

Asset Transfer Procedure

Community Empowerment (Scotland) Act 2015

February 2017





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1. Introduction

The Community Empowerment (Scotland) Act 2015 comes into effect in January 2017 and recognises the role that The Ownership or control of land and buildings can have in assisting communities to drive change and achieve their own goals.

Aberdeen City Council (The Council) intends working with their Community Planning Partners and communities to support community transfer where this works best for service delivery and communities and in delivery of the outcomes they hope to achieve as identified in the Aberdeen Local Outcome Improvement Plan. Community Planning Aberdeen also recognises the opportunities that Asset Transfer offers to support locality planning and how it may support the regeneration objectives particularly within its priority localities.

A link to the Aberdeen Local Outcome improvement plan is shown below:-

<https://www.aberdeencity.gov.uk/services/people-and-communities/community-planning>

This procedure is intended to give guidance to community bodies on how Aberdeen City Council will approach Community Asset Transfer and receive and consider requests.

Part 5 of the Community Empowerment (Scotland) Act 2015 sets out the key rights and duties and provides a framework for the asset transfer process. It gives the Scottish Ministers powers to make regulations to fill in more detail of the procedures to be followed. The following regulations have been laid in the Scottish Parliament for scrutiny:

- The Asset Transfer Request (Procedure (Scotland) Regulations 2016
- The Asset Transfer Request (Appeals) (Scotland) Regulations 2016
- The Asset Transfer Request (Review Procedure) (Scotland) Regulations 2016
- The Asset Transfer Request (Appeal Where No Contract Concluded) (Scotland) Regulations 2016
- The Community Empowerment (Registers of Land) (Scotland) Regulations 2016
- The Community Empowerment (Miscellaneous Amendments) (Scotland) Regulations 2016

The text of the Act is available at

<http://www.legislation.gov.uk/asp/2015/6/part/5>.

The text of the Regulations will also be available at **www.legislation.gov.uk**, or through **<http://www.parliament.scot/>**

Part 5 of the Act and the Regulations came into force on **23 January 2017**.

This procedure take cognisance of the technical guidance produced by the Scottish Government under section 96 of the Act, which relevant authorities are required to have regard to in carrying out their functions in relation to asset transfer. More information about the development of the Act and its implementation can be found on the Scottish Government website at:-

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

2. Aberdeen City Council Considerations

This procedure will explain the process Aberdeen City Council (“the Council”) will use and in most instances replicates the technical guidance produced by the Scottish Government.

The council recognise that for asset transfer to be successful, there also needs to be a wider context of partnership with and support for community bodies and community-led activity. This aligns with the approach which is encouraged throughout public services in Scotland and the community planning partnership in Aberdeen, and should build on existing relationships.

The Community Ownership Support Service (“COSS”) provides extensive advice on the benefits of asset transfer and how to prepare and work with community bodies:

<http://www.dtascommunityownership.org.uk/public-bodies>

Community transfer bodies are encouraged to discuss their ideas with the Council at an early stage. This may be when they have identified an asset they are interested in, or to discuss their ideas and needs and see whether any suitable assets are available. The Council would encourage such approaches and are ready to direct community transfer bodies to sources of support if needed.

To aid with this the single point of contact for all requests is :-

Asset Management Manager

Aberdeen City Council

Business Hub 10

Marischal College

Broad Street

Aberdeen

AB10 1AB

01224 522675

CAT@aberdeencity.gov.uk

**[www.aberdeencity.gov.uk/
communityassettransfer](http://www.aberdeencity.gov.uk/communityassettransfer)**

Assets and Services

Sometimes a community transfer body may wish to take over a building or land and the services which are delivered by the Council from those premises. This could be addressed by an asset transfer request, or a participation request, within Part 3 of the act, in relation to improving the outcome of the services. We do not recommend using both types of request together.

- If the community body wants to run a service which is tied to the particular premises, and does not want to use the premises for any other purpose, this should be addressed through a participation request. A lease or other arrangement in relation to the premises can be negotiated as part of the agreement to provide the service. Further guidance will be provided on participation requests as this become available.
- If the community body wants to take control of the asset in order to develop the service on its own terms or use the property for other purposes, this should normally be addressed through an asset transfer request.
- An asset transfer request can be accompanied by negotiations for the public authority to contract with the community body to continue to provide a service, as a source of income.

3. Summary of asset transfer under the Community Empowerment Act

Part 5 of the Community Empowerment (Scotland) Act 2015 allows a community transfer body to make an asset transfer request to a relevant authority such as the Council. Chapter 5 of this guidance explains the requirements for being a community transfer body.

A request can be made in relation to any land which is owned or leased by the council and a community transfer body can ask to buy or lease the land, or to have other rights, for example to occupy or use the land for a particular purpose.

There is standard information that a community transfer body must include in any request which includes the reason for making the request, the benefits of the proposals, and the price they are prepared to pay.

There is a formal process for the Council to acknowledge the request, notify others who may be interested, and allow them to make representations.

Where an asset transfer request has been considered and refused (including any review or appeal), the Council does not have to accept another similar request for the same property if it is made within two years of the first. The relevant authority can accept a repeat request if it wishes, for example if it is from a genuinely different group or the proposal has been improved.

Once an asset transfer request has been made, the council is not allowed to transfer the property to anyone else until that request process has been completed, including any appeals. This does not apply if the property was advertised for sale, or negotiations had started to transfer it to someone else, before the asset transfer request was made. Other Asset Transfer requests can be considered during this period.

In deciding whether to agree to or refuse the request, the Council must consider the following things:

- the reasons 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
- environmental wellbeing, or
- whether agreeing to the request would be likely to reduce socio-economic inequalities
- any other benefits that might arise if the request were agreed to
- how the request relates to the Council's duties under Equalities legislation
- any obligations that may prevent, restrict or otherwise affect the authority's ability to agree to the request

The Council must compare the benefits of the proposal in the request to the benefits of any alternative proposals, whether those come from the authority itself or anyone else, and consider how the potential benefits relate to the functions and purposes of the authority, and any other matters they consider relevant.

A mechanism is in place to provide some advice on how to obtain a valuation of the property, how to assess non-financial benefits, and on using conditions to protect any discount given, if required.

When the Council has made its decision, it must issue a decision notice setting out its reasons for agreeing or refusing.

If the relevant authority agrees to the request, there is a process to negotiate the final contract. This can allow time for the community body to confirm funding before the final transfer takes place.

There are various options for review or appeal if:

- the request is refused,
- no decision is given within the time allowed, or
- the community transfer body does not agree with conditions imposed by the relevant authority.

At the end of each financial year, the council must publish a report on the number of requests it has received and the number which have been agreed, refused, appealed etc. It must also report on action it has taken to promote the use of asset transfer requests and to support community transfer bodies to make requests.

4. Community Transfer Bodies

To make an asset transfer request, an organisation needs to be a community transfer body. This is defined in section 77 of the Act. It can be either a **community controlled body** (defined in section 19) or a body **designated by the Scottish Ministers**.

Further information is available in the technical guidance however

- A community controlled body does not have to be incorporated, but it must have a written constitution, incorporating the provisions set out in paragraph 5.11.
- A community controlled body which wants to make an asset transfer request for ownership must also be incorporated as a company, a SCIO (Scottish Charitable Incorporated Organisation) or a BenCom (Community Benefit Company), with a minimum of 20 members and provision for transfer of its assets on winding up. This is set out in section 80.

The Scottish Council for Voluntary Organisations (“SCVO”) has helpful advice on its website <http://www.scvo.org.uk/setting-up-a-charity/> for groups setting up a formal organisation, including advice on charitable status.

Model governing documents will be provided by the Scottish Government for an unincorporated association, company, SCIO or BenCom which meet the requirements for a community controlled body.

Requirements for a community controlled body

To qualify as a community controlled body, the body’s constitution, Articles of Association or registered rules must include the following:

- a. A definition of the community to which the body relates
- b. provision that membership of the body is open to any member of that community
- c. provision that the majority of the members of the body is to consist of members of that community
- d. provision that the members of the body who consist of members of that community have control of the body
- e. a statement of the body’s aims and purposes, including the promotion of a benefit for that community

- f. provision that any surplus funds or assets of the body are to be applied for the benefit of that community.

If the request is for ownership, and the community transfer body is a company, the Articles of Association must include arrangements for what happens to the body’s assets if it is wound up. This must require that the property is transferred:

- i. to another community transfer body,
- ii. to a charity,
- iii. 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,
- iv. to such crofting community body (within the meaning of section 71 of that Act) as may be so approved, or
- v. 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.

If the organisation is a SCIO or BenCom, there will be similar provisions to ensure that remaining property is transferred to another body with similar structure and aims.

Communities of interest

The legislation on asset transfer does not define what a community can be. It simply requires a community transfer body to define the community it relates to, and ensure the body is open to and controlled by members of that community, and uses its assets to benefit that community. Whether an organisation is eligible to make an asset transfer request depends on their constitution meeting the requirements, not on what community it represents.

A community can be any group of people who feel they have something in common. In many cases, it is that they live in the same area. However, it can also be that they share an interest or characteristic. Communities of interest could include faith groups, ethnic or cultural groups, people affected by a particular illness or disability, sports clubs, conservation groups, clan and heritage associations, etc. They may be very specialised or local, ranging up to national or international groups with thousands of members.

5. Helping community bodies to identify suitable assets

Large charities or Non-Governmental Organisations may qualify as community controlled bodies, but you will need to check their governing documents to ensure they relate to a defined community, that the members of that community are always in the majority and in control of decision-making processes, and that at least one of the purposes of the body is to provide a benefit to the community they represent.

An asset transfer request should be judged on the benefits it will deliver, not on the community it represents. However, relevant authorities may also take into account the impact on other groups, such as any loss of facilities, and any wider benefits or potential for conflict. Bodies representing communities of interest should be encouraged to engage with and seek support from the local community.

Designation

The Scottish Ministers can designate a body to be a community transfer body. They will do this by making an order.

The guidance for community transfer bodies includes instructions on applying for designation.

Register of land

Section 94 of the Act requires each relevant authority to establish, maintain and make available a register of land which it owns or leases, to the best of its knowledge and belief. The Council hold a register of their landholding on their website.

This can be accessed at

<https://www.aberdeencity.gov.uk/services/business-and-licensing/property-services/property-asset-management>

Further information about land or buildings

Once they have identified one or more properties that may be suitable for their project, a community body will need further information about them. They will need to decide whether the land or building is suitable for their planned activities, what the running costs will be, and how much to offer for it. If they intend to request ownership or a lease with repairing responsibilities, they will need information about the structural condition of any building, other rights on the land, and so on.

We recommend that community bodies should make contact with us as early as possible to discuss such properties. We will be open about the information we have on properties, including practical knowledge about managing the property, and how other information might be obtained, including any information that is likely to be a significant factor in the authority's decision on the request. Whilst it is ultimately it is the responsibility of the community transfer body to ensure it has all the necessary and relevant information to develop its proposals. Where possible and the information is available we will try to provide information to support requests this may include:-

- title reports
- rateable value
- size – including site or building plans if appropriate
- any planning restrictions, heritage designations, environmental designations, or other restrictions on future use
- information on any tenancies, occupancy agreements etc (as far as possible under confidentiality)

6. Requirements for an Asset Transfer Request

- utility / service information

For buildings

- condition and suitability reports
- asbestos reports and management plan
- energy costs (for current use) and / or Energy Performance Certificate

For land

- contamination
- for agricultural or forestry land, any relevant planting records, management plan or similar.

Aberdeen City council would strongly recommend that community bodies make approaches prior to an asset transfer request before it is formally submitted. This will allow us to make appropriate information available and make all relevant officers aware. We may also be able to support you in your application or put you in touch with someone that can.

We acknowledge the work required to submit formal requests and through early consultation abortive work may be avoided or initial advice on the strength of the proposal can be provided.

This said community transfer bodies have a right to submit an asset transfer request without any previous discussion.

Content of a request

The legislation requires certain information to be specified in an asset transfer request. This is set out in section 79(4) of the Act and regulation 3 of the Asset Transfer Requests (Procedure) (Scotland) Regulations 2016 (the Procedure Regulations. **An asset transfer request is not treated as having been made until all the required information is received by the Council.**

We may seek further detail during the process, and the community transfer body may provide additional information, in particular in response to any representations made about the request. We may decide to refuse the request if it does not feel it has sufficient information on the proposals. **The level of detail required will be proportionate to the scale and nature of the request.**

An application form for an asset transfer request is available from the Council website, shown below, although we cannot insist on this being used.

[www.aberdeencity.gov.uk/
communityassettransfer](http://www.aberdeencity.gov.uk/communityassettransfer)

An asset transfer request must be made in writing and must:

A. State that it is an asset transfer request made under Part 5 of the Community Empowerment (Scotland) Act 2015

This is included to make clear that the community transfer body intends to make an asset transfer request, even if it does not include all the required information.

B. Name and contact address of the community transfer body

C. Copy of constitution

The organisation's constitution, articles of association or registered rules must be attached, so that we can check the organisation is eligible to make an asset transfer request, and to make a request for ownership if appropriate. The company number, charity number or registered number are also requested on the standard form, to provide for background checks.

D. How the body is a community transfer body

If the organisation does not qualify as a community controlled body but has been designated as a community transfer body, or is one of a class of bodies which have been designated as community transfer bodies, they must explain this. Designation orders will be published online for reference.

E. The land to which the request relates

The request must provide sufficient information to be clear what land is being requested. In practice this should relate to the details on the land register.

Maps or drawings may not be necessary if the location and boundaries of the land requested are clear from the description. Assistance can be provided for this in pre-application discussions.

F, G, H, I, J. Type of request, payment and conditions

The request must state clearly whether it is for:

- ownership (under section 79(2)(a))
- lease (under section 79(2)(b)(i)), or
- other rights (section 79(2)(b)(ii))

A request for ownership must state the price that the community transfer body is prepared to pay for the land.

A request for ownership must state the amount of rent the community transfer body is prepared to pay, the duration of the lease, and any other terms and conditions they consider should be included in the lease. A request for other rights must state the nature and extent of the rights sought.

All requests should also include any other terms and conditions applicable to the request (section 79(2)(h)). For ownership, this is likely to include key terms which the community transfer body wishes to be included in the contract, in addition to the information included elsewhere in the request on the extent of the land, price and proposed use.

K. Reasons for making the request

The community transfer body should explain the reasons behind the project and why this land or building is necessary or particularly suitable for it. They should also set out how the land or building will be used and what activities, in general terms, will take place there. For example, the reason for making the request may be to prevent a prominent building from falling into disrepair, or increase tourism to the area; the intention might be to use it as a visitor centre or community venue; more information would then be needed on the planned activities. In other cases the reason and use may be the same, for example where the intention is to develop a hydroelectric scheme or a community garden. This section should also set out any planned physical changes or development on the land.

L. Proposed use of the land

This is one of the most important sections of the request, since the benefits of the community body's proposals will be key to the decision on whether to agree to or refuse the request, as set out in chapter 10.

M. Benefits of the proposals

All requests will be considered in detail to understand the proposed benefits, but community transfer bodies are encouraged to set them out along the lines of the issues relevant authorities are required to consider, and with reference to intended outcomes. They are also encouraged to show how they might address any potential negative consequences, take account of any restrictions on the use of the land, and demonstrate the capacity of the organisation to deliver the project.

If possible, we will endeavor to advise you should advise the community body at an early stage of any negative consequences likely to arise, and discuss whether these can be addressed or mitigated. If the land is subject to heritage or conservation designations, the community transfer body should show they have engaged with the appropriate regulators, and that their proposals support the Local Development Plan, if relevant.

N. Funding

The community transfer body must outline how they propose to fund the price or rent they are prepared to pay for the land, and their proposed use of the land. This should include any development costs, ongoing maintenance and the costs of activities.

In some cases this will be very straightforward, for example if the organisation's rent and incidental expenses are covered by the fees paid by members, or by volunteering, donations and fundraising. For large projects, more detail will be required, showing that the community transfer body understands all the costs associated with their proposals and how these will be covered. This may be through grants, loans, fees for activities, income from commercial operations, and so on. Community bodies should not be expected to have funding in place when the request is made, but they should have a clear idea of where they expect to get it.

O. Community support

The request must set out the level and nature of support for it within the community to which the community transfer body relates, ie the community defined in the community transfer body's constitution. How the level and nature of support should be described will depend on the particular case, but could include evidence from a range of activities undertaken to engage with the wider community, such as public meetings, community surveys, community action planning or a charette, or community budgeting. The community transfer body may reference the National Standards for Community Engagement to show that their engagement has been effective and inclusive. A full community ballot may be used, but is not required.

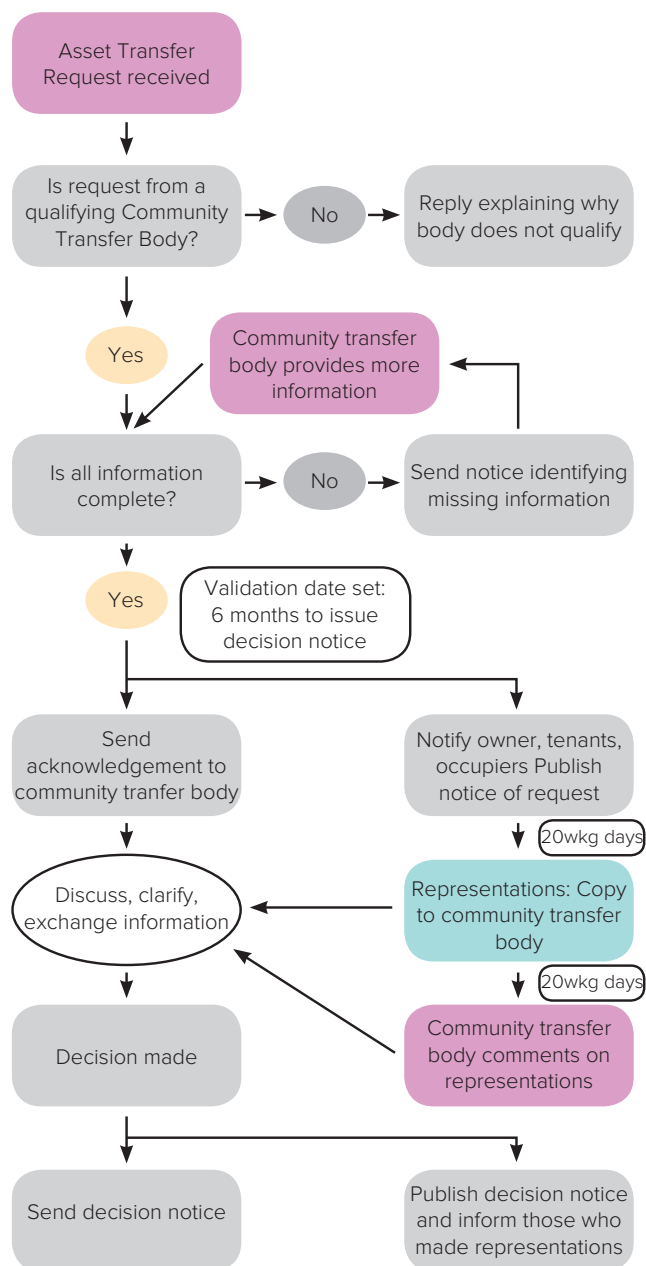
Community transfer bodies are encouraged to include information on the total number of people in their community and how many of them are members of the organisation to provide context for the level of support. Communities of interest may only be able to estimate this, using evidence such as the census, other surveys or information from national representative bodies.

Details of other support may also be provided. This could be, for example, from another local community or community of interest which the project will benefit, or from organisations such as a sport governing body or national umbrella body.

Signatures

8.9 The standard application form requires two signatures from officers of the community transfer body, with their full names and addresses. This is not a requirement of the asset transfer legislation, but will be required by relevant authorities to undertake fraud prevention checks.

Procedure following receipt of an asset transfer request



7. Procedure following receipt of an asset transfer request

When we receive a request, the first thing we will do is to check it contains all the required information and that the organisation making the request qualifies as a community transfer body (and is eligible to make a request for ownership, if appropriate).

If the organisation making the request is not eligible to do so, technically it is not an asset transfer request and you will be advised of explaining in general terms why the organisation is not eligible

If the request does not contain all the required information you will be advised what is missing. No further action will be taken by us until all the required information is received.

Power to decline repeat requests

Section 93 of the Act allows a us to choose not to consider a request which is the same or very similar to a previous request which was refused. This applies if the new request relates to the same land or building, and seeks the same type of transfer, as a request made in the previous two years, which was refused. It does not matter if the new request is made by the same body or a different one. Declining to consider a request under these circumstances does not count as a refusal of the request and therefore is not eligible for appeal or review.

Acknowledgement

Once we are satisfied that all the required information has been provided, you will receive acknowledgement as required by regulation 4(3) and (4). The acknowledgement will include the following information:

- the validation date – regulation 5 states that this is the date on which the last of the required information was received (the date the request was received if it was complete). This is the date from which other time limits will be calculated.
- an explanation of the timescale within which we will issue a decision notice. As set out in regulation 10 and section 82(8), we must issue a decision notice within 6 months after the validation date, unless a longer period is agreed between the relevant authority and the community transfer body. This will often be discussed with you to be consistent with the appropriate council meetings.

- information about the right to appeal to the Scottish Ministers or request a review, as appropriate. This is required at the outset because of the option to appeal if no decision is made within the time limit.
- whether another asset transfer request has already been made to the relevant authority in respect of the same land (or part of the same land).
- whether the relevant authority considers that it is now prohibited from disposing of the land to any other person (see below).

Publication of documents

The council will make copies of the asset transfer requests and any documents or information accompanying it available to be viewed online, until the request process is completed. Any representations made about the request will also be put online.

www.aberdeencity.gov.uk (to be developed)

In order to comply with data protection requirements, any personal information will be redacted from these documents before they are published.

The council are also working maintaining an archive of completed requests online. In particular, this will help community transfer bodies to know if previous requests have been made, and refused, for the same property.

Notification and representations

Regulations 6 and 7 of the Procedure Regulations set out arrangements for other people to be made aware that an asset transfer request has been made, and of how they can make representations about it. This will be done by us as soon as practicable after the validation date (the date the completed request was received).

We will directly notify any tenant or occupier of the land the request relates to. This would include any group which has an agreement for regular use of the land or building. We will also also notify the owner, if the relevant authority leases the land.

Notice of the asset transfer request will be published online, and put up at the site. Regulation 7(2) (b) requires it to be displayed at a public place in the vicinity of the land to which the asset transfer request relates.

Notices sent to tenants, occupiers and owners and those published online and near the land all require to contain the same information. They must:

- state that an asset transfer request has been made
- identify the community transfer body making the request and the land to which the request relates
- give a brief description of the nature of the rights requested and how the community transfer body propose to use the land
- say how the asset transfer request and associated documents can be inspected
- say how representations about the request may be made, and by what date. This must be at least 20 working days after the notice is given or published.

The notice should also advise that all representations will be copied to the community transfer body for their comments, and published.

If any representations are received in response to these notices, we will send copies to the community transfer body and inform them how and by what date they can make comments about them. The date must be at least 20 working days from the date on which the copy is sent. Any personal information will be redacted from representations before they are copied to the community transfer body or published online.

Prohibition on disposal of land

Once an asset transfer request has been made, we are not allowed to sell, lease or otherwise dispose of the land it relates to, to anyone other than the community transfer body that made the request, until the whole process is completed. This is set out in section 84 of the Act. Subsection (11) provides that in these circumstances, any contract requiring the us to dispose of the property to any other person has no effect.

Subsections (4) to (10) of section 84 set out all the possible ways in which the asset transfer request process can come to an end. In summary, the process is completed when:

- a contract for the transfer is concluded;
- the request is refused and the community transfer body has followed all routes of appeal without success, or

- the community transfer body fails to take the next action in the process within the time required. For example, if it does not make an offer, or does not request a review or appeal if the request is refused.

There is no statutory provision for a community transfer body to withdraw its request.

Under subsection (12), the prohibition on disposal does not apply if, before the asset transfer request is made, the land has already been advertised for sale or lease, or the relevant authority has entered into negotiations or begun proceedings to transfer or lease the land to another person.

Multiple requests for the same property

Each asset transfer request that is received will be processed in line with the procedures and timescales set out above, even if further requests are received for the same land before the first has been concluded. There is no provision, for example, to allow the relevant authority to delay a decision on one request until it has considered another, unless the community transfer body making the first request has agreed to an extension of the timescale. Ideally, all community transfer bodies interested in a particular property would work together to submit a single request, but this is not always practical.

8. Decision-making process

To provide a robust, transparent and consistent decision-making process applications for asset transfer will all be reviewed by a panel of officers within the council including:-

- Communities and Housing
- Land & Property Assets
- Finance
- Legal and Democratic Services.

This panel will be supplemented by other officers, depending on the nature and type of the application. This may include specialisms around sports, culture, education, environmental policy or economic development. It may also include officers of partner organisations and may also seek advice from its community planning partners.

The panel will be chaired by the Asset Management Manager, who will be responsible for reporting the panel's outcomes to the Finance Policy and Resources committee of the council.

Dialogue between the relevant authority and the community transfer body may continue throughout the process. We may seek clarification or more detail on any issues we feel is necessary to make a decision. This will help to avoid situations where a request is refused on the basis of a lack of information which the community transfer body could have provided if they had been asked. **We will take care to ensure that the type of information and level of detail expected is appropriate and proportionate to the individual request.**

Matters to be considered

Aberdeen City Council take a positive approach to asset transfer and are likely agree to the request unless there are reasonable grounds for refusal.

It is not possible to give detailed guidance on what may be reasonable grounds for refusal, as this will be determined in the circumstances of each individual case. However, they are likely to include cases where the benefits of the asset transfer request are judged to be less than the benefits of an alternative proposal, where agreeing to the request would restrict us in carrying out our, or where another obligation on the Council prevents or restricts its ability to agree to the request.\

Benefits

In assessing the benefits of the request we will consider whether agreeing to it would be likely to:

- promote or improve
 - economic development
 - regeneration
 - public health
 - social wellbeing
 - environmental wellbeing, or
- reduce inequalities of outcome which result from socio-economic disadvantage
- Contribute to the Local Outcome Improvement Plan/ Locality Plans.

We will make our decision in a manner which encourages equal opportunities and the observance of the equal opportunities requirements. While some of this may come under the heading of promoting or improving social wellbeing it provides a focus for considering activities which may benefit particularly disadvantaged groups, or promote inclusion and understanding between different groups.

Ability to deliver

Considering whether a proposal is likely to achieve the benefits set out is not only a matter of whether the planned activities would lead to the suggested outcomes. It also requires an assessment of whether the community transfer body is able to successfully deliver the project, and make it sustainable. We will consider both funding and the capacity and governance of the organisation. Some issues which we will consider will be:

- has the community transfer body identified all the relevant costs of the project or activities?
- have they identified appropriate and realistic sources of funding – for example, will they be eligible for any suggested grants, are any fees for activities affordable for their target market, do they have a viable business plan for any proposed commercial activities?
- where relevant, have they identified how the project will be funded in the longer term?
- do members have appropriate skills, experience and qualifications to deliver the project, or does the body have a plan for engaging people who do?

9. Price, Valuation and Non-financial benefits

- does the community transfer body have suitable governance arrangements for the scale of the project?
- where relevant, do they have succession plans in place for recruiting new Board members / Trustees in future?

Consideration of these issues will be **proportionate and appropriate to the scale and type of project involved**

Linkages to Local outcome improvement plan:-

http://www.aberdeencity.gov.uk/web/files/Council_and_Government/LOIP_22_Aug.pdf

We will consider how the proposal relates to meeting the outcome of the Local Outcome Improvement plan or to more general national outcomes.

Obligations and restrictions

Any obligations that may prevent, restrict or otherwise affect the authority's ability to agree to the request, whether these arise from legislation or otherwise will be explained to the community transfer body at the earliest possible stage, as they may influence their decision on what property may be suitable for their needs.

“Other matters” and community support

Under this heading we will consider community support for the proposals and any potential impact on other community groups.

The relative importance of wider community support will depend on the proposed project. There are often differences of opinion within communities, and you should not expect unanimous support for a proposal. However, one of the intended benefits of community ownership and community-led activity is to increase community cohesion and resilience. A scheme that attracts substantial opposition and causes division in the community may not have a net benefit. It could also result in fewer people becoming involved or using the services.

Request from bodies representing a community of interest, will require to show how they have engaged with the geographic community in the area where the asset is located. A community of interest may be a subset of the local community, such as an equality group or sports club, or it may be drawn

from a regional, national or even international base. In either case, the views of local residents who are not part of that community of interest should be considered. Equally, a proposal from a geographic community may reference support from communities of interest who may benefit.

The community transfer body has to state in the asset transfer request how much they are prepared to pay, alongside the benefits the project will deliver. Aberdeen City Council has to decide whether to accept that price. The council have a duty to secure Best Value in their operations, including when disposing of or letting property. Best Value does not always mean the highest possible price, and we have the ability to dispose of property at less than market value where there are wider public benefits to be gained. This is set out in the Disposal of Land by Local Authorities (Scotland) Regulations 2010.

<http://www.legislation.gov.uk/ssi/2010/160/contents/made>

The likely price of the asset is something the community transfer body will need to consider at an early stage in developing its proposals, along with the initial and ongoing costs of the project. The council will where possible give an indication of their expectations in terms of price at an early stage in discussions. **Community transfer bodies should not assume that asset transfers will be at a nominal sum.**

For purchase or lease, both parties are likely to need a formal valuation for accounting and funding purposes. If the community transfer body decides to offer a price that is less than the market value, the relevant authority will need to assess whether the non-financial benefits offered by the proposals justify that reduced price.

State Aid Considerations

All asset transfers must comply with state aid rules. A disposal at less than market value may constitute State Aid, if it provides an economic advantage to a trading entity.

We will have to consider whether any reduction from market value is allowed under the State Aid Rules. However, if any assistance is found to have breached the Rules, it is the organisation that received the assistance that has to pay it back, so it is important for clarity on both sides of the request.

10. Obtaining a joint valuation of the asset

The council and the community transfer body are likely to need to understand the market value of the asset, for accounting, borrowing or funding purposes, and to ensure transparency about the amount of any reduction from market value. A market value is also required for Best Value and State Aid assessments.

To reduce overall costs and provide a common starting point, we are willing to discuss a joint valuation, and to agree that this will give the figure on which discussions will be based.

Information in relation to how the valuer is instructed, the times this should be undertaken, who should undertake the valuation and the basis of valuation, along with sample instruction letters are all contained within the technical guidance.

11. Assessing asset transfer requests

Introduction

When the price offered in an asset transfer request is less than the market value of the property, the relevant authority will need to consider whether the proposed benefits to be delivered by the community transfer body justify the proposed discount (which will be accounted for as a gift. This will be based solely on the analysis of the information included in the request. The benefits of the request should be proportionate to the value of the asset and the level of discount, with an appropriate level of information to support the application. Any decision to transfer an asset must represent good use of public resources.

Criteria for Assessing Requests

A way to demonstrate resources are being put to good use is to demonstrate Best Value.

There are seven Best Value themes which the council must consider include the following types of benefit:

- Economic development
- Regeneration
- Public health
- Social wellbeing
- Environmental wellbeing
- Reducing inequalities of outcome from socio-economic disadvantage (LOIP and Locality Plans)
- Any other benefits that might arise through the alternative use of the asset.

Asset transfer at less than market value is justified when these additional benefits empower communities and align with local and national priorities to enable the delivery of Best Value across the public sector as a whole.

Considering the Request

The information provided in the asset transfer request should demonstrate that the project has clear objectives, including the projected outcomes and impacts sought by the community transfer body alongside any associated dependencies, constraints and risks identified. The benefits of the request should be proportionate to the value of the asset and the level of discount.

The council will consider each one of the seven Best Value themes to evaluate the strength of the case being made, including the sustainability of the proposal in the longer-term. The request must also include the benefits that will be delivered as part of the proposal.

Benefit	Example	Assessment
Financial	Reduction in public sector costs or enhancement of provision due to the proposal.	e.g. the costs associated with volunteers' time or where intervention can reduce pressure on municipal services through the people that can be reached, such as alleviating alcohol/ drug/ smoking dependency.
Outcomes - quantitative	Contribution towards local or national priorities e.g. improved standards of healthcare; contribution towards alleviating homelessness; supporting local employment etc.	e.g. the increase in local engagement in physical activity for a particular group or groups; the reduction in numbers of homeless through intervention/ advocacy; the hours of vocational training provided to help develop skills that are in demand.
Outcomes - qualitative	Improved community cohesion; enhanced local services etc.	e.g. the improvement in local wellbeing from reducing anti-social behaviour; the increase in participation from a marginalised group or groups, such as providing online access or financial independence.

In reviewing each request the following matters, though not exhaustive, will also be considered:

- a. Value to relevant authority in existing use
 - feasibility and cost of relocation of services elsewhere
 - potential revenue savings arising from transfer
- b. Value for alternative use/redevelopment
- c. Value for proposed and other community purposes

- d. Level of community benefits
 - extent of community served
 - Nature of benefits to be delivered
 - links to relevant authority's corporate priorities and outcomes
 - community need/demand for the services
- e. Likelihood that benefits will be delivered over a 5-year period
 - strength of organisation
 - sustainability of business plan/project
 - sources and level of funding support
- f. Impact of project failure
 - to surrounding local environment
 - to reputation of the parties
 - to the service users/relevant authority's objectives

Based on the evidence provided the request will then be assessed on the following basis.

Evidence	Overview
Very strong	Governance and financial arrangements are strong and sustainable. Best Value characteristics are evidenced and contained throughout the overall approach. Related projected benefits are very robust and demonstrate value for money: suitability, effectiveness, prudence, quality, value and the avoidance of error and other waste.
Strong	Governance and financial arrangements are sound and sustainable. Best Value characteristics are in evidence in the proposal. Related projected benefits are demonstrated well and represent value for money.
Moderate	Governance and financial arrangements are in place and acceptable. Best Value characteristics have been considered as part of the proposal. Related projected benefits are acceptable and could lead to value for money.
Weak	Governance and financial arrangements are weak. Best Value characteristics are not well demonstrated in the proposal. Related projected benefits are not based on robust information and demonstrates questionable value for money.
Poor	Governance and financial arrangements are poor. There is little evidence of Best Value characteristics in the proposal. Related projected benefits are ill defined and/or unrealistic and do not demonstrate value for money.

The strength of the proposals will then be considered against the financial implications of any decision both for short-term budget planning and long-term asset strategies. This will include the consideration of the current use of the asset and any consequent implications that could arise from the transfer of the asset. A larger discount will require a stronger case to be made with an appropriate level of benefits demonstrated effectively.

Asset Transfer Request Recommendation

Following a detailed review and assessment of the information provided in an asset transfer request, a recommendation can then be made on the strength of the case to the relevant accountable officer or to the appropriate council committee. Any request for a transfer at less than best consideration will be reported to committee.

Depending on the nature of a request, expert opinion may need to be sought to assess effectively the financial implications, the Best Value considerations and/or the proposed benefits.

The community transfer body needs to provide a proportionate request that demonstrates clear benefits with the appropriate level of information to support the application – commensurate to the value of the asset and the level of discount.

Any asset transfer request will be assessed alongside any other proposals for the related asset to enable a Best Value judgement to be made. This will be a judgment that takes into account the financial implications alongside the wider benefits that will accrue.

Best Value Theme	Summary	Information Required
Vision and Leadership	An organisation will have in place a clear vision and plan for what it will do to contribute to the delivery of improved outcomes for Scotland. This may be linked to one or more local or national priorities. e.g. the Scottish Government's National Outcomes.	A clear plan for achieving the intended outcomes, ideally showing links to local or national priorities. Members of the community transfer body would also show that they have the relevant skills and experience to deliver the intended objectives.
Effective Partnerships	An organisation will show how it, and its partnerships, provides a collaborative approach to the challenges that communities face.	The detail of any partnerships in place to help ensure successful delivery of the intended benefits. Community support is vital and can be shown through a variety of metrics such as surveys, consultations or ballots.
Governance and Accountability	An organisation will be able to demonstrate structures, policies and leadership behaviours that support the application of good standards of governance and accountability.	An outline to illustrate that the appropriate structures and policies are in place to help ensure success in the longer-term.
Use of Resources	An organisation will ensure that robust arrangements are in place to monitor the achievement of its desired outcomes as well as any reporting arrangements.	Explain how the body's current and future resources will be used as part of a medium to long term plan (5-10 years). This could include the numbers of employees or volunteers and the maintenance of any asset. This could also include the funding requirements of the group and the sources of funding already in place.
Performance Management	An organisation will ensure that robust arrangements are in place to monitor the achievement of its desired outcomes as well as any reporting arrangements.	Outline the way in which a community transfer body will be able to monitor the achievement of its objectives, whether that be recording volunteers time or the amount of benefit achieved as part of the overarching vision. To demonstrate openness and transparency it will be important to report performance to the community.
Sustainability	An organisation will demonstrate an effective use of resources in the short-term and an informed prioritisation of the use of resources in the longer-term in order to contribute to sustainable development. The goal of Sustainable Development is to enable all people throughout the world to satisfy their basic needs and enjoy a better quality of life without compromising the quality of life of future generations.	There are five broad principles of sustainability: <ul style="list-style-type: none"> • promoting good governance; • living within environmental limits; • achieving a sustainable economy; • ensuring a stronger healthier society; and • using sound science responsibly. A community transfer body could demonstrate how its future funding or self-financing arrangements are to be achieved. Any proposal could also include any positive impact on the natural environment.
Equality	An organisation will demonstrate that consideration of equality issues is embedded in its vision and strategic direction and throughout all of its work.	The community transfer body should establish that the different groups within the community have had their different needs taken into account. Any request should include where a proposal may be reducing inequalities of outcome from socio-economic disadvantage.

12. Use of conditions to protect discount

As explained in previous sections, the council are required to achieve Best Value in their property transactions. In the case of asset transfer to community bodies, disposal at less than market value, or with other support or concessions, may be justified by reference to the expected benefits to be delivered by the project. In that situation, relevant authorities sometimes seek to protect themselves against the risk that the benefits may not be delivered by including clauses in the contract requiring some form of restitution if the project fails.

Further detail in relation to the potential mechanisms for this is discussed in Scottish Government guidance. The requirement for this is any will be discussed during the application process.

Collaboration and monitoring

It will often be helpful for the relevant authority to work directly with funders to agree a balance of legal mechanisms to secure the interests of all those involved. There can be misunderstandings about the requirements of different organisations which are best clarified by making direct contact. While these discussions are likely to take place between lawyers, community bodies should be reassured that the aim is to produce a better result for them, with fewer overlapping conditions.

Where any mechanism is put in place, by a relevant authority or a funding organisation, to ensure that benefits are delivered or property is used for a particular purpose, monitoring of those requirements is also essential. If difficulties arise with a project, support may also be necessary to help the community body get back on track. Where there are several organisations with similar interests, it may be possible to establish an agreement whereby one partner undertakes monitoring on behalf of all, providing other partners with sufficient confidence to reduce the need to impose multiple protective mechanisms. This would also benefit the community body, in reducing duplication of monitoring.

13. Decision notice

Having made its decision the council will issue a decision notice to the community transfer body, under section 82(7) of the Act, setting out its decision and the reasons for it. This must be done within six months from the validation date, as prescribed in regulation 10 of the Procedure Regulations, or a longer period if agreed between the relevant authority and the community transfer body.

The decision will not be unnecessarily delayed and will normally fit around Council committee dates.

A longer period may be required for complex requests or where another process is required to remove a restriction on the relevant authority. Should this be required a revised process will be agreed with you once an application is made.

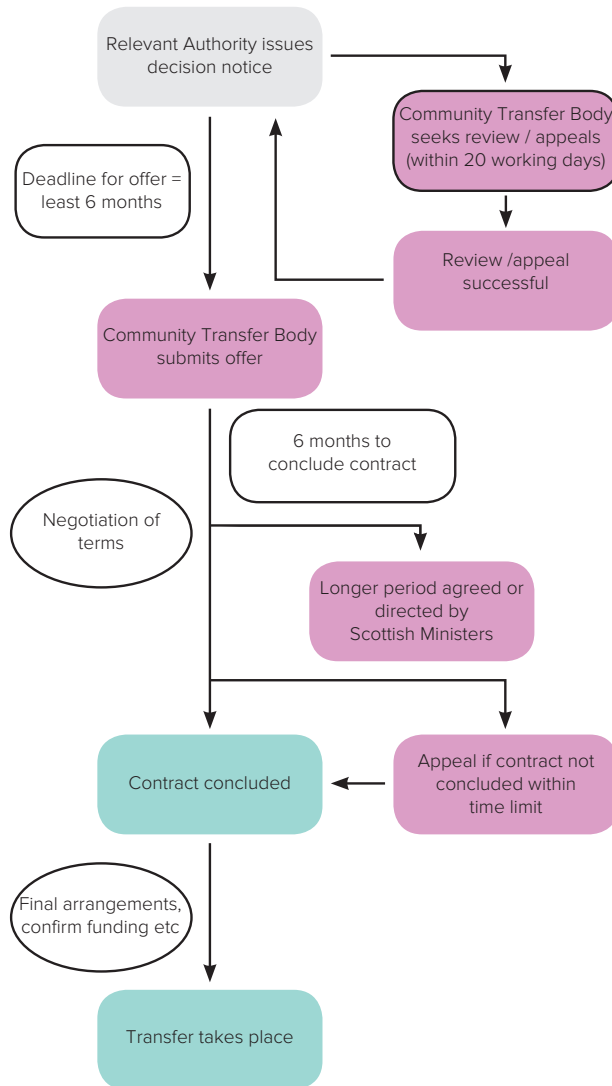
The information to be provided in a decision notice is set out in sections 82(7) and 83(2) of the Act, and regulation 11 of the Procedure Regulations. It will contain the following:

- A.** state the date on which the asset transfer request was made
- B.** identify the community transfer body which made the request
- C.** identify the land to which the request relates
- D.** set out the authority's decision to agree to or refuse the request
- E.** set out the authority's reasons for its decision
- F.** contain notification of the right of appeal or review, how an appeal or application for review may be made, and the date by which it must be made, and if the request is agreed:
- G.** specify the terms and conditions on which the authority is prepared to transfer ownership, lease the land or confer the rights requested
- H.** state that, to proceed with the process, the community transfer body must submit an offer,
- I.** specify the period within which the offer must be submitted (this must be at least 6 months from the date of the decision notice)

Notification and Publishing

The decision notice will be sent to the community transfer body at the contact address, and will also be published online. We will also inform anyone who made representations (and provided an address) of its decision and where the decision notice can be seen.

14. After Agreement



Community Transfer Body's Offer

Section 83 of the Act sets out the next steps after a relevant authority has issued a decision notice agreeing to an asset transfer request and detail is provided in the technical guidance.

In response to the decision notice, the community transfer body must submit an offer to take ownership of the land, lease it or take up the rights covered by the request.

- They must do this by the date stated in the decision notice.
- The offer must reflect the terms and conditions set out in the decision notice; if those terms and conditions are significantly different from those included in the request, and are not acceptable to the community transfer body, they can appeal or request a review.
- The offer can also include other reasonable terms and conditions that may be needed to make sure the transfer goes ahead within a reasonable time.

If no offer is made by the date set in the decision notice, (and the community transfer body did not appeal or request a review in relation to the terms and conditions within 20 working days of the decision notice), the process is at an end.

Conclusion of contract

Once the offer has been received by the Council, there may be further negotiations required to conclude the contract. If the request is for ownership or a long-term lease this will be like any other property transaction, with exchanges between lawyers to agree the final wording.

The contract must normally be concluded within 6 months of the date of the offer. This does not mean the transfer has to take place within that time, but the date for the transfer, the price or rent and any other terms and conditions must be agreed.

The contract may be conditional on other factors that are needed to allow the community proposals to go ahead, such as confirmation of funding or planning permission.

15. Reviews and Appeals - Introduction

No contract concluded

If no contract is concluded within 6 months of the offer, and no other action is taken, the process is at an end.

Sometimes this is by mutual consent –circumstances may change, funding or other requirements may not be secured, and it may no longer be practicable to take the project forward.

However, if the community transfer body believes there is still progress to be made, they can take action to keep the request alive.

There are three options available to the community transfer body to keep the asset transfer request going beyond 6 months after the offer date:

- a. agree an extension with the relevant authority,
- b. apply to the Scottish Ministers for a direction to extend the period, or
- c. appeal to the Scottish Ministers, under section 83(6), to determine the terms and conditions of the contract, which the relevant authority can be required to accept.

An application to the Scottish Ministers for an extension must be made between 6 weeks and 4 weeks before the end of the 6 month period. The community transfer body must first try to agree an extension with the relevant authority, so this may be raised around 4 months into the negotiations. An extension can be agreed at any point, and need not be used if the contract is concluded sooner than expected. There is no limit on how long the extension may be, but there must be an end date.

If the end of the period is reached, either the original 6 months or an extended period, and no contract has been concluded, the community transfer body can appeal to the Scottish Ministers. This must be done within 10 working days of the end of the period. Procedures for such appeals are set out in the guidance issued by the Scottish Government.

A community transfer body can seek a review (by the Council) or appeal (to the Scottish Ministers) if:

- their request is refused,
- the request is agreed, but the terms and conditions in the decision notice are significantly different from those in the request, or
- no decision notice is issued within the required period.

The community transfer body can apply for an internal review by the Council, as set out in section 86 of the Act. If the outcome of the review does not resolve the issue, or if no decision is made within the required period, the community transfer body can then appeal to the Scottish Ministers under section 88.

Section 91 of the Act provides that a community transfer body cannot seek a review or appeal in relation to the terms and conditions in the decision notice if it has already made an offer, unless it first withdraws that offer. If the community transfer body makes an offer after submitting an appeal or application for review, the appeal or review is treated as having been withdrawn.

A community transfer body can also appeal to the Scottish Ministers if a request is agreed, but no contract is concluded within the required time limit.

In all cases the final decision lies with the Scottish Ministers. There is no further route of appeal beyond them (except by judicial review).

16. Local authority review

If an asset transfer request is made to a local authority, the community transfer body can apply for an internal review by the authority, as set out in section 86 of the Act. Procedures for such reviews are set out in the Asset Transfer Request (Review Procedure) (Scotland) Regulations 2016.

Section 86(10) amends the Local Government (Scotland) Act 1973 so that a review of an asset transfer decision must be carried out by a committee, or sub-committee made up of Councillors who were not involved in the original decision, and the review cannot be delegated to officers.

The process for this is documented in the technical guidance issued by the local authority and includes the application and acknowledgement process, notification to interested parties and advice on further representations.

Application for review and acknowledgement

The community transfer body's application for review must be made in writing to the local authority within 20 working days beginning with the date of the decision notice, or if no decision has been made, within 20 working days beginning with the date of the deadline for the decision.

The application must include the name and contact address of the community transfer body, and specify the land to which the asset transfer request relates. It must also include a statement setting out their reasons for requiring a review, and the procedure which they consider should be used to obtain further information, for example whether there should be a hearing or perhaps a site visit, in addition to written representations.

The application for review must include a statement setting out the reasons for the application. This must cover all matters which the community transfer body intends to raise in the review. They may only bring forward further matters or evidence in response to representations on the application, or if the local authority request it. The application must also be accompanied by a list of documents and other evidence supporting the case, and copies of any of those documents or evidence the local authority does not already have. All these review documents will be published on the council's website with personal information should be redacted before publication.

An acknowledgement of the application for review to the community transfer body will be made within 10 working days of receiving it. The acknowledgement will state the date on which the application was made, and tell the community transfer body how the review documents can be inspected.

Notification of interested parties

Notification must also be given to other interested parties. Further information on this is provided within the technical guidance.

Further representations

Once they have the initial evidence, any representations from interested parties and comments on those representations, the Council may have enough information to determine the review, without further procedure. If not, they may decide what further procedure to use to get more information. This could be by written submissions, a hearing session, or other procedures such as a visit to the land to which the asset transfer request relates or to another relevant site (for example the community transfer body's existing premises or another similar community project). The community transfer body can say in their initial evidence what procedures they think should be used, but the final decision will be made by the Council.

Anyone may be asked to provide further information by written submissions, or by attending a hearing session, including people not previously involved in the case. Any request for further information will be proportionate to the transfer request to which the review relates. If further written submissions are required, a notice will be sent requesting this detailing the matters on which further representations are required, and the date by which they are to be received.

Hearing session rules

The rules for arranging and conducting a hearing session are set out in the Schedule to the Regulations.

Additional evidence

If it is proposed to take into consideration any new evidence that was not obtained through the process for written representations or hearing sessions, the community transfer body and other relevant parties will have an opportunity to comment on that evidence prior to a decision being made.

17. Appeal to the Scottish Ministers

Decision

Section 86(8) of the Act states that section 82, subsections (3) to (5) apply to a review as they apply to an original asset transfer request.

Having carried out the review, we will either confirm the original decision, modify it or any part of it (including the terms and conditions set out in the decision notice) or substitute a different decision.

A new decision notice, which replaces the previous decision notice will be issued. The decision notice must be given within 6 months of the date the application for review was made, or a longer period if agreed with the community transfer body. If it is refused (or no decision is made within the time limit, or the terms and conditions are not acceptable) the community transfer body can appeal to the Scottish Ministers.

In addition to sending the decision notice to the community transfer body, it will be published online to allow every person who made written representations in relation to the review of the decision and where the notice can be inspected.

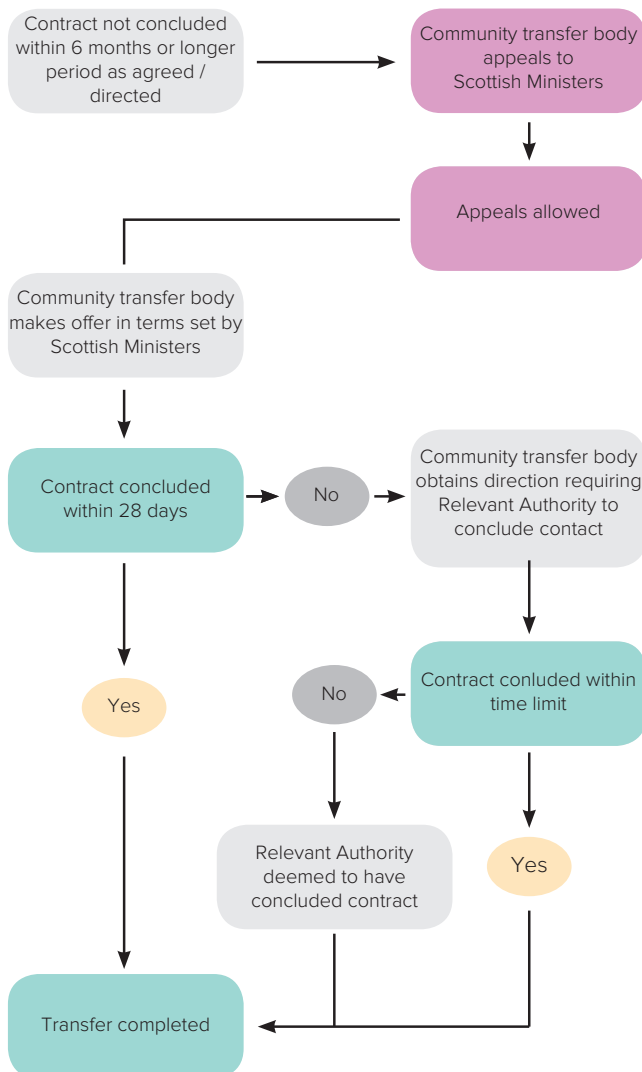
Community transfer bodies can also appeal to the Scottish Ministers following a review by a local authority, as provided by section 88 of the Act. The procedure is the same in both cases. Part 4 of the regulations sets out the technical differences in how they refer back to section 88 instead of section 85.

The process for this is set out within the technical guidance notes.

18. Aberdeen City Council Considerations

Once an asset transfer request has been agreed, if no contract has been concluded within the period allowed, the community transfer body can appeal to the Scottish Ministers under section 83(6) of the Act. Procedures for such appeals are set out in the Asset Transfer Request (Appeal Where No Contract Concluded) (Scotland) Regulations 2016.

The process for this is set out within the guidance notes.



Annex A: Useful Websites and links

Community Ownership Support Service - <http://www.dtascommunityownership.org.uk/>

Community Woodlands Association - www.communitywoods.org

Community Energy Scotland - <http://www.communityenergyscotland.org.uk/>

Community Land Advisory Service Scotland - <http://sc.communitylandadvice.org.uk/>

Forestry Commission Scotland - <http://scotland.forestry.gov.uk/managing/get-involved/communities>

National Standards for Community Engagement - <http://www.scdc.org.uk/what/national-standards/>

Communities Channel Scotland - <http://www.scdc.org.uk/what/national-standards/>

Community Land Scotland - <http://www.communitylandscotland.org.uk/>

Community Funds -
<https://www.gov.scot/policies/community-empowerment/empowering-communities-fund/>

Asset Transfer Guidance for local authorities - <http://www.gov.scot/Publications/2016/11/1889>

Asset Transfer Guidance for communities - <http://www.gov.scot/Publications/2016/11/3688>

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

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

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

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

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

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

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

