



Community Empowerment Unit
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Our Case ID: 201601361

16 June 2016

By email AssetTransfer@gov.scot

Dear

The Scottish Government – Community Empowerment (Scotland) Act 2015 Part 5 Asset Transfer: Consultation on Draft Regulations

Thank you for your invitation to provide our views on draft regulations for Asset Transfer. I offer the following comments on behalf of Historic Environment Scotland which is the new lead public body set up to investigate, care for and promote Scotland's historic environment.

We are a non-departmental public body with charitable status, governed by a Board of Trustees, who were appointed by Scottish Ministers. We lead and enable Scotland's first historic environment strategy *Our Place in Time*, which sets out how our historic environment will be managed. It ensures our historic environment is cared for, valued and enhanced, both now and for future generations.

We are responsible for more than 300 properties of national importance. Buildings and monuments in our care include Edinburgh Castle, Skara Brae, Fort George and numerous smaller sites across Scotland, which together draw more than 3 million visitors per year.

Consultation

We have found this consultation very useful and are grateful to your colleague Jean Waddie for discussing the detail with us. Asset transfer is relevant to us as a public owner of property, because we act on behalf of Scottish Ministers for properties in care, and because we work to support community groups developing viable new uses for buildings in their area. The Community Empowerment (Scotland) Act 2015 strengthens the rights of communities and asset transfer presents a key opportunity for enabling groups to take a leading role in using and looking after historic assets across Scotland.

Draft regulations paper

We have answered the questions in the consultation paper where we have a particular view or the question is relevant to our areas of business (1, 3, 5, 9 and 11). We have a couple of points about the flowcharts in the draft paper: the flowchart on p8 could be amended to identify instances where the relevant authority rejects the asset transfer request for valid reasons. All eventualities in the flowchart lead to 'contract concluded' which is misleading. The flowchart on p39 presumes that a transfer takes place which will not necessarily always



be the case. The flowchart could also show the outcome in the event of an appeal being unsuccessful.

A relevant authority

Although not yet listed as a relevant authority under Schedule 3 of the Act, we understand the schedule will be amended to include Historic Environment Scotland.

As a public body formed on 1 October 2015, Historic Environment Scotland owns ancillary land and property for which asset transfer requests could be made. We also manage land and property owned or leased by Scottish Ministers. We would therefore be well placed to handle asset transfer requests for these properties. We would make recommendations on these asset transfer requests, for Scottish Ministers own decision.

The majority of the properties that we look after are in guardianship (rather than ownership) of Scottish Ministers. These properties are owned by others but through a guardianship agreement, full control and management of the property rests with Scottish Ministers for the long term. We would not be in a position to agree to asset transfer requests for guardianship properties because they are not owned by Scottish Ministers. We understand however that where the owner is another relevant authority, the community body could make a request to that authority.

We will publish and maintain an accessible asset register for: all land and property that Historic Environment Scotland owns; all land and property owned or leased by Scottish Ministers and in our care; and all land and property in guardianship of Scottish Ministers that is owned or leased by a relevant authority. We have existing information on all of these assets to draw upon, some of which is already publically available.

Policy and procedures

With Scottish Ministers, we are currently developing an *Acquisitions and Disposals Policy for the properties in care of Scottish Ministers*. Our policy and procedures on asset transfer, which we will develop, may be best set out within this.

In drafting our policy, we will have regard to our duty of care as set out in legislation and to the particular functions delegated to us by Scottish Ministers, as the lead public body for the historic environment. Our functions in managing the properties in care include ensuring their conservation, articulating and safeguarding cultural significance, providing public access for current and future generations, and managing the associated commercial operations. We are mindful therefore that there may be cases where an asset transfer request may be reasonably refused because it would interfere with these particular functions, or restrict our ability to carry out our functions.

Historic Environment Scotland is large organisation and we can easily see the value and importance of having a single point of contact for community bodies on asset transfer.

Opportunities

We look forward to increased scope for collaboration and enabling communities to take control of assets, or make use of them, to deliver benefits for people and places. There could be instances where a proposal would result in increased benefits through a better plan put forward by a community body for control or use of an asset in our control.



We support and engage with communities across many areas of our work, and we will be able to provide advice and signposting about the Act and the opportunities it presents. We offer significant grant aid for building repair projects that will deliver benefits to communities; promote public access; promote quality; develop knowledge and skills; and build capacity for local heritage management. We also offer advice at the early stages of developing such projects.

Our work on the Buildings at Risk Register is relevant and we plan to repurpose this service, bringing a clearer focus on reuse, including meanwhile use of vacant buildings. Asset transfer and the right to buy are parts of the Act that could help reduce the number of historic buildings at risk in Scotland.

I hope this is helpful. Should you wish to discuss our comments in more detail, please feel welcome to contact Pauline Megson on 0131 668 8669.

Yours sincerely

Barbara Cummins

Director of Heritage Management

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)

Historic Environment Scotland

What is your phone number?

What is your address?

Longmore House
Salisbury Place
Edinburgh

What is your postcode?

EH9 1SH

What is your email?

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

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

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.

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 agree registers should provide useful and accurate information to enable community bodies to search easily.

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.

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

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?

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.

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?

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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