.3 Equalities: It is likely that more vulnerable communities will require support to consider asset transfers.

5.4 Climate Change/Carbon Clever: None identified at this time.

5.5 Risk: There is a risk that the Highland CPP does not comply with the new legislation. This is being mitigated by taking early action with partners in advance of the new duties coming into place.

5.5 Gaelic: None identified at this time.

5.6 Rural implications: None identified at this time.

## **6. Recommendation**

Members are asked to:

- Note the content of the Consultation on the Draft Regulations for Asset Transfer under the Community Empowerment Act.
- Consider the response to the consultation in Appendix 1, suggest any amendments and agree a final response.

Designation: Community and Democratic Engagement Manager

Date: 30 May 2016

Author: Pablo Mascarenhas

Background Papers: Appendix 1 – Draft Response to Part 5 Asset Transfer of the Community Empowerment Act

## Asset Transfer under the Community Empowerment (Scotland) Act 2015:

### Consultation on Draft Regulations

#### Questionnaire

Q1: Do you agree that the types of land set out in the draft Community Empowerment (Registers of Land) (Scotland) Regulations 2016 need not be included in relevant authorities' registers?

Yes  No

If not, please explain what you would change and why.

Yes, however it would be helpful to have a definitive indication on whether the following assets are in scope-

- Common Good assets and how this interlinks with Part 8 of the Act and disposal of Common Good Assets
- Assets held under the Housing Revenue Account
- Assets leased by the public body from a private landlord – the legal basis for this is unclear

In terms of compiling a register of land it should be acknowledged that this could be a costly and time consuming exercise. It is not clear how this cost could be met.

Q2: Are there any other types of land that relevant authorities should not have to include in their register? Please explain what should not be included and why.

No

Q3: Do you have any comments on the proposals for guidance on what information registers should contain and how they should be published?

It would be useful if the register, in addition to being online, was linked to GIS mapping. This would be particularly useful in rural areas where a postcode or street address is less meaningful. The regulations appear to allow this as a local development.

If there is intent for Scottish Public Authorities to share land and property information, can a common platform, e.g. ePIMS, not be developed/opened up for public access (read only or otherwise?), which would be a single repository for all public authorities land and property holdings which could benefit the public and public authorities alike, and overcome the need for public property information to be held in multiple different locations.

It is welcome that “publishing” the register and making it available for inspection can be by allowing/supporting access to a document in an electronic format.

Q4: Is there any information you think a community transfer body should be able to request from a relevant authority, that it would not be able to obtain under FOISA or the EIRs?

It is agreed that the majority of information relating to the state or value of the Council's assets would reasonably be in the public domain and that this information would be provided under FOISA or EIRs.

However, there is a possibility that, should commercial arrangements exist with third parties, the Council may not be in a position to publish some information and would rely on an exemption under FOISA/EIRs. If there is a likelihood that this could hinder the asset transfer process, the Government may wish to provide provision that enables the Council to provide exempt information to Community Transfer Bodies in confidence, at the same time as protecting it from third party claims.

Section 7 suggests that the Council will offer information on title burdens or servitudes. We are not in a position to be involved in offering legal guidance/advice to the community body on the terms of the title and the implications for the body – that is a matter upon which the body would need to seek independent legal advice.

Q5: Do you think the proposed additional requirements for making an asset transfer request are reasonable?

Yes  No

If not, please explain what you would change and why.

Yes it is sensible to assess the potential asset transfer against-

- The status of the community transfer body
- The level of community benefit
- The current level of community benefit and its likely impact on the public bodies own functions
- The financial sustainability of the proposal
- Levels of community engagement and support

Q6: Is there any other information that should be required to make a valid request?

No the range of information required seems reasonable.

Q7: Do you have any comments on the proposals for acknowledgement of requests?

No

Q8: Do you have any comments on the proposed requirements for notification and publication of information about a request?

The proposal to affix a sign on the land/property seems to incur an unnecessary time and cost burden for the relevant authority regarding timescales and resources, tied in traveling to/from remote sites to erect/remove signage; producing weather proof sign/method of fixing etc. depending upon site conditions.

This requirement would be particularly costly for a rural authority such as Highland.

Q9: Do you think 6 months is a reasonable length of time for the relevant authority to make a decision on an asset transfer request? (This time may be extended if agreed with the community transfer body.)

Yes  No

If not, how long should the period for making a decision be?

Yes 6 months is a reasonable time to come to a decision on most asset transfer requests. However there may be circumstances where this is problematic. For example where the authority leases an asset from a private entity and therefore negotiations may be time consuming.

Q10: Do you agree with the proposals for additional information to be included in a decision notice?

Yes  No

If not, please explain what you would change and why.

Q11: Do you agree that the Scottish Ministers should be required to appoint a panel of 3 people to consider reviews of Ministers' own decisions?

Yes  No

If not, how do you think these reviews should be carried out?

Q12: Do you agree that a local authority should be required to make a decision on a review within 6 months?

Yes  No

If not, how long should the period for making a decision be?

It is suggested that this timescale would be unhelpful for community groups and that a review should be completed within a period of 3 months. This would mirror the time period for Planning Review decisions.

Q13: Do you have any other comments about the draft Asset Transfer Request (Review Procedure) (Scotland) Regulations 2016 or draft Asset Transfer Request (Appeals) (Scotland) Regulations 2016?

The requirement for Members of the Local Authority to conduct a review, places an additional cost on authorities to establish a formal Members Panel and service it. It is not clear how this cost could be met.

The Regulations do not appear to allow the review process to consider the Authority's reasons for refusing the application.

Q14: Do you agree that the Scottish Ministers should appoint a single person to consider an appeal where no contract has been concluded?

Yes  No

If not, how do you think these reviews should be carried out?

It is not clear which body would meet the costs of an appeal to Scottish Ministers.

Q15: Do you agree that the documents should not be published in relation to appeals where no contract has been concluded?

Yes  No

Please explain your reasons.

Q16: Do you agree that no third party representations should be allowed in relation to appeals where no contract has been concluded?

Yes  No

Please explain your reasons.

Q17: Do you have any comments on the proposed procedures for appeals where no contract is concluded?

It is not clear which body would meet the costs of an appeal to Scottish Ministers.

Q18: Do you have any comments on the proposed procedures for applications to Ministers for Directions?

No