

Asset Transfer under the Community Empowerment (Scotland) Act 2015: Consultation on Draft Regulations



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response.

Are you responding as an individual or an organisation? (required)

- Individual
 Organisation

What is your name or your organisation's name? (required)

Glasgow Centre for Population Health

What is your phone number?

0141 330 2747

What is your address?

GCPH c/o
(Olympia Building)
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Glasgow

What is your postcode?

G12 8QQ

What is your email?

catherine.tabbner@glasgow.ac.uk

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference: (required)

- Publish response with name
 Publish response only (anonymous)
 Do not publish response

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Government to contact you again in relation to this consultation exercise?

- Yes
 No

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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.

The GCPH is responding to questions 3, 5, 6, 8, 9, 10 and 13 only.

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.

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

We commend the recognition in the draft regulations that it is not always clear to communities and local organisations exactly who owns a building or piece of land and welcome the creation of a Land Register by 2019. Land can often be categorised in confusing terms and we particularly welcome the introduction of a "basic description" (p.17) of the land for each entry on the register. In this spirit, we further recommend that the Land Register is in Plain English. If in practice the register does need to include any jargon terms, we recommend it also contains a short glossary.

We commend that the regulations recognise the need to make a Land Register available online *and* offline. In addition to proposing that members of the public can obtain a copy of the register from an authority, we further recommend that a copy is held at a public venue, such as a library. This will enable members of the public to access the Land Register if they cannot visit the authority during its opening hours.

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?

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.

The requirements are reasonable *providing* adequate support is provided to community bodies so that they can make an Asset Transfer Request. In this light, we commend that the regulations propose an ‘open discussion’ between community bodies and authorities; we particularly propose that an open discussion also comprises outreach and support by the authority.

As with our response to the consultation on Participation Requests, we recognise that in pragmatic terms, excluded groups are often missing in engagements – statutory forms and requirements could unintentionally widen this inequality. In this light we recommend that if the regulations insist all requests are made in writing, community bodies are supported to do this if they are impeded for whatever reasons (e.g. the form contains jargon which is not comprehensible to community bodies, disability, language, literacy barriers). We recommend that public services employ a common sense approach to any forms or requirements by supporting any community groups who might find difficulty with a form, and by helping them to collect and present any necessary information.

While we commend that the decision-making process undertaken by authorities should consider criteria such as “public health, social wellbeing” and “socioeconomic inequalities”, we recommend that community bodies are supported to articulate the extent to which their request will achieve positive outcomes in these areas. Such support may range from signposting community bodies to relevant sources of advice and information, to supporting community bodies to understand and interpret these within the context of their local community.

Where professional surveys have been commissioned by an authority, we recommend that consideration be given to providing community bodies with a copy rather than assuming the information is by default confidential and thereby placing a burden on communities to commission their own surveys – which in and of itself may be a barrier to disadvantaged communities. Surveys can provide information which is crucial for the sustainable and responsible ownership and/or management of an asset, including; value of the asset; legal boundaries and titles of the asset; relationship of the asset to neighbouring assets; features of the asset which may not be otherwise visible such as mine shafts and sewers; whether the asset is

located on a floodplain.

The third sector are at present absent in the legislation and regulations, except where charities are included. The third sector have invaluable expertise which could support community bodies to formulate constitutions and make an asset transfer request.

While we understand the need for public authorities to collect consistent information about community bodies who submit requests, we caution whether constitutions will satisfy this requirement. As with our response to Participation Requests, we advise that constitutions can become out of date and can vary in format. We also recommend that the regulations include alternative mechanisms whereby public authorities work with a community body to collect any relevant information needed to formulate the request.

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

Regulation 8.3 regarding the power to decline repeat requests does not seem to account for a change in circumstances (either concerning the asset in question and/or regarding the community body). We recommend that the regulation allows for a community body to repeat a request if there is change in circumstances which makes their request valid.

It may be further helpful for the draft regulations and guidance to articulate that the potential for repeatedly declined requests may be reduced if community bodies receive appropriate support in the early stages of their *first* request. Therefore, it is also important for the draft regulations and guidance to encourage authorities to explore any reasons for repeatedly declined requests and have a dialogue with community bodies about this rather than placing the power with authorities to dismiss them outright.

The language in Regulation 8.3 may be offensive to community bodies where it uses the term “vexatious requests”. This should be amended.

While the regulations account for criteria to determine whether a request is valid, we advise the regulations account for circumstances in which other authorities or community bodies may object to an approved request.

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

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

As with our comments about Participation Requests, we recommend that the regulations stipulate that public service authorities make publicly available the requests they receive, the decisions made about them and reasons for the decision taken. This recommendation resonates with existing wording on page 1 of the regulations which states that the legislation “requires those public authorities to assess requests transparently against a specified list of criteria”. We recommend that these are publicly available, on a website and offline, such as in a public venue like a library or community centre.

In pragmatic terms, we propose that when a public service authority receives a request, it advertises this in case any other groups may also wish to submit a request. This ensures the process is open and transparent.

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?

We recommend that authorities have flexibility with regards to timescales. If the request involves a relatively straightforward response, then it seems reasonable to suggest that in pragmatic terms the authority can make a decision within six months. By contrast, if the request comprises complex considerations then it seems reasonable to allow an authority longer than six months to make a decision. Where a complex request does require a response timescale of six months or more, then it further seems reasonable to propose that the service maintains regular communication with the community body on progress with the request, including expected timescales for issuing a response.

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.

We recommend that decision notices are provided in Plain English or any other required formats to make them comprehensible and accessible to community bodies. We further recommend that the decision notice is made publicly available (online and offline in a public venue such as a library) to ensure transparency and to keep other community bodies updated, especially where they may also consider submitting a request.

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?

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?

We commend that the legislation recognises the need for, and supports, shifting “the balance of power clearly towards the community body” as stated on page 1 of the regulations. We further commend the recognition that securing the best value from property “does not always mean the highest possible price” and that best value can comprise community and social benefits. However, we caution that subsequent wording seems to contrast with this principle by stating that within the current financial climate “public authorities need capital returns or rental income to fund new building or other services, so there is a need to assess what will provide the greatest overall benefit”.

In line with our response throughout this consultation, we emphasise the importance of making information available to community bodies about what support is available to help them make requests and / or conduct an appeal. If the service is not responsible for providing support, then it needs to be clearly communicated to community bodies who is responsible for providing this support.

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?

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

Yes No

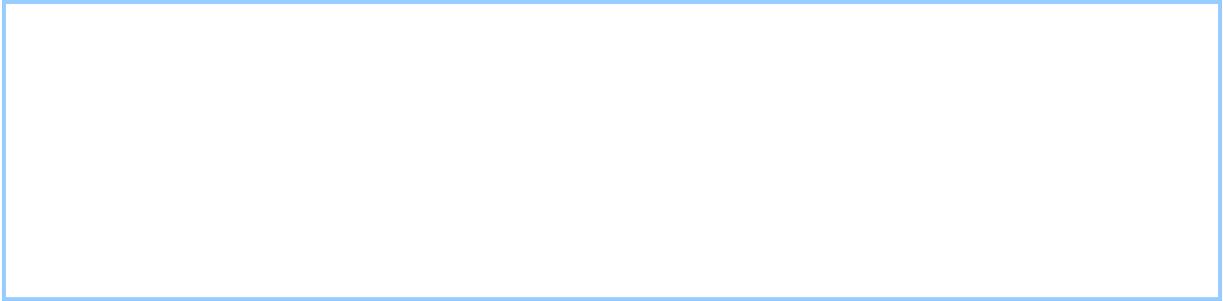
Please explain your reasons.

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

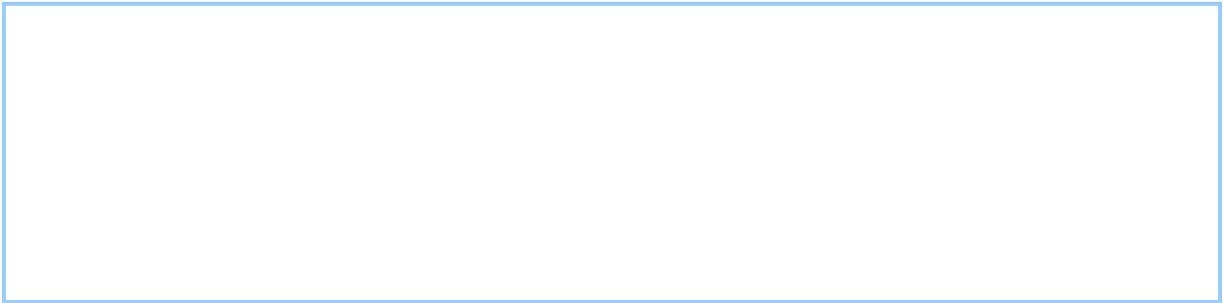
Yes No

Please explain your reasons.

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

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

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