

Asset Transfer Under the Community Empowerment (Scotland) Act 2015

**Consultation on Draft Regulations Analysis
of Responses**

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Executive Summary

About this Report

This report provides an analysis of written responses to the Scottish Government Consultation on Draft Regulations relating to the Asset Transfer under the Community Empowerment (Scotland) Act 2015.

Overview of Responses

A total of 82 responses were received to the consultation - 79 from organisations and 3 from individuals. Respondent categories were developed to reflect different interests and roles in relation to asset transfers. Organisational responses were received from local authority organisations, community representative or support organisations, other “relevant authorities” (under the Act), NHS organisations, community planning or health and social care partnerships, and others.

Registers and Information About Land

Types of land to be excluded

The majority of respondents (87%) agreed that the types of land set out in the draft regulations need not be included in relevant authorities’ registers. There was broad support from across respondent groups.

When asked whether there are other types of land relevant authorities should not have to include, a large number suggested assets of critical importance to infrastructure or public sector operations – although some may have misunderstood that excluding types of land from the register does not exclude those assets from being subjects of asset transfer requests. Respondents made a wide range of specific suggestions for further exclusions. These included assets relating to public safety, schools and land jointly owned, leased or in dispute.

Guidance on registers

The consultation asked for comments on the proposals for guidance on what information registers should contain and how they should be published. Many respondents highlighted their agreement with particular aspects of the guidance. Many respondents made specific suggestions about additional information that should be included on land registers. In particular, they proposed information on the status of the asset, and additional practical information that may help community transfer bodies decide whether an asset might be suitable for their purposes. Several respondents called for open and positive dialogue between community transfer bodies and relevant authorities.

Information to be provided on request

Respondents were asked whether there was any information that a community transfer body should be able to request from a relevant authority, that would not be available under Freedom of Information (Scotland) Act (FOISA) or the Environmental

Information Regulations (EIRs). A large number of respondents simply stated 'no', as they were in broad agreement with the proposals. Some highlighted information that would be especially important to community transfer bodies, but which may not be available under the existing legislation. In particular, they emphasised early information that might help a community transfer body decide whether an asset was not worth pursuing, and information on operational costs, title deeds, condition, planning restrictions or permissions, rateable values and any warranties or liabilities.

Procedures for making requests

Additional requirements for making a request

The majority of respondents (79%) agreed that the proposed additional requirements for making an asset transfer request were reasonable. There was broad support from across respondent categories. A few respondents called for more detailed information to be required of community transfer bodies. Others emphasised the challenges of gathering some information that may be required – including valuation information, evidence of community support, and funding information.

Respondents were also asked if there was any other information that should be required to make a valid request. Many emphasised the need to ensure that information on proposed funding and use of land was sufficiently detailed and robust. Others suggested community transfer bodies could be required to provide information on the financial standing of the organisation, its skills, experience or capacity, information on governance and management arrangements within the community transfer body, conflicts of interest, whether they had submitted any other requests, and the organisation's ability to conclude the process within 6 months.

Acknowledgements of requests

When asked for further comments on the proposals for acknowledgements of requests, most respondents indicated they broadly agreed with the proposals. Specific comments related to dealing with missing information, alerting community transfer bodies to alternatives or likely challenges (where appropriate), when prohibition to dispose of an asset would come into effect, and how acknowledgements might deal with competition from other community transfer bodies or commercial bidders.

Notification and publication of information about a request

Respondents commented on a number of issues relating to proposed requirements for notification, when asked. Some respondents commented on the use of physical signs – with some expressing concern about this requirement and others suggesting this should be further developed. A few respondents proposed there may be a need to go beyond the proposed notification and publication processes, to widen the ways in which information would be shared with the local community.

Timescale for decision making on an asset transfer request

When asked whether they thought 6 months was a reasonable length of time for the relevant authority to make a decision on an asset transfer request, the majority of respondents (74%) agreed. There was broad agreement from most respondent groups with the exception of NHS respondents, of which 63% disagreed. While many thought that 6 months would be appropriate in most cases, many (both those who said they agreed and disagreed with the proposal) felt that more complex cases may take longer.

Additional information to be included in decision notices

The majority of respondents (87%) agreed with the proposal for additional information to be included in decision notices. There was a high level of support across respondent groups, with the exception of the NHS respondents, with half broadly agreeing and half broadly disagreeing. Respondents made specific suggestions about other information that might usefully be included in decision notices.

Reviews and appeals

Requirement to appoint a panel of three people to review Ministers' own decisions

The majority of respondents (89%) agreed with this proposal. There was broad support across respondent groups. Of those who provided further comments, most raised questions or put forward suggestions about how a panel might be made up or recruited. Respondents highlighted the importance of transparency, independence and expertise. Three respondents suggested an independent organisation should undertake these reviews.

Timescale for local authorities to make a decision on a review

When asked whether they agreed that local authorities should be required to make a decision on a review within 6 months, the majority of respondents (83%) said they should. There was broad support for this proposal from across respondent groups. When asked to explain how long the period should be, if they had disagreed, respondents provided a wide range of diverse responses. A number emphasised that while the period of 6 months would be workable in most cases, it may be insufficient where a situation was more complex. Of those who disagreed and provided further comments, five specified that the period was too long, and five suggested it was too short.

Other comments about reviews and appeals

Some of those who provided further comments on reviews and appeals demonstrated their general support. A few highlighted the challenges of assessing and balancing non-financial and financial benefits in reviews and appeals. A few others commented on how information would be issued, or on hearings.

Appointment of a single person to consider appeals where no contract has been concluded

The majority of respondents (75%) broadly agreed with this proposal. There was broad support from across respondent groups. When asked for further comments on

how these appeals should be carried out if they disagreed, sixteen respondents suggested that a panel or team would be more appropriate. Respondents also highlighted the importance of appointing individual(s) with the right skills, and expertise.

Publication of documents in relation to appeals where no contract has been concluded

Respondents were asked if they agreed that documents should not be published in relation to appeals where contracts had not been concluded, and to explain their reasons. The majority of respondents (79%) agreed with this proposal, and there was overall support from across respondent groups. Those who agreed were often concerned about legally or commercially sensitive information. A few suggested there was no real benefit in sharing information relating to these situations. Those who disagreed tended to suggest information should be shared wherever possible, in the spirit of openness and transparency.

Third party representations where no contract has been concluded

The majority of respondents (90%) agreed that there should be no third party representations allowed in relation to appeals where no contract has been concluded. There was broad support from all respondent groups. When asked to explain their reasons, many of those who agreed suggested there was no real value in additional representation at this stage – which might even introduce further complexities and prevent progress being made. Those who disagreed tended to feel the process should be as open and accessible as possible.

Procedures for appeals where no contract is concluded

When asked for any comments on the proposed procedures for appeals where no contract is concluded, only 23% of respondents answered. Some respondents requested further clarity and guidance on appeals. A few respondents had general or specific queries about how the process might operate, or how Ministers would carry out assessments and develop terms and conditions. Others made very specific suggestions about the timescales for this part of the process.

Procedures for applications to Ministers for Directions

When asked for any comments on the proposed procedures for applications to Ministers for Directions, very few respondents (12%) commented. Points made related to suggested improvements, and changes to timescales.

1. Introduction

About this report

- 1.1 This report provides an analysis of responses to the Scottish Government consultation on draft regulations associated with asset transfer under the Community Empowerment (Scotland) Act 2015.

Background

- 1.2 The Scottish Government is committed to transferring more power to communities and supporting communities to lead their own change. Empowering communities is key to the Government's approach to making Scotland a better place to live, for everyone. It can contribute to a range of benefits, building stronger communities through enhancing democratic participation, increasing confidence and skills among local people, increasing volunteering, creating better and more responsive services, and increasing satisfaction with overall quality of life.
- 1.3 The Community Empowerment (Scotland) Act builds on the Scottish Government's recent work to support and promote transfer of public sector assets to communities.
- 1.4 Part 5 of the Act provides a right for community bodies to request the transfer of land and buildings belonging to public authorities. The Act sets out a framework for the asset transfer scheme and gives Scottish Ministers powers to make regulations to fill in the detail of the procedures to be followed.
- 1.5 The text of the Act is available at: <http://www.legislation.gov.uk/asp/2015/6/part/5>. More information about how Act has been developed and is being implemented can be found on the Scottish Government website at: <http://www.gov.scot/topics/people/engage/CommEmpowerBill>.
- 1.6 The Scottish Government consulted on regulations associated with asset transfer from 20 March to 20 June 2016. The consultation paper asked for views on draft regulations for making and responding to requests, for review or appeal of decisions, and on registers of land.

Analysis methodology

- 1.7 The Scottish Government received and organised all consultation responses – either through the [online consultation platform](#) (Citizen Space), by email or post. We (Research Scotland) were provided with secure access to all responses for analysis.
- 1.8 We downloaded all responses to Excel - in order to analyse quantitative (yes/no/not answered) responses and qualitative (open-ended) responses.

- 1.9 Eleven non-standard responses were received, which did not follow the consultation structure, and these were carefully read and comments, whether quantitative and/ or qualitative, were input against the relevant consultation questions.
- 1.10 We undertook quantitative analysis using Excel in order to produce a table for each quantitative question, highlighting overall responses and a breakdown by respondent category. We have included relevant tables and figures throughout our report.
- 1.11 We analysed qualitative (open) responses using a process of manual thematic coding. This involves reviewing the open responses and manually coding the themes identified by each respondent. The qualitative analysis process enabled us to extract the main themes from each question which allowed the range of views to be presented across all responses and trends among respondent groups to be highlighted. We have identified some organisational respondents by name or type, where we had the required permissions and it was relevant.
- 1.12 We used a consistent scale to describe the number of respondents making similar points. Where five or fewer respondents made a similar point we used the term 'a few'. 'Some' is used for six to ten respondents, and 'many' is used for 11 to 20 respondents. Where more than 20 respondents made a similar point, we used the term 'a large number'.
- 1.13 In a few cases, open comments conflicted with 'yes' or 'no' responses. This occurred in questions 15 and 16. We have highlighted this issue in the analysis of these questions.

Profile of respondents

- 1.14 A total of 82 responses were received to the consultation – 79 from organisations and 3 from individuals. One local authority submitted an identical response to the response submitted by the Community Planning Partnership for the same area and was not included in the analysis to avoid duplication. The quantitative analysis is therefore based on a total of 81 responses.
- 1.15 More than half (46) of respondents completed the consultation through Citizen's Space. Thirty-five responses were submitted by email or post.
- 1.16 We worked with the Scottish Government to agree seven broad respondent categories. We used these groups for quantitative analysis and to highlight key themes, commonalities or divergencies within or between groups for qualitative analysis.

Respondent group ¹	Number	Proportion of total responses
Local Authority	21	26%
Community Representative/Support Organisation	16	20%
Other Relevant Authorities	14	17%
NHS	10	12%
Community Planning Partnerships/Health and Social Care Partnerships (CPP/HSCPs)*	10	12%
Other	7	9%
Individual	3	4%
Overall	81	100%

*Community Planning Partnerships and Health and Social Care Partnerships is abbreviated to CPP/HSCPs throughout this report

1.17 The respondent categories were developed to reflect different interests and roles in relation to asset transfers. Respondents in local authority, NHS, CPP/HSCPs, and 'other relevant authority' categories were all either relevant authorities under the terms of the Act (and could therefore be subject to asset transfer requests) or had a particular interest in the role of relevant authorities. The remaining respondent categories represented wider interests, including potential community transfer bodies (organisations that can submit an asset transfer request).

1.18 Of the 81 responses included in the analysis, 79 gave permission for their response to be published by the Scottish Government. These full responses can also be viewed here: https://consult.scotland.gov.uk/community-empowerment-unit/asset-transfer-procedures/consultation/published_select_respondent. Annex One of this report is a list of the organisational respondents that gave permission for their response and name to be published.

¹ The 'Other' category is made up of: Carnegie (UK) Trust, Audit Scotland, Glasgow Centre for Population Health, Scottish Property Federation, Big Lottery Fund, The National Trust for Scotland and the Chartered Institute of Housing. The 'Other Relevant Authorities' category is made up of public organisations classed as Relevant Authorities in terms of the Act.

2. Analysis of Responses

Registers and information about land

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? If not, please explain what you would change, and why.

- 2.1 Sixty-three (78%) respondents answered the closed part of question 1, and 18 (22%) did not. Of those that responded, 55 (87%) agreed 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, and 8 (13%) disagreed.
- 2.2 Further comments were provided by 24 respondents. Of those who gave comments, 14 (58%) broadly agreed with the proposed types of land, 8 (33%) disagreed and 2 (8%) did not give a view either way.

Respondent Group	Yes	%	No	%	Number responded	No Response
Local Authority	17	89%	2	11%	19	2
Community Representative/ Support Organisation	7	70%	3	30%	10	6
Other Relevant Authorities	11	100%	0	-	11	3
NHS	7	78%	2	22%	9	1
CPP/HSCPs	8	100%	0	-	8	2
Other	3	100%	0	-	3	4
Individual	2	67%	1	33%	3	0
Overall	55	87%	8	13%	63	18

*Percentages of yes/ no/ don't know are calculated based on the total who answered this question.

- 2.3 There was broad support from across respondent groups. All 'other relevant authorities', CPP/HSCPs and 'others' agreed with the list. Most local authorities (89%), NHS (78%) and community representative or support organisations (70%) also agreed.
- 2.4 Housing, hostels and lodgings was the category of land most commonly discussed. Three organisations commented on the need to clearly define 'houses, lodgings and lodging-houses'. This included one local authority and an 'other relevant authority' who broadly agreed with the proposed list, but wanted the definition of hostels to clearly cover shelters and facilities for vulnerable people, such as refugees.
- 2.5 Several respondents who disagreed with the list queried whether houses, lodgings, or lodging houses should be included in the list at all. A community representative or support organisation and a local authority argued this category should not be included because basic information on housing ownership and hostels is already a matter of public record. Others suggested

this information should be included on registers unless particularly sensitive, and if the houses are untenanted.

- 2.6 Two respondents commented more broadly on the processes associated with compiling registers. A local authority that disagreed was concerned that existing systems do not easily allow for segregation of Housing Revenue Account information, which they suggested would be required under proposals. A CPP/HSCP (which broadly agreed with the list) felt that existing asset registers should be used.
- 2.7 A few specific comments related to the inclusion of particular assets on registers. Local authorities and CPP/HSCPs asked for clarification on: the inclusion of assets leased from a third party (for example, a private landlord), how to deal with common goods assets or assets held under a Housing Revenue Account, and whether registers need to include the assets on land. A community representative or support organisation asked for clarification on what constitutes a towpath and an NHS organisation asked why bus stations had been excluded – as these may be of interest to community groups.
- 2.8 One community representative or support organisation called for the Government to explore the links between the Act and the Long Lease Act, suggesting registers should include any land or property owned by an authority before November 2015, when the Long Lease Act was implemented.
- 2.9 In response to this question a few respondents suggested additional types of land for exclusion, but these comments have been analysed under question 2.

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?

- 2.10 Forty-three (53%) respondents provided comments in response to question 2. NHS respondents (80%), local authorities (67%), other relevant authorities (64%) and CPP/HSCPs (60%) were most likely to express a view. A small proportion of community representative or support organisations, ‘others’ and individuals commented.

Respondent Group	Number responded	% of consultation responses
Local Authority	14	67%
Community Representative/Support Organisation	4	25%
Other Relevant Authorities	9	64%
NHS	8	80%
CPP/HSCPs	6	60%
Other	1	14%
Individual	1	33%
Overall	43	53%

2.11 A large number of those responding felt that assets of critical importance to infrastructure and public sector operations should be excluded from registers – unless these assets were surplus to requirements. Although not explicit in their comments, it seemed as though some respondents may have mistakenly believed that excluding types of assets from registers would mean these assets would not be subject to an asset transfer request.

2.12 Specific suggestions for exclusions were very wide ranging, and included:

- operational water and waste sites, water and waste treatment works;
- operational hospitals, schools, fire stations, ambulance stations, court and tribunal buildings;
- graveyards and crematoria;
- refuse sites;
- operational buildings used to provide sensitive services or service to vulnerable people – such as care homes, day care provision, children’s residential units, homelessness accommodation, hostels, lodging houses, refugee centres, shelters, and rehabilitation centres,
- surveillance and data centres;
- scheduled ancient monuments, Sites of Specific Scientific Interest, local nature reserves, conservation sites, listed buildings;
- ferry terminals, ports, airports, airfields;
- roads, park and ride facilities, cycle ways, public footpaths, drains, bridges, and car parks; and
- mineral rights held as a separate tenement.

2.13 Some respondents provided more detailed comments in relation to a few types of land or assets including:

- **Sites important to public safety** - A few respondents, raised concerns about how information on the register might threaten public safety. These respondents suggested that assets sensitive to police operations or public safety should be excluded from registers. Some of these are included in the list above. However, a few respondents argued elsewhere that the level of information on the asset register was unlikely to go much beyond information already in the public domain.
- **Schools** - SOLAR and a local authority asked that schools be excluded from registers, as any proposals relating to schools are likely to be dealt with under the Schools (Consultation) Act.
- **Land jointly owned, leased or in dispute** - A few respondents asked for clarification about or sought exclusions for land involved in existing leases or where jointly owned. For example, one ‘other relevant authority’ asked whether properties occupied under Licence to Occupy need not be included on the Register, and suggested those that are in dispute might not be included. One local authority called for assets jointly owned with non-relevant authorities to be excluded and another suggested those subject to long leases might be excluded.

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

2.14 Fifty-five (68%) respondents answered this question. Most ‘other’ respondents (100%), community representative or support organisations (81%), and CPP/HSCPs (70%) responded. The lowest response came from NHS organisations (40%).

Respondent Group	Number responded	% of consultation responses
Local Authority	13	62%
Community Representative/Support Organisation	13	81%
Other Relevant Authorities	9	64%
NHS	4	40%
CPP/HSCPs	7	70%
Other	7	100%
Individual	2	67%
Overall	55	68%

2.15 Many respondents from across respondent categories took the opportunity to agree with particular aspects of the guidance. In particular, some community representative or support organisations and local authorities, other relevant authorities and ‘other’ respondents emphasised the importance of keeping the registers simple, practical, accurate and accessible. Community representative or support organisations were especially keen to ensure that information was as up-to-date and accessible as possible. They called for regular updates, openness and transparency, and welcomed that registers should be searchable. Several welcomed being able to access the resource in person as well as online, although one local authority and one CPP/HSCP raised concerns about the in person access.

2.16 A few respondents emphasised the importance of having some kind of central resource which provides access to information about assets across the country. While some seemed satisfied with the proposed central website, the Carnegie Trust, an NHS board and a community representative or support organisation preferred the idea of a central database.

2.17 Some respondents were concerned that there needed to be consistency across registers and a few suggested that there should be a standard template to support authorities to prepare their registers.

2.18 Many respondents made specific suggestions about additional information that should be included on land registers. In particular:

- **Information on the status of the asset** – Such as whether assets are leased, general service, housing revenue account, endowments or common good. This was particularly suggested by relevant authorities. As the Association for Chief Estates Surveyors highlighted, quite different regulations and issues affect these different categories of asset, and this information may help inform decisions about whether to

request an asset transfer. One local authority suggested it might be helpful to identify whether an asset is surplus on the register. Another suggested that specific designations or reservations should be noted.

- **Additional practical information** – Such as the size of the asset, number of rooms or boundary information. This type of information was proposed by two relevant authorities, two ‘others’, and a community representative or support organisation. Some took this further to suggest that information on value, usage, running costs, maintenance and condition should be included. It was felt by some that this would help community transfer bodies decide whether assets might be suitable for their purposes.

2.19 Two community representative or support organisations wanted the registers to include relevant land registry references, where available.

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?

2.20 Sixty-four (79%) respondents answered this question. Response levels were high from local authorities (95%), NHS organisations (90%) and CPP/HSCPs (90%). The lowest response rate came from ‘other’ respondents (43%).

Respondent Group	Number responded	% of consultation responses
Local Authority	20	95%
Community Representative/Support Organisation	12	75%
Other Relevant Authorities	9	64%
NHS	9	90%
CPP/HSCPs	9	90%
Other	3	43%
Individual	2	67%
	64	79%

2.21 A large number of respondents simply stated ‘no’ or demonstrated that they broadly agreed with the proposals in relation to information. Some highlighted that FOISA and EIRs should cover most information required, and that information excluded from these would likely be for a good reason – such as commercial sensitivity.

2.22 Some respondents highlighted information that would be especially important to community transfer bodies but they felt may not be provided under the proposal. These included:

- Early information that would demonstrate that an asset was not worth pursuing. For example, a community representative or support organisation suggested this might be the case where there are valid

grounds for refusing the transfer of an asset – where early disclosure would avoid further work.

- Information on operational costs, title deeds, condition, planning restrictions or permissions, rateable values and any warranties or liabilities.

2.23 Several respondents from different respondent groups expressed a hope that community transfer bodies and relevant authorities could have open and positive dialogue about their information needs and issues, without resorting to formal FOI procedures. A few community representative or support organisations emphasised the need for clear guidance on what is available under FOI and EIRs, and the need for staff to understand the spirit of FOI, and be open to engagement.

Procedures for making and dealing with requests

Q5. Do you think the proposed additional requirements for making an asset transfer request are reasonable? If not, please explain what you would change and why?

2.24 Sixty-six (81%) respondents answered the closed part of question 5. Of those that responded, 52 (79%) agreed that the proposed additional requirements for making an asset transfer request were reasonable, 14 (21%) disagreed.

2.25 Further comments were provided by 34 respondents. Of those who gave comments, 17 (50%) respondents broadly agreed with the proposal, 14 (41%) disagreed and 3 (9%) did not give a view either way.

Respondent Group	Yes	%	No	%	Number responded	No response
Local Authority	15	79%	4	21%	19	2
Community Representative/Support Organisation	7	64%	4	36%	11	5
Other Relevant Authorities	12	100%	0	0%	12	2
NHS	5	71%	2	29%	7	3
CPP/HSCPs	7	88%	1	13%	8	2
Other	4	67%	2	33%	6	1
Individual	2	67%	1	33%	3	0
Overall	52	79%	14	21%	66	15

2.26 All 'other relevant authorities' agreed with the proposed requirements. There were also relatively high levels of agreement across respondent groups. While still broadly positive about the proposals, community representative or support organisations (64%), 'other' (67%) and individuals (67%) were least likely to agree with the proposals.

2.27 A few respondents generally called for more detailed information to be required. Two NHS organisations suggested that the requirements did not go far enough. A local authority who broadly agreed with the proposed additional requirements, called for the word 'detailed' to be added to the level of information needed regarding funding and level and nature of support. Views on additional information requirements are discussed in further detail in the analysis of Question 6.

2.28 On the other hand, there was recognition that the proposed requirements could be onerous for community transfer bodies. The Carnegie Trust (who disagreed with the proposed requirements) expressed the view that the proposed regulations regarding information need to be 'reduced and kept to a minimum'.

2.29 A few respondents specifically emphasised the challenges of gathering valuation information to be able to propose a price. The Big Lottery suggested that having to undertake a valuation was perhaps too onerous at

this stage. Glasgow Centre for Population Health suggested any available survey information should be provided to community organisations wherever possible, to enable them to plan and prepare their requests.

- 2.30 Some respondents highlighted challenges for community transfer bodies to gather and prepare information on proposed funding, and future plans for using the asset, particularly where this needed to be “detailed”. Two local authorities were specifically concerned about the ability of a community transfer body to set out funding sources, in advance of any agreement on a transfer being reached. The Scottish Community Development Centre broadly agreed that community bodies should give an indication of how they would fund their proposal, but did not feel that they should have to show that funding was in place at this stage.
- 2.31 The other key area of concern related to information on the level and nature of support. An NHS organisation and three local authorities raised concerns about the type and amount of evidence that might be needed. The Big Lottery suggested that a community transfer body might only be able to provide a rough estimate of the level and nature of support within the community for their request. One ‘other relevant authority’ felt the regulations should clarify that this information should specifically focus on community support.
- 2.32 The Glasgow Centre for Population Health and the Scottish Community Development Centre emphasised the need for community engagement to be fair, accessible and balanced – taking particular care to engage with typically excluded groups.
- 2.33 A few respondents highlighted the importance of support for community transfer bodies at this stage. The Glasgow Centre for Population Health and a community representative or support organisation highlighted the need for community organisations to receive adequate guidance and support to prepare their asset transfer requests, and meet the proposed requirements.
- 2.34 The Chartered Institute of Housing Scotland and one ‘other relevant authority’ called for a standard form to be provided to support community transfer bodies submit the required information.

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

2.35 Forty-eight respondents (59%) provided substantive comments in relation to this question. NHS respondents (90%), local authorities (76%) and CPP/HSCPs (70%) were most likely to respond. The lowest response level came from community representative or support organisations (19%).

Respondent Group	Number responded	% of consultation responses
Local Authority	16	76%
Community Representative/Support Organisation	3	19%
Other Relevant Authorities	8	57%
NHS	9	90%
CPP/HSCPs	7	70%
Other	4	57%
Individual	1	33%
Overall	48	59%

2.36 Some respondents reiterated support for the main areas already outlined in the regulations, or provided very detailed comments about areas of information that have already been discussed – although some highlighted that a greater level of detail may be best left for guidance rather than regulations.

2.37 Many respondents emphasised the need to ensure that information on proposed funding and use of land were sufficiently detailed and robust to allow a relevant authority to take an informed decision. Five NHS respondents, four local authorities, two CPP/HSCPs and two other relevant authorities suggested strongly that there was a need for requests to be accompanied by a robust business case, and even a detailed business plan. As well as including future plans for the development and management of the asset, and information on community support or demand, some called for fairly detailed financial projections.

2.38 A few local authorities and a few ‘other’ respondents called for community transfer bodies to be required to submit additional information on:

- The financial standing of the organisation, which might include annual accounts, annual reports and bank statements.
- The capacity, skills and experience of the community transfer body in relation to managing assets or similar activities.
- Information on governance and management arrangements within the community transfer body.
- Any conflicts of interest.
- If they had submitted any other requests.
- The organisation’s ability to conclude the process within 6 months.

2.39 A few respondents called for specific guidance on the level and type of information community transfer bodies should have to include in relation to

‘the level and nature of support’. They wanted to ensure that this information was robust, fair and reflective of community or wider views.

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

2.40 Twenty-four respondents (30%) provided substantive comments in relation to this question.

Respondent Group	Number responded	% of consultation responses
Local Authority	6	29%
Community Representative/Support Organisation	6	38%
Other Relevant Authorities	1	7%
NHS	4	40%
CPP/HSCPs	6	60%
Other	0	-
Individual	1	33%
Overall	24	30%

2.41 Of those who responded, most broadly agreed with the proposals for acknowledgements of requests. Comments tended on the whole to be very specific or related to wider issues or guidance.

2.42 Some respondents were concerned about, or made suggestions relating to, instances where there was missing information. One NHS respondent felt that a timescale should be imposed on community transfer bodies to provide any missing information, to avoid ‘piecemeal’ submissions. Two local authorities, a CPP and a HSCP made specific individual suggestions about how acknowledgements might deal with missing information. They suggested acknowledgements should specify what was missing, highlight the impact of missing information on timescales, and signpost to assistance to fill any gaps in information.

2.43 An NHS respondent and a local authority suggested that acknowledgements should also include information on the process for deciding on applications, as well as the timescales relating to this.

2.44 A few respondents suggested that it may be useful to alert the community transfer body to alternative options or likely challenges directly following the submission of its request. Two local authorities suggested that where ownership might not be appropriate, it would be helpful if a relevant authority could suggest an alternative – such as leasing. Another local authority felt that where there may be good reasons for rejecting a transfer (for example, where there is already a legally binding lease in place), it would be helpful to share this with a community transfer body as soon as possible, to avoid any unnecessary work.

- 2.45 A few respondents commented on whether the prohibition to dispose of an asset once a request has been made should come into effect immediately if a community transfer body has provided a submission with missing information. One NHS respondent was concerned that delays on the part of the community transfer body should not be allowed to tie up assets indefinitely. On the other hand, a community representative or support organisation felt that prohibition should begin as soon as a request was received – even if all the required information has not been included. A CPP/HSCPs suggested that the acknowledgement should include a clear statement about the prohibition.
- 2.46 A few community representative or support organisations raised questions about how the process may be affected in situations where there is competition from other community transfer bodies or commercial bidders.

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

- 2.47 Thirty-three (41%) respondents provided substantive comments in relation to this question.

Respondent Group	Number responded	% of consultation responses
Local Authority	11	52%
Community Representative/Support Organisation	7	44%
Other Relevant Authorities	4	29%
NHS	5	50%
CPP/HSCPs	2	20%
Other	3	43%
Individual	1	33%
Overall	33	41%

- 2.48 Some respondents commented on the use of physical signs, with at times quite different views. Two local authorities had general concerns about this – one suggested it would be difficult to affix signs, and prevent damage or removal. While a rural local authority felt that the requirement to place a sign would introduce an unnecessary time and cost burden, particularly for a rural authority.
- 2.49 Two other relevant authorities agreed that sites unlikely to be visited regularly should not require a physical sign. However, a local authority and a community representative or support organisation argued that authorities may not always know which sites are regularly visited by the public, and which are not. The community representative or support organisation argued physical signs should be posted, even in remote locations which are believed to be seldom visited.

- 2.50 A few respondents proposed that there may be a need to go beyond the proposed notification and publication processes – particularly to alert the wider community. One ‘other relevant authority’ suggested there should be additional discretion given to relevant authorities to decide how best to publicise requests, such as in local shops, newspapers or other publications. The Scottish Community Development Centre suggested that authorities should publish details of requests through existing channels or places – such as at information points, in waiting areas, or in community publications.
- 2.51 Some respondents raised questions about how this stage of the process might deal with potential competing interest from other community transfer bodies. For example, an NHS respondent and a local authority asked for clarity on what would happen in instances where other community transfer bodies expressed an interest. The Glasgow Centre for Population Health suggested that when a public service authority received a request it should advertise this in case others wish to submit a request. Another community representative or support organisation suggested that acknowledgements should flag current and ongoing negotiations. A CPP/HSCP felt that it would be fair to allow a second or even third application to be considered as long as they were made early on in the process, such as during the 28 day publication period.
- 2.52 A few NHS and local authority respondents raised concerns about the resource implications of particular aspects of acknowledging requests. These included: issues dealing with notifications to tenants, occupiers or owners; responses or enquiries resulting from publication; resources to produce and place physical signs; and providing access to hard copies of information for public view.
- 2.53 Data protection and confidentiality were raised by a few respondents, who emphasised the importance of considering these issues in relation to notifications and publication. One local authority called for clarification on how this might affect what should be published. Another felt that regulations should stipulate that commercial or sensitive information would not be disclosed.
- 2.54 One community representative or support organisation suggested that a body should be able to ask that funding information is not shared with others at the acknowledgement stage.
- 2.55 Another community representative or support organisation suggested that notifications and acknowledgements should clarify the parties involved – especially where lease agreements are involved.

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.)

If not, how long should the period for decision making be?

2.56 Sixty-five (80%) respondents answered the closed part of question 9. Of those that responded, 48 (74%) agreed that 6 months was a reasonable length of time for the relevant authority to make a decision on an asset transfer request and 17 (26%) disagreed.

2.57 Further comments were provided by 46 respondents. Of those who gave comments, 27 (59%) respondents broadly agreed with the proposal, 18 (39%) disagreed and 1 (2%) did not give a view either way.

Respondent Group	Yes		No		Number responded	No response
Local Authority	12	67%	6	33%	18	3
Community Representative/Support Organisation	10	91%	1	9%	11	5
Other Relevant Authorities	11	100%	0	-	11	3
NHS	3	38%	5	63%	8	2
CPP/HSCPs	6	67%	3	33%	9	1
Other	3	60%	2	40%	5	2
Individual	3	100%	0	-	3	0
Overall	48	74%	17	26%	65	16

2.58 All 'other relevant authorities' and individuals, as well as almost all community representative or support organisations (91%), said 'yes' when asked if six months was a reasonable length of time for decisions about asset transfer requests. The majority of local authorities, CPP/HSCPs, and 'other' respondents also agreed. By comparison, the majority of NHS respondents (63%) disagreed.

2.59 When offered the opportunity to provide further comment, respondents who answered 'yes' and 'no' often highlighted similar concerns or issues. The most important theme was that while many felt that 6 months (or slightly longer) would be appropriate in most cases, many respondents (both those who said yes, and those who said no) thought that more complex cases would take longer.

2.60 Those who were broadly in agreement with the timescales sometimes emphasised the need to progress requests quickly, and highlighted the importance of avoiding protracted processes. For example, the Scottish Community Development Centre emphasised the need to avoid delays. A local authority, which actually proposed a longer period of a year, still supported the principle of speeding up the process – which they said currently could take up two years in their area. A community representative or support organisation specifically suggested 3 months, extendable to 6 months to gather internal information.

2.61 Respondents who emphasised the need for longer periods of consideration in some cases emphasised:

- the complexities involved in some asset transfers – such as those which involve lease situations, opposition, funding bids, or multiple interested parties;
- time limitations associated with internal processes and decision making structures - such as engaging with Council Committees and periods of recess;
- a desire to allow sufficient time for other interested parties to consider and respond; and
- the time associated with engaging professional advisors, if necessary.

2.62 Eleven respondents from across respondent categories proposed longer timeframes. Although respondents were seldom clear whether they felt the regulations actually needed to be amended, a number were fairly specific about the timeframe they felt would be more reasonable. Of those who proposed longer timeframes:

- four suggested 9 months;
- six suggested 1 year; and
- one suggested up to 3 years.

2.63 Often respondents reiterated that each situation is different, and that a degree of flexibility is needed. While the regulations allow the timeframe to be extended if the community transfer body agrees, a CPP/HSCP suggested there should be a provision to ask Ministers to agree a timescale if the relevant authority and the community transfer body cannot agree on this.

2.64 One of the local authorities that disagreed with the 6 month timeframe recommended that timescales should be used as a guideline only, and relevant authorities should have flexibility to set processing and validation dates themselves.

Q10. Do you agree with the proposals for additional information to be included in a decision notice? If not, please explain what you would change and why?

2.65 Sixty (74%) respondents answered the closed part of question 10. Of those that responded, 52 (87%) agreed with the proposal for additional information to be included in a decision notice and 8 (13%) disagreed.

2.66 Further comments were provided by 27 respondents. Of those who gave comments, 17 (63%) broadly agreed with the proposal, 9 (33%) disagreed and 1 (2%) did not give a view either way.

Respondent Group	Yes		No		Number responded	No response
Local Authority	18	95%	1	5%	19	2
Community Representative/Support Organisation	9	90%	1	10%	10	6
Other Relevant Authorities	7	78%	2	22%	9	5
NHS	4	50%	4	50%	8	2
CPP/HSCPs	8	100%	0	0%	8	2
Other	3	100%	0	0%	3	4
Individual	3	100%	0	0%	3	0
Overall	52	87%	8	13%	60	21

- 2.67 There was a high level of support from all respondent groups, except the NHS respondents, with half of this group broadly agreeing and the other half broadly disagreeing.
- 2.68 Respondents who broadly agreed with the proposals for additional information often reinforced support in their comments, or asked for further clarity on particular issues. Disagreeing and agreeing respondents often raised wider issues about asset transfers – particularly in relation to how decisions are made, and terms and conditions set. This analysis primarily focuses on points made specifically in relation to the proposals for additional information set out in the regulations.
- 2.69 A few respondents commented on the proposal to include information about rights and processes relating to review and appeal. Two other relevant authorities asked for clarification about whether the authority needs to go beyond referring to the relevant elements of the Act and set out the specific circumstances in which an appeal may be made. An NHS respondent felt that it was the responsibility of the community transfer body to satisfy themselves about information relating to appeals, and that the relevant authority should not be required to provide the proposed information relating to this.
- 2.70 A local authority suggested including the validation date if different from the date of the request.
- 2.71 Data protection and confidentiality were raised by a few respondents. Three local authorities and two CPP/HSCPs emphasised the importance of these issues or asked for further guidance on the level of information to be included in notices.
- 2.72 A community representative or support organisation suggested the decision notice might include a time limit for how long the decision is valid.
- 2.73 A community representative or support organisation which disagreed with the proposals called for Regulation 11(1) to be simplified to ensure more detailed information from requests does not need to be duplicated.

Reviews and appeals

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? If not, how do you think these reviews should be carried out?

- 2.74 Sixty-three (78%) respondents answered the closed part of question 11. Of those that responded, 56 (89%) agreed that Scottish Ministers should be required to appoint a panel of 3 people to consider reviews of Ministers' own decisions and 7 (11%) disagreed.
- 2.75 Further comments were provided by 23 respondents. Of those who gave comments, 12 (52%) respondents broadly agreed with the proposal, 8 (35%) disagreed and 3 (13%) did not give a view either way.

Respondent Group	Yes	%	No	%	Number responded	No response
Local Authority	18	95%	1	5%	19	2
Community Representative/ Support Organisation	11	92%	1	8%	12	4
Other Relevant Authorities	8	100%	0	0%	8	6
NHS	7	78%	2	22%	9	1
CPP/HSCPs	7	78%	2	22%	9	1
Other	2	67%	1	33%	3	4
Individual	3	100%	0	0%	3	0
Overall	56	89%	7	11%	63	18

- 2.76 Support was high across respondent groups. All individuals and other relevant authorities, and almost all local authorities (95%) and community representative or support organisations agreed with the proposal.
- 2.77 Most respondents answering the second part of the question raised questions or put forward suggestions relating to the Ministerial panel approach. Most comments related to the process for appointing panel members, the make-up of the panel, and the skills, experience, and knowledge of individual panel members. Respondents from across groups commented on these issues, with some highlighting the importance of transparency, independence and expertise. NHS respondents were particularly concerned with the make-up and process for appointing panel members, with two who broadly agreed, and two who broadly disagreed with this proposal, raising concerns or questions in relation to this. Two of them also asked about whether an equivalent panel would be used to deal with appeals.
- 2.78 A few respondents felt there needed to be further information on the process for selecting panel members, particularly those from outside Government.

2.79 Specific individual suggestions for strengthening this proposal included:

- An local authority that agreed suggested that at least one of the panel should have demonstrable and relevant knowledge and expertise.
- A local authority that disagreed felt that more information was required about the likely backgrounds of members.
- One local authority and a community representative or support organisation suggested the panel should be larger.
- Two community representative or support organisations and one local authority thought most panel members should come from outside the Scottish Government.

2.80 Three respondents suggested alternatives to a panel appointed by Ministers. Two respondents that disagreed – a CPP/HSCP and the Big Lottery - suggested the Scottish Public Sector Ombudsman would be preferable. Loch Lomond and the Trossachs National Park suggested that Scottish Ministers could refer reviews to the Lands Tribunal, given its independent status and expertise in property matters. However, the Act requires that the review is carried out by Ministers, and they must make the final decision.

Q12. Do you agree that a local authority should be required to make a decision on a review within 6 months? If not, how long should the period for making a decision be?

2.81 Sixty-three (78%) respondents answered the closed part of question 12. Of those that responded, 52 (83%) agreed that a local authority should be required to make a decision on a review within 6 months and 11 (17%) disagreed.

2.82 Further comments were provided by 25 respondents. Of those who gave comments, 11 (44%) agreed with the proposal, 12 (48%) disagreed and 2 (8%) did not give a view either way.

Respondent Group	Yes	%	No	%	Number Responded	No response
Local Authority	17	85%	3	15%	20	1
Community Representative/Support Organisation	10	83%	2	17%	12	4
Other Relevant Authorities	8	100%	0	-	8	6
NHS	5	63%	3	37%	8	2
CPP/HSCPs	7	78%	2	22%	9	1
Other	2	67%	1	33%	3	4
Individual	3	100%	0	-	3	0
Overall	52	83%	11	17%	63	18

2.83 There was broad support for this proposal from across respondent groups. All ‘other relevant authorities’ and individuals agreed with the proposed review timescales for local authorities. Most local authorities (85%), community representative or support organisations (83%) and CPP/HSCPs (78%) also agreed with this proposal. NHS and ‘other’ respondents were less positive about the proposals, although most still broadly agreed.

- 2.84 Respondents provided a range of diverse responses to the second part of the question.
- 2.85 Similarly to question 9 (which also asked about process timescales) a number of respondents emphasised that while the proposed period of six months would be workable in most cases, it may be insufficient where a situation was more complex.
- 2.86 Of those who disagreed with the timescales, five respondents felt that six months was too long. A local authority and the Big Lottery suggested a 3 month period. The local authority said this would replicate the timescales for planning reviews. Two community representative or support organisations felt that the aim should be 3 months, with a maximum of 6 months. The Scottish Property Federation suggested the timeframe was too long but did not suggest an alternative.
- 2.87 Five of those who disagreed with the timeframe explained that complex cases might require longer to review. This was a particular issue for NHS organisations. Two NHS boards suggested that the regulations should not include a timeframe at all. A CPP/HSCPs suggested 12 months would be more appropriate, based on their experience of transfers.
- 2.88 SOLAR and a CPP/HSCP highlighted that the proposed timeframe may require changes to council Standing Orders, which specify that councils cannot review a decision taken within the last six months.
- 2.89 One CPP/HSCP suggested that internal review might not be practicable for small authorities, as it may involve the same officers involved in the original decision reviewing the case. It felt local authorities should be able to decline a decision, with the community transfer body going directly to an appeal.

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?

- 2.90 Thirty-three respondents (41%) provided substantive responses to this question. NHS respondents (80%) and community representative or support organisations (63%) were most likely to respond.

Respondent Group	Number responded	% of consultation responses
Local Authority	7	33%
Community Representative/Support Organisation	10	63%
Other Relevant Authorities	1	7%
NHS	8	80%
CPP/HSCPs	4	40%
Other	3	43%
Individual	0	-
Overall	33	41%

- 2.91 Some of those who responded demonstrated their general support for these regulations, or review and appeal processes. Others took the opportunity to raise more general points about asset transfers. The analysis here mainly focuses on comments about the specific regulations relating to reviews and appeals.
- 2.92 A few respondents highlighted the challenges of assessing and balancing non-financial and financial benefits in reviews and appeals. For example, the Glasgow Centre for Population Health suggested that the language used in the regulations seemed at times to conflict regarding these different types of benefits. Two NHS respondents emphasised the importance of ensuring consistency in decision making during reviews and appeals, particularly in relation to weighing up non-financial and financial benefits. Another NHS respondent suggested that the proposals developed under the Short Life Working Group in relation to valuation and assessment of non-financial benefits will be critical to ensure consistency in approach, especially in relation to balancing costs and benefits.
- 2.93 A few respondents commented on regulations relating to how information should be issued. One NHS respondent was concerned about issues relating to electronic communications and suggested that notices should be issued to Chief Executives of relevant authorities. A local authority felt that email should be an option for notices, provided there was agreement on this. This respondent also asked for further clarification on when advertising in newspapers was required.
- 2.94 A few respondents made comments in relation to hearings. Two NHS respondents suggested hearings were too resource intensive, and submissions to appeals should be made in writing instead. Another NHS respondent suggested that a community group should be allowed a timed period to present their case to the panel, rather than just rely on a written submission. A community representative or support organisation felt that cross-examination should be permitted as part of the hearing process. The same organisation also highlighted the importance of working to support attendance at hearings, and felt that this should be demonstrated in instances where someone has not attended. This respondent suggested that new dates for adjourned sessions should take account of ability to attend. The Big Lottery called for additional notifications - of likely cross-examination, and when adjournments are announced in advance.
- 2.95 Many comments relating to the regulations on reviews and appeals were very specific, and included:
- The Big Lottery suggested community transfer bodies and relevant authorities should not necessarily be required to identify the most appropriate appeal procedure. It was also concerned about references to the terms and conditions that a relevant authority can be invited to suggest at this stage.
 - A local authority queried the wording relating to information being sent to 'any other person', as the current regulations suggest this may mean a person (for example, the community transfer body) may receive information they already hold or have submitted.
 - A local authority felt that the regulations do not seem to consider the authority's reasons for refusing an application, and highlighted the costs associated with forming panels.

- A local authority suggested that following a successful appeal, the Scottish Government should pass re-negotiations back to the relevant authority and community transfer body.
- A community representative or support organisation was unclear if a reviewer is entitled or obliged to seek written submissions from their own Council officials.
- Community Land Advisory Service suggested that hearing rules appear to assume community transfer bodies will always be legal persons, and queried the inclusion of 'fully' at Hearing Rule 4(5)(a).
- A CPP/HSCP felt there needed to be a provision to allow relevant parties to withdraw from the process.

2.96 Some respondents made specific comments regarding appeal or review timescales:

- In relation to regulations on appeals, two NHS respondents suggested that relevant authorities should not be required to send a response to Scottish Ministers and the community transfer body within 21 days of receiving the notification of an appeal.
- In relation to regulations on reviews, a local authority felt that 14 days following receipt of an application for review was not long enough to complete required notification and publication tasks – for example, advertising in local newspapers. It suggested 20 days may be more reasonable.
- Two community representative or support organisations proposed that applicants should be allowed longer than 28 days to submit an application for review or appeal. One of these respondents suggested 60 days should be allowed, to accommodate the need for professional advice or support. The other organisation suggested 42 days to allow for discussion at regular community group meetings, which may not meet within the proposed timeframe. This respondent also suggested that people attending hearings should have 21 days (rather than 14) to confirm their attendance.

2.97 Some respondents made more general points about appeals and regulations. For example, a local authority and an NHS organisation suggested that the proposed processes seemed to place significant decision making powers on Scottish Ministers. An 'other relevant authority' and an NHS respondent highlighted the need for these regulations to reflect the variable nature of different asset transfer situations.

2.98 The Glasgow Centre for Population Health and the Scottish Community Development Centre highlighted the importance of providing accessible information and guidance on appeals and reviews, as well as access or signposting to relevant support.

2.99 Two NHS respondents called for further guidance to be developed in the NHS Scotland Property Transaction Handbook or the Scottish Government guidelines on disposal of assets.

Failure to conclude a contract

Q14. Do you agree that the Scottish Ministers should appoint a single person to consider an appeal where no contract has been concluded? If not, how do you think these reviews should be carried out?

2.100 Fifty-nine (73%) respondents answered the closed part of question 14. Forty-four respondents (75%) agreed that Scottish Ministers should appoint a single person to consider an appeal where no contract has been concluded, and a 15 disagreed (25%).

2.101 Further comments were provided by 29 respondents. Of those who gave comments 10 (34%) respondents agreed with the proposal, 18 (62%) disagreed and 1 (3%) did not give a view either way.

Respondent Group	Yes	%	No	%	Number responded	No response
Local Authority	16	80%	4	20%	20	1
Community Representative/Support Organisation	6	55%	5	45%	11	5
Other Relevant Authorities	10	100%	0	0%	10	4
NHS	4	57%	3	43%	7	3
CPP/HSCPs	6	75%	2	25%	8	2
Other	0		0		0	7
Individual	2	67%	1	33%	3	0
Overall	44	75%	15	25%	59	22

2.102 All respondent groups mostly agreed with proposals. Levels of agreement were particularly high across other relevant authorities (100%), local authorities (80%), and CPP/HSCPs (75%). There was least support among community representative or support organisations (55% said yes) and NHS respondents (with 57% saying yes).

2.103 Sixteen respondents (including two who didn't disagree with the proposal in the closed part of the question) suggested that a panel or team would be more appropriate than a single person. Often respondents suggested this should have three members.

2.104 Some respondents also highlighted the importance of appointing individuals (or panel members) with the right skills and expertise. Two NHS respondents felt unable to answer this question, without further information on this role and the related appointment process. Three local authorities emphasised the importance of having an individual or panel with the rights skills or qualifications. One of these suggested the individual should have legal expertise, and another suggested a lawyer or surveyor would be the most likely professionals for this role.

Q15. Do you agree that the documents should not be published in relation to appeals where no contract has been concluded? Please explain your reasons.

2.105 Sixty-one (75%) respondents answered the closed part of question 15. Forty-eight (79%) respondents agreed that the documents should not be published in relation to appeals where no contract has been concluded, and 13 (21%) disagreed. It should be noted that responses to the open questions suggest that at least two respondents misunderstood this question, and selected 'no' instead of 'yes'.

2.106 Further comments were provided by 43 respondents. Of those who gave comments, 26 (60%) agreed with the proposal, 13 (30%) disagreed and 4 (9%) did not give a view either way.

Respondent Group	Yes	%	No	%	Number responded	No response
Local Authority	17	89%	2	11%	19	2
Community Representative/Support Organisation	6	55%	5	45%	11	5
Other Relevant Authorities	9	90%	1	10%	10	4
NHS	8	89%	1	11%	9	1
CPP/HSCPs	5	63%	3	38%	8	2
Other	2	100%	0	-	2	5
Individual	1	50%	1	50%	2	1
Overall	48	79%	13	22%	61	20

2.107 The level of agreement was highest among 'others' (100%), other relevant authorities (90%), local authorities (89%) and NHS respondents (89%). Levels of agreement were lowest among community representative or support organisations (55%) and CPP/HSCPs (63%).

2.108 Many of those who seemed to broadly agree, commented that information relating to contracts and other documentation at this stage would be legally or commercially sensitive. This was mainly raised by relevant authorities but two community or support organisations, two CPP/HSCPs and one 'other' mentioned this as well. There was some concern that releasing this information could influence future contracting, or competing bids.

2.109 Two other relevant authorities, a local authority and a CPP/HSCPs suggested there was no real benefit in sharing documents where no contract has been concluded.

2.110 Those who offered their reasons for disagreeing tended to suggest that information should be released where possible, in the spirit of openness and transparency. An NHS respondent suggested it may be in the interest of the community to understand the progress made, and potential barriers. A community representative or support organisation and a CPP/HSCP suggested information should be published, unless for confidentiality reasons.

2.111 Some responses appeared to relate to publication of documents after the completion of the appeal, rather than as part of the process to invite representations from third parties. A local authority and a CPP/HSCP suggested that valuable lessons might be learned by sharing information. Two respondents suggested that the outcome of the appeal should be shared. A community representative or support organisation proposed that the appointed person should be required to produce a written report for publication. Similarly, a CPP/HSCP suggested that the outcomes and reasons for the decision are made publicly available.

Q16. Do you agree that no third party representations should be allowed in relation to appeals where no contract has been concluded? Please explain your reasons.

2.112 Fifty-nine (73%) respondents answered the closed part of question 16. Fifty-three respondents (90%) agreed that third party representations should not be allowed in relation to appeals where no contract has been concluded, and 6 (10%) disagreed. It should be noted that responses to the open questions suggest that at least one respondent misunderstood this question, and selected 'no' instead of 'yes'.

2.113 Further comments were provided on question 16 by 38 respondents, of which 32 (84%) agreed and 6 (16%) disagreed.

Respondent Group	Yes	%	No	%	Number responded	No response
Local Authority	19	95%	1	5%	20	1
Community Representative/Support Organisation	7	64%	4	36%	11	5
Other Relevant Authorities	10	100%	0	-	10	4
NHS	7	88%	1	13%	8	2
CPP/HSCPs	7	100%	0	-	7	3
Other	1	100%	0	-	1	6
Individual	2	100%	0	-	2	1
Overall	53	90%	6	10%	59	22

2.114 There was a very high level of support from almost all respondent groups, with the exception of community representative or support organisations, although 64% of them still agreed with the proposal.

2.115 Many of those who agreed suggested that there would be no value in additional representation at this stage. They argued that all the relevant information should already have been gathered, and that this process should be more practical in nature. Two other relevant authorities, three NHS organisations and a local authority argued that further information at this stage would make the situation more complex, making the finalisation of the contract even more difficult.

2.116 Some respondents who agreed with the proposal emphasised that it was not appropriate to engage others in what is a contract negotiation between two organisations. Four relevant authorities and two community representative or support organisations made such points.

2.117 Those who disagreed tended to feel the process should be as open as possible. One community representative or support organisation felt that excluding third party representations was counter to the principle of community engagement. Another queried why the process would be different from the appeals and reviews earlier in the process. Another from the same respondent group felt further input might add value.

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

2.118 Nineteen respondents (23%) provided substantive comments to this question.

Respondent Group	Number responded	% of consultation responses
Local Authority	6	29%
Community Representative/Support Organisation	4	25%
Other Relevant Authorities	1	7%
NHS	4	40%
CPP/HSCPs	3	30%
Other	1	14%
Individual	0	-
Overall	19	23%

2.119 Some respondents requested further clarity and guidance on appeals where no contract has been concluded - including how engagement would take place, what frameworks and information would support decision making, and how particular challenges would be dealt with.

2.120 A few respondents had either general or specific queries about how the process would operate. A community representative or support organisation felt it needed further information on when appeals can be made. An NHS respondent asked for clarity on how the process might deal with any agreement reached between the community transfer body and the relevant authority while the appeal process was underway. A local authority suggested there does not appear to be a right to redress for the public authority, where it feels it has been disadvantaged.

2.121 A few respondents called for further information or clarity around what Ministers would explore in their assessment. A local authority and a CPP/HSCP (from the same area) queried whether the appeal would review the substantive decision made, or focus instead on the decision making process. These respondents also asked whether the same Minister would provide oversight of the proposed procedure. An NHS respondent also queried how decisions would be reached - particularly where there seemed to be no common grounds for decision making, such as around the financial and non-financial benefits of requests. Two NHS respondents suggested that delays in providing information on the part of the community transfer body should be taken into account in the appeals process.

2.122 A few comments related to how Ministers would develop terms and conditions, if required as part of the appeals process. The Association of Chief Estate Surveyors were keen to understand the basis upon which Ministers could develop these, and

how this would sit with the terms of the Local Government (Scotland) Act 2003. A local authority suggested that Scottish Ministers should take a mediation or facilitation role in supporting negotiations, where possible.

2.123 Respondents made a number of very specific comments about timescales relating to appeals where no contract has been concluded. These included:

- An NHS organisation called for greater flexibility in the process timescales – for example, to accommodate a community body seeking planning approval or awaiting the result of a funding request.
- A CPP/HSCP highlighted that timescales are generally very tight, and would be better extended.
- An NHS respondent suggested a relevant authority should be allowed longer than 21 days from the date of receipt of notification of an appeal to provide its response. The same organisation felt that 28 days was insufficient to deem the local authority accepting the offer made by the community transfer body, if the relevant authority has not voluntarily concluded the process in that period.
- A community representative or support organisation felt that the requirement for applications to be made within 14 days of the end of the period to conclude the contract should be changed to 21 days, to allow community transfer bodies additional time to consider whether to make such an application.
- A community representative or support organisation felt that the lengths of time to respond were unfair to communities, compared with relevant authorities. In particular, they emphasised community groups often meet on a 28 day cycle, so 14 days was not long enough to respond.
- SOLAR suggested that 14 days response time for relevant authorities to provide comments on appeals is too short, and suggested 21 days.

2.124 Specific comments made by only one respondent included:

- The Big Lottery reiterated concerns about the onus being placed on community transfer bodies, under the proposed process.
- A community representative or support organisation was keen to ensure that the prohibition on disposal of assets was in effect during the appeal period.
- A CPP/HSCP highlighted their preference for a process which resembles that for planning appeals.
- Another community organisation felt that the reference to ‘a copy of all correspondence’ should be expanded to ensure Scottish Ministers considered a wider range of evidence in these appeals – such as evidence of discussions or phone calls.

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

2.125 Ten (12%) respondents provided substantive comments to this question. Only a few local authorities, NHS and CPP/HSCPs provided comments.

Respondent Group	Number responded	% of consultation responses
Local Authority	4	19%
Community Representative/Support Organisation	0	-
Other Relevant Authorities	0	-
NHS	4	40%
CPP/HSCPs	2	20%
Other	0	-
Individual	0	-
Overall	10	12%

2.126 An NHS respondent suggested that the proposed arrangements are relatively straightforward and ensure that the final step is concluded in a timely way. But other NHS organisations raised concerns. One suggested there should be a limit on the number of times a community transfer body can apply to the Scottish Ministers for direction to extend the period for concluding a contract. This respondent also queried what weight would be given to delays on the part of the community transfer body, in coming to a decision to make a direction. Another NHS respondent suggested it may not always be appropriate for all extensions to have ministerial input, and reiterated that more complex asset transfers may need longer timescales in general. Another NHS respondent felt the timescales for directions were generally too short, and reiterated concerns about a lack of clarity around how decisions in relation to this and other aspects of the process would be reached.

2.127 A local authority felt that 28 days to conclude a contract was very restrictive, and suggested 42 days. Another suggested that allowing just 14 days for relevant authorities to provide comments on applications for a direction is too short, and suggested 21 days.

Annex One – Organisational Respondents

The consultation received 82 responses. Of these, 79 were received from organisations and 3 from individuals. Respondents that gave permission for their organisation's name to be published are listed below.

Aberdeen City Council
Aberdeen City Health and Social Care Partnership
Aberdeen Civic Forum
Aberdeenshire Community Planning Partnership
Aberdeenshire Council
Angus Community Planning Partnership
Association of Chief Estates Surveyors (ACES)
Audit Scotland
BIDs Scotland
Big Lottery Fund
Carnegie UK Trust
Chartered Institute of Housing Scotland (CIH)
Colleges Scotland
Community Land Advisory Service
Community Planning Aberdeen
Community Planning West Dunbartonshire
CVS Inverclyde
Development Trusts Association Scotland / Community
Ownership Support Service
Dumfries and Galloway Council
Dundee City Council
Dundee Third Sector Interface
East Ayrshire Council
East Renfrewshire Council
Glasgow and West of Scotland Forum of Housing
Associations
Glasgow Centre for Population Health
Highland Community Planning Partnership
Highland Council
Highlands and Islands Enterprise
Historic Environment Scotland (HES)
Loch Lomond and the Trossachs National Park
Mastrick, Sheddocksley and Summerhill Community
Council
Midlothian Council
Midlothian Voluntary Action
NHS Borders
NHS Forth Valley
NHS Highland
NHS National Services Scotland
NHS Tayside
North Ayrshire Council
North Lanarkshire Council

PAS

Perth and Kinross Council (Community Planning Partnership)

Renfrewshire Community Planning Partnership

Renfrewshire Council

Scottish Allotments and Gardens Society

Scottish Ambulance Service

Scottish Borders Community Development Company (The Bridge)

Scottish Borders Council

Scottish Canals (The operating name of the British Waterways Board)

Scottish Community Development Centre (SCDC)

Scottish Enterprise

Scottish Federation of Housing Associations (SFHA)

Scottish Natural Heritage

Scottish Property Federation

Scottish Water

Shetland Partnership

Society of Local Authority Lawyers & Administrators in Scotland (SOLAR)

South Ayrshire Council

Stirling Council

Stonehaven Town Partnership

Strathclyde Partnership for Transport

The Moray Council

The National Trust for Scotland

The Scottish Courts and Tribunals Service

West College Scotland

West Lothian Council



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Any enquiries regarding this publication should be sent to us at
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