



BRIEFING PAPER

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Assets of community value

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Summary

Part 5 Chapter 3 of the *Localism Act 2011* provides for a scheme called 'assets of community value'. This requires district and unitary councils to maintain a list of 'community assets'. It has also become known as the 'community right to bid'.

Community assets can be nominated by parish councils or by groups with a connection with the community. Individuals cannot nominate community assets. If the nomination is accepted, local groups 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 to sell it. The scheme does not give first refusal to the community group, unlike the equivalent scheme in Scotland. 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 'disposals' for the purposes of the legislation.

The community right to bid extends to England; the Welsh Government has not yet commenced it with regard to Wales.

Other community powers regarding land and property addressed in this note are the *community right to reclaim land*, *community asset transfer*, the *Right to Contest*, requests for Compulsory Purchase Orders, and the Government's *One Public Estate* programme.

1. How the community right to bid works

Part 5 Chapter 3 of the [Localism Act 2011](#) provides for district and unitary councils to maintain a list of **assets of community value**, which can be either land or buildings, nominated by local community groups or parish councils. When listed assets come up for sale or change of ownership, the Act then gives local 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. The scheme is also known as the **community right to 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.¹

The provisions extend to England and Wales, but the Welsh Government has not commenced the Act with regard to Wales, thus it applies only in England at present.²

The Welsh Government issued a consultation on 21 May 2015 seeking views on either commencing the Localism Act provisions or introducing an alternative scheme in Wales, or doing neither.³ A Written Statement in December 2015 indicated support for some form of scheme from the consultation. The Welsh Government expressed cautious support for commencing the *Localism Act 2011* provisions with regard to Wales following the 2016 National Assembly election.⁴ This has not taken place at the time of writing. Alternative options for Welsh communities are provided on the Welsh Government's [Assets Cymru](#) web pages.

1.1 Nomination

The first element of the community right to bid is nominating a community asset. Parish councils and community organisations may nominate land or buildings to the local authority (the district or unitary council) to be included in their list of community assets. Nominations may not be made by individuals,⁵ or by county, district or unitary local authorities themselves. A more detailed definition of bodies that have a local connection (and which therefore may propose assets for listing) can be found in the [Assets of Community Value \(England\) Regulations 2012](#).

Regulation 6 of the 2012 regulations sets out the content of a community nomination, which must include a description of the

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

² See Welsh Government, [Written Statement – Assets of Community Value measures contained in the Localism Act 2011](#), 14 October 2014, for a recent summary of the Welsh Government's position.

³ Welsh Government, [Protecting Community Assets](#), May 2015

⁴ Welsh Government, [Written Statement: Assets of Community Value](#), 7 December 2015

⁵ See DCLG, [Community right to bid: non-statutory advice note](#), October 2012, p.10

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 is considered to be of community value must also be included.

Following receipt of a nomination of land or buildings, the local authority then has eight weeks to make a judgement on whether the land should be listed. If it decides that the nomination meets the criteria, the local authority must enter it on its list of assets of community value. Properties remain on the list for five years, unless they are sold following a moratorium period being triggered.⁶ A list of unsuccessful nominations must also be kept; it is up to the local authority how this is published.

The asset must be a building or land, as defined in section 88 of the 2011 Act. The contents of a building, or related services or business assets, are not covered by the Act.

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. Further classes of property are excluded by Schedule 1 of the [Assets of Community Value \(England\) Regulations 2012](#). These include temporarily unoccupied residences, holiday lets and caravan sites. Land and buildings used for statutory undertakings (e.g. working electricity sub-stations) are also exempt.

Once listed, the local authority must inform the owner of the property and other interested parties that it has been listed, enter the listing 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 if the owner applies and the local authority accepts that listing has had a detrimental effect on the value of the property.

1.2 Community assets and bids

The second element of the community right to bid is the submission of a bid. The provisions for a community group to prepare a bid only apply when the asset is being put up for sale. The act of listing the asset does not compel the owner of the listed asset to sell it, nor does it create any restriction on what the owner can do with the property while they own it.

A moratorium will be applied when a listed asset is put up for sale. There is an initial six-week interim period, during which a community group may express interest in bidding. If one does, a six-month moratorium begins 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. After a moratorium period has ended, another moratorium period cannot begin for a further 12 months.

⁶ *Localism Act 2011* section 87 (3); [Assets of Community Value \(England\) Regulations 2012](#) regulation 2 (b). A property will be removed from the list after it is sold, whether that sale is to a community group or another body.

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 for whatever price they choose. There is no requirement to co-operate with a community bid, for instance by providing additional information about or access to the property. 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.

A community bid does not have to come from the same organisation that listed the asset initially. Equally, there is nothing in the legislation to prevent two or more 'community' bids for the same asset.

The scheme differs from the Scottish community right to buy, where the community group has first refusal on the asset.⁷

Compensation may be paid, by the local authority, to the owner of land if they have incurred loss or expense in relation to the land which would not have been the case if it had not been listed (see regulation 14 of the 2012 regulations).

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.

1.3 Communities and Local Government Committee report

The Communities and Local Government Committee published a report, *Community rights*, on 5 February 2015. It recommended a number of adjustments to the right to bid, including:

- Extending the moratorium period from six months to nine: this was a particular concern in disadvantaged areas, which are perceived to be making less use of community rights than other communities;
- Allowing the moratorium period to end if the community bidder withdrew from the process;
- A right of appeal for nominators, under certain circumstances, when the local authority refuses to list an asset, including a right of appeal to an independent tribunal;
- A greater focus on what communities wish to achieve, instead of the legal processes associated with the various community rights;
- Requiring local authorities to maintain a "basic level of data" on the "take-up of all community rights".⁸

The Government did not accept any of these recommendations in its response.⁹ However, the Conservative Party's 2015 manifesto made reference to the moratorium period:

⁷ For more details on the community right to buy, see Scottish Government, [Community Right to Buy in Scotland](#).

⁸ *Ibid.*, p. 38

⁹ See DCLG, [Government response to the Communities and Local Government Select Committee Inquiry into the Community Rights](#), Cm 9052, March 2015

We will extend the length of time communities have to purchase these assets, and require owners to set a clear 'reserve' price for the community to aim for when bidding. We will set up a Pub Loan Fund to enable community groups to obtain small loans to pay for feasibility work, lawyers' fees, or materials for refurbishment, where they have bid to run the pub as part of our reforms to the Community Asset Register.¹⁰

The Pub Loan Fund was established in September 2015.¹¹

1.4 Reviewing community rights

DCLG stated in January that it will carry out a full review of community rights in 2015.¹² No publications have been forthcoming since then, though the review has been referred to in Parliament. Baroness Williams mentioned it in an exchange in May 2016:

We have spoken to stakeholders—from local authorities and community groups to property owners—listening to their reflections and experiences of how the Community Right to Bid is working in practice. Their views will allow us to develop options to strengthen the policy, as we set out in the manifesto commitment.¹³

A Parliamentary Question on 28 April 2016 produced the following response:

... officials are undertaking a review of the implementation of the policy in relation to all assets across the country. They are engaging a broad range of stakeholders - local authorities, community groups, property owners - to listen to their reflections and experiences concerning the policy and any evidence on how the Community Right to Bid is working in practice.¹⁴

A further question answered on 6 November 2017 suggested that this 'review' is continuous rather than fixed in time:

Lord Kennedy of Southwark: To ask Her Majesty's Government what progress they have made in reviewing the Assets of Community Value scheme.

Lord Bourne of Aberystwyth: Since 2012 Community groups across England have made use of the Community Right to Bid legislation with more than 4,000 local assets listed as Assets of Community Value. The legislation attempts to balance the wishes of the community with the rights of owners. We continue to listen to feedback from all partners (communities, owners and local authorities) and continue to keep the scheme under review.¹⁵

1.5 Statistics and guidance

The Department for Communities and Local Government does not collect formal statistics on either the number of listed assets or the number bought by community groups. Nor is there a national list either

¹⁰ Conservative Party, *Strong Leadership, A Clear Economic Plan, A Brighter, More Secure Future*, 2015, p21

¹¹ DCLG, [Run your local with £1.5 million Pub Loan Fund](#), 11 September 2015

¹² See [HCWS221](#), 26 January 2015

¹³ [HLDeb 24 May 2016 c264](#)

¹⁴ [HC PQ 36093 2015-16](#), 28 Apr 2016

¹⁵ [House of Lords PQ 2642](#), 2017-19

of listed assets or of assets that have been purchased by the community. The website [MySociety](#) announced its intention to create such a list in late 2017.

The Communities and Local Government Committee report, in February 2015, stated that 11 assets had been bought by community groups, whilst 122 groups had triggered the moratorium period. DCLG evidence to the inquiry stated that nine assets had been bought.¹⁶ A Parliamentary Question in January 2017 stated that around 4,000 assets of community value had been listed in England.

The first asset to be bought by a local community was the [Ivy House pub](#) in Nunhead, London Borough of Southwark.

The DCLG issued [a non-statutory advice note](#) on 4 October 2012, giving general information about the policy. An LGA guide is also available on the use of local assets more generally.¹⁷ An [interactive map](#) showing the use of all of the community rights is available, though it is not dated. Resources for local organisations that wish to pursue a community right to bid (or other routes to local ownership of land or properties) are available from the website www.mycommunity.org.uk.

There are no grant schemes specifically targeted at assisting local bids to buy assets of community value. The Plunkett Foundation runs a grant programme called '[More Than a Pub](#)', directed specifically at local organisations wishing to buy local pubs. Local organisations are free to apply to appropriate grant funders for such uses, or to arrange alternative forms of financing. A list of possible funding schemes can be found [on the Locality website](#).

¹⁶ Communities and Local Government Committee, [Community Rights](#), HC-262 2014-15, 2015, p. 8-11

¹⁷ LGA, [Empowering communities: making the most of local assets](#), 2011

2. The right to bid: constituency issues

2.1 Saving a threatened local asset

Frequently a community will seek to list a local asset at short notice as a way of preventing it from being sold or redeveloped. This may or may not be an effective approach.

Listing an asset cannot in itself prevent an asset from being sold. If a sale process has begun but the asset is not yet listed, it may be possible to halt a sale if the local authority lists the asset before the sale concludes. This depends on how quickly the local authority considers the application to list. If the sale concludes before the authority lists the asset, the community will not be able to trigger the moratorium procedure until the asset is *next* sold.

Nominations do not have to take account of current patterns of land ownership. For instance, where adjoining land and buildings have the same owner, either the land or the buildings can be nominated separately if the nominators wish. By the same token, an owner may sell part of a nominated asset but not all of it, so long as they comply with the moratorium procedures.

2.2 Use by the community

An asset must have been 'used' by the community in the 'recent past'. There is no definition in statute or in guidance of the term 'recent past'. It is for local authorities to decide whether an asset has been used recently enough to justify its inclusion on the list. An asset must also face a realistic prospect of reuse by the community in the next five years. However, a prospect of use or reuse by the community does not itself need to be demonstrated by a proposal to take the asset over (*Henthames Ltd v South Oxfordshire DC*, 2015).¹⁸

A building or land which has *never* been used by the community will not be eligible to be listed. A community which wishes to use a building as a community asset when it has never been one in the past cannot use the Right to Bid to achieve this.

2.3 'Going concerns'

There are certain types of land and asset disposal to which the provisions for the community right to bid do not apply. These are listed in Schedule 3 of the 2012 regulations, and explained on pages 22-24 of the guidance note.¹⁹

One of these provisions is that disposal of an asset as a 'going concern' does not trigger the moratorium procedures. This would enable, for

¹⁸ This case, and a number of other recent cases, are noted on the [Local Government Lawyer](#) website.

¹⁹ See DCLG, [Community right to bid: non-statutory advice note](#), October 2012, p.22-24

instance, the sale of a pub to another pub owner to take place without triggering the moratorium period and possibly a community bid. The 2015 CLG Committee report noted concerns that pubs were being sold as 'going concerns' to owners who were unlikely to want to continue to manage them, and stated:

We recommend that the Government...bring forward proposals to close the loophole in the current legislation which allows an Asset of Community Value to be sold as a going concern when the buyer has no intention of retaining it in its current use.²⁰

2.4 The five-year period

Assets remain on the relevant list of assets of community value for five years (unless they are sold after a moratorium period is triggered: see section 1.1). After five years, the property must be removed from the list. As this policy came into effect in late 2012, from late 2017 it is likely that some assets will begin to be removed from local lists.

The procedure for re-listing an asset is identical to the procedure for listing it. It is not yet clear whether local groups will find it straightforward to have an asset listed for a second period of five years. Relevant matters may have changed during that period: for instance, the provisions over 'use in the recent past' (see section 2.2 above).

2.5 Pubs and change of use rights

The Government issued a written statement in January 2015,²¹ stating that it planned to pass regulations providing that any property listed as an asset of community value would have to apply for planning permission to change its use class, instead of being able to do so under permitted development rights. This was done via the [*Town and Country Planning \(General Permitted Development\) \(Amendment\) \(England\) Order 2015*](#) (SI 2015/659), effective as of 6 April 2015.

The aim was to close a loophole in the law, whereby owners of pubs which had been listed as assets of community value could use permitted development rights to convert them to residential property. As noted above, residential properties cannot be assets of community value. Pub owners could therefore use this route to sell the property whilst avoiding the moratorium period and/or a bidding process.

2.6 The right to bid and planning applications

There have been instances of the listing of a property as an asset of community value being regarded as a 'material consideration' for planning purposes. In other words, the grant or refusal of planning permission might take into account the fact that the property was listed as an asset of community value. This would take place at the discretion of the relevant planning committee: the matter is not mentioned in

²⁰ Communities and Local Government Committee, [Community Rights](#), HC-262 2014-15, 2015, p. 16

²¹ See [HCWS221](#), 26 January 2015

legislation. The Government's [non-statutory guidance note of late 2012](#) says:

2.20 The provisions do not place any restriction on what an owner can do with their property, once listed, so long as it remains in their ownership. This is because it is planning policy that determines permitted uses for particular sites. However the fact that the site is listed may affect planning decisions - it is open to the Local Planning Authority to decide whether listing as an asset of community value is a material consideration if an application for change of use is submitted, considering all the circumstances of the case.²²

There are examples of applications for change of use being rejected with the planning authorities citing listing as a community asset as a factor: these include the Peterborough Arms, Dauntsey (near Chippenham, Wiltshire).²³ Some additional cases are noted [on the Planning Law blog](#). The 2015 Communities and Local Government Committee report said:

We recommend that the Government, as part of its review of Community Rights later in 2015, consult on a proposal to amend its guidance so that ACV listing is a material consideration for local authorities in all planning applications other than those for minor works.²⁴

2.7 Extending the right to bid

The right to bid covers only land and buildings. It does not cover any business or service run from a building. Nor does it cover any other elements of community life that could be described as 'assets'. A number of suggestions have been made for extending the right to bid to different categories of 'asset':

- Helen Goodman MP suggested, in a Westminster Hall debate on 30 March 2017, that it should be possible to classify newspapers and other local businesses as community assets.²⁵ This attracted some interest from the responding Minister, Matt Hancock MP:

The legislation on such assets, however, refers only to the land and buildings. That might potentially cover the physical assets of a local newspaper, but her point is that there is more to the assets of a local newspaper than the physical asset. I will therefore have a conversation with Ministers at the Department for Communities and Local Government, the lead Department, to see whether we can make any progress. We will have to look into the practical questions, but I understand her thrust.²⁶

- During the Committee Stage of the *Bus Services Bill 2016-17*, Daniel Zeichner MP introduced an amendment that would have

²² DCLG, [Community Right to Bid: Non-Statutory advice note for local authorities](#), 2012, p. 6

²³ See [the Wiltshire Council officers' report to the relevant planning committee](#)

²⁴ Communities and Local Government Committee, [Community Rights](#), HC-262 2014-15, 2015, p. 12

²⁵ [HC Deb 30 Mar 2017](#) c200-01WH

²⁶ *Ibid.*, c224

permitted bus routes to be designated as community assets.²⁷

Later in the debate, the Transport Minister, Andrew Jones, said:

I do not think that it is reasonable or sensible to force operators to continue to operate a service, potentially at significant financial detriment, for six months rather than the 56 days currently required. Doing so could act as a disincentive for operators to trial new services, step in to see whether they can make a service viable or operate services commercially where local authority funding is precarious and can be kept going for only a short time.²⁸

- A debate on rural post offices, on 17 November 2016, saw several references to the status of post offices as 'community assets', though this was not explicitly linked to the assets of community value regime.²⁹

None of these suggestions have resulted in changes at the time of writing. There is an element of overlap with the "community right to challenge", which allows local groups to bid to take over public services (see the Library briefing paper [The community right to challenge](#)).

Communities can make bids to take on local public services via the Community Right to Challenge.³⁰

2.8 Appeals

Although the owner of an asset may appeal against its inclusion on the list, there is no provision for a community nominator to appeal if the local authority rejects an application to list land or buildings as an asset.

Regulation 11 of the 2012 regulations provides that the owner of a building may appeal against its listing as an asset of community value. The first such tribunal case concerned the [Chesham Arms pub](#) in Hackney. At a hearing on 17 October 2013, the judge ordered that the pub should remain on Hackney's list of assets of community value.

²⁷ [HCDeb 14 Mar 2017 c77](#)

²⁸ [HCDeb 14 Mar 2017 c80](#). See also [HLDeb 24 May 2016 c265](#)

²⁹ [HCDeb 17 Nov 2016 c202-228](#)

³⁰ See the Library briefing paper *Community Right to Challenge*.

3. Community land and assets: other options

3.1 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*.

Legal powers

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 2003.³¹ 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).³²

Local authorities may also dispose of land or buildings on a long leasehold basis.

Current practice

Local authorities are 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

³¹ DCLG, *Circular 06/03: Local Government Act 1972 general disposal consent (England) 2003 disposal of land for less than the best consideration that can reasonably be obtained*, 2006

³² *Ibid.*, p. 11

enterprises and social firms, mutuals, development trusts and housing associations.³³

Locality's 2010 report *To Have and To Hold* noted 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.³⁴

However, there has been a trend in the other direction since 2010: the think-tank Localis published a report in 2014 entitled *Public land, public good*, which recommended that local authorities seek to use assets as sources of revenue as central grants continued to fall.

Community organisations seeking to take on assets from local authorities would normally need a business plan and evidence of organisational stability. Local authorities will want to minimise the likelihood of facing future pressure to step in if a community organisation fails after taking on an asset.

The Welsh Government piloted a support programme for community asset transfer in late 2015 and early 2016. It has produced a series of resources, including a best practice guide, [available on its website](#). An evaluation of community asset transfer in Wales was also published in 2016.³⁵

Policy development

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 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

³³ LGA/DeA, [Improving efficiency in the culture and sport sector](#), 2010, p.3

³⁴ Locality, [To have and to hold](#), 2010, p. 14

³⁵ CMI, [Evaluation of the community asset transfer programme](#), May 2016

transferred include redundant police stations, old hospital sites, empty shopping parades and closed down pubs on estates.³⁶

A community empowerment white paper, published in July 2008, repeated the Government's commitment to this policy and summarised progress made to date.³⁷ The white paper announced the establishment of the Asset Transfer Unit (ATU), which provided advice and support to individuals and groups (including local authorities) on asset transfer. This was later folded into the independent organisation [Locality](#). A Government response to the Quirk Review, entitled [Building on Strong Foundations](#), was published in 2009.

3.2 Community right to reclaim land

Schedule 16 of the [Local Government, Planning and Land Act 1980](#) 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**.³⁸ In effect, local groups can request a disposal of land by a public body, and the Secretary of State may direct it to do so under this schedule. Brief details of this procedure, 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.³⁹ The Government has also published [a list of public bodies affected by the provisions](#).

The procedure applies to the public bodies listed in schedule 16 of the 1980 Act, and requests can be made to 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. The 2015 CLG Committee report stated that 42 requests had been received between February 2011 and June 2014, of which two were under consideration. Locality, in evidence in the 2015 CLG Committee report, proposed a 'right to demand discounted asset transfer' – i.e. for discounted transfer to be available as of right, not to depend on Government benevolence. The Committee did not endorse this suggestion, but recommended that the Government issue draft guidance on what constitutes under-used land, to help proposers to know where this procedure might best be used.

In January 2015, the Government published a table of recent requests under this procedure, in response to a series of Parliamentary questions.⁴⁰ This recorded 78 applications in four years. None of them resulted in a decision to direct disposal, though fourteen applications

³⁶ DCLG, "[Councils urged to reap the benefits of handing assets to communities](#)", News release 2007/0092, 15 May 2007. The main report is entitled [Making assets work: the Quirk Review](#), May 2007.

³⁷ See [Communities in control: real people, real power](#), Cm 7427, July 2008, chapter 8.

³⁸ See DCLG, "[Communities to be given a right to reclaim land](#)", 2 February 2011

³⁹ See DCLG, [Public request to order disposal process](#), 5 October 2011. See also Locality, [Empowering communities: making the most of local assets: an officer companion guide](#), 2011, p.18-22

⁴⁰ [PQ HC220952 2014-15](#), 15 January 2015

were under consideration at the time of publication. In a response to a Parliamentary Question in 2015, the Minister, Brandon Lewis, indicated that requests under this community right would be dealt with under the Right to Contest in future:

Whilst theoretically people can still use the Community Right to Reclaim Land for Government land, in practice, most will now be dealt with under Right to Contest.⁴¹

3.3 Right to Contest

The Government introduced a 'Right to Contest' in January 2014, relating to land owned by central government and its agencies.⁴² Members of the public may submit a form specifying land and buildings which they believe are surplus to central government requirements, or could be put to better economic use. This right also covers local authority-owned land and buildings that are under-used or derelict. The guidance states:

Anyone can use Right to Contest, including businesses, local authorities or members of the public, to challenge the government about a site, as long as they believe that all the following apply.

Land owned by a central government department or one of their arms' length bodies

The site:

- is potentially surplus or redundant
- could be put to better economic use, e.g. for housing or to help businesses develop or expand

Please note that you can use the Right to Contest to challenge central government sites which are in use, as long as you think that operations could be moved to a different location.

Land owned by a local authority or certain other public bodies

- the site is empty or under-used
- there are no plans to bring it back into use⁴³

The relevant department may then agree to sell the land or buildings concerned on the open market. If it does not, the Department for Communities and Local Government (DCLG) will effectively act as arbiter, taking both perspectives into account. The relevant department may indicate that it does not wish to sell if "the site is vital for operational purposes" or "other considerations outweigh the potential better economic use".⁴⁴

The 2015 Spending Review said:

The government will also strengthen the existing legislation around Right to Contest to allow local communities to challenge the use of land and property that is in use by local authorities, not

⁴¹ [House of Commons PQ 220952 2014-15](#)

⁴² [HCWS509 2014-15](#), 26 Mar 2016

⁴³ See Cabinet Office, [Right to Contest: government guidance](#), 8 Jan 2014

⁴⁴ *Ibid.* The application form is also available at this link.

just property that is empty or under-used, where these assets could be made surplus and put to better use.⁴⁵

The Right to Contest is not at present backed by specific legislative provisions.

3.4 Compulsory purchase order requests

In 2015, the Government issued revised guidance 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 90 of the revised 'Crichel Down regulations'. The guidance states:

183. What requests can be made to a local authority?

Authorities can receive requests from the community or local bodies to use their compulsory purchase powers to acquire community assets, which may have been designated as [Assets of Community Value](#), that are in danger of being lost where the owner of the asset is unwilling to sell, or vacant commercial properties that are detracting from the vitality of an area.

184. What considerations need to be made when receiving a request?

Local authorities should consider all requests from third parties, but particularly voluntary and community organisations, and commercial groupings like Business Improvement District bodies, which put forward a scheme for a particular asset which would require compulsory purchase to take forward, and provide a formal response.

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 those making the request.

Local authorities should, for example, ascertain the value of the asset to the community, or the effect of bringing it back into use; 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.⁴⁶

3.5 One Public Estate

The One Public Estate programme was begun as a pilot in 2013. The programme is designed to encourage local councils to work with central government and other public sector organisations to share buildings and re-use or release surplus property and land.⁴⁷ It may lead to land and buildings being sold, shared, repurposed, or used for income generation. It is being jointly delivered by the Cabinet Office's Government Property Unit and the [Local Government Association](#).

The Cabinet Office has said that the One Public Estate programme is designed to:

⁴⁵ HM Treasury, *Spending Review 2015*, 2015, p.60

⁴⁶ DCLG, *Compulsory purchase process and the Crichel Down rules: guidance*, October 2015, p. 90

⁴⁷ Cabinet Office, *'Chloe Smith welcomes new pilot property scheme'*, 25 June 2013

- Deliver significant savings for the taxpayer
- Provide better, more integrated local services, in places which are more convenient for users; and
- Release land and property which can be reused for housing and new enterprise, boosting local jobs, growth and house-building.⁴⁸

The programme was launched in May 2013, with twelve participating councils.⁴⁹ A further twenty councils joined the programme in August 2014.⁵⁰ A series of case studies can be found in a joint Cabinet Office / Local Government Association publication from August 2014.⁵¹

The LGA and Cabinet Office publication, *One Public Estate: Unlocking the Value in Public Sector Assets*, describes the work of the programme during its first two years:

We began OPE as a pilot programme with 12 areas in 2013. In 2014, a further 20 areas were successful in joining the programme. Together, these 32 areas forecast the following benefits from being on the programme compared with operating alone: 20,000 jobs, c.9,000 homes, reducing running costs by £77 million, and raising £129 million from land and property sales.⁵²

An additional £6m was then announced in the 2015 Summer Budget to expand the programme, with larger partnerships of councils and further schemes.⁵³ In July 2015 councils were invited to join Phase 3 of the programme: this was then launched in December 2015.⁵⁴

107 local councils agreed to join Phase 3. According to the LGA, "together they expect to deliver 16,500 new homes, 36,000 new jobs, raise £138 million in capital receipts and save £56 million in running costs over the next five years".⁵⁵ A full list of the local authorities involved in Phase 3, including their funding allocation, is available on the [Cabinet Office website](#).⁵⁶

In January 2016 the LGA and the Cabinet Office also published *One Public Estate: Unlocking the Value in Public Sector Assets*. This stated that "central government is set to release land for 160,000 homes and raise at least £5 billion from land and property disposals and local government is forecast to raise over £9 billion from land sales".⁵⁷ The [Invitation to Apply](#) for Phase 4 was published on 1 April 2016. This stated that the LGA and Cabinet Office were:

⁴⁸ [PQ 13191](#) [Public Sector: Assets], 11 November 2015

⁴⁹ Cabinet Office, *Chloe Smith welcomes new property pilot scheme*, 25 June 2013

⁵⁰ Cabinet Office, *Successful government estate programme expands*, 6 August 2014

⁵¹ Cabinet Office / LGA, *One Public Estate: Transforming Property and Services*, August 2014

⁵² Cabinet Office and the Local Government Association, *One Public Estate: Unlocking the Value in Public Sector Assets*, January 2016, p10

⁵³ HM Treasury, *Summer Budget 2015*, para 2.26

⁵⁴ Local Government Association, *One Public Estate*, 6 June 2016

⁵⁵ Local Government Association and Cabinet Office, *One Public Estate: Invitation to Apply*, April 2016, p1

⁵⁶ See Cabinet Office, *'More local authorities set to sell government assets'*, 11 December 2015

⁵⁷ Cabinet Office and the Local Government Association, *One Public Estate: Unlocking the Value in Public Sector Assets*, January 2016, p6.

looking to build a national programme on the successful foundations of earlier pilot phases. This means new partnerships will continue to record and map assets, establish property boards to bring together public sector partners, and agree and implement joint projects. We also retain the philosophy of cross-public sector working on land and property to unlock major service transformation and/or economic growth priorities locally.⁵⁸

Applicants were required to submit an expressions of interest for Phase 4 by 6 May and a final services and assets delivery plan by 29 July 2016. Successful applicants received up to £500,000 per partnership. By the end of 2017, the programme was in its sixth phase. [A list of participating councils](#) was published in December 2017.

A Parliamentary Answer in October 2017⁵⁹ gave details of the spending to date on the programme, including grants provided by HM Treasury to enable “small-scale land remediation and infrastructure projects that will deliver much-needed land for housing”.⁶⁰

Intended outcomes

One of the aims of the programme is to allow surplus land to be used as a source of revenue by local authorities.⁶¹ The Government has said that councils on phase 2 of the programme “expect to raise £129 million in capital receipts from land sales and cut running costs by £77 million over 5 years”.⁶² In December 2016, a Written Answer stated that “One Public Estate covers 50% of councils in England and expects to deliver at least £56 million in running cost savings, £138 million in capital receipts, 36,000 jobs, and 16,500 homes by 2020”.⁶³

Use of receipts from public land

The 2015 Spending Review contained the following announcement:

1.245 To support local authorities to deliver more efficient and sustainable services, the government will allow local authorities to spend up to 100% of their fixed asset receipts (excluding Right to Buy receipts) on the revenue costs of reform projects. Instead of holding assets that could be made surplus, councils will be able to sell them and reinvest in their services that allow them to deliver more for less – for example in home improvements that can help keep older people from needing to go to hospital. The flexibility to use asset receipts for reform projects will be subject to a number of conditions, including limits on the years in which the flexibility will be offered and the qualifying criteria for reform projects. This detail will be set out by DCLG alongside the Local Government settlement in December.⁶⁴

This is in effect a commitment to permitting ‘capitalisation’ – the transfer of capital income to revenue budgets – under certain circumstances. This would allow local authorities that are struggling

⁵⁸ Local Government Association and Cabinet Office, [One Public Estate: Invitation to Apply](#), April 2016, p2

⁵⁹ [House of Commons PQ 108426](#) 2017-19

⁶⁰ LGA, [One Public Estate: invitation to apply](#), August 2017

⁶¹ See, e.g., Cabinet Office, [More local authorities set to sell government assets](#), 11 December 2015

⁶² Cabinet Office, [Government drive to use land and property for growth](#), 23 July 2015

⁶³ [PQ HC907870](#), 2016-17, 8 December 2016

⁶⁴ *Ibid.*, p. 60

with reductions in central grant funding to supplement their revenue from this source. Guidance on the type of initiative on which receipts may be spent was published alongside the draft Local Government Finance Settlement in December 2015.⁶⁵ Further discussion of capitalisation can be found in the Library note [Local government in England: capital finance](#).

Alternative viewpoints on the use of public land and property have been advanced. The 2014 Localis report [Public land, public good](#) advocated the use of land and property by local authorities as a capital asset that could supply revenue for local services. A similar point was made by the 2015 Centre for Cities report *Delivering change: making the most of public assets*. Local authorities may be influenced by a combination of concerns in making decisions about local assets, including facilities and quality of life for residents, economic growth, and revenue streams. The Centre for Cities report says:

The sale of an asset (or liability) might sometimes be an appropriate response, but there is a shift away from focusing on cost-reduction and disposal *above all else*. The appropriate responses to managing public land and property assets should be assessed through the lens of place and the contribution an asset can play [sic] in the local economy, rather than a silo-led approach to disposing of assets by sale on a case by case basis as standard.⁶⁶

The report also notes that mapping the public estate has been a particular challenge, as the information held locally is often poor. Participants in One Public Estate are required to upload details of their property assets to the Government database 'E-PIMS'.⁶⁷ This underlies the [Government Property Finder](#) database.

A number of the areas that have agreed 'devolution deals' with the Government during 2015 have agreed to set up 'land commissions' or 'joint assets boards'. The aim of such bodies is to map all public assets in their locality and to bring together the public bodies that own them i.e. taking forward the aims of the One Public Estate programme. These commissions are not statutory, nor do they benefit from a fixed funding stream from the Government: they are partnerships between local public bodies.

3.6 Scotland: community asset transfer

The Scottish Parliament introduced the concept of 'community asset transfer' in the *Community Empowerment (Scotland) Act 2015*. The Scottish power equates to the description of community asset transfer above, and also encompasses the 'community right to reclaim land' and 'right to contest' in England. However, it is distinct from the 'right to buy' introduced by the *Land Reform (Scotland) Act 2003*. It covers a range of public bodies listed in schedule 3 of the 2015 Act. This part of the Act came into force in January 2017.

⁶⁵ DCLG, [Guidance on flexible use of capital receipts](#), 17 December 2015

⁶⁶ Centre for Cities, [Delivering Change: making the most of public assets](#), 2015, p.30

⁶⁷ [HLDeb 6 Feb 2017 c351](#)

The 2015 Act requires the public body to which a request is made to “to assess requests transparently against a specified list of criteria, and to agree the request unless there are reasonable grounds for refusal”.⁶⁸ While a request is under way, the public body cannot dispose of the land or property to anyone else. Requests can be made by community groups, either representing a particular geographical area or a community of interest: “faith groups, ethnic or cultural groups, people affected by a particular illness or disability, sports clubs, conservation groups, clan and heritage associations”.⁶⁹

Guidance for Scottish community organisations is available from the [Community Ownership Support Service](#). Scottish community councils (the equivalents of parish and town councils in England) are not covered by this legislation.

⁶⁸ Scottish Government, *Asset Transfer: Guidance for Community Transfer Bodies*, 2017, p1

⁶⁹ Scottish Government, *Asset Transfer: Guidance for Community Transfer Bodies*, 2017, p14

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