

Review of Community Rights for Asset Transfer in Northern Ireland

A Scoping Paper

Review of Community Rights for Asset Transfer in Northern Ireland

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1. Scope

The scope of this review, commissioned by Development Trusts Northern Ireland (DTNI), is to look at current legislation and practice across the UK that could inform the development of Community Rights legislation applicable to Northern Ireland that relates to community asset transfer (CAT) ¹ - specifically land and buildings. The Rights would be for use by community/voluntary/not for private profit organisations (referred to throughout this paper as “Community Organisations”).

The reported benefits of asset ownership by Community Organisations are well documented and not reviewed here. For a comprehensive review of the benefits see the Joseph Rowntree reports of 2011 and 2012. This included a review in November 2012 of Community Asset Transfer in Northern Ireland. The current Northern Ireland Community Asset transfer policy also references the benefits and includes case studies and examples.

In addition, in 2016 Power to Change (a social/community business funder in England) asked the New Local Government Network to survey CAT in all local authorities as part of identifying the potential market for assets to grow the social/community business sector. These studies summarised the benefits of asset ownership for the Community Organisations concerned, as providing direct economic and environmental benefits in the area where the asset was located and contributing to a ‘social good’ of local well-being:

- A heightened sense of identity
- Greater financial viability
- Improved levels of activity and access to services
- Increased opportunities for training, jobs, and business development/local economic activity
- A better physical environment
- Enhanced credibility with local authorities and outside agencies, including leveraging additional investment – both capital and revenue.

¹ Community Asset Transfer is an established mechanism used to enable the community ownership and management of publicly owned land and buildings. It is worth noting that Asset Transfer as a term was originally used to indicate that as communities were to be the beneficiaries of the asset via transfer of ownership, that they would be at less than market value or even for “a peppercorn” (A peppercorn is a nominal or trivial amount that is paid in order to legalise a contract. The phrase dates from the late 16th/early 17th century when a single peppercorn was first used in such transactions). In practice, some have been transferred at less than market value or no financial consideration, but many have involved a financial transaction sometimes at open market value (OMV).

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- By enhancing local environments, successful community assets could help to stem decline and rejuvenate an area, making it more attractive to existing and prospective residents.

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

1. Their experience of asset transfer in NI
2. Their initial reaction to the idea that land and building assets - regardless of their current ownership (public or private) and how much they cost to acquire - could be embedded in community rights legislation.
3. The specific issues that the rights would have to address in the way that any legislation could be framed for purchasers/recipients and sellers in NI.
4. The specific difficulties that there would be for purchasers/recipients and sellers if such rights existed.

The list of organisations associated with the interviewees is attached at Appendix 1 and references for the literature review can be found at Appendix 2.

2. Community Rights in the United Kingdom related to Asset Transfer

The legislation related to community asset transfer in other parts of the United Kingdom is summarised for ease of reference in the tables below. These give a summary of the extent and applicability of these rights and the procedures/processes which apply to a Community Organisations (which may be defined more prescriptively in some legislation than others) to benefit from them. There is also a summary of the requirements that Community Organisations have to fulfil to be eligible for asset ownership and the support available to them to exercise the Community Rights. In some cases, this also extends to current owners of assets to be transferred, particularly for public bodies.

It is worth noting that in England these community rights are not just available to community organisations but to parish Councils. A Parish Council is an elected body and is the first tier of local government. Elections take place every four years and councils run local services in their areas including open spaces, housing, community buildings and so on. They also have the power to raise tax to fund these services.

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LEGISLATION THAT SUPPORTS THE TRANSFER OF ASSETS TO COMMUNITIES IN ENGLAND

Note the descriptions in quotes below are from the “Plain English Guide to the Localism Act 2011” Dept for Communities and Local Government

COMMUNITY RIGHT TO BID (Localism Act 2011 Part 5, Chapter 3) this enables Community Organisations to nominate to a local authority “assets of community value” regardless of who owns them. The Local authority considers them and, if successful, they are placed on a register and subject to a process that if they are put up for sale the Community Organisations which nominates them has a “window” of six months in which it can put together an offer to buy it. There is no obligation at the end of this process for the seller to accept the bid of the Community Organisations”.

- **Community requirements –**

Groups who may nominate assets to the local authority for the right to bid can be a community group (such as a society, parish council, neighbourhood forum, not for profit organisation or a group of at least 21 individuals) that is locally connected to the area.

COMMUNITY RIGHT TO BUILD/NEIGHBOURHOOD DEVELOPMENT ORDERS (Localism Act 2011 Schedule 9)

“As part of neighbourhood planning, the Act gives groups of local people the power to deliver the development that their local community want. They may wish to build new homes, businesses, shops, playgrounds or meeting halls. A Community Organisation, formed by members of the local community, will be able to bring forward development proposals which, providing they meet minimum criteria and can demonstrate local support through a referendum, will be able to go ahead without requiring a separate traditional planning application. The benefits of the development, such as new affordable housing or profits made from letting the homes, will stay within the community, and be managed for the benefit of the community. The Government will also fund sources of help and advice for communities who want to bring forward development under the community right to build.”

Community Right to Build Orders (CROs) are a special type of neighbourhood development order (NDO). Unlike NDOs and Neighbourhood Development Plans (NDPs) however, any local Community Organisations, not just a parish or town council or a neighbourhood forum, is able to create a Community Right to Build Order.

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- **Community requirements –**

NDOs are prepared as part of a Neighbourhood Plan so must meet the same requirement in terms of the Group/Parish preparing it. If the NP group/Parish is not pursuing the CRO, the group preparing has to have more than half its members from the Neighbourhood Plan area, like Neighbourhood Plan Forums they must be established to pursue the social, economic and environmental improvement of the area. In addition, any profits resulting from the development must be used for the good of that community, not for private gain.

COMMUNITY RIGHT TO PLAN/NEIGHBOURHOOD PLANNING (Localism Act 2011 Schedule 10)

“The Act introduces a new right for communities to draw up a neighbourhood plan. Neighbourhood planning will allow communities, both residents, employees and business, to come together through a local parish council or neighbourhood forum and say where they think new houses, businesses and shops should go – and what they should look like.

These plans can be quite simple and concise or go into considerable detail where people want. Local communities will be able to use neighbourhood planning to grant full or outline planning permission in areas where they most want to see new homes and businesses, making it easier and quicker for development to go ahead.

Provided a neighbourhood development plan or order is in line with national planning policy, with the strategic vision for the wider area set by the local authority, and with other legal requirements, 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 for a group who can exercise the Right to Plan differs dependent on the location of the proposed Neighbourhood Plan area that groups wish to cover for their plan. If it is a “parished” area (the lowest level of local government in England) then the Parish can apply. If in an urban area (which are mostly not covered by parishes) then the group has to constitute with a minimum of 21 people drawn from the area and they must be established to pursue the social, economic and environmental improvement of the area.

Local planning authorities are required to provide technical advice and support as neighbourhoods draw up their proposals. The Government is funding sources of help and advice for communities”

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COMMUNITY RIGHT TO CHALLENGE (Localism Act 2011, part 5 Chapter 2)

“The Government thinks that innovation in public services can offer greater value for taxpayers’ money and better results for local communities...In some places, however, voluntary and Community Organisations who have bright ideas find that they do not get a proper hearing. The Localism Act gives these 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”. The right to challenge does not extend to some services related to children and vulnerable people and services provided by the National Health Service.

- **Community requirements**

Are as stated above but the provisions for local authority employees who want to use the right must form a suitable not for private profit legal vehicle.

COMMUNITY RIGHT TO RECLAIM LAND (Local Government, Planning and Land Act 1980) this gives power to *individuals* to apply to the Secretary of State to request that the Secretary of State makes an order requiring a public body to dispose of land it owns. This was known as the public right to order disposal (PROD) re-named the Right to Reclaim Land in 2011.

- **Community requirements –**

Are as stated above but Community Organisations can also exercise the right.

The following legal provisions are also relevant to the transfer of assets to communities from public bodies since they are related to establishing their value:

GENERAL POWER OF COMPETENCE (Localism Act 2011 Part 1 Chapter 1 section 1. Section 2 boundaries of the Power). 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

LAND DISPOSAL AT LESS THAN BEST CONSIDERATION (Section 123 of the Local Government Act 1972) allows councils in England and Wales to dispose of land in any way they wish at “best consideration that can be reasonably obtained”. Definitions of best consideration have been widely debated and are subject to a good deal of case law, but the general consensus is that best consideration is not simply about a

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financial transaction but also about any transfer of ownership being seen to contribute to the well-being of communities and the wider objectives of the public body disposing of the land.

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.

Support available for exercise of Community Rights in England

The main source of support available for use of the rights by Community Organisations in England and Wales is from Locality (formerly the Development Trusts Association). They have been the grant administration body and delivery body for support for all the community rights and have leveraged further resources from a variety of funders (including local government Charitable Trusts and National Lottery funds). Since 2008 they have developed a wide range of resources to assist Community Organisations who want to acquire or develop assets of all kinds – affordable housing (through www.communityledhomes.org.uk) workspace, community facilities, cultural/arts centres/studios and pubs. This is through www.mycommunity.org.uk which is an alliance of 12 organisations who specialise in Community Organisations' and social enterprise support and development). This support includes access to grants and social investment loans as well as support for crowdfunding and community share issues)

Support is also available for those who own assets that may be acquired by Community Organisations. A programme called Advancing Assets was made available to local authorities to help them to formulate local CAT policies and their relationship with their Asset Management Strategies and provided written guidance to councillor to increase their awareness and understanding of CAT policy development and the issues that may have to be addressed by them as public owners of land and building assets. This included summarising the powers available to them, managing risk and providing support to Community Organisations,

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POLICY AND LEGISLATION THAT SUPPORTS THE TRANSFER OF ASSETS TO COMMUNITIES IN SCOTLAND

Community Empowerment (Scotland) Act 2015, Part 4 and 5

The community right to buy in Part 2 of the Land Reform (Scotland) Act 2003 (“the 2003 Act” or the “Act”) has been amended by Part 4 of the Community Empowerment (Scotland) Act 2015 (“the 2015 Act”). The Act introduces a right for community bodies to make requests to all local authorities, Scottish Ministers, and a range of public bodies for any land or buildings they feel they could make better use of. They can request ownership, a lease, or other rights as they wish.

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 wellbeing, and agree the request unless there are reasonable grounds for refusal.

Should such a request be refused, the community group have a right to appeal or to ask for a review of that decision

Community Empowerment (Scotland) Act 2015, Part 3

This 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 their purpose is to start a dialogue with a service provider, contribute to decision making processes, contribute to service changes, challenge decisions, and seek support for alternatives.

The following legal provisions are also relevant to the transfer of assets to communities from public bodies since they are related to establishing their value:

The Local Government in Scotland Act 2003

The powers to transfer assets at less than market value were established in this act, which amended section 74 of the Local Government (Scotland) Act 1973, and set out that the 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.

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.

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Community requirements

Exercise of all the rights requires that community bodies be of a type and legal structure which are defined in the act. This includes provisions re 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 have to be approved and submitted as part of exercising the Community Rights.

Support available for exercise of Community Rights in Scotland

There are a number of organisations providing support to Community Organisations for asset transfer.

- DTA Scotland <https://dtascommunityownership.org.uk/community/community-asset-transfer>
- Highlands and Islands enterprise <https://www.hie.co.uk/> which also provides loan funds
- The Scottish arm of Farm Garden UK Community Land Advisory Service <https://www.farmgarden.org.uk/clas/scotland>

The Scottish Government also provides funds through the National Lottery Community Fund of £10,000 to £1,000,000 for CAT projects in Scotland. Since 2016 they have funded 177 projects all over Scotland. A network of organisations concerned with land ownership in Scotland is also supported by Community Land Scotland (<https://www.communitylandscotland.org.uk/>)

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Policy and Legislation that supports the transfer of assets to communities in Northern Ireland

Department for Social Development (2014) Community Asset Transfer in Northern Ireland: Enabling and Supporting Community Ownership and Management of Public Assets

This outlines the case for supporting community asset transfer and the potential introduction of Community Rights in reference to those in England and Scotland and provides case studies underlining the benefits of transfer to organisations that operate in the not for private profit sector. In particular it supports the Executive's commitment in the Programme for Government (2011-2015) to "invest in social enterprise growth to increase sustainability in the broad community sector". This work also supports the Concordat between the Voluntary and Community Sector and the Government which contains a commitment to investigate the potential for community asset management and ownership in Northern Ireland. It commits to working to identify resources to support the development of Community Asset transfer. It includes the needs for cross department working on CAT and considers methods to justify disposal of public assets at less than best consideration. In partnership with the Development Trusts Northern Ireland (DTNI) it commits to supporting pilot demonstration projects and to widen the range of finance available to support them through for example community shares issues.

LAND DISPOSAL AT LESS THAN BEST CONSIDERATION (Stormont Regulation and Government Property Act (Northern Ireland) 1933). Section 5 allows 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.

LOCAL GOVERNMENT ACT (NORTHERN IRELAND) 1972, PART VII SECTIONS 95 AND 96 allows Councils in Northern Ireland to acquire and dispose of land for the purposes of carrying out their statutory functions. The power of disposals of land at less than best consideration requires ministerial consent.

GENERAL POWER OF COMPETENCE (Local Government Act 2014, part 11, Section 79, Section 80 boundaries of the Power). As in England this general power allows councils the ability to do anything an individual can do (subject to restrictions) rather than only what they are directly empowered to do

COMMUNITY ASSET TRANSFER GUIDANCE IN RESPECT OF TRANSFER OF CENTRAL GOVERNMENT SURPLUS ASSETS 2018

This sets out guidance for asset owners on the process to be used for considering community asset transfer for property assets defined as surplus to government requirements by Land and Property Services, part of the Department of Finance Northern Ireland.

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This current asset transfer process is an important part of scoping the future of asset transfer in NI and is set out in more detail below:

Table 1: CAT Stage 1

STAGE ONE	ACTIVITY	WHO HAS TO BE INVOLVED	HOW MUCH TIME IS ALLOWED
Stage 1a	Trawl	Land and Property Service's (LPS) Central Advisory Unit (CAU) circulate copy of LPS Internal Trawl (D1) Notices to appropriate parties including DTNI.	DTNI must respond that there is Community Organisations interest within 15 working days (3 weeks)
Stage 1b	Expression of interest (EOI) questionnaire	DfC VCD Asset owner, Sponsor body, Community Organisations, DTNI (if supporting Community Organisations)	Community Organisations must respond to LPS within 40 working days/8 weeks
Stage 1c	Review of EOI questionnaire	LPS CAU, asset owner, sponsor body (in principle or confirmed) and DfC VCD.	20 working days/4 weeks
Outcome of Stage 1	Scenario 1 <u>OR</u>	The asset owner is also the sponsor and is responsible for assessing and endorsing the suitability of the Community Organisations proposal.	
	Scenario 2	The asset owner is not the sponsor and will agree the level of support it requires from the sponsor to facilitate the Community Organisations proposal before moving to Stage 2.	

Table 2: CAT Stage 2

STAGE TWO	ACTIVITY	OPTIONS	WHO HAS TO BE INVOLVED	HOW MUCH TIME IS ALLOWED
Stage 2a	Business Plan Production	Option 1 Asset owner is sponsor and is willing and able to sell at less than market value direct to the TSO, subject to business plan and business case.	Community Organisations	4 months for completion of Business Plan is suggested. Or as agreed between the asset owner and Community Organisations
		Option 2 Asset owner is not sponsor but has obtained sponsor body commitment and is able to sell at less than	Community Organisations	

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STAGE TWO	ACTIVITY	OPTIONS	WHO HAS TO BE INVOLVED	HOW MUCH TIME IS ALLOWED
		market value direct to the Community Organisations, subject to business plan and business case. This requires the identification of an alternative sponsor body which should have been confirmed in principle at Stage 1.		2 months
		Option 3 Asset owner is sponsor and is not willing or able to sell at less than market value. Disposal to Community Organisations at market value.	Community Organisations	
		Option 4 Asset owner is not sponsor and is not willing or able to sell at less than market value. Disposal to Community Organisations at market value.	Community Organisations	
		Option 5 Asset owner is not sponsor and is not willing or able to sell directly at less than market value - NBV (or reduced value) Transfer to Confirmed Sponsor with sponsor body commitment for subsequent CAT at less than market value.	Community Organisations	
Stage 2b	Business case production	Option 1 as above	Asset Owner	2 months
		Option 2 as above	Asset owner with input from Sponsor Body in terms of review, policy input, strategic context, alongside confirmation of sponsor role	
		Option 3 as above	Asset Owner	
		Option 4 as above	Asset Owner	
		Option 5 as above	Asset Owner, with input from Sponsor	

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Table 3: CAT Stage 3

Stage 3 of CAT Process	Activity	Who has to be involved	How much time is allowed
Stage 3	Approval, transfer, and post transfer monitoring	Asset owner, Sponsor and Community Organisations	None set. Dependent on close contact and communication at Stage 2 to avoid delays in final stage

Support Available for asset transfer to Community Organisations in Northern Ireland

DTNI is supported by the Department for Communities (DfC) to provide support to Community Organisations through the asset transfer process. They are also the route through which D1 notices, providing details of land and building that are surplus to government needs, are circulated to Community Organisations in order that they may submit an expression of interest in the asset.

Social Farms and Gardens, a UK wide service also completed a feasibility study in July 2018 on the potential for their support to be provided to Community Organisations for asset transfer under the umbrella of their Community Land Advisory Service. This has yet to be taken forward.

In September 2019, an Innovation Lab was held by the Department of Finance and the Department for Communities and involved a wide range of stakeholders. The Strategic Insight Lab looked at the operation of the Community Asset transfer process in NI and identified both the gaps and weaknesses of the current situation and also recommended that the possibilities for framing community rights legislation in Northern Ireland be examined. A total of 36 recommendations were made in the report of the event over 5 themes – community rights legislation, development of CAT policy to delivery central government outcomes, streamlining the CAT process, defining and applying consistently measurements of social value in Cat business cases, improving information on CAT and improving local authority involvement and funding.

This scoping paper and two others related to the detail of potential legislation and links with the Land Use and Community Planning regimes in Northern Ireland are part of taking the recommendations of the Innovation Lab forward.

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3. Asset Transfer in Practice: Data

Data

In 2015 the House of Commons Community and Local Government Committee conducted a review into the use and operation of the Community Rights (with the exception of the Right to Plan) available to Community Organisations in England.

The table below summarises the committee findings and recommendations for future changes to the Rights.

Table 4: House of Commons Review of the use of community rights and recommendations on changes to their operation

Community Right	Use of the Right	Issues identified from exercise of the right by Community Organisations	Recommendations
Right to Bid	1800 assets of community value listed using the community right 11 assets successfully acquired 60 Unsuccessful 27 Outstanding	Value of listing as a consideration in planning applications for the asset Justification of the value of the assets to the community to achieve listing Lack of appeal process for groups to refusal of listing as an asset of community value (owners can appeal listing of their property) Time limits on raising funds to buy an asset (6 months)	Propose moratorium extended to 9 months Propose right of appeal for groups on decisions to refuse listing 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.
Right to build	8 applications between 2012 and July 2014	Referendum requirements were disproportionate for small developments	Re-consider capital funding available to support community led housing projects

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Community Right	Use of the Right	Issues identified from exercise of the right by Community Organisations	Recommendations
		Capital funding available not suited to smaller organisations or small development projects	
Right to challenge	50 expressions of interest to service providers from communities as of December 2014		<p>Government work with local authority commissioners of services to involve communities routinely in the design of services; consider whether certain services might be reserved for community enterprises using either a normal tendering route or a Community Right process.</p> <p>Rename the Right to Challenge in order to reduce the perception that it is confrontational.</p>
Right to Reclaim Land	Feb 2011 to June 2014 47 applications had been made with 2 actively under consideration	Definitions of land that can fall under the right. Open spaces, some public buildings (e.g. fire stations and NHS property) had been inconsistently accepted for registration	Issue draft guidance on what constitutes unused or underused land and consider how to improve access to information on public landholdings.

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A striking feature of the Review of the Community Rights in England was the lack of data on what had happened to the groups who had attempted to use the Community Rights but had not yet proceeded to a successful conclusion – whether it was completing a neighbourhood plan, securing an asset through the right to bid after successfully nominating it as an asset of community value, expressing an interest in delivering services through the Right to Challenge or successfully reclaiming land that was underused or unused. This was also striking to the House of Commons Community and Local Government Committee, who recommended “that the Government, as part of its review of the Community Rights later in 2015, propose that a basic level of data be retained by all local authorities on take-up of Community Rights. The Government should then periodically analyse that data, first, to understand which groups are using the Rights, why those that do ultimately succeed or fail, and how the Rights might be reformed; and, second, to target resources more effectively, in order to improve take-up of the Community Rights”.

The Right to Plan was not included in the House of Commons review but data is collected about its use by the Ministry of Housing and Local Government, as it results in a statutory land use plan with legal weight in the development process for land and buildings. Latest 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, in addition to their own local plan which covers 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,

Scotland: Data

Data is available from the Scottish government on Community asset registration, but it is not fully publicly available. Similarly, a Review undertaken by McMillan, Steiner and Hill O’Connor 2020 identified a lack of longitudinal data on asset transfer requests from public bodies to which the 2015 Act relates.

According to their study however an analysis of available relevant authority annual reports, showed that between 2017 and 2019, relevant authorities received 139 asset transfer requests, agreed to 81 and refused 10. The data suggests an increase in activity between 2017-2018 and 2018-2019. In addition, their data showed that the majority of asset transfer requests were submitted to local authorities (85% in 2017-2018 and 79% in 2018-2019).

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Between 2017 and 2019, 53 requests were made for buildings (53% and 27% of all requests in 2017-2018 and 2018-2019 respectively). The number of requests for both land and buildings was 21 (9% and 20% of all requests in 2017-2018).

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 with an average grant award of £188,000. This total includes some exceptionally large investments - £4.4 million to buy a woodland estate and lake in Mull and some very modest ones - £147,000 to buy a Harbour Masters house to convert it into 2 affordable apartments.

Northern Ireland: Data

The Community Asset Transfer Framework in Northern Ireland was published in 2014 and available data has been collected from DTANI and Land and Property Service in the NI Department of finance.

Data is also available from Land and Property Services Central Advisory Unit (NI) showing progress since 2014 when the Community Asset Transfer Framework was adopted. These two breakdowns obviously focus on different elements of the process and the details of the assets both made available via the process and the community interest shown in them.

Table 5: Progress on Asset transfer in Northern Ireland 2018-2020

Calendar Year/Year to date	Total No. of D1 Notices	Type of asset				Owner			No of groups expressing formal interest in an asset	No of assets with no valuation information	Total asset value where information provided
		Land	Building	Land and Buildings	Unknown	Central Gov't Dept	NIHE	Councils			
2018	56	Unknown	Unknown	Unknown	Unknown	20	24	12	10	53	£51,200
2019	77	21	9	4	43	37	25	15	14	71	£2,526,000
2020	14	8		6		4	4	6	3	12	£430,000

Source: DTNI 2020

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Table 6: Progress on Asset transfer in Northern Ireland 2014-2020

Asset Transfer CAT Project Progress 2014-2020	
	2014-2020
Total Number of Asset Transfer EOIs in D1 Process	32
Withdrawn by Owner	2
Purchased by Community Organisations expressing interest	11
Not purchased by Community Org expressing interest	7
In Progress	7
No Decision	5
<i>Source: Land and Property Services Central Advisory Unit 2020</i>	

Of the 11 assets successfully purchased two were transferred at nil value others at Open Market Value (OMV) and the average time from declaration of the asset being surplus to requirements to purchase was 2 years.

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4. Asset Transfer in Practice: Weaknesses and Challenges

Reviews have been carried out in Scotland and England of the rights available for communities to acquire public assets. These studies have involved an analysis of the numbers of requests made and to identify any issues with their operation and effectiveness. Some of these are referred to for England in section 3, undertaken as part of a House of Commons Select Committee in 2015 and for Scotland a study by C. McMillan, A. Steiner and C. Hill O'Connor in 2020 reviewed the operation of Part 5 of the Community Empowerment (Scotland) Act 2015. There is remarkable congruence in these studies about the weaknesses and challenges of practice in asset transfer which can be summarized as:

- Big variations in awareness and take up of the opportunities afforded by the legislation both by the public authorities who can provide the asset opportunities and the Community Organisations who could benefit.
- Lack of time and technical support for community-based propositions to be worked up in detail and meet deadlines in asset disposal, given the need to involve a wide range of government and community stakeholders in these processes.
- Lack of understanding and familiarity of public bodies with non-financial returns from asset transfer that meet their other non-financial policy objectives related to health and well-being, housing, the local economy and capital leverage into transformation of underused publicly owned assets that cannot be accessed by public bodies.
- A concern that asset acquisition was more likely to be undertaken by Community Organisations that were in affluent areas due to both a lack of awareness of the opportunity to do so and by a lack of capacity to respond in non-affluent ones.

As part of this Scoping Paper the interviews that were undertaken also invited stakeholders to share their experience of the CAT process in NI to date and their view of what would be needed in new legislation and supporting conditions for it to be successful. These show similar concerns to the reviews undertaken in the rest of the UK. A summary of the key issues raised is below and is followed by a selection of quotes to give a flavour of stakeholders' views in their own words.

In their view the NI processes and policy for asset transfer were:

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Stakeholder view	Details
<i>Very poorly promoted</i>	In an integrated way across all levels of government and all departments. In particular concern that Community Organisations may not be aware of Council owned surplus assets in some areas dependent on the policy position taken on CAT by councils - some were positive and proactive, and some were not.
<i>Bureaucratic and confused</i>	Some thought that the internal market (where other public bodies were approached to ensure that they did not want to acquire the assets which had been declared by some departments as surplus to requirements). It was thought that this should be done <i>prior</i> to inviting Community Organisations to express an interest. Some reported that Community Organisations had ended up as a competitor with another central government department, Council or NIHE which can result in abortive work for both sides and makes it difficult to manage expectations within the wider community that support the expression of interest or proposed bid for community ownership. Changes in personnel within asset owners was highlighted as an issue which could result in delay and effective re-starting of the process. In addition there was confusion about the responsibility for preparation of Business cases, despite the guidance
<i>Unimaginative</i>	There was little promotion of the idea of multiple use of assets to meet a wide range of community needs. For example, combined business and housing propositions along the lines of community led housing projects in England. Similarly, some suggested that the process inhibited the use of a blend of capital funding routes including share issues, crowdfunding, and unsecured debt
<i>Inhibit securing the commitment of key stakeholders</i>	The timescales to secure Sponsors are too short, particularly to prepare a good case for asset acquisition in enough detail. This is particularly important given that the guidance to owners makes it clear that the asset owner and sponsor need to be involved in the business case in particular. The process needs to be longer and in addition guidance needs to specifically identify Sponsor Bodies who have the powers required to enable them to transfer assets to Community Organisations to avoid abortive work.
<i>Lacking in supporting infrastructure to make the policy a success</i>	Funding for feasibility work and business case/business plan preparation is needed as well as clarity about what needs to be included in both. Some interviewees stressed the need for independent supporters who could “speak both languages” . This needed to cover that of the

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Stakeholder view	Details
	owner and the professionals supporting them (Valuation professionals, asset managers and those familiar with NI Government guidance on Disposal of Surplus Public Sector Property in Northern Ireland (2018) and the Northern Ireland Guide to Expenditure Appraisal and Evaluation (NIGEA 2015) on business case development <u>and</u> of the mainly lay people who were part of the Community Organisations seeking to acquire an asset.
<i>Inappropriately named</i>	Although the NI CAT framework guidance makes it clear that sale at less than best consideration will be considered on a case by case basis, the use of the term CAT was thought by some interviewees to mean that Community Organisations will expect this and sellers may feel that something is being “given away for nothing” rather than see sale at less than best consideration <i>financially</i> as an investment in communities to meet their own needs where they align with government policy objectives.
<i>Lacking in integration and consistency across all levels of government</i>	All assets in public ownership should be offered via one route. Currently there is no obligation for Councils to use the Central government run trawl and DI process resulting in some Community Organisations and councils missing out on the benefits of community ownership of an asset or others benefitting more than others because a more proactive approach had been taken with CAT policy and procedure agreements in specific council areas.
<i>That the process was too focussed on central government assets.</i>	In practice, the thought that more local councils will have meaningful relationships and regular communication with Community Organisations than central government departments, including mutually beneficial partnerships in service provision via funding or service contracts. In addition, there was a need for more independent bodies to focus on public asset acquisition by Community Organisations that could provide both supporting infrastructure and ensure that they were delivering outcomes that were aligned with government policy outcomes. It was suggested that up to six such bodies may be required, aligned with the 6 counties of NI
<i>Lacking a range of tenure² options in practice</i>	Although in practice the CAT Framework suggest that all types of ownership arrangements are possible “The spectrum of transfer options can vary widely, including a freehold, long lease, shorter lease or a licence to occupy” in practice most transfers are long term leases or freehold

² the conditions under which land or buildings are held or occupied

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Stakeholder view	Details
	disposals. This was linked to the lack of enthusiasm of some government departments to taking a “landlord role” to Community Organisations in a leasehold arrangement – particularly where the benefits of transfer were to policy outcomes and service delivery areas not related to the central government department who owned the asset. This prevents a smaller Community Organisations from developing capacity in asset management over time and increases the liabilities and risks of taking ownership at the start.
<i>Lacking capital funding for acquisition</i>	Particularly where Open Market Value (OMV) or something close to it is required by the seller. This was particularly stressed by some interviewees in the context of the financial crash in 2008 and the associated long period of “austerity” for government spending at all levels
<i>Lacking transparent and specific guidance on the content required for both Business Cases and Business Plans</i>	These are key elements of the process if a Community Organisations is to be successful.
<i>Carry risks</i>	That the current process may mean that over time larger Community Organisations that are well established and have experience of the process may forge ahead in multiple asset acquisitions of public assets, when smaller organisations may not get an opportunity to develop a case for asset ownership at all.
<i>Suffers from negative prevailing attitudes towards risk by asset owners</i>	It was thought that there was more tolerance of potential failure of asset acquisition by private sector organisations when there had been some difficulties/failures by that sector too (e.g. Casement Park)
<i>Lacks follow through support for Community Organisations</i>	Training and support post acquisition was lacking in terms of financial and asset management.

In relation to the framing of new legislation stakeholders thought that:

1. Framing legislation as a community “right” regardless of the proposed use of an asset once it has been acquired could cause problems where Community Organisations could “over reach” and submit under developed proposals that are not viable (financially) or sustainable (operationally or in terms of acceptable governance arrangements).

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2. If future legislation made reference to “Rights” Community Organisations may consider that it should go to them anyway regardless of the strength of their case/proposal in viability or sustainability terms or their inclusiveness in terms of governance and capacity to maintain and run the asset effectively.
3. That any unevenness in the take up of “Rights” may amplify divisions (religious, political) between communities within an area and across areas.
4. That some of the Rights provisions which apply in England which require local referenda could be problematic in NI given the kinds of divisions that exist within and between communities of both geography and interest.
5. That many of the weaknesses and challenges of the current NI CAT process would remain even if new legislation were enacted and would not realise its potential to deliver community benefits. In particular capital funding to support acquisition which had been key to the successes in other parts of the UK.
6. That a change of culture needed to take place within asset owner organisations, particularly in relation to risk and a positive “can do” approach to the process overall.

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Stakeholders views in their own words

“Most of the places we looked at [to acquire] would have been liabilities”

“We knew a partnership application with the Council would make a stronger application”

“Asset sellers must be discerning about what is required in terms of outcomes and the policy objectives served by the transfer of the asset. A high bar is needed in terms of transparency and accountability for any transfer – for both seller and purchaser”

“Sometimes the interests of the local economy are anything but best price [for an asset]”.

“Language is important...Framing rights as freedoms or protections would be more accessible to different audiences ... or [framing them] in terms of jobs and the environment”

“The Asset management Strategy for NI was about how central government departments could save money on their estate”

“I would be concerned about how the language of community rights in a progressive sense may become a reactionary limitation on individual rights”

“The CAT process currently does not protect land from the wider market and other central government departments expressing interest. Community organisations need preferred bidding status after the internal process is complete”

“We are lacking infrastructure to carry the weight of the work we want to do. In the absence of having that kind of infrastructure we can’t capitalise on the experience [of community asset acquisition] that has built up in isolated pockets”

“People involved in transfer can change – which can delay it”

“If there is seriousness about making community-based enterprise and ownership mainstream it needs infrastructural support, otherwise it’s just about getting rid of assets”

“We have come to the limits of what CAT can do without policy and legislation”

“CAT in NI has been very poorly marketed. This [CAT] should be front and centre in the minds of those

“Any appetite that may have existed to take advantages of Community Asset Transfers was damaged by the

“There is an opportunity to address deficits [post pandemic] in the rural economy, high street etc... to given control of

“There are six counties in Northern Ireland... If I were identifying this as a priority - were I in government - I would be setting up ... let’s call them Commissions. The one thing

“How could you possibly think of wasting public assets [by underusing them] rather than putting them to good use when communities are under such pressure? ..

“smaller groups do not know about asset transfer and what is possible”

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Stakeholders views in their own words

people capable of creating social capital and enabling communities to enable themselves”

financial crisis of 2007/8”

some assets to local areas.”

they would have in common is enabling communities to enable themselves. I would give them (based on their population size) a slice of capital – say £5 million, it would have to be “chunky” – I would also transfer assets to them ... which could be leveraged so that they could create betterment and transform it into social benefits [of all kinds].”

the issue will be to explain why legislation would be useful”

“Sometimes the interests of the local economy are anything but best price [for an asset]”.

“There is a big disposition [in government] to say why we can’t or shouldn’t and fear of risks”

“Legislation can be a reason to say we must push this and offer it as an option”

“A challenge in the process is lack of communication between departments about the transfer and changes in personnel”

“we need municipal entrepreneurs as well as community entrepreneurs”

“Assessment of sustainability, viability [for asset transfers] has to be as good and as genuine as it can be – from both sides [seller and purchaser]”

“we need municipal entrepreneurs as well as community entrepreneurs”

“What sort of economy is going to work in areas that have not benefited from growth? CAT has potential to do this. We need investment in the economy of working-class areas”

How do you know [in CAT projects] you are doing worthwhile things? CAT needs to be connected to {proposed} impacts”

“Assets must be made available at a price that is an advantageous one which increases the likelihood of a good social outcome”

“CAT does not address [due to its current scale] the issues of the labour market [in disadvantaged areas].

“if community rights are there and we don’t have the skills and particularly we don’t have the finance .. then they will be useful but will not translate into anything”

“The community felt that the department should be handing this [the asset] over for nothing. But the department wanted something from the start and I thought it was unrealistic to expect that this would change”

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5. Asset Transfer in Practice: Strengths and Opportunities

The data on asset transfer suggests that although the take up of rights available elsewhere in the UK is uneven, it does exist and similarly there is a growing demand for expressing interest in asset acquisition by Community Organisations in Northern Ireland.

Operation of community rights on asset transfer in other parts of the UK provides a source of learning to ensure that issues identified with these rights could be avoided in the NI context.

Stakeholders were keen to stress that even before the NI CAT Framework, asset acquisition by Community Organisations had taken place anyway and cited examples associated with NIHE, Woodland and River projects, business provision as part of enterprise programmes (Making Belfast Work) and so on. This meant that there was existing experience to draw upon both to promote the benefits and widen the opportunity for asset acquisition to Community Organisations.

Most stakeholders were supportive of providing a legislative basis for asset acquisition by Community Organisations. They thought that its power was that it was not part of a “deficit model” where communities are seen as places that only had needs, but also had assets which could be built upon – people and skills/networks, local buildings and facilities that could be used more directly to provide stimulus to and strengthen the local economy to ensure that money and jobs “stick” locally.

Most stakeholders regarded the fact that assets available for acquisition by Community Organisations were an opportunity since by definition they were underused and were providing no economic, social, or environmental returns to the people and businesses of NI.

Stakeholders saw particular opportunities in strategic funding via the Special EU Programmes Body and extension of existing funding such as the Social Investment Fund NI. Some thought that the issues associated with implementing the CAT framework prevented these opportunities from being grasped when NI National Policy set out most recently in “New Decade New Approach” (Jan 2020) was committed to a regionally balanced economy and an anti-poverty strategy.

The refresh of the Northern Ireland Outcome Delivery Plan (2019) was also identified as an opportunity to make the acquisition of assets by Community Organisations more integrated into government agreed outcomes and more locally devolved delivery to achieve them.

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6. Recommendations

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

- i. Improve the current process of what is known as Community Asset Transfer (CAT) in Northern Ireland to make it more effective in ensuring that Community Organisations are aware of it and supported to make use of it as an opportunity to meet the needs of communities in Northern Ireland
- ii. Improve the integration of central and local government in making available surplus and underused land and buildings to Community Organisations to meet NI Executive policy commitments and improve transparency around the availability of assets that are identified for disposal by central government department and local councils.
- iii. Guide the drafting of legislation that balances the opportunity for community ownership that achieves shared government and community objectives, learning from practice from elsewhere in the United Kingdom

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i) Improvement to the current process of acquisition of land and building assets by Community Organisations in Northern Ireland

- ✓ *Policy related to the acquisition of assets by Community Organisations should be expressed not as CAT, which implies the giving away of assets for free, but as an investment of assets in communities to achieve economic, environmental and social impacts that are shared by both current owners and the acquiring Community Organisation – particularly those that are associated with the building of social capital³*
- ✓ *All guidance needs to be refreshed to communicate clearly to Community Organisations that the acquisition of an asset is a negotiation in relation to the balance between financial value that is paid between the acquirer and the seller and the beneficial outcomes that would result from the specific asset to be transferred relating to service/place-making/citizen empowerment objectives.*
- ✓ *There should be no assumption that it should be available for free. But that every effort would be made to reduce the financial aspects of the transaction so that there would be a focus on capital and revenue funding being applied for agreed social, environmental, and economic outcomes specifically related to the asset. This would acknowledge and respect the role of public servants who have a duty to implement government policy and take positive action to assist and empower the most vulnerable people in NI and steward the assets of the state to enable this.*
- ✓ *Guidance on asset acquisition by Community Organisations needed to be more detailed and tailored to the needs and circumstances of Community Organisations, particularly in relation to the Expression of Interest Questionnaire at Stage 1 and the Business Plan and Business Case requirements at Stage 2*
- ✓ *That the policy should be more widely promoted, using all available media, particularly to local councils and Community Organisations so that early discussions and capacity building could result in more detailed and robust proposals for asset acquisition and time could be spent securing financial and other support to develop them. For councils, awareness of the way that asset acquisition by Community Organisations could address their own wider policy objectives for service provision is needed.*
- ✓ *That dedicated capital funding to acquire and improve assets identified as surplus was an essential accompaniment to provide the investment that could release their future value to people and the local economy.*

³ Social capital is the effective functioning of Community Organisations through interpersonal relationships, a shared sense of identity, a shared understanding of outcomes to be pursued, shared norms (acceptable conduct), shared values, trust, cooperation, and reciprocity. Social capital is a measure of the value of resources, both tangible (e.g., public spaces, private property) and intangible (e.g. people or organisations who are free to make their own choices or have specific skills and connections), and the impact that these relationships have on the resources involved in each relationship, and on larger groups. It is generally seen as a form of capital that produces public goods (where people cannot be excluded from it and/or do not have to pay for it) for a shared purpose.

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- ✓ *That the timescales for any asset acquisition needed to be extended for all the current stages of the process.*
- ✓ *A programme of work that focussed on pre-acquisition support is needed to increase the pipeline of Community Organisations who could go through the process successfully by building their understanding of its requirements so that they could decide whether to proceed and express and interest as part of the process.*
- ✓ Supporting Infrastructure to redress the imbalance in skills between potential acquirers and current owners is needed to release all the potential benefits of the policy – this includes access to independently commissioned and independent advisors on the technical and more strategic appraisal aspects (redevelopment/refurbishment of assets, business cases) financial aspects (valuation and business planning) and reporting and monitoring post acquisition.

Improve the integration of central and local government in making available surplus and underused land and buildings to Community Organisations

- ✓ Councils should be required to use the Trawl Process for their surplus assets to ensure that all potential assets were available to Community Organisations

Guidance for the drafting of new legislative powers

Any legislation introduced should:

- ✓ Provide powers that are referred to as community empowerment and investment provisions so that Community Organisations can take action via the acquisition of land or buildings in public ownership to address community needs (either in relation to a definition of community related to a place – a defined geographical area, or an interest - e.g. food growing, biodiversity preservation or enhancement, young/older people, health, transport, affordable housing)
- ✓ Provide powers similar to those in England that apply to both public and privately owned assets where they are considered to be of value to the community. These powers should create a window for Community Organisations to register their interest in them and then to buy them when they are offered up for sale. Any refusal of registration of an interest in an asset by a Community Organisations should be accompanied by reasons for refusal and an opportunity for a right of appeal and that a similar justification and right of appeal on a community bid to acquire when the asset is put on the market 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 to enable it to be more integrated and more effective at a local level where Community Organisations have

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greater contact and communication with government. In particular, a general disposal consent which allows local government to decide on 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.

- ✓ Be specific about the definition of community that is acceptable and the governance arrangements that should be in place for Community Organisations to be eligible for asset acquisition (e.g., asset locks, open membership, requirements to prevent the long term control of organisations by individuals). This is particularly important in NI due to divisions within communities based on religious or political affiliations and their manifestations in communities of place. The Scottish guidance for this is very relevant and could be used as the basis for identifying acceptable governance of bodies who wish to acquire assets that are surplus to public sector requirements and provide safeguards to the use of revenues that arise from the asset acquired to ensure that it is used for community benefit.

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Appendix 1: Interviews

Organisation	Interviewed
NILGA	8 th September 2020
Centre for Cross Border Studies	1 st September 2020
Holywell Trust	Not available within the study period
Community Foundation for NI	13 th September 2020
Queens University Belfast	5 th August 2020
Department for Communities	5 th August 2020
STEP (South Tyrone Empowerment Programme)	2 nd September 2020
PPR (Participation & Practice of Rights)	2 nd September 2020
Belfast Charitable Society	14 th August 2020
Strategic Investment Board	2 nd September 2020
NIVCA	13 th August 2020
Community Finance Ireland	14 th August 2020

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Appendix 2: References

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