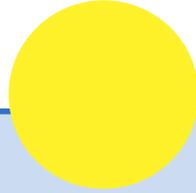


# DTNI

Empowering Communities



## SHAPING COMMUNITY ASSET TRANSFER



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## Acknowledgements

Lorraine Hart is Director of Community Land Use, a London-based organisation committed to the promotion and support of community-led development and regeneration. Lorraine leads on policy research for funders and statutory authorities, as well as practical support for voluntary and community organisations who are developing a land or building project.



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# Community rights for Asset Transfer in Northern Ireland

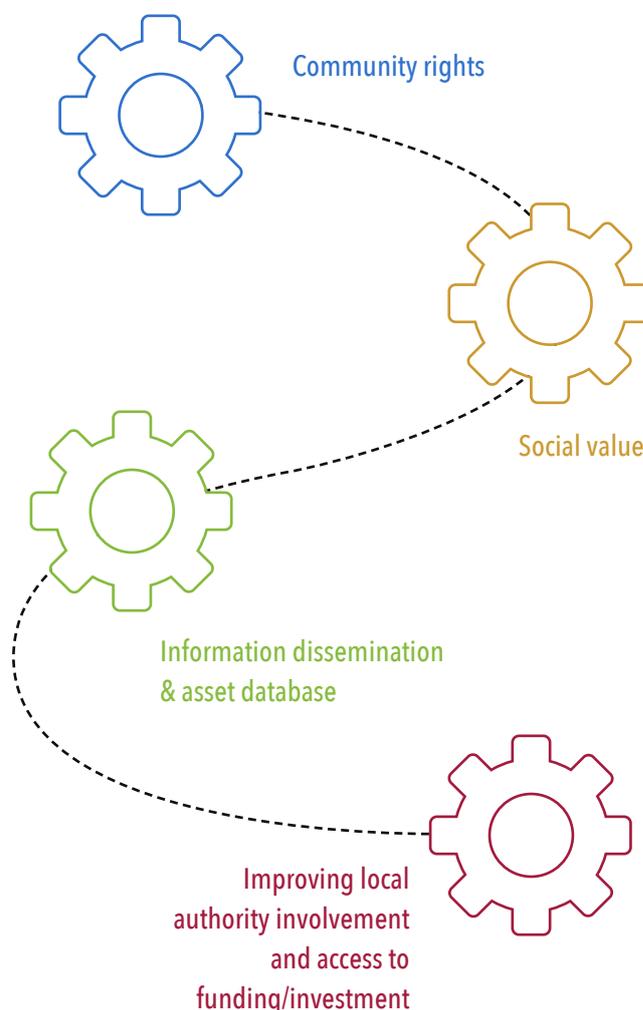
In 2014, the Northern Ireland Executive introduced a policy framework in support of Community Asset Transfer<sup>1</sup> (CAT)<sup>2</sup>. The term 'asset transfer' was originally used to indicate that communities were to be the beneficiaries of public assets via transfer of ownership. There is a recurring inconsistency in how the CAT policy guidelines are used by public bodies in Northern Ireland (NI). In practice, some public bodies have transferred assets at less than market value or no financial consideration, but many more have involved a financial transaction, sometimes at open market value (OMV).

## 1. Introduction

Several factors have decelerated the promised social, economic, and environmental returns envisioned through making public assets available to voluntary and community sector organisations<sup>3</sup>. The collapse of the NI Executive in January 2019 has been a significant contributory factor, as has the absence of legislation to underpin the delivery of the CAT policy framework aspiration; that is, to 'invest in social enterprise growth to increase sustainability in the broad community sector', and by extension, progress community rights of ownership.

In September 2019, an Innovation Lab was held by the Department of Finance (DfC), and the Department for Communities (DfC) which looked in detail at the operation of the Community Asset Transfer process in NI. It identified both the gaps and weaknesses and recommended that the possibilities for framing community rights legislation in Northern Ireland be examined.

**A total of thirty-six recommendations were made covering the areas of:**



This scoping paper reflects on the actions needed to advance on community ownership and rights in NI. Current legislation and practice across the UK can inform the development of community rights legislation for NI concerning community ownership and, specifically, land and buildings acquired by means of CAT. The rights would be for use by community/voluntary/not-for-private-profit organisations (referred to throughout as 'community organisations').

This paper is based on the results of a review of literature and data on practice in asset transfer across the United Kingdom. A desk-based review was then followed up with interviews with Northern Ireland practitioners and academics selected by Development Trusts NI (DTNI). These stakeholders were asked for their views on:

- (i) Experience of asset transfer in NI.
- (ii) Provisions for acquiring land and building assets to be embedded in community rights legislation.
- (iii) The specific issues that the rights would have to address so that any legislation could be framed for purchasers/recipients and sellers in NI.
- (iv) The specific difficulties that there would be for purchasers/recipients and sellers if such rights existed.

## 2. Community Rights in the UK related to Asset Transfer

### (i) The NI Context

**TABLE 1: Policy & Legal Provisions Northern Ireland**

#### 1. Community Asset Transfer in Northern Ireland - Enabling and Supporting Community Ownership and Management of Public Assets:<sup>4</sup>

The policy framework for supporting community asset transfer and the potential introduction of community rights legislation in NI. Specifically, it supports delivery of the NI Executive's commitment in the Programme for Government (2011-2015) to 'invest in social enterprise growth to increase sustainability in the broad community sector'. It also commits to working to identify resources to support the development of Community Asset Transfer.

#### 2. Land Disposal at Less Than Best Consideration:

The Stormont Regulation and Government Property Act (Northern Ireland) 1933 makes provision (section 5) for the sale of assets by NI central government departments at less than best consideration to a body that does not trade for profit subject to the consent of the Department of Finance NI.

#### 3. Local Government Act (Northern Ireland) 1972:

Allows councils in Northern Ireland to acquire and to dispose land (part VII, sections 95 & 96) for the purposes of carrying out their statutory functions. The power to dispose of land at less than best consideration requires ministerial consent.

#### 4. General Power of Competence:

As in England, this general power exists within the Local Government (Northern Ireland) Act 2014 (sections 79 & 80) and grants councils the ability to do anything an individual can do (subject to restrictions) rather than only what they are directly empowered to do.

<sup>1</sup> Community Asset Transfer in Northern Ireland: Enabling and Supporting Community Ownership of Public Assets.

<sup>2</sup> Community Asset Transfer is an established mechanism used to enable the community ownership and management of publicly owned land and buildings.

<sup>3</sup> For benefits of CAT see: Murtagh B, Bennett E, Copeland L, and Goggin N (2012) "Community asset transfer in Northern Ireland" JRF & Power to Change Research Institute Report No 3 (2016) "A common interest: the role of asset transfer in developing the community business market".

<sup>4</sup> General Powers of Council.

## (ii) The UK Context

The key legislative instruments supporting community asset transfer in Great Britain are the Localism Act 2011 and the Community Empowerment (Scotland) Act 2015. The respective legislation relevant to England and Scotland is summarised below along with the eligibility requirements for community organisations pursuing the exercise of community rights.

### TABLE 2: The Localism Act<sup>5</sup> (England)

- 1. Community Right to Bid:** Enables community organisations to nominate local authority 'assets of community value'. If successful, and if the asset is put up for sale, the nominating community organisation has a window of six months in which it can put together an offer to buy it. There is no obligation to accept the bid of the community organisations.

#### Community requirements

Nominating community groups can include a parish council, a neighbourhood forum, a not-for-profit organisation or a group of at least twenty-one individuals connected to the local area.

- 2. Community Right to Build (Neighbourhood Development Orders):** 'As part of neighbourhood planning, the Act gives groups of local people the power to deliver the development that their local community wants. They may wish to build new homes, businesses, shops, playgrounds or meeting halls.'

#### Community requirements

The group preparing the neighbourhood plan must have more than half its members from the local area and they must be established to pursue the social, economic, and environmental improvements of the area. Any profits resulting from the development must be used for the good of that community, not for private gain.

- 3. Community Right to Plan/Neighbourhood Planning:** 'The Act introduces a new right for communities to draw up a neighbourhood plan... and say where they think new houses, businesses, and shops should go... Local communities will be able to use neighbourhood planning to grant full or outline planning permission... making it easier and quicker for development to go ahead... local people will be able to vote on it in a referendum. If the plan is approved by a majority of those who vote, then the local authority will bring it into force.'

#### Community requirements

The minimum criteria differ dependent on the location of the proposed Neighbourhood Plan area. If it is a parish area (the lowest level of local government in England) then the parish can apply. If in an urban area then the group must constitute with a minimum of twenty-one people drawn from the area and be established to pursue the social, economic and environmental improvement of the area.

- 4. Community Right to Challenge:** 'Provides groups, parish councils and local authority employees the right to express an interest in taking over the running of a local authority service. The local authority must consider and respond to this challenge and, where it accepts it, run a procurement exercise for the service in which the challenging organisation can bid.'

#### Community requirements

The provisions for local authority employees who want to use the right must form a suitable not-for-private-profit legal vehicle.

- 5. General Power of Competence:** This took effect in England in 2012 and allows councils the ability to do anything an individual can do (subject to restrictions) rather than only what they are directly empowered to do.

<sup>5</sup> Descriptions in quotes below are drawn from the *Plain English Guide to the Localism Act 2011* Dept for Communities, and local government.

### TABLE 3: Supplementary Legal Provisions (England)

- 1. Community Right to Reclaim Land:** The Local Government, Planning and Land Act 1980 gives power to individuals to request that the Secretary of State makes an order requiring a public body to dispose of land it owns. Previously known as the Public Request to Order Disposal, it was renamed the Right to Reclaim Land in 2011.
- 2. Land Disposal at Less Than Best Consideration:** The Local Government Act 1972 allows councils in England and Wales to dispose of land at 'best consideration that can be reasonably obtained... best consideration... is not simply about a financial transaction but also about any transfer of ownership being seen to contribute to the wellbeing of communities...'
- 3. The General Disposal Consent 2003:** Provides a general consent and guidance which allows councils to sell land at less than best consideration without the need to seek the consent of the Secretary of State, provided that the undervalue is less than £2 million.

### TABLE 4: The Community Empowerment (Scotland) Act 2015<sup>6</sup>

- 1. Participation Requests:** Part 3 of the Act enables communities to request to participate in decisions and processes which are aimed at improving outcomes. Subsequent guidance in 2017 on the request to participate clarifies that the purpose of their request is to facilitate a dialogue with a service provider, contribute to decision-making processes, contribute to service changes, challenge decisions, and seek support for alternatives.
- 2. The Community Right to Buy Land:** The Community Right to Buy in Part 2 of the Land Reform (Scotland) Act 2003 has been amended by Part 4 of the Community Empowerment (Scotland) Act 2015. This extends the Community Right to Buy to all of Scotland, urban and rural. The local community can register an interest in the land, and if the land comes up for sale, they have first choice to buy it. This depends on the landowner deciding to sell the land.
- 3. Asset Transfer Requests:** This provision gives community bodies a right of request to buy, lease, manage or use land and buildings belonging to local authorities, Scottish public bodies or Scottish ministers that they feel they could make better use of. The public authorities must transparently assess requests against a specified list of criteria, which include whether agreeing to the request would be likely to promote or improve economic development, regeneration, public health, social wellbeing, or environmental well-being, and agree the request unless there are reasonable grounds for refusal. Should such a request be refused, the community group has a right to appeal or to ask for a review of that decision.  
  
'Relevant authorities will be required to publish a register of the land they own or lease to help communities identify suitable property. The Act does not say whether the community body should pay full market value for the property or should be allowed a discount. The guidance includes advice on the assessment of non-financial benefits.'
- 4. Participation in Public Decision-Making:** Part 10 of the Act is 'a new regulation-making power enabling ministers to require Scottish public authorities to promote and facilitate the participation of members of the public in the decisions and activities of the authority, including in the allocation of its resources.' The provision notes that 'involving people and communities in making decisions helps build community capacity and also helps the public sector identify local needs and priorities and target budgets more effectively.'

#### Community requirements

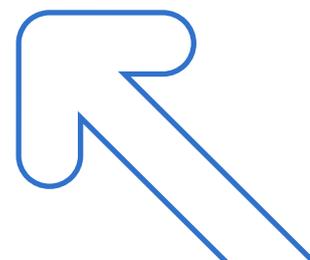
Exercise of all the rights requires that community bodies be of a type and legal structure that is defined in the act. To make an asset transfer request, your organisation needs to be a '**community transfer body**.' It can be either a community-controlled body or a body designated by the Scottish ministers.<sup>6</sup> This includes provisions regarding accountability, asset locks to protect assets into the future, defined communities of interest or geography, application of surplus funds, minimum membership numbers (20), affordable membership fees, and control of the organisation by the defined community. Copies of governing documents for community bodies must be approved and submitted as part of exercising the community rights.

<sup>6</sup> Community Empowerment Act Summary (for narrative description in parenthesis) Community Empowerment (Scotland) Act 2015: community transfer bodies' guidance

#### TABLE 5: Supplementary Legal Provisions (Scotland)

- 1. The Land Reform (Scotland) Act 2003:** Introduced a new system of legal provisions governing land ownership, use, rights and responsibilities so that land may contribute to a fair and just society while balancing public and private interests. The act covers matters relating to the community right to buy and the crofting community right to buy, as well as introduces a provision covering abandoned, neglected or detrimental land.
- 2. The Local Government in Scotland Act 2003:** The power to transfer assets at less than market value was established in this act which amended section 74 of the Local Government (Scotland) Act 1973, and set out that Scottish ministers may, by regulations, provide the circumstances in which local authorities can dispose of land at less than the best consideration that can be reasonably obtained.
- 3. Disposal of Land by Local Authorities (Scotland) 2010:** Provides discretionary powers to local authorities to dispose of land (and assets) to community organisations at less than best consideration without reference to the minister.

*Communities have assets which could be built upon – people with skills and local buildings and facilities that could be used more directly to provide stimulus to the local economy to ensure that money and jobs are retained locally*



### 3. Asset Transfer: Data on Practice

#### I. England

In 2015, the House of Commons Community and Local Government Committee conducted a review into the use and operation of the community rights available to community organisations in England. A striking feature of the review was the lack of data gathered on those who attempted to use the community rights, whether completing a neighbourhood plan, securing an asset through the Right to Bid, expressing an interest in delivering services through the Right to Challenge (after nominating an asset of community value), or successfully reclaiming land that was underused or unused. The review committee recommended that a basic level of data on take-up of community rights be retained by all local authorities and that government periodically analyses the data to understand which groups are using community rights, why they succeed or fail, and how the rights might be reformed in order to target resources to improve take-up.

The Right to Plan was not included in the House of Commons review but data from February 2020 shows that currently 2,835 neighbourhood plans have been started and over 1,000 have been 'made' so that they are now used by the local planning authority to guide decisions about planning applications made in the Neighbourhood Plan area and the local plan covering their district/borough. Specific issues raised by communities that have exercised this right include the cost and time needed to be invested in the process (principally of volunteers) and the varying degrees of support and cooperation from their local council.

#### II. Scotland

Data on community asset registration is not fully publicly available. A review undertaken by McMillan, Steiner and Hill O'Connor 2020<sup>7</sup> identified a lack of longitudinal data on asset transfer requests from public bodies to which the 2015 Act relates. Their study showed that between 2017 and 2019 there were 139 asset transfer requests to the relevant authorities that the Act covered. Of these, 81 were agreed and 10 refused. The majority (approximately 80%) of requests were submitted to local authorities. The asset requests in the periods reviewed included land and buildings and a combination of both.

A further indicator of the take-up of asset transfer is the Scottish Land Fund, which since 2016 has awarded £33,176,137 in 177 grants to community organisations. This total includes some exceptionally large investments - £4.4 million to buy a woodland estate and lake in Mull - and some very modest ones (e.g. £147,000 to buy a harbour master's house to convert it into two affordable apartments).

#### III. Northern Ireland

The Community Asset Transfer policy framework in Northern Ireland was published in 2014, and data has been collected by Land & Property Services in the NI Department of Finance. There are two time periods covered by the available data: the first, 2014 to 2017, and the second from 2018 onwards. The information is not robust enough to draw any meaningful conclusions, especially concerning the experiences of community organisations expressing an interest in CAT. The types of assets being disposed of were unknown in 2018 with significant information gaps remaining in 2019. The profiles of the disposing bodies cover central government, local government and the NI Housing Executive. The value of the assets being disposed of has frequently been withheld. Available data suggests that community organisations make up approximately 21% of all expressions of interest to acquire surplus assets, of which 35% have been successful.

Of the eleven assets successfully purchased, two were transferred at nil value others at open market value, and the average time from declaration of the asset being surplus to requirements to purchase was two years. Of the eleven assets successfully purchased, two were transferred at nil value, others at open market value, and the average time from declaration of the asset being surplus to requirements to purchase was two years.

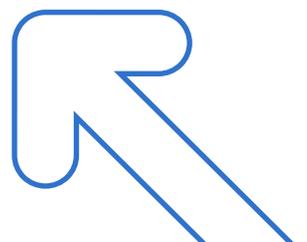
<sup>7</sup> McMillan, C., Steiner, A. and Hill O'Connor, C. (2020) Participation Requests: Evaluation of Part 3 of the Community Empowerment (Scotland) Act 2015, Scottish Government.

## 4. Asset Transfer: Weaknesses and Challenges

The reviews carried out in England by the House of Commons Select Committee and in Scotland by C. McMillan et al revealed a remarkable congruence covering the weaknesses and challenges of practice in asset transfer which can be summarised as:

- Variations in awareness and take-up of the opportunities, both by the public authorities who can provide the asset and the community organisations who could benefit.
- Lack of time and technical support for community-based propositions to be worked up in detail within deadlines.
- Lack of awareness by public bodies of non-financial returns from asset transfer that meet their other non-financial policy objectives related to health and well-being, housing, and the local economy.
- Lack of awareness by public bodies of capital leverage/return into transformation of underused publicly owned assets that cannot be accessed by public bodies.
- Concerns that asset acquisition was more likely to be undertaken by community organisations in affluent areas due to both a lack of awareness and capacity to respond in non-affluent areas.

*Delivering shared social, economic, and environmental outcomes can be strategically advanced by framing the roles to be played by communities within a legislative framework of community rights.*



## 5. Stakeholder Views

Stakeholder opinion recorded for this scoping paper about the CAT process in NI presents the following viewpoints.

**Table 5: Community Asset Transfer - Stakeholder Views**

<b>Stakeholder View</b>	<b>Details</b>
<b>Poorly promoted</b>	Not integrated across all levels of government. Many community organisations not aware of council-owned surplus assets in some areas
<b>Bureaucratic and confused</b>	An internal market trawl of other public bodies - should be done prior to inviting community organisations to express an interest... Confusion about the responsibility for preparation of business cases despite the guidance.
<b>Unimaginative</b>	Little promotion of the idea of multiple use of assets to meet a wide range of community needs. See, for example, community-led housing projects in England.
<b>Inhibits stakeholder participation</b>	The timescales are too short, particularly to prepare a detailed case for asset acquisition. Guidance should identify sponsor bodies who have the powers required to enable them to facilitate the transfer assets to community organisations.
<b>Lacks a support infrastructure</b>	Funding for feasibility work and business plan/business case preparation is needed as are professional services (e.g. valuation, town/area planning, asset managers, business/financial planners, architects/surveyors) to meet the support needs of communities and disposing bodies.
<b>Clarity</b>	Disposal at less than best consideration needs to be considered as an investment in communities to meet their own needs, particularly where future use aligns with government policy objectives.
<b>Consistency of approach</b>	All assets in public ownership should be offered via one route. No current obligation for councils to use central government trawl and disposal process.
<b>Narrow outcome focus</b>	Fails to capitalise on the relationships between local government and community organisations or invest in use of CAT to advance mutual partnerships in service provision via funding or service contracts.
<b>Narrow tenure options</b>	CAT presents a spectrum of transfer options (e.g. lease or a licence to occupy) but in practice it is usually a long term lease or freehold disposal. Central Government departments rarely facilitate variable leasehold arrangements especially if it is unaligned to its policy outcomes and service delivery areas. Restricted tenure prevents smaller community organisations from developing capacity.
<b>Lacks capital funding</b>	A form of capital funding is necessary especially if open market value or something close to it is required by the seller.
<b>Carry risks</b>	There is a danger that larger, established, experienced community organisations and charitable bodies may forge ahead in multiple asset acquisitions of public assets when smaller organisations may not get an opportunity to build capacity for asset acquisition.
<b>Community risk aversion</b>	The public sector has a failure bias tolerance which favours market disposal and private sector organisations.
<b>Lacks ongoing support</b>	Training and support post-acquisition was lacking in terms of financial and asset management.

Legislating for a community rights framework to overcome the myriad of existing challenges and weaknesses is not without its own challenges. Framing legislation for asset transfer as a community right could cause problems where community organisations possibly overreach and submit underdeveloped proposals that are not financially viable or sustainable. Moreover, future legislation may confer a sense of entitlement for communities to acquire assets regardless of the strength of their case/proposal in viability or sustainability, and any unevenness in the take-up of rights has the potential to amplify divisions (religious, political) between communities within an area and across areas. Many of the weaknesses and challenges of the current CAT process would remain even if new legislation was enacted, and it would still not realise its potential to deliver community benefits. Capital funding to support acquisition, which had been key to the successes in other parts of the UK, is central to future success in NI, coupled with a change of culture within asset owner organisations, particularly in relation to risk and a positive approach to the process overall.

## Strengths and Opportunities

The take-up of rights available elsewhere in the UK is uneven but does exist, and the legislation in support of asset transfer in Great Britain provides a source of learning to help avoid issues associated with these rights in the NI context.

It is important to note that even before the implementation of the NI CAT policy framework, asset disposal to community organisations had already taken place. Previous examples have involved the NI Housing Executive and the development of enterprise workspaces for example. The NI CAT policy framework has been able to build from this experience and widen the opportunity for asset acquisition to more community organisations.

The stakeholders spoken with in the preparation of this scoping paper were supportive of calls to provide a legislative basis for asset acquisition by community organisations. The power of this approach, they thought, is that it is not part of a 'deficit model' where communities are seen as places that only have needs, and recognises that communities have assets which could be built upon – people with skills and local buildings and facilities that could be used more directly to provide stimulus

to the local economy to ensure that money and jobs are retained locally. The assets that are available for acquisition by community organisations present opportunities since they were designated as underused or surplus and providing no economic, social, or environmental returns to the people and businesses of NI.

There are emerging investment opportunities in strategic funding via the Special EU Programmes Body, and a renewal of previous funding interventions such as the Social Investment Fund NI. The issues associated with implementing the CAT framework to date have, perhaps, prevented these opportunities from being grasped but the opportunity is still present to align community ownership with the policy priorities set out in *New Decade New Approach* (Jan 2020), which commits to deliver a regionally-balanced economy and an anti-poverty strategy. The refresh of the Northern Ireland Outcome Delivery Plan (2019) presents a further opportunity to make the acquisition of assets by community organisations more integrated into government agreed outcomes with more locally-devolved delivery to achieve them. Delivering shared social, economic, and environmental outcomes can be strategically advanced by framing the roles to be played by communities within a legislative framework of community rights.

## 6. Recommendations

Based on the review and interviews undertaken as part of this scoping paper, the following recommendations are proposed to achieve three objectives:

### A **Process Improvement:** *make asset transfer and disposal policy more effective, ensuring it fulfils opportunities to meet the needs of communities.*

- The acquisition of assets by community organisations should be expressed as an investment of assets in communities to achieve economic, environmental, and social impacts especially where these align with government's policy outcomes.
- Guidance needs refreshed to communicate clearly to community organisations that the acquisition of an asset is a negotiation in relation to the balance between financial value and the social value outcomes.
- To provide clarity on the process steps and community requirements and extend timescales for its requisite stages.
- Frame the financial characteristics of asset transaction: focus on capital and revenue funding for agreed social, environmental, and economic outcomes, and acknowledge the role and duty upon public servants to implement and balance competing government policies to enable this.
- Policy promotion, information and awareness raising to local councils and community organisations: facilitate early discussions and capacity building and enhance councils' awareness of how asset acquisition by community organisations can deliver policy objectives for public service.
- Establish a capital development fund to acquire and improve assets that could release their future value to people and the local economy.
- Establish a pre-acquisition support programme to increase the pipeline of community organisations that could go through the process and respond to opportunities should they emerge.

- Invest in the support infrastructure: provide access to independently-commissioned and independent advisors to cover technical and strategic appraisal aspects (redevelopment /refurbishment of assets, business cases); financial aspects (valuation and business planning); and reporting and monitoring post-acquisition.

### B **Strategic Integration:** *improve integration between central and local government in mapping and making surplus and underused land and buildings available*

- Councils should be obliged to use the trawl process for their surplus assets to ensure that all potential assets are available to community organisations

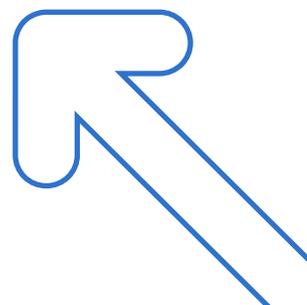
### C **Legislation:** *draft legislation that balances the opportunity for community ownership with shared government and community objectives*

- Provide powers that are referred to as community empowerment - and investment - provisions so that community organisations can act via the acquisition of land or buildings in public ownership to address community needs (a defined geographical area, or an interest).
- Provide powers that apply to both public and privately owned assets where they are of value to the community, including a community right to register an interest to buy.
- Provide right to appeal decisions (by public authorities) which refuse registration of a community interest to buy. A community bid to acquire, when the asset is put on the market, should be similarly imposed upon an owner.
- Provide powers to local government in the eleven councils of NI, which simplify the decision-making process on asset acquisition by community organisations.

- Enhance general disposal consent which allows local government to decide on the sale of its assets to community organisations at less than best consideration, subject to a maximum undervalue, without the need for central government department or ministerial consent.
- Provide a 'community definition guidance framework' and governance eligibility criteria for asset acquisition (e.g. asset locks, open membership, etc) covering religious and/or political affiliations and their manifestations in communities of place<sup>8</sup>.

*The acquisition of assets by community organisations should be expressed as an investment of assets in communities to achieve economic, environmental, and social impacts.*

<sup>8</sup> See Community Empowerment (Scotland) Act 2015





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