

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



September 2017

## **1. What is an Asset Transfer Request?**

The Community Empowerment (Scotland) Act 2015 provides a mechanism whereby certain community bodies can make request to certain public authorities, including the Council, for a transfer to them of an interest in land or buildings owned or leased by the authority, which the body feel they could make better use of.

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 relevant parts of the Act and the related Regulations came into force on 23 January 2017.

The Scottish Government has published comprehensive guidance for community bodies looking to make an asset transfer request which we also would recommend you look at if you are considering an asset transfer request. There is a link to the page on the Scottish Government web site that includes this guidance in the links section at the end of this document. There is a great deal of information there on asset transfer requests, including links to the relevant legislation and regulations, style documents, and case studies.

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

If you are thinking about making an asset transfer request, the first thing you should contact us to discuss the detail of what you want to have transferred, what you intend to do with it and the detail of your group.

Discussions around any request or potential request will involve council staff from Property, Community Learning and Development, Finance and Legal, but your first point of contact will be the Council's Property Asset Manager, whose details are in the Contacts section at the end of this document.

We recommend that you contact us early to discuss any proposals that you may have. Depending on the circumstances of your group or your proposals, 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.

## 2. How do I make a formal Asset Transfer Request?

**Under Section 79(4) of the Community Empowerment (Scotland) Act 2015, an asset transfer request must specify:**

- the land to which the request relates;
- whether the request is for –
  - transfer of ownership;
  - grant of a lease; or
  - transfer of rights;
- the reasons for making the request;
- the benefits which the community transfer body considers the transfer would bring;
- where the request is for transfer of ownership, the price that the community transfer body would be prepared to pay for the transfer;
- where the request is for grant of a lease;
  - the amount of rent that the community transfer body would be prepared to pay in respect of any lease;
  - the duration of any such lease, and
  - any other terms and conditions that the community transfer body considers should be included in any such lease,
- where the request is for a transfer of rights, the nature and extent of the rights sought, and
- any other terms or conditions applicable to the request.

**Under Regulation 3 of the Asset Transfer Request (Procedure) (Scotland) Regulations 2016 an asset transfer request must:**

- be made in writing;
- state that it is an asset transfer request made under Part 5 of the Community Empowerment (Scotland Act) 2015;
- state the name and address of the community transfer body applying;
- describe how the community transfer body proposes that the land to which the request relates is to be used;
- outline how it is proposed that—
  - the transfer of ownership of the land, the lease of the land or the conferral of other rights in respect of the land on the community transfer body (as the case may be) is to be funded; and
  - the proposed use of the land is to be funded;
- describe the level and nature of support for the asset transfer request from the community to which the community transfer body relates;
- if the request is made by a body which is not a community-controlled body, explain the basis on which the body is a community transfer body; and
- be accompanied by a copy of the constitution of the community transfer body.

Your formal asset transfer request should be sent in writing to the Property Asset Manager, whose details are in the Contacts section at the end of this document. We provide a style of asset transfer request form on our website, which is included in the links section at the end of this document. You do not need to use this style form, but as the request must meet the various requirements of the Act and the regulations, it is likely to make the process quicker if you do.

### 3. Who can make an Asset Transfer Request?

Asset transfer requests can only be made by a “community transfer body”, that is a body meeting the various requirements under the Act. There are additional requirements that apply to bodies seeking transfer of ownership.

#### **ALL REQUESTS**

An **asset transfer request** under the **Community Empowerment (Scotland) Act 2015** can only be made by a **community transfer body** as defined in **Section 77** of the Act.

A **community transfer body** is a body which has a written constitution that includes:

- a definition of the community to which it relates;
- provision that the majority of the members of the body must come from that community;
- provision that the members of the body who are from that community have control of the body;
- provision that membership of the body is open to any member of that community;
- a statement of the aims and purposes of the body, which must include proposition of a benefit for that community; and
- provision that any surplus funds or assets of the body are to be applied for the benefit of that community.

**There are additional requirements set out below that must be met where a community transfer body wishes to take outright ownership of an asset.**

**Under Section 77(2) of the Act the Scottish Ministers can by order designate that a body is a community transfer body, or that a class of bodies are all community transfer bodies.**

#### **REQUESTS FOR TRANSFER OF OWNERSHIP**

**In addition to the above requirements**, an **asset transfer request for transfer of ownership** can, in terms of **Section 80** of the **Community Empowerment (Scotland) Act 2015**, only be made by a **community transfer body** if:

- it is a company the articles of association of which include provision that it must have not fewer than 20 members and that on the winding up of the company any property (including any land, and any rights in land, acquired as a result of an asset transfer request the Act) passes—
  - to another community transfer body,
  - to a charity,
  - to such community body (within the meaning of section 34 of the Land Reform (Scotland) Act 2003) as may be approved by the Scottish Ministers,
  - to such crofting community body (within the meaning of section 71 of that Act) as may be so approved, or
  - if no such community body or crofting community body is so approved, to the Scottish Ministers or to such charity as the Scottish Ministers may direct;
- it is a Scottish charitable incorporated organisation the constitution of which includes provision that the organisation must have not fewer than 20 members,
- it is a community benefit society the registered rules of which include provision that the society must have not fewer than 20 members,
- in the case of a body designated by an order by the Scottish Ministers under the Act, 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 made 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.

If you wish to check if your organisation meets the conditions to qualify as a community transfer body, or the particular requirements where you are seeking a transfer of ownership, then get in touch with us and we can discuss. As before, the first point of contact should be the Council's Property Asset Manager, whose details are in the Contacts section at the end of this document.

The Scottish Government guidance provides a great deal of detail on these requirements and this may also help answer any questions you may have. There is a link to the Scottish Government web page where you will find this guidance in the links section at the end of this document.

#### **4. Procedure on Receipt of an Asset Transfer Request – Receipt to Validation**

There is a flow chart on the following page outlining the process that will be followed after your asset transfer request is received. There is a two stage process to this.

The first stage is to confirm if the request is valid. 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 additional tests); and
- if all the information required under the act for it to be a formal asset transfer request is included?

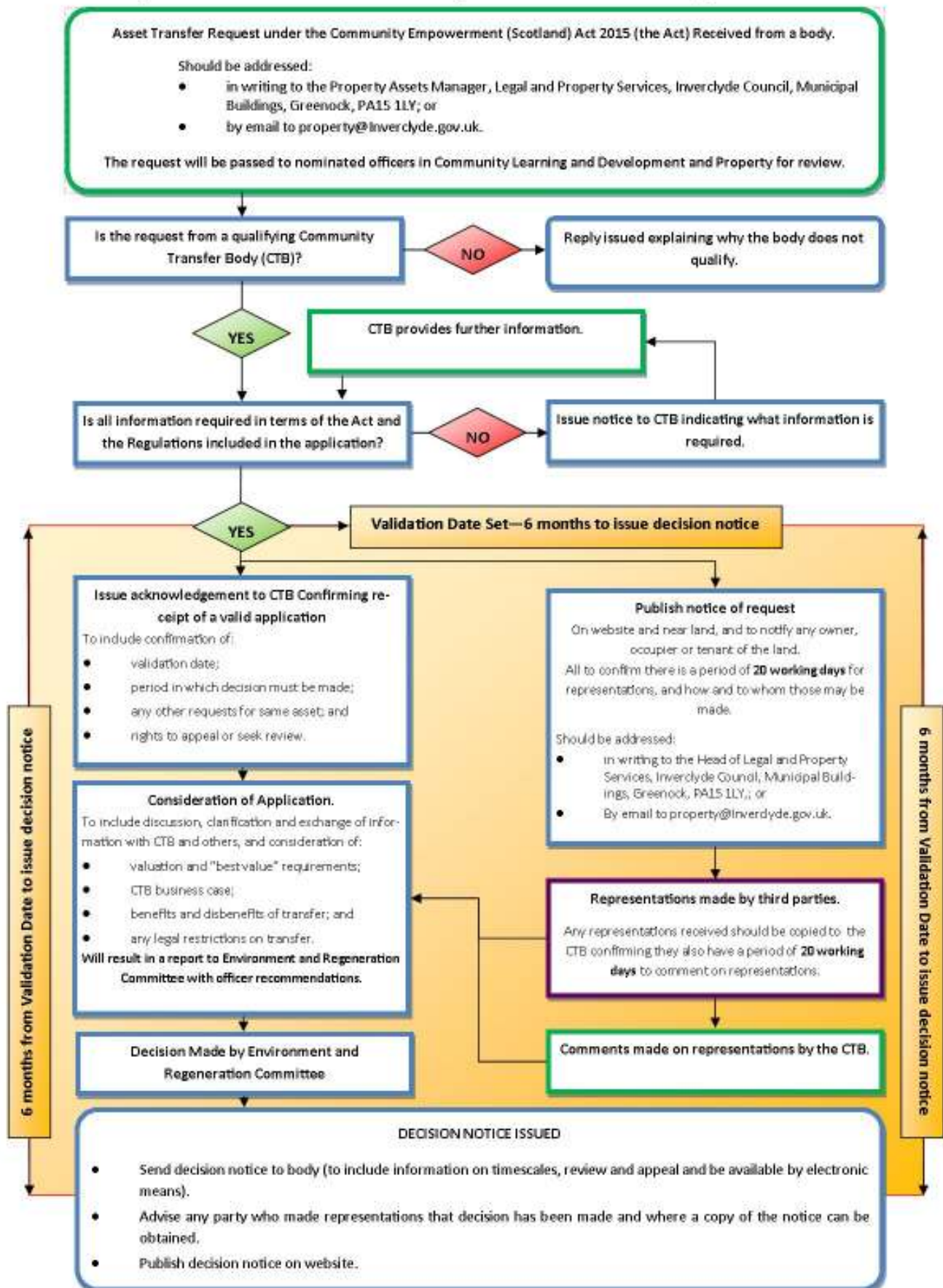
If your group is not a community transfer body, then you will be contacted to confirm why that is the case.

If all the necessary information is not included, then you will be contacted to discuss the further information that is required and to ask for that to be provided.

Under the regulations, the validation date is the date on which all the required information under the Act and the regulations for a valid asset transfer request has been received by the Council. When we have that from you, we will provide you with a formal acknowledgement of your request which will include confirmation of that validation date.

The Council then has a period of six months to reach a decision on your request. This is the second stage of the process and is dealt with in the next section of this guidance.

## Inverclyde Council - Asset Transfer Request Procedure Flow Diagram.



## 5. Procedure on Receipt of an Asset Transfer Request – Validation to Decision

At the same time as you are sent confirmation of the validation date, the Council will issue a public notice that the request has been received, which will be published on the Council website and displayed in a public place near the land affected. This will include your details, details of the request and confirm that representations can be made to the Council on the asset transfer request 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.

Any representations received will be sent to you, and you will similarly have a period of 20 working days to comment on them.

There will then follow a period of discussion with you of the detail of your request and consideration of all the documentation submitted. As part of this process, we may ask you for further documentation or information. We may also provide alternative proposals for you to consider.

Under **Section 82(3)** of the **Community Empowerment (Scotland) Act 2015**, in deciding whether or not to agree to an **asset transfer request** the Council must consider the following matters:

- (a). the reasons for the request,
- (b). any other information provided in support of the request (whether such other information is contained in the request or otherwise provided),
- (c). whether agreeing to the request would be likely to promote or improve—
  - i. economic development,
  - ii. regeneration,
  - iii. public health,
  - iv. social wellbeing, or
  - v. environmental wellbeing,
- (d). whether agreeing to the request would be likely to reduce inequalities of outcome which result from socio-economic disadvantage,
- (e). any other benefits that might arise if the request were agreed to,
- (f). any benefits that might arise if the Council were to agree to or otherwise adopt an alternative proposal in respect of the land to which the request relates,
- (g). how such benefits would compare to any benefits such as are mentioned in paragraphs (c) and (e),
- (h). how any benefits such as are mentioned in paragraph (f) relate to other matters the Council considers relevant (including, in particular, the functions and purposes of the authority),
- (i). 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
- (j). such other matters (whether or not included in or arising out of the request) as the authority considers relevant.

Under **Section 82(5)** of the Act the Council must agree to the request unless there are reasonable grounds for refusing it.



The Council will take a variety of matters into consideration when reaching a decision. The Act lists many of these explicitly, but also requires the Council to take into consideration any other matters it considers relevant.

The matters that will be considered will depend on the circumstances surrounding your group, the land affected, the interest sought and the use proposed, but the following are likely to feature in most applications.

- There will be a valuation obtained for the land involved, taking account of the type of transfer requested, so that we can see if 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. Much of the information required for that is likely to be in your asset transfer request, but it may be necessary to get further information from you.
- There will be 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 that the transfer would have on any existing use by the Council, and on the provision of Council services.
- The impact that the transfer would have on any owner, tenant or other party having an interest in it.
- Any impact of EU State Aid rules – these are wide reaching and apply to not-for-profit organisations and activities as well as commercial businesses. It is not the type of organisation which receives support that is important but the nature of the activities that it carries out.
- Any conditions that should attach to the transfer – in particular any mechanisms that should be used to secure any discount given or a public benefit to be provided.

As part of the process you will be asked for:

- information on how the organisation intends to use the asset.
- demonstration of a clear community/social demand for the transfer and the community benefits to be derived from the transfer.
- evidence that there is community backing for the transfer and that consultation has taken place within the community.
- evidence of engagement with Elected Members for that Ward in relation to the transfer.
- demonstration that the group has the capacity to manage the asset and has members who have the necessary skills and experience.
- demonstration that the organisation has the ability to conclude the transfer within 6 months of the date of the decision notice.
- financial information in relation to both capital and revenue costs, including cash flow projections for the first 3 years of the project (the Council recognises that many capital funding streams are dependent on full asset transfer, and the provision of unsecured funds within the business plan will be considered within this context).

At the end of this process there will be a report to the Council’s Environment and Regeneration Committee, setting out your request in detail, the outcome of the various discussions and representations and giving a recommendation from officers on whether the transfer should or should not be agreed to. You will be given a formal decision notice once the decision has been made, which will also be published on the Council website and passed on to any party who made representations regarding the request.

The decision notice will:

- confirm if your request has been agreed to or not;
- give your reasons for the decision;
- set out the rights you have to seek a review of or appeal in respect of any decision made; and
- if your request is agreed to:
  - set out any conditions that are to be attached to the transfer; and
  - confirm the period that you will have to submit a formal legal offer (which will be not less than 6 months from the date of the decision notice) offering to proceed with the transfer.

We will discuss with you further at that time, and any professional advisers you have involved, how to proceed with any legal documents that need to be completed to complete a transfer.

## 6. Review and Appeal

There are a variety of rights in relation to review and appeal under the Act. These will be set out in detail in the notices you are provided with throughout the process.

You have a right to seek a review by the Council of your asset transfer request if:

- the Council refuses your request;
- the Council agrees to your request but includes conditions materially different from those specified in your request; 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.

A review is a formal procedure conducted by the Council itself. Decisions on reviews are made by the Council's Policy and Resources Committee. A formal decision notice is also issued at the end of this process.

You have a 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 longer 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 (or such other period as has been agreed with you) of the date of your application for review.

We again recommend you read the Scottish Government Guidance which has more detail on the appeal and review process, which you can download from the page of the Scottish Government Website shown in the links section at the end of this document.

## **Contacts**

Property Assets Manager  
Inverclyde Council  
Legal and Property Services  
107 Dalrymple Street  
Greenock  
PA15 1HU

[property@inverclyde.gov.uk](mailto:property@inverclyde.gov.uk)

01475 712102

## **Links**

Inverclyde Council page on community asset transfer  
<http://www.inverclyde.gov.uk/assettransfer>

Scottish Government page on community asset transfer – including:

- guidance for community transfer bodies
- guidance for relevant authorities (including the Council)
- links to the legislation and regulations
- model forms, notices and case studies of previous asset transfer projects are provided to accompany the Guidance

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