



The Community Empowerment Act

The Community Empowerment Bill received Royal Assent and became an Act on 24 July 2015. The text of the Act can be found on the [Legislation.gov.uk](http://www.legislation.gov.uk) website at:

<http://www.legislation.gov.uk/asp/2015/6/contents/enacted>

When will the Act come into force?

Part 1: National Outcomes:

Requires Scottish Ministers to continue the approach of setting national outcomes for Scotland. They must consult on, develop and publish a set of national outcomes. They must also regularly and publicly report progress towards these outcomes and review them at least every five years. Public authorities and other persons or organisations that carry out public functions must have regard to the national outcomes in carrying out their devolved functions. ***Came into practice 15 April 2016***

Part 2: Community Planning:

Places Community Planning Partnerships (CPPs) on a statutory footing and imposes duties on them around the planning and delivery of local outcomes, and the involvement of community bodies at all stages of community planning. Tackling inequalities will be a specific focus, and CPPs will have to produce “locality plans” at a more local level for areas experiencing particular disadvantage. ***Came into practice 20 December 2016.***

Part 3: Participation Requests:

Provides a mechanism for community bodies to put forward their ideas for how services could be changed to improve outcomes for their community. This could include community bodies taking on delivery of services. ***Final regulations are expected to come into practice in April 2017.***

Part 4: Community Rights to Buy Land:

Amends the Land Reform (Scotland) Act 2003, extending the community right to buy to all of Scotland, urban and rural, and improving procedures. Part 4 also introduces a range of measures to amend, and in some areas, simplify, thecrofting community right to buy. Finally, Part 4 introduces a new provision for community bodies to purchase land which is abandoned, neglected or causing harm to the environmental wellbeing of the community, where the owner is not willing to sell that land. This is if the purchase is in the public interest and compatible with the achievement of sustainable development of the land. ***Final regulations are expected to come into practice in April 2017.***

Part 5: Asset Transfer Requests:

Provides community bodies with a right to request to purchase, lease, manage or use land and buildings belonging to local authorities, Scottish public bodies or Scottish Ministers. There will be a presumption of agreement to requests, unless there are reasonable grounds for refusal. Reducing inequalities will be a factor for public authorities to consider when making a decision. Relevant authorities will be required to create and maintain a register of land which they will make available to the public. ***Came into practice 23 January 2017.***



Part 6: Delegation of Forestry Commissioners' Functions:

Allows for different types of community body to be involved in forestry leasing. This opportunity is available under the new Community Asset Transfer Scheme (CATS) for Scotland's National Forest Estate.

Came into practice 23 January 2017.

Part 7: Football Clubs:

The Scottish Government is committed to the principle that supporters should have a role in decision-making, or even ownership when the opportunity arises, of their football clubs. The Act provides powers for Ministers to make regulations to facilitate supporter involvement and give fans rights in these areas.

TBC

Part 8: Common Good Property:

Places a statutory duty on local authorities to establish and maintain a register of all property held by them for the common good. It also requires local authorities to publish their proposals and consult community bodies before disposing of or changing the use of common good assets. *TBC*

Part 9: Allotments:

Updates and simplifies legislation on allotments. It requires local authorities to take reasonable steps to provide allotments if waiting lists exceed certain trigger points and strengthens the protection for allotments. Provisions allow allotments to be 250 square metres in size or a different size that is to be agreed between the person requesting an allotment and the local authority. The Act also requires fair rents to be set and allows tenants to sell surplus produce grown on an allotment (other than with a view to making a profit). There is a requirement for local authorities to develop a food growing strategy for their area, including identifying land that may be used as allotment sites and identifying other areas of land that could be used by a community for the cultivation of vegetables, fruit, herbs or flowers. *TBC*

Part 10: Participation in Public Decision-Making:

A new regulation-making power enabling Ministers to require Scottish public authorities to promote and facilitate the participation of members of the public in the decisions and activities of the authority, including in the allocation of its resources. Involving people and communities in making decisions helps build community capacity and also helps the public sector identify local needs and priorities and target budgets more effectively. *TBC*

Part 11: Non-Domestic Rates:

Provides for a new power for councils to create and fund their own localised business rates relief schemes, in addition to existing national rates relief, to better reflect local needs and support communities. *Came into practice 31 October 2015*

Asset Transfer Request Approach

BAVS is looking to work with the BTSP and SBC to produce a joint response and guidelines in response to the Community Empowerment Act, in particular, Part 5: Asset Transfer Requests, which came into force in **January 2017**.

The list of SBC assets in Berwickshire can be found [HERE](#)

Who can make an Asset Transfer Request?

Under the terms of the Act, to make an asset transfer request, an organisation needs to be a "**community transfer body**". There are different requirements depending upon if the organisation wishes to own an asset or to manage/lease it.

For ownership, the community transfer body has to be:

- A Scottish Charitable Incorporated Organisation (**SCIO**) the constitution of which includes provision that the organisation must have not fewer than 20 members; or
- A Community Benefit Society (**BenCom**) the registered rules of which include provision that the society must have not fewer than 20 members; or
- A company the articles of association of which include provision such as:
 - (a) the company must have not fewer than 20 members; and
 - (b) on the winding up of the company and after satisfaction of its liabilities, its property (including any land, and any rights in relation to land, acquired by it as a result of an asset transfer request under this Part) passes—
 - (i) to another community transfer body, or
 - (ii) to a charity.

For leasing or managing an asset, the community transfer body has to be:

Community-Controlled Body which means a body (whether corporate or unincorporated) which has a written constitution that includes the following—

- (a) a definition of the community to which the body relates;
- (b) provision that the majority of the members of the body consists of members of that community;
- (c) provision that the members of the body, who consist of members of that community, have control of the body;
- (d) provision that membership of the body is open to any member of that community;
- (e) a statement of the body's aims and purposes, including the promotion of a benefit for that community; and
- (f) provision that any surplus funds or assets of the body are to be applied for the benefit of that community.

Information Required in advance of an Expression of Interest

All the required information must be provided before the request can be validated. Any request should be submitted on the Asset Transfer Request form at and must include:

- **Organisation constitution** and evidence of the **type of organisation** you are
- **Details of the asset being requested** and what **type of transfer** -ownership, management, leasing or use
- What you **intend to use the asset for**
- A draft **business plan** of how you propose to fund the purchase/lease of the asset and the ongoing associated revenue costs. You should also provide an indicative price
- **What benefits you believe this will bring to your community**:- economic, regeneration, health, social wellbeing, environmental or whether it will tackle inequalities
- **Options Appraisal**
- You need to outline and **demonstrate community support**

How much you are expected to pay?

The Act does not say how much a community organisation should pay to buy or rent something through asset transfer.

Sometimes they should pay the full price, so the public authority has money to do its job. Sometimes the public authority should let them pay less, because what they do will help the community and improve people's lives.

It is not always easy to decide when community organisations should be allowed to pay less, and how much less. The guidance suggests some ways of thinking about this.

The first thing the community body needs to know is how much the full price ("market value") would be.

The relevant authority needs to know this too. It is a good idea if they both ask the same person to work out the market value, and share the cost of that work.

Formal enquiries should be made to: EstateManagement@scotborders.gov.uk

Informal enquiries should be made to: CommunityEngagement@scotborders.gov.uk

THE PROCESS WITH THE COMMUNITIES DEPARTMENT AT SBC

Shona Smith, Clare Penny, Colin Banks

Stage 1 (no less than three months)

1	<p>We recommend that you make contact with us at the earliest stage, at the point where you have just begun to explore the possibility of taking a Council asset into community management.</p> <p>Formal enquiries should be made to: EstateManagement@scotborders.gov.uk</p> <p>Informal enquiries should be made to: CommunityEngagement@scotborders.gov.uk</p>
2	<p>Once we have confirmed that the building you have targeted is one of our assets and within the asset transfer programme, we will provide you with the background information you need to determine whether the building is suitable for your needs:</p> <ul style="list-style-type: none"> • condition data and assessments • building plans and layout • title information and appraisal • usage data (raw and analysed) • running costs including support costs and lifecycle costs
3	<p>We can also provide you with demographic, social, economic and planning data to help you build up a community profile and demonstrate local community need for your proposal.</p>
4	<p>At the end of this exploratory stage we will support you to produce a business case for your proposal.</p> <p>In the business case we expect you to present the reason for transfer, based on your assessment of community needs.</p> <p>An options appraisal should be included, which demonstrates why transfer of the targeted building is the best of the available options; how it will achieve your organisation's aims and objectives.</p> <p>The business case should also include an initial assessment of financial viability.</p> <p>We think it is particularly important at this stage, especially if you want to bid for funding to support your project, that you demonstrate community need and demand in the business case.</p>
5	<p>In exceptional circumstances, other community organisations may express an interest in the building you have targeted.</p> <p>Where there is conflicting demand, we will make our decision about which project to support based on how well the business case demonstrates the viability of the project and the community benefits it will deliver.</p>

Stage 2 (no less than six months)

1	When we reach agreement that the business case is made, we will proceed with you to produce a full business plan for the transfer.
2	The business plan will include an operational plan , which demonstrates how you will manage the building and deliver your project, and a financial plan which shows what your running costs will be and how you will meet them, along with any investment proposals you have for the building.
3	We will draft a management agreement or lease for you, or, if we have agreed that outright transfer is a better option, we will prepare the documentation for transfer. Where our caretaking staff become part of the transfer we will manage this process with you.
4	Where we believe that the transfer is particularly complex or contentious we may initiate a public consultation to ensure that there is a public consensus for the preferred way ahead.
5	<p>When we have agreed a business plan and management agreement or lease or outright transfer with you and all documentation is in place, we will seek approval for the transfer.</p> <p>We will either go direct to the Council's Executive for approval, or, if the building is held as Common Good or in Trust, we will first approach the local Common Good Working Group or trust representatives for their support and then go to the Council (acting as administrators) for approval.</p>

Asset request Application forms can be found [HERE](#)