

# Final Business and Regulatory Impact Assessment

## **Title of Proposal**

The Asset Transfer Request (Procedure) (Scotland) Regulations 2016  
The Asset Transfer Request (Review Procedure) (Scotland) Regulations 2016  
The Asset Transfer Request (Appeals) (Scotland) Regulations 2016  
The Asset Transfer Request (Appeal Where No Contract Concluded) (Scotland) Regulations 2016

## **Purpose and intended effect**

- **Background**

Community ownership and control of land and buildings can make a major contribution towards strengthening communities and empowering them to create thriving and sustainable places to live. The public sector owns a wide range of land and buildings throughout Scotland, and many communities wish to take control of assets in order to address local needs and improve outcomes.

An increasing number of public authorities have established asset transfer schemes and work with communities as part of their asset management strategies. The Community Empowerment (Scotland) Act 2015 (“the Act”) goes further and establishes a statutory right for community bodies to make asset transfer requests for land owned or leased by listed “relevant authorities”. Relevant authorities are listed in schedule 3 of the Act; they include the Scottish Ministers, local authorities, NHS boards, FE colleges and a range of Scottish public bodies.

The Act provides a framework for the asset transfer scheme. It sets out the criteria for a community body to be eligible to make a request, information to be included in the request, and the matters which a relevant authority must take into account in deciding whether to agree to or refuse the request. A request must be agreed unless there are reasonable grounds for refusal. The Act also makes provision for community bodies to request a review of a decision and to appeal to the Scottish Ministers, in various circumstances. It allows for Ministers to make regulations giving further detail about how requests are to be made, and about the procedure to be followed in relation to requests, reviews and appeals.

- **Objective**

These regulations set out additional information to be provided in an asset transfer request and how an application for review or appeal is to be made. They set out the procedures and timescales for publicising a request, review or appeal, seeking representations or additional information from third parties, and giving notice of a decision. These procedure regulations are similar to those used for existing statutory processes such as planning and civic licensing. They will provide for a consistent approach across all relevant authorities and clarity for all those involved.

- **Rationale for Government intervention**

Asset transfer, and community empowerment more widely, is key to achieving the national objective “We have strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others.”

As set out above, the purpose of introducing a statutory scheme is to ensure communities in all parts of Scotland have access to asset transfer, supporting community ownership and the benefits it can bring. Ministers are not required to make regulations on procedure, but they will help to support the practical implementation of the scheme and ensure consistency.

## **Consultation**

- **Within Government**

The procedures implemented by the regulations have been developed with a steering group of key stakeholders. This includes representation from Scottish Government Property Division and Directorate for Financial Management, who have advised on the standard procedures and requirements for disposal of property. Representatives from Forestry Commission Scotland have given advice on the procedures used in the National Forest Land Scheme.

- **Public Consultation**

The steering group also included representatives of local authorities and third sector organisations with experience of voluntary asset transfer, who fed in existing good practice.

A public consultation on the proposed regulations and accompanying guidance took place from March to June 2016. A total of 82 responses were received, of which 55 were from relevant authorities and 16 were from organisations representing communities, or third sector organisations providing support to community bodies. The consultation paper and responses are available at <https://consult.scotland.gov.uk/community-empowerment-unit/asset-transfer-procedures> . An analysis of the responses will be published shortly.

The consultation responses generally agreed with the procedures proposed throughout. Many comments addressed wider issues about asset transfer, such as the need to provide support for community transfer bodies through

the process. A number of minor points have been changed in response to comments. For example, we have made sure that in reviews and appeals, no-one is required to provide copies of documents that the other party already has, and the community body and the relevant authority have equal periods of time to respond to the other's case.

Members of the steering group and consultees felt it was important that asset transfer requests are publicised so that others have an opportunity to comment, or to submit requests themselves. Some concerns were raised about the costs of placing notices on sites that are remote from the authority's offices. We have clarified the guidance to confirm that the community body may be asked to put up the notice, and amended the regulations to provide that the notice must be "displayed in a public place in the vicinity of the land to which the asset transfer request relates", so that it can be placed, for example, on a community noticeboard rather than erecting a sign on a piece of undeveloped land.

- **Business**  
The regulations do not affect businesses.

## Options

**Option 1: Regulate for standard procedures for requests, reviews and appeals**

**Option 2: Regulate only for time periods for decisions**

**Option 3: Do nothing**

The Act gives community transfer bodies a right to make asset transfer requests, and sets out how relevant authorities must make decisions on such requests. It also gives community transfer bodies rights to request reviews and appeals in specified circumstances. The Scottish Ministers have powers to make regulations providing more detail on the procedures to be followed, information to be provided and so on, but they are not required to do so.

Relevant authorities are required to give a decision notice to the community transfer body within a period prescribed in regulations. Where local authorities carry out a review, the decision is similarly to be given within a period prescribed in regulations. These time periods trigger the right to appeal, therefore the legislation could not effectively operate without them.

**Option 1** is to regulate for procedures throughout the scheme. **Option 2** is to regulate only for time periods for decisions, and **Option 3** is to do nothing.

## Sectors and groups affected

The groups affected will be relevant authorities (public sector) and community bodies seeking to make asset transfer requests. There is a possible impact for people who may wish to make representations about requests.

### **Benefits – Option 1**

By regulating for statutory procedures throughout the scheme, the Scottish Ministers will provide consistency for all asset transfer requests, and reduce the amount of effort required for relevant authorities to develop their own schemes. If a community transfer body makes requests to different relevant authorities, the regulations will ensure that the same type of information is required in each request and they will go through the same processes of notification, representations and decision. People who wish to make representations about requests will also be able to rely on standard processes. There will also be clarity for all parties about the procedures that will apply where the Scottish Ministers carry out a review or appeal.

The procedures chosen are similar to those that apply to other statutory schemes such as planning and civic licensing. They ensure that all interested parties are able to see and comment on the information on which a decision is based, and that the community transfer body is aware at each stage of the next steps and their rights to review or appeal.

### **Benefits – Option 2**

Regulating for the time periods for decisions would allow the legislation to be implemented effectively. It would provide certainty on timescales for asset transfer requests for both parties and allow community transfer bodies to request a review or appeal if decisions were not made within the prescribed periods. However, it would not provide any certainty or consistency as to other requirements and procedures. Each relevant authority would have to devise their own procedures for requests and reviews.

### **Benefits – Option 3**

None. The requirement for decisions to be given within a reasonable time is a key part of the asset transfer legislation. If Ministers do not regulate for these time periods community transfer bodies will be denied the right of appeal if no decision is made.

### **Costs – Option 1**

The Financial Memorandum for the Act considered the overall costs of the asset transfer scheme, but concluded these could not be calculated because the level of demand and the type of land requested could not be predicted. However, some information was subsequently provided to the Scottish Parliament's Finance Committee (3 October 2014) showing some estimates of administrative costs. These include items such as legal and valuation fees, advice to community bodies and a panel to evaluate requests, which would be required in any scheme and are not affected by the regulations. The Forestry Commission estimated that the administrative costs of the existing National Forest Land Scheme were £50,000 per annum; East Lothian Council estimated a full time post at £40,000 per annum would be required to cover work on both asset transfer and common good.

We do not consider that the procedures set out in the Regulations will lead to increased costs for relevant authorities, compared to procedures they might implement themselves if the Scottish Ministers do not regulate, or compared to the procedures already in place for voluntary schemes. There may be a small saving in

that relevant authorities will not have to devise their own procedures for the new scheme individually.

In the same letter to the Finance Committee, the Community Ownership Support Service provided estimated costs to a community body of undertaking asset transfer, ranging from £13,480 to £25,040. These costs cover items such as legal advice to establish an eligible organisation, and to negotiate the final contract, survey and valuation, consultation with the community and business planning. All of these would be required for any type of community land acquisition, and are also likely to be required to apply for funding. We do not consider that the procedures set out in the Regulations will lead to any increase in costs for community transfer bodies; there may be a small saving from providing consistency, if they make requests to more than one relevant authority.

### **Costs – Options 2 and 3**

There are no financial costs of options 2 or 3, but they would not realise the benefits of Option 1.

### **Scottish Firms Impact Test**

The regulations do not affect businesses.

### **Competition Assessment**

The regulations have no impact on competition.

### **Test run of business forms**

The regulations do not introduce any statutory forms.

### **Legal Aid Impact Test**

The regulations do not introduce any new processes that would lead to use of legal aid.

### **Enforcement, sanctions and monitoring**

If community bodies do not submit requests, or applications for review or appeal, in line with the requirements of the regulations, they will be rejected. Relevant authorities are expected to support community bodies to make compliant requests.

If relevant authorities fail to follow the statutory procedures, this may be grounds for the community body to seek a review or appeal, ultimately to the Scottish Ministers. There may also be grounds for a complaint to the Scottish Public Services Ombudsman. There is no provision in the Act for specific sanctions or enforcement action.

Statutory reporting will provide information on the number of requests received, agreed and refused. Ongoing relationships with stakeholders will allow for feedback on the effectiveness of the procedures.

### **Implementation and delivery plan**

The provisions of Part 5 of the Act and the Regulations will come into force on 23 January 2016.

Relevant authorities were encouraged to start preparing their procedures on the basis of the consultation paper, published in March 2016. Final guidance will be published when the regulations are laid in Parliament, early in November. Officials have met and given presentations to a wide range of stakeholders throughout the development of the asset transfer legislation and will continue to do so.

- **Post-implementation review**

A review of the statutory asset transfer scheme will take place within 5 years of coming into force.

### **Summary and recommendation**

Option 1 is recommended, to regulate for procedures throughout the asset transfer scheme. This will provide consistency for all asset transfer requests, and certainty for all parties in relation to reviews or appeals to the Scottish Ministers. We do not consider that this will lead to any increase in costs for relevant authorities or community transfer bodies.

### **Declaration and publication**

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that there is no impact on businesses in Scotland.

**Signed: KEVIN STEWART**

Minister for Local Government and Housing

**Date: 31 October 2016**

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