



Guidance on submitting an Asset Transfer Request Under the
Community Empowerment (Scotland) Act 2015

What is an Asset Transfer Request

The Community Empowerment (Scotland) Act 2015 was given Royal Assent on 24th July 2015 and came into effect on 23rd January 2017. Asset Transfer is covered within the act under section 5.

The Act is seen to help to empower community bodies through ownership or control of land and / or building(s). The act moves forward from the previous voluntary approach by the public sector and introduces a right for community bodies to make requests to Local Authorities, Scottish Ministers and a wide range of public bodies for any piece of land and / or any building(s) which they feel they could make better use of, for the benefit of the local community.

The presumption is **for** asset transfer to take place and the burden is therefore on the local authority to clearly justify any refusal.

An asset transfer request can be a request for: -

- The transfer of outright ownership;
- The granting of a lease or
- The transfer of other rights.

The Scottish Government has published comprehensive guidance for community bodies who are looking to make as asset transfer request which we also would recommend you review if you are considering an asset transfer request.

The guidance that we provide should be treated as supplement to the Scottish Government Guidance.

We recommend that you contact us early to discuss any proposals that you may have. We will be able to advise if a transfer may be possible without the need for a formal asset transfer request. If a formal application is necessary then these discussions are likely to make the application process quicker and simpler.

In the first instance please contact: -

The Asset Manager Asset & Estates Property Services Renfrewshire Council Renfrewshire House Cotton Street Paisley PA1 1TT Tel: 0300 300 0221
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How do I make an Asset Transfer Request

For a Community Asset Transfer request to be progressed the community group / organisation must formally notify the local authority of the request in line with section 79 (4) of the act. The group / organisation must include the following: -

- the land / building(s) that it relates to;
- if it is for purchase, lease or other rights;
- the price, rent or terms offered;
- any other terms and conditions;
- The reasons for the request;
- The proposed use;
- The benefits that will arise from the proposal;
- How the proposal will be funded;
- The nature and level of community support.

In line with the Asset Transfer Request (Procedure) (Scotland) Regulations 2016, regulation 3, an Asset Transfer request must: -

- Be made in writing to the relevant authority / organisation;
- State clearly that in line with Part 5 of the Community Empowerment (Scotland) Act 2015 it is deemed as an asset transfer request;
- Provide details of the group / organisations including full name and contact address;
- Provide information on the land / building(s) being applied for and how the subjects will be used;
- How the land / building(s) to be transferred will be funded and how it/ they will continue to be funded once in use;
- Outline the level and nature of support for the asset transfer request from the community which the applying body relates to;
- If a request has been received from a body who is not a community-controlled body, then they must provide details upon the basis with which the body is a community transfer body and be accompanied by a copy of the constitution of the community transfer body.

Attached to this document and on Renfrewshire Council's website is an Asset Transfer Application Form which we would recommend you complete. This would form part of your formal application for an asset transfer request.

A formal Asset Transfer request should be sent to: -

The Asset Manager Asset & Estates Property Services Renfrewshire Council Renfrewshire House Cotton Street Paisley PA1 1TT
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Who can make an Asset Transfer Request

The Community Empowerment (Scotland) Act 2015 section 5 provides that an Asset Transfer request can only be made by a '*Community Transfer Body*'. Section 5 enables Community organisations to buy, lease, manage or use land or buildings which are in public sector ownership, however they must be eligible to do so. Section 77 of the act defines a community transfer body as being a body who has a written constitution that includes: -

- A definition of the community which it relates to;
- That most of the members of the body must come from the community it relates to;
- The members of the group from the community that the request relates to, must have control of the body;
- Membership of the body is open to any member of the community with which it relates to;
- A statement of the aims and purposes of the body, which must also include the proposition of a benefit for that community;
- Provision that any surplus funds or assets of the body, are to be applied for, for the benefit of that community.

There are additional requirements which must be met when a community transfer body wishes to take outright ownership of an asset. The Community Empowerment (Scotland) Act 2015 section 80 provides that: -

- If it is a company, then the articles of association include provision that it must have not fewer than 20 members;
- If it is a Scottish charity incorporated organisation (SCIO), the consultation of which includes provision that the organisation must have not fewer than 20 members;
- If it is a community benefit society (BenCom), the registered rules of which include provision that the society must have not fewer than 20 members;
- Upon winding up of the company any property, (including land and any rights in land acquired as a result of an asset transfer request) will pass to: -
 - Another community transfer body;
 - To a charity;
 - To such community body as may be so approved (in line with section 71);
 - If there is no such community body or crofting community body, to the Scottish Ministers or to such a charity as the Scottish Ministers may direct.
- In the case of a body designated by an order by the Scottish Ministers, the order includes provision that the body may make an asset transfer for transfer of ownership or
- In the case of a body falling within a class of bodies designated in an order by the Scottish Ministers under the Act, the order includes provision that bodies falling within the class may make an asset transfer request for transfer of ownership.

In the event that a community body seek a long term lease on land / building(s) the process upon the winding up of the organisation is similar to the guidance above: -

- Another community transfer body;

- To a charity;
- To such community body as may be so approved.

What is the process once a Community Asset Transfer Request has been submitted

There are two stages once an Asset Transfer request has been received. Stage 1 is to confirm if the request is indeed valid upon which the request will be reviewed to confirm: -

- If your group is a community transfer body (and if ownership is asked for, does it meet the criteria);
- If all the information required for it to be a formal asset transfer, is included within the request.

Assuming the request is submitted with all the relevant information, the date of validation for the request will be the date the application is received. This is the date which both parties should use in line with the act.

Once a valid request has been received, the local authority must formally acknowledge receipt of the application in accordance with the Act. If a request is received without the required information the local authority must write to the community group / organisation outlining what information is missing to allow the application to be completed correctly. The Community Asset Transfer Panel, will then review the formal application. This Panel will consist of the relevant Senior Officers from various services, and will be chaired by Head of Property. If the panel agree that the request is valid and should be supported a Board Paper will then be prepared and presented to the Infrastructure, Land and Environment Policy Board at its next cycle. The flowchart in Appendix 1 outlines the process to be followed.

The Council has a period of six months to reach a decision on the request and once a decision has been made and approved at Board level there is a seven day calling in period.

Validation of as Asset Transfer Request to a Final Decision

Once a validation date has been agreed, following a valid application being received, a letter of confirmation will be sent to the community group / organisation. The council will then, in line with the Act, issue a public notice that the request has been received. The notice will be placed on the Council website and displayed within a public area on or near the subject site / building(s). The notice will contain details of whom the application has come from, the details of the request and confirm that representation can be made to the Council, for the attention of the Asset Manager for a period of not less than 20 working days. The council will also send notice to any owner, tenant or persons with an interest in the land, again inviting representations to be made.

Should representations be received they will be sent to the applying group, and the group will have 20 working days to comment on them. A period of discussion will then follow discussing the detail of the request and consideration be given to all the documentation submitted. It may be that the Council request further documentation or supporting information. The council may also provide alternative proposals for the group to consider if appropriate.

The Community Empowerment (Scotland) Act 2015 section 82(3) states that when deciding whether to agree or disagree with an Asset transfer request, the Council must consider the following: -

- The reason 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 and /or
 - Environmental wellbeing;
- Would agreeing to the request be likely to reduce inequalities of outcome which results from social-economic disadvantage;
- Any other benefit(s) that might arise if the request were agreed to;
- Any benefit(s) that might arise if the Council were to agree to or otherwise adopt an alternative proposal in respect of the land which the request relates;
- How such benefits would compare to any benefit(s) such as are aforementioned;
- How any benefits relate to other matters the Council considers relevant (including, the functions and purposes of the authority);
- Any obligations imposed on the Council, by or under any enactment or otherwise, that may prevent, restrict or otherwise affect its ability to agree to the request; and
- Such other matters as the authority considers to be relevant.

Under section 82(5) of the Community Empowerment (Scotland) Act 2015, the Council must agree to the request unless there are reasonable ground for refusing it.

The Council will consider many matters, when reaching a decision. The Community Empowerment (Scotland) Act 2015, outlines many of these however, the Council must then consider any other matters. These depend generally on the circumstances surrounding your group, the land / building(s) affected, the interest sought and the use proposed: -

- a review of the Council's legal interest in the land affected, be that title deeds or a lease, and an assessment made of any restrictions there may be on the Council making such a transfer;
- The impact the transfer would have on any existing use by the Council, and on the provision of Council services;
- The impact the transfer would have on any owner, tenant or other party having an interest in it;
- Any conditions attached to the transfer;
- There will be a valuation obtained for the land / building. Considering, the type of transfer requested, it may be that the requirements of the Disposal of Land by Local Authorities (Scotland) Regulations 2010 apply. There will need to be a separate appraisal under these regulations if the price or rent proposed is less than 'best value' in terms of the same.

As part of the process, you will be asked for: -

- Information on how the organisation intends to use the asset;
- Demonstrate a clear community demand for the transfer and the community benefits to be derived from the transfer;
- Evidence that there is community support for the transfer and that consultation has taken place within the community;
- Evidence that the group has the capacity to manage the asset and the members have the necessary skills and experience;
- Demonstration that the organisation can conclude the transfer within 6 months of the date of the transfer decision being awarded;
- Financial information in relation to both capital and revenue costs, including cash flow projections for a specific period this may range from 5 – 10 years project dependent. The Council recognises that many funding streams are dependent on full asset transfer and the provision of unsecured funds within the business plan will be considered within this context.

Upon completion of this process, the Community Asset Transfer Panel will meet to discuss the request in detail and review all supporting documentation. Following their decision, you will be provided with a formal decision notice which will also be published on the Council's website and passed on to any party who made any representations regarding the initial request.

Review and Appeal Process

There are a variety of rights in relation to review and appeal under the Community Empowerment (Scotland) Act 2015.

Groups / organisations have the right to seek a review by the Council in relation to asset transfer request if: -

- A request is refused by the Council;
- The Council agrees to your request but includes conditions materially different to those specified in your request; and / or
- The Council does not give you a decision notice within 6 months (or such other period as has been agreed with you) of the validation date.

You have the right to appeal to the Scottish Ministers if: -

- You have submitted an offer complying with a decision notice, and the Council has not accepted that offer within a period of 6 months of the date of the offer (or such period as may be agreed between you and the Council or directed by the Scottish Ministers);
- The Council, following a valid request for review, refuses your request;
- The Council, following a valid request for review, agrees to your request but includes conditions materially different from those specified in your request or
- The Council, following a valid request for review, does not give you a decision notice within 6 months of the date of your application (or such period as has been agreed with you).

There is guidance on The Community Empowerment (Scotland) Act 2015 and the Asset Transfer element both on the Scottish Government website, and on our website www.renfrewshire.gov.uk.

For any further queries or should you have an enquiry you wish to discuss please contact: -

The Asset Manager Asset & Estates Property Services Renfrewshire Council Renfrewshire House Cotton Street Paisley PA1 1TT Tel: 0300 300 0221
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