

POLICY NOTE

THE ASSET TRANSFER REQUEST (DESIGNATION OF COMMUNITY TRANSFER BODIES) (SCOTLAND) ORDER 2016

SSI 2016/361

The above instrument was made in exercise of the powers conferred by section 77(2)(b) of the Community Empowerment (Scotland) Act 2015. The instrument is subject to negative procedure.

Policy Objectives

A single community organisation may, at different times, want to acquire land through different mechanisms. The Community Empowerment (Scotland) Act 2015 (“the Act”) and the Land Reform (Scotland) Act 2003 (“the 2003 Act”) set out eligibility criteria relating to provisions that must be included in a community organisation’s constitution or governing documents, for that organisation to use asset transfer or community rights to buy. These provisions are intended to ensure that the organisation is controlled by members of the community it represents, and that its funds and assets are used to benefit that community.

The criteria for asset transfer and for community rights to buy are similar, but not identical. As a consequence, it is not possible to produce governing documents that meet both sets of requirements. The purpose of this Order is to resolve that issue, by providing that any organisation whose constitution meets the requirements of the Land Reform Acts is also eligible to make asset transfer requests.

Under section 79 of the Act, an asset transfer request may be made by a “community transfer body”. Section 77 of the Act provides that a community transfer body may be a “community-controlled body”, defined in section 19, or a body, or one of a class of bodies, designated by order as a community transfer body.

This order designates two classes of bodies as community transfer bodies. They are defined as bodies falling within certain sections of the 2003 Act. These sections set out the provisions that must be included in the governing documents of bodies that wish to use the different community rights to buy:

- Article 2(2)(a) specifies bodies falling within section 34(1), (1A) or (1B) of the 2003 Act, namely bodies whose constitutions meet the requirements set out in those subsections and so may be community bodies for the purposes of the community right to buy under Part 2 of the 2003 Act.
- Article 2(2)(b) specifies bodies whose constitutions meet the requirements set out in section 71(1)(a) to (h) of the 2003 Act and so may be crofting community bodies for the purposes of the crofting community right to buy under Part 3 of the 2003 Act.

Section 34(1), (1A) and (1B) relate respectively to requirements for companies limited by guarantee, Scottish Charitable Incorporated Organisations and Community Benefit Companies. The requirement in section 34(1)(c), (1A)(c) and (1B)(c) and also in section

71(1)(c) that may be disapplied by the Scottish Ministers under section 34(2) or 71(2) is the requirement for the constitution of the body to provide for a minimum number of members..

In order to use the community rights to buy there is an additional requirement: the Scottish Ministers must give written confirmation that they are satisfied that the main purpose of the body is consistent with furthering the achievement of sustainable development. The Order does not require a body to have this confirmation letter to be eligible for asset transfer; it will be for each relevant authority to consider whether the organisation's governing documents include the required provisions.

Section 80 of the Act sets out further requirements that must be met for a community transfer body to be eligible to make an asset transfer request for the transfer of ownership of land. If a body or class of bodies is designated as a community transfer body, the order may provide that they may make asset transfer requests for ownership. Since the classes being designated necessarily relate to community bodies seeking ownership of land, article 3 of the Order provides that any body falling within these classes may make an asset transfer request for ownership.

Consultation

We have not consulted specifically on this order. There is a general expectation among stakeholders that community bodies such as Development Trusts will be able to use both community right to buy and asset transfer. The designation will have no effect on bodies eligible for community right to buy that do not want to pursue asset transfer.

Impact Assessments

There are no issues for which impact assessments are required.

Financial Effects

The Minister for Local Government and Housing confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Local Government and Communities Directorate

8 November 2016