

## **ITEM No ...6.....**

**REPORT TO:** NEIGHBOURHOOD SERVICES COMMITTEE – 13 JUNE 2016

**REPORT ON:** COMMUNITY EMPOWERMENT (SCOTLAND) ACT 2015–  
RESPONSES TO CONSULTATIONS

**REPORT BY:** EXECUTIVE DIRECTOR OF NEIGHBOURHOOD SERVICES

**REPORT NO.:** 200-2016

### **1.0 PURPOSE OF REPORT**

- 1.1 The purpose of this report is to seek agreement to proposed responses to Scottish Government Consultations on Asset Transfer and Participation Requests, as detailed in the Community Empowerment (Scotland) Act 2015 and corresponding draft Regulations; which the Scottish Government aim to have in force by Autumn 2016.

### **2.0 RECOMMENDATIONS**

- 2.1 It is recommended that members approve the proposed responses to Scottish Government consultations on Participation Requests and Asset Transfer as detailed in Appendices A and B attached.

### **3.0 FINANCIAL IMPLICATIONS**

- 3.1 There are no known financial implications at this time.

### **4.0 MAIN TEXT**

- 4.1 The Community Empowerment (Scotland) Act 2015 is intended to further empower community bodies, the definition of community bodies to be recognised is detailed in the Act.
- 4.2 Asset Transfer requires public bodies to have mechanisms in place for the transfer of ownership or control of land and buildings from public bodies to community organisations
- 4.3 Asset Transfer 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.
- 4.4 Relevant authorities will be required to create and maintain a register of land, including buildings, which to the best of their knowledge they own or lease. This register will be required to be made available to the public.
- 4.5 Dundee City Council's current Asset Transfer Strategy will require to be amended to take account of the changes and a system developed for responding to Participation Requests.

- 4.6 The introduction of Participation Requests aims to strengthen community voice in decisions about public services, through the introduction of formal Participation Requests.
- 4.7 Public bodies are required by the Act to develop mechanisms for Participation Requests to be processed. Participation Requests will provide a process for community bodies to put forward their ideas on how public services could be changed to improve outcomes for their community. This could include community bodies taking on delivery of services. Such requests should not be viewed as a replacement for existing engagement and participation processes, where they already function well, but as an opportunity to establish dialogue with communities where there are no existing mechanisms for them to be recognised or heard. This includes communities of place (neighbourhoods or other defined geographical areas) or communities of interest (groups of people having common interests or identity).
- 4.8 The Council must agree to the Participation Request unless there are reasonable grounds for refusal. If it refuses the request, it must explain the reasons. At the end of the process, the Council must publish a report on whether the outcomes were improved and how the community body contributed to that improvement
- 4.9 The implementation of the Asset Transfer and Participation elements of Community Empowerment (Scotland) Act 2015 have been the subject of consultation. Neighbourhood Services have led these involving all DCC service areas in developing Dundee City Council's response to the Scottish Government questions. These exercises were supported by Scottish Community Development Centre (SCDC) with regard to Participation Requests and by the Community Ownership Support Service (COSS) with regard to Community Asset Transfer.
- 4.10 The consultation documents which include references to the relevant parts of the 2015 Act have been made available to Group Leaders, Bailie Borthwick, Bailie Scott and Councillor Macpherson.

## **5.0 POLICY IMPLICATIONS**

- 5.1 The report has been screened for any policy implications in respect of Sustainability, Strategic Environmental Assessment, Anti-Poverty, Equality Impact Assessment and Risk Management. No major issues were identified.

## **6.0 CONSULTATION**

- 6.1 The Chief Executive, Executive Director of Corporate Services and Head of Democratic and Legal Services, all other Chief Officers and the Dundee City Council Community Asset Transfer Steering Group have been consulted on the preparation of this report. No concerns were expressed.

## **7.0 BACKGROUND PAPERS**

- 7.1 None.

Elaine Zwirlein  
**Executive Director of Neighbourhood Services**

David Simpson  
**Head of Housing & Communities**

1 June 2016

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

**Questionnaire**

- Q1: Do you agree that the types of land set out in the draft Community Empowerment (Registers of Land) (Scotland) Regulations 2016 need not be included in relevant authorities' registers?**

Yes ☒ No ☐

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

Agree.

- 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.**

No, however consideration should be given to applying a "De minimus" limit and test for small miscellaneous areas of undeveloped land.

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

Agree that the function of the land/building assets should be stated as well as the address. This information should be posted on public service authority websites.

- 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?**

No.

- Q5: Do you think the proposed additional requirements for making an asset transfer request are reasonable?**

Yes ☒ No ☐

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

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

No.

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

There are no timescales for regulation 4 and no sanctions for any failure to comply. There will be occasions where the asset in question is already leased / occupied whereby the Council is under a legal obligation to give exclusive occupation and as such would always be refusing a transfer request. However there is no short circuit means within in the regulations to do so. This will therefore lead to a large amount of bureaucracy for both sides.

The Regulations do not provide for the circumstance where there are competing requests for Asset Transfer and how best to consider these. At present DCC is required to complete the process as per Section 82, however part of the decision making involves consideration of an alternative proposal. Further section 84 prohibits disposal to any person other than the Community Transfer Body.

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

Elements of this proposal could be resource intensive and have an impact on other areas of service provision.

**Q9: Do you think 6 months is a reasonable length of time for the relevant authority to make a decision on an asset transfer request? (This time may be extended if agreed with the community transfer body.)**

Yes ☒ No ☐

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

**Q10: Do you agree with the proposals for additional information to be included in a decision notice?**

Yes ☒ No ☐

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

**Q11: Do you agree that the Scottish Ministers should be required to appoint a panel of 3 people to consider reviews of Ministers' own decisions?**

Yes ☒ No ☐

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

**Q12: Do you agree that a local authority should be required to make a decision on a review within 6 months?**

Yes ☒ No ☐

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

**Q13: Do you have any other comments about the draft Asset Transfer Request (Review Procedure) (Scotland) Regulations 2016 or draft Asset Transfer Request (Appeals) (Scotland) Regulations 2016?**

No

**Q14: Do you agree that the Scottish Ministers should appoint a single person to consider an appeal where no contract has been concluded?**

Yes ☒ No ☐

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

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

Yes ☒ No ☐

Please explain your reasons.

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

Yes ☒ No ☐

Please explain your reasons.

Not obvious as to how a third party can be represented in any event.

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

Nothing further to add to comments above.

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

No comments.

**Participation Requests under the Community Empowerment  
(Scotland) Act 2015: Consultation on Draft Regulations**

**Questionnaire**

**Q1: Should the use of a statutory form be required in the regulations?**

Yes ☒ No ☐

Please give reasons for your response.

Statutory Form needs to be in plain English with a Guidance Note under each question.

Statutory form is important if there is more than one applicant or the request involves more than one service or affects more than one Public Service Authority.

**Q2: Should it be possible for a community body to put in a Participation Request without using a form?**

Yes ☐ No ☒

Please give reasons for your response.

Consistency must be maintained but it must be recognised that there are particular challenges for some groups who have additional support needs to complete forms and mechanisms need to be in place to support this. Also to recognise that there may be cost implications to support those groups eg those with hearing and visual impairments.

**Q3: What else might a statutory form usefully cover beyond the example set out in Annex B?**

As stated in question 2 the Statutory Form requires a guidance note under each question and in plain English. It needs to make clear the expectations required of the community body and include whether they have a constitution or not, their Charity Number if applicable, how many members the group and have reference to evidence of community support for the request. It also needs to make reference to the support available through the public service authority and also the support needs of the community body itself to progress a Participation Request.

**Q4: Is 14 days a reasonable amount of time for additional public service authorities to respond?**

Yes ☐ No ☒

If not, please suggest an alternative timescale and explain reasons for the change.

Would prefer that a reasonable amount of time to respond is 30 days. This acknowledges the potential time it takes to identify relevant persons within different Public Service Authorities and for each of them to liaise internally to progress the Participation Request.

**Q5: What, if any, are the particular/specific ways that public service authorities should promote the use of participation request?**

Agree that existing community engagement and participation processes should support Participation Requests. The Community Planning/Local Community Planning structures in Dundee are well established. Promotion of the Statutory Form on Local Authority websites as well as all expectations stated in question 3 should be available online. In addition the Scottish Government should lead on a national promotion of all aspects of the Community Empowerment (Scotland) Act.

**Q6: What are the ways that public service authorities should support community participation bodies to make a participation request and participate in an outcome improvement process that should be set out in the regulations?**

It is important that there is a single point of contact within each local authority to deal initially with participation requests and also that there are designated members of staff identified within different service areas of local authorities to deal with the Participation Request as it relates to them. It is important that all public service authorities adopt this approach and that designated persons within each authority are known to each other so that participation requests which impact on more than one authority can be dealt with efficiently.

**Q7: What types of communities could the regulations specify that may need additional support? Please give reasons for your response.**

Collectively public service authorities currently have legal responsibilities to respond to equalities. This is currently recognised and supported through existing community engagement and participation processes.

**Q8: How long should the public service authority have to assess the participation request and give notice to the community participation body? Is 30 days a reasonable amount of time?**

Yes ☒ No ☐

If not, how long should the period for making a decision be? Please give reasons for your response.

In general terms, 30 days is a reasonable amount of time, however depending on the need to involve another Public Service Authority(s) and the extent of its complexity, a clause giving the option to extend this would be desirable.

**Q9: Are there any additional information requirements that should be included in connection with a decision notice? Please give reasons for your response.**

No

**Q10: What other information, if any, should the regulations specify should be published in relation to the proposed outcome improvement process? Please give reasons for your response.**

None

After a public service authority agrees a Participation Request, the proposed outcome improvement process as stated in the draft regulations is acceptable.

**Q11: What other information, if any, should the regulations specify should be published in relation to the modified outcome improvement process? Please give reasons for your response.**

None

**Q12: Section 31 sets out the aspects that the report of the outcome improvement process must contain. What other information, if any, should the regulations require the report include? Please give reasons for your response.**

None.

Agree with the criteria stated in the draft Regulations. It must be clearly acknowledged that reporting on each individual Participation Request and all Participation Requests annually will have a significant impact on staff resources.

**Q13: Do you have any other comments on the draft Participation Request (Procedure) (Scotland) Regulations 2016?**

It is understood that guidance will be issued in the autumn of 2016, however it would have been more helpful to have had this at an earlier stage.



## EQUALITY IMPACT ASSESSMENT TOOL

### Part 1: Description/Consultation

Is this a Rapid Equality Impact Assessment (RIAT)? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
Is this a Full Equality Impact Assessment (EQIA)? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Date of Assessment: 17th May 2016	Committee Report Number:
Title of document being assessed:	Community Empowerment (Scotland) Act 2105 Consultation
1. This is a new policy, procedure, strategy or practice being assessed (If yes please check box) <input type="checkbox"/>	This is an existing policy, procedure, strategy or practice being assessed? (If yes please check box) <input type="checkbox"/>
2. Please give a brief description of the policy, procedure, strategy or practice being assessed.	Consultation findings relating to Participation Requests and Community Asset Transfer as part of the Community Empowerment (Scotland) Act 2105.
3. What is the intended outcome of this policy, procedure, strategy or practice?	To inform Dundee City Council's response to the Scottish Government consultation.
4. Please list any existing documents which have been used to inform this Equality and Diversity Impact Assessment.	Community Empowerment (Scotland) Act 2105
5. Has any consultation, involvement or research with protected characteristic communities informed this assessment? If yes please give details.	Two consultations have been held. One led by the Scottish Community Development Centre and the other by Community Ownership Support Service.
6. Please give details of council officer involvement in this assessment.  (e.g. names of officers consulted, dates of meetings etc)	Both events were open to and attended by people with protected characteristics.  John Hosie, Community Regeneration & Health Manager
7. Is there a need to collect further evidence or to involve or consult protected characteristics communities on the impact of the proposed policy?  (Example: if the impact on a community is not known what will you do to gather the information needed and when will you do this?)	Not for this assessment, however further consultation will be carried out as required.

## Part 2: Protected Characteristics

Which protected characteristics communities will be positively or negatively affected by this policy, procedure or strategy?

NB Please place an X in the box which best describes the "overall" impact. It is possible for an assessment to identify that a positive policy can have some negative impacts and visa versa. When this is the case please identify both positive and negative impacts in Part 3 of this form.

If the impact on a protected characteristic communities are not known please state how you will gather evidence of any potential negative impacts in box Part 1 section 7 above.

	Positively	Negatively	No Impact	Not Known
Ethnic Minority Communities including Gypsies and Travellers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Gender	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Gender Reassignment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Religion or Belief	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
People with a disability	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Age	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Lesbian, Gay and Bisexual	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Socio-economic	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Pregnancy & Maternity	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Other (please state)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

### Part 3: Impacts/Monitoring

<p><b>1. Have any positive impacts been identified?</b></p> <p>(We must ensure at this stage that we are not achieving equality for one strand of equality at the expense of another)</p>	<p>This Act is an important development which could benefit people of all equalities groupings.</p>
<p><b>2. Have any negative impacts been identified?</b></p> <p>(Based on direct knowledge, published research, community involvement, customer feedback etc. If unsure seek advice from your departmental Equality Champion.)</p>	<p>No</p>
<p><b>3. What action is proposed to overcome any negative impacts?</b></p> <p>(e.g. involving community groups in the development or delivery of the policy or practice, providing information in community languages etc. See Good Practice on DCC equalities web page)</p>	<p>N/A</p>
<p><b>4. Is there a justification for continuing with this policy even if it cannot be amended or changed to end or reduce inequality without compromising its intended outcome?</b></p> <p>(If the policy that shows actual or potential unlawful discrimination you must stop and seek legal advice)</p>	<p>The Community Empowerment (Scotland) Act aims to promote equality, address disadvantage and reduce inequalities in local communities.</p>
<p><b>5. Has a 'Full' Equality Impact Assessment been recommended?</b></p> <p>(If the policy is a major one or is likely to have a major impact on protected characteristics communities a Full Equality Impact Assessment may be required. Seek advice from your departmental Equality lead.)</p>	<p>No</p>
<p><b>6. How will the policy be monitored?</b></p> <p>(How will you know it is doing what it is intended to do? e.g. data collection, customer survey etc.)</p>	<p>Consultation findings will inform Scottish Government Guidance which will be available later in 2016.</p> <p>Monitoring arrangements will be developed at this stage.</p>

#### Part 4: Contact Information

<b>Name of Department or Partnership</b>	Neighbourhood Services
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<b>Type of Document</b>	
Human Resource Policy	<input type="checkbox"/>
General Policy	<input type="checkbox"/>
Strategy/Service	<input checked="" type="checkbox"/>
Change Papers/Local Procedure	<input type="checkbox"/>
Guidelines and Protocols	<input type="checkbox"/>
Other	<input type="checkbox"/>

<b>Manager Responsible</b>	<b>Author Responsible</b>
<b>Name:</b> Marie Dailly	<b>Name:</b> John Hosie
<b>Designation:</b> Service Manager (Housing & Communities)	<b>Designation:</b> Community Regeneration & Health Manager
<b>Base:</b> Mitchell Street Centre	<b>Base:</b> Mitchell Street Centre.
<b>Telephone:</b> 01382 435820	<b>Telephone:</b> 01382 435856
<b>Email:</b> marie.dailly@dundeecity.gov.uk.	<b>Email:</b> john.hosie@dundeecity.gov.uk

<b>Signature of author of the policy:</b> <i>John Hosie</i>	<b>Date:</b> 17 <sup>th</sup> May 2016
<b>Signature of Director/Head of Service:</b> <i>David Simpson</i>	<b>Date:</b> 26 <sup>th</sup> May 2016
<b>Name of Director/Head of Service:</b> <i>David Simpson</i>	
<b>Date of Next Policy Review:</b> N/A	