



## **Localism Act: Assets of community value**

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Part 5 Chapter 3 of the *Localism Act 2011* provides for a scheme called ‘assets of community value’. Part of the Government’s community empowerment agenda, it requires a local council to maintain a list of ‘community assets’.

Nominations for community assets can be made by parish councils or by groups with a connection with the community. Individuals cannot nominate community assets. If the nomination is accepted, the group will be given time to come up with a bid for the asset when it is sold.

The right to bid only applies when an asset’s owner decides to dispose of it. There is no compulsion on the owner of that asset to sell it. The scheme does not give first refusal to the community group, unlike the equivalent scheme in Scotland; and it is not a community right to *buy* the asset, just to *bid*. This means that the local community bid may not be the successful one.

Certain types of land, most notably residential property, are exempt from being placed on the register. Owners of property placed on the register may appeal against its listing and can claim compensation if they can demonstrate its value has been reduced. Also, certain types of transfer of land or assets do not count as disposal for the purposes of the legislation.

The scheme was brought into effect on 21 September 2012. More information is available in a [Community right to bid: non-statutory advice note](#), which was issued to local authorities in England by DCLG on 4 October 2012. DCLG has launched a community rights microsite, <http://communityrights.communities.gov.uk/>, which provides information and support on a number of community empowerment initiatives.

The scheme is not the same as *community asset transfer*, which is also addressed within this note.

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## 1 Background

Part 5 Chapter 3 of the [Localism Act 2011](#) provide for a local council to maintain a list of **assets of community value** which can be either land or buildings. The Act requires local authorities (district councils in two-tier areas) to maintain a list of assets of community value which have been nominated by the local community. When listed assets come up for sale or change of ownership, the Act then gives community groups the time to develop a bid and raise the money to bid to buy the asset when it comes on the open market. This will help local communities keep much-loved sites in public use and part of local life. The scheme is also known as the **community right to bid**.

Local community groups will be able to nominate the asset, and, if the nomination is accepted by the local authority, it will be listed; then, when it is put up for sale, the group will have to be informed and will be given time to prepare with a bid. The Government has said that the aim of the measure is as follows:

to give many more communities the opportunity to take control of assets and facilities in their neighbourhoods by levelling the playing field [and] by providing the time for them to prepare a proposal.<sup>1</sup>

The [Plain English Guide to the Localism Act](#) summarises the background to the power:

### **Community right to bid (assets of community value)**

Every town, village or neighbourhood is home to buildings or amenities that play a vital role in local life. They might include community centres, libraries, swimming pools, village shops, markets or pubs. Local life would not be the same without them, and if they are closed or sold into private use, it can be a real loss to the community.

In many places across the country, when local amenities have been threatened with sale or closure, community groups have taken them over. In some cases, however, community groups who have attempted to take assets over have faced significant challenges. They often need more time to organise a bid and raise money than the private enterprises bidding against them.

## 2 How the community right to bid works

### 2.1 Nomination

Parishes and community organisations may nominate local assets to the local authority to be included in their list of community assets. Nominations may be made by local organisations, including parish councils and community interest groups – but not by individuals.<sup>2</sup> Additionally, (principal) local authorities cannot themselves nominate assets on to either their own or another local authority's register.

The local authority then has eight weeks to make a judgment on whether the land should be listed. If it decides that the nomination meets the relevant criteria, the local authority must list it in its list of assets of community value. Under section 87 (3) of the Act, properties remain on the list for five years. A list of unsuccessful nominations must also be kept; it is up to the local authority how this is published.

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<sup>1</sup> DCLG, [Assets of Community Value – Policy Statement](#), 2011

<sup>2</sup> See DCLG, [Community right to bid: non-statutory advice note](#), October 2012, p.10

The asset must be a **building or land**, as defined in section 88 of the Act. The contents of a building, or related services or business assets, are not covered by the Act. In general, in order to be listed, the building must further the social wellbeing or social interests of the local community, or have been used to do so in the recent past. Residential property is excluded from listing, except where an asset that could otherwise be listed contains integral residential quarters, such as a pub or caretaker's flat.

Once listed, the local authority must inform owners and other interested parties that it has been listed, enter this fact on the local land charges register and, in the case of registered land, apply for a restriction on the land register. Provisions exist for appeals against the local authority's decision, and for compensation to be paid where the local authority believes listing has had a detrimental effect on the value of the property;

## 2.2 Moratorium on sale

A moratorium will be applied when a listed asset is put up for sale. This is an initial six-week interim period, during which a community group must express interest in bidding. If one does, there is a six-month moratorium **beginning from when the asset is put up for sale, i.e. including the six-week interim period**, to allow a community interest group to put a bid together.

The provisions for a community group to prepare a bid only apply **when the asset is being put up for sale**. There is no compulsion on the owner of the listed asset to sell it, nor any restriction on what the owner can do with the property while they own it.

There is no community right to *buy* the asset, just to *bid*. This means that the local community bid may not be the successful one. The owner can, at the end of the moratorium, sell to whomever they choose and at whatever price. The owner is also at liberty to negotiate a sale with a preferred buyer during the moratorium period: but the sale cannot be **concluded** during that period.

Where the sale of an asset has been announced but not yet concluded, it is still possible for a group to seek to list it. This circumstance may arise if a much-used local asset is suddenly put up for sale. If a sale is agreed before the asset appears on the list, there would be no opportunity for a group to put in a bid; but if the asset is listed before a sale is agreed, the moratorium provisions apply.

The scheme differs from the Scottish **community right to buy**, where the community group has first refusal on the asset.<sup>3</sup>

The scheme was brought into force on 21 September 2012.

## 3 Detailed regulations

The Act is supplemented by the *Assets of Community Value (England) Regulations 2012*,<sup>4</sup> which were approved by resolution of both Houses and came into force on 21 September. The *Localism Act 2011 (Commencement No 1) (England) Order 2012*<sup>5</sup> brought the provisions of the Act relating to assets of community value into effect on the same date. The regulations sketch out more detail on certain aspects of the scheme:

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<sup>3</sup> For more details on the community right to buy, see <http://www.scotland.gov.uk/Topics/farmingrural/Rural/rural-land/right-to-buy/Community>.

<sup>4</sup> SI 2012/2421

<sup>5</sup> SI 2012/2420

- Regulation 2 specifies that a local authority must add details of any proposed asset, together with the community interest proposing it, to its list of community assets within 6 weeks of receiving the request; and must remove the entry if an appeal against the listing is successful.
- Schedule 1 of the regulations defines land which is not of community value and therefore cannot be listed. This includes residential property and land (although land can be listed if an otherwise eligible building is partly used as a residence), temporarily unoccupied residences, holiday lets and caravan sites. Land and buildings used for statutory undertakings are also exempt;
- Section 89(2)(b)(iii) of the Act allows a voluntary or community body with a local connection to nominate land for listing. Regulation 4 defines those bodies that have a local connection, which would include a body whose activities are wholly or partly concerned with the local authority's area or with a neighbouring authority's area;
- Regulation 6 sets out the content of a community nomination, which must include a description of the nominated land and its boundaries, as well as the names of the occupants of the land and those holding a freehold or leasehold estate in the land. The reasons why the land should be considered of community value must also be included.
- Local authorities must decide within eight weeks whether to include a community nomination in the list (Regulation 7); if it is included, an owner of the land may appeal against the decision to the First-Tier tribunal (Regulation 11).
- Regulation 14 allows for compensation to be paid, by the local authority, to the owner of land who has incurred loss or expense in relation to the land which would not have been the case if it had not been listed, and that person may also request a review of any decision relating to compensation (Regulation 16). They may make a further appeal to the First-Tier tribunal on the same matter (Regulation 17). A claim for loss resulting from a delay in sale caused by the moratorium on completion of the sale can be valid under these regulations.

There are certain types of land and asset disposal to which the provisions for the community right to bid will not apply. These are listed in Schedule 3 of the regulations, and explained on pages 22-24 of the guidance note.<sup>6</sup>

If an owner disposes land on the assets list in contravention to the requirements of the scheme, the Act provides that the land transaction is invalid in law.

The Government has said that it will meet the cost of compensation claims that exceed £20,000 in a financial year up to March 2015, with consideration to follow on funding from 2015 onwards.<sup>7</sup> It has also announced a fund of £17.5m to assist local communities with using the regulations.<sup>8</sup>

More information is available in [a non-statutory advice note](#), which was issued to local authorities in England by DCLG on 4 October 2012. DCLG has launched a community rights

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<sup>6</sup> See DCLG, [Community right to bid: non-statutory advice note](#), October 2012, p.22-24

<sup>7</sup> Ninth Delegated Legislation Committee, [Draft Assets of Community Value \(England\) Regulations 2012](#), 12 September 2012, c.7

<sup>8</sup> *Ibid.*, c.8

microsite, <http://communityrights.communities.gov.uk/>, which provides information and support on a number of community empowerment initiatives. An LGA guide is also available on the use of local assets more generally.<sup>9</sup>

## 4 Community asset transfer

Community asset transfer is a central government policy directed at local authorities' use of their redundant assets. It is entirely separate from the community right to bid, operating on a discretionary basis rather than forming a 'community right'. The powers under which it takes place predate the *Localism Act 2011*. Nevertheless, on the *My Community Rights* website it is presented alongside the 2011 Act's provisions as one of a number of sources of greater community ownership of local assets.

### 4.1 Powers to dispose of land

The *Local Government Act 1972* section 123 (2) states:

Except with the consent of the Secretary of State, a council shall not dispose of land under this section, otherwise than by way of a short tenancy, for a consideration less than the best that can reasonably be obtained.

A **general consent** for local authorities to dispose of land to community organisations at below market value was given under this section in 2003.<sup>10</sup> The consent specifies the following conditions:

The specified circumstances are:

- a) the local authority considers that the purpose for which the land is to be disposed is likely to contribute to the achievement of any one or more of the following objects in respect of the whole or any part of its area, or of all or any persons resident or present in its area;
  - i) the promotion or improvement of economic well-being;
  - ii) the promotion or improvement of social well-being;
  - iii) the promotion or improvement of environmental well-being; and
- b) the difference between the unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed £2,000,000 (two million pounds).<sup>11</sup>

In 2006, the then Government announced the establishment of a review of existing powers and policies on community asset transfer under the chairmanship of Barry Quirk, then chief executive of the London Borough of Lewisham. The **Quirk Review** (*Making Assets Work*) reported in May 2007. Its main conclusions were summarised in the accompanying press release as follows:

...there are no substantive barriers to prevent councils transferring assets into community management or full ownership. Powers already exist for this but the report finds that many are not fully aware of them, or are not using them to full benefit. Therefore a change in culture is required so that every community has the chance for

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<sup>9</sup> LGA, *Empowering communities: making the most of local assets*, 2011

<sup>10</sup> See the Government circular, including the consent in an appendix, at [http://libraries.communityknowledgehub.org.uk/sites/default/files/general\\_disposal\\_consent\\_2003.pdf](http://libraries.communityknowledgehub.org.uk/sites/default/files/general_disposal_consent_2003.pdf)

<sup>11</sup> *Ibid.*, p. 11

more active citizenship, a greater role in running services and owning assets, and improving wellbeing in their communities.

Underpinned by safeguards to ensure good management councils can sell off or lease assets for as little as £1 where it is clear it is for the good of the community. Other assets that could be transferred include redundant police stations, old hospital sites, empty shopping parades and closed down pubs on estates.<sup>12</sup>

The community empowerment white paper, published in July 2008, repeated the Government's commitment to this policy and summarised progress made to date.<sup>13</sup> The white paper announced the establishment of the **Asset Transfer Unit** (ATU), which provided advice and support to individual and groups (including local authorities) on asset transfer. This was later folded into the independent organisation **Locality** ([www.locality.org.uk](http://www.locality.org.uk)). A Government response to the Quirk Review, entitled *Building on Strong Foundations*, was published in 2009.

Local authorities are now expected to have a strategy for asset disposal. A number of means are available through which this can take place:

A range of organisational structures are now commonly used to provide legal entities through which community organisations can own and manage local assets. These include community interest companies, companies limited by guarantee, charitable incorporated organisations, charitable trusts and industrial and provident societies. These structures can incorporate social enterprises and social firms, mutuals, development trusts and housing associations.<sup>14</sup>

Locality's publication *To Have and To Hold* notes that the Government has encouraged greater use of asset disposal in recent years, in particular to benefit community organisations:

Since 2005 the key shift in public policy as it affects asset transfer and development is that there has been a move from a 'demand pull' for transfer of ownership and control of assets from community based organisations to a 'supply push' from public sector bodies to transfer assets to community based organisations. As reductions in public spending and the need to consider the costs of running assets increases, more and more public bodies are likely to look to community based organisations to take on publicly owned assets to enable them to stay in local control and be used for wider community benefit.<sup>15</sup>

## 4.2 Community right to reclaim land

A separate power exists in schedule 16 of the *Local Government Planning and Land Act 1980*. This allows the Secretary of State to direct specific bodies to dispose of land or property. This formed the basis of what used to be known as the Public Request to Order Disposal (PROD) process, which since 2011 has been referred to as the **community right to reclaim land**.<sup>16</sup> In effect, local groups can request a disposal of land by a public body, and the Secretary of State may direct it under this section. Brief details of this procedure,

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<sup>12</sup> DCLG, "Councils urged to reap the benefits of handing assets to communities", News release 2007/0092, 15 May 2007, <http://www.communities.gov.uk/news/corporate/councilsurged>. The main report is entitled *Making assets work: the Quirk Review*, May 2007.

<http://www.communities.gov.uk/publications/communities/makingassetswork>

<sup>13</sup> See *Communities in control: real people, real power*, Cm 7427, July 2008, chapter 8.

<sup>14</sup> LGA/IDeA, *Improving efficiency in the culture and sport sector*, 2010, p.3

<sup>15</sup> Locality, *To have and to hold*, 2010, p. 14

<sup>16</sup> See <https://www.gov.uk/government/news/communities-to-be-given-a-right-to-reclaim-land>.

together with an application form to request the Secretary of State to direct the disposal of land, can be found on the gov.uk website.<sup>17</sup>

The procedure applies to the public bodies listed in schedule 16 of the 1980 Act, and requests can be made of other public bodies which have signed a memorandum of understanding with DCLG. Under this procedure, land is sold on the open market: there is no first refusal for community groups.

In tandem with these provisions, there is access to a [map of land held by public bodies](#), though the gov.uk website warns that this is incomplete.<sup>18</sup>

### 4.3 Compulsory purchase order requests

Additionally, in 2011 revised Government guidance was issued covering the right of community organisations to call on local authorities to issue compulsory purchase orders on land or buildings which are unused and have been, or could be, of benefit to the community. This can be found on page 57 of the revised 'Crichel Down regulations'.<sup>19</sup> The guidance states:

1. From time to time, authorities may receive requests from the community (by petition or otherwise) to acquire community assets that are in danger of being lost to the detriment of that community. If the owner is unwilling to sell, the implication is that the community would ask the authority to use its compulsory purchase powers to acquire the asset.
2. Local authorities should consider all requests from third parties, but particularly voluntary and community organisations, which put forward a scheme for a particular asset which would require compulsory purchase to take forward, and provide a formal response.
3. As with any compulsory purchase, local authorities must be able to finance the cost of the scheme (including the compensation to the owner) and the Compulsory Purchase Order process either from their own resources, or with a partial or full contribution from the requesting organisation (see paragraphs 20 – 23 of Part 1 of the Memorandum to this Circular).
4. In order to assess whether there is a compelling case in the public interest for compulsory acquisition, local authorities should ask those making the request for such information that is necessary for them to do so. This could include the value of the asset to the community; the perceived threat to the asset; the future use of the asset and who would manage it (including a business plan where appropriate); any planning issues; and how the acquisition would be financed. This list is not exhaustive, but the level of detail required should be tailored to the circumstances.

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<sup>17</sup> See <https://www.gov.uk/government/publications/the-public-request-to-order-disposal-process--2>. See also Locality, *Empowering communities: making the most of local assets: an officer companion guide*, 2011, p.18-22

<sup>18</sup> See DCLG, *Community right to reclaim land*, 7 November 2012, <https://www.gov.uk/government/policies/giving-people-more-power-over-what-happens-in-their-neighbourhood/supporting-pages/community-right-to-reclaim-land>.

<sup>19</sup> See Appendix KA of *Compulsory Purchase and the Crichel Down rules*, ODPM Circular 06/2004, revised in 2011, p. 57