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Executive Summary

1. General disposal consent legislation gives permission to public authorities to transfer public assets at less than market value, subject to certain checks and balances.
2. There is currently no enabling legislation in Northern Ireland in relation to General Disposal Consent. Rather, the express consent of the Department of Finance is required if property is to be transferred at less than best value.
3. The absence of enabling legislation is a major obstacle in the way of Community Wealth Building in Northern Ireland. Public servants are reluctant to dispose of publicly owned assets for less than full market value without a clear and unambiguous legislative basis for such a transfer.
4. Elsewhere in the United Kingdom, England and Scotland both have enabling legislation providing for General Disposal Consent on their statute books. In these jurisdictions, this legislation has removed one of the key obstacles to Community Asset Transfers, and thus acts as an important driver of the Community Wealth Building agenda.
5. As General Disposal Consent is working effectively in these other jurisdictions of the United Kingdom, it is recommended that similar enabling legislation should be enacted in Northern Ireland as soon as practicable.
6. The Scottish legislation in particular, both primary and secondary, provides a valuable template for any new Northern Ireland legislation on General Disposal Consent.
7. In this paper, two main options are considered in relation to the introduction of General Disposal Consent legislation in Northern Ireland:
 - 7.1 Option One - Introduce a short bill dealing with General Disposal Consent only.
 - 7.2 Option Two - Introduce a wider community rights and empowerment bill - which would include General Disposal Consent alongside a wide range of other community empowerment provisions.
8. Once primary legislation is in place, secondary legislation would need to be introduced to set out the detail of how General Disposal Consent would operate in practice in Northern Ireland.
9. This secondary legislation should include some or all of the following provisions and protections:
 - 9.1. A list of all the Northern Ireland public bodies covered by the General Disposal Consent provisions.
 - 9.2. A maximum amount for the difference between the full transfer value and the amount actually paid by the transferee. In England, this maximum amount is £2 million.
 - 9.3. Any disposal must be reasonable.
 - 9.4. Any disposal must be likely to contribute to the provision or improvement of economic development or regeneration, health, social wellbeing, or environmental wellbeing.
 - 9.5. The transferee must be a not-for-profit legal entity with an asset lock, such as a charitable company limited by guarantee, or a Community Interest Company.

Introduction

Background - Collaboration Ireland

This paper was prepared by Andrew Talbot of Collaboration Ireland.

A qualified solicitor, Andrew is a consultant who specialises in supporting the voluntary, community, and social enterprise (VCSE) sector in Ireland.

Andrew qualified as a solicitor in 2001 and worked initially in private practice as a corporate, commercial & charity lawyer in leading corporate law firms in Newcastle-Upon-Tyne and Belfast. Since 2010, Andrew has focused on his real passion, which is to strengthen and develop the VCSE sector.

From 2010 until 2017, Andrew worked for NICVA, the umbrella body for the voluntary and community sector in Northern Ireland, providing advice and support to charities on legal structures, partnership working and mergers, good governance, and charity law. Since 2017, Andrew has delivered this support on a freelance basis as a Collaboration Ireland consultant.

Andrew has also been a board member of the Northern Ireland Hospice since 2015.

Purpose of this paper

The purpose of this paper is to consider why General Disposal Consent legislation is needed in Northern Ireland and to discuss the scope and content of such legislation.

Why is General Disposal Consent legislation needed in Northern Ireland?

The current position in Northern Ireland is that there is no enabling legislation in relation to General Disposal Consent.

The absence of enabling legislation is a major obstacle in the way of enabling public authorities to transfer public assets at less than market value to community ownership. This is because public servants are reluctant to dispose of publicly owned assets for less than full market value without a clear and unambiguous legislative basis for such a transfer.

There is enabling legislation in place in both the English and Scottish jurisdictions, and in Scotland in particular, this enabling legislation is clear and unambiguous.

Partly as a consequence of this enabling legislation, there are greater numbers of Community Asset Transfers taking place in both Scotland and England.

As General Disposal Consent legislation is working effectively and successfully in the other jurisdictions of the United Kingdom, similar enabling legislation should be introduced in Northern Ireland.

What is General Disposal Consent?

General disposal consent gives public authorities permission to transfer public assets at less than market value. Such General Disposal Consent would be a hugely important step forward in facilitating Community Asset Transfers in Northern Ireland.

What is Community Asset Transfer?

Community Asset Transfer is an established mechanism used to enable the community ownership and management of publicly owned land and buildings. The term is usually used to indicate that as communities are to be the beneficiaries of the asset, the transfer of ownership should be at less than full market value.

Primary and secondary legislation

Each section of this paper will consider both primary and secondary legislation.

Primary legislation is the general term used to describe the main laws passed by the legislative bodies in each of the jurisdictions - the UK Parliament at Westminster, the Scottish Parliament, and the Northern Ireland Assembly.

Secondary legislation is law which is created by ministers or statutory bodies under powers granted to them by primary legislation. Secondary legislation is used to fill in the detail and provide practical measures that enable the law to operate and be enforced. Secondary legislation is usually subjected to much less scrutiny and debate, and is likely to pass into law much more quickly and smoothly.

How this paper is structured

Section one of this paper will consider the scope and content of the primary and secondary legislation which provides General Disposal Consent in England.

Section two of this Paper will consider the scope and content of the primary and secondary legislation which provides General Disposal Consent in Scotland.

Section Three will consider the current legislation in place in Northern Ireland in relation to Community Asset Transfer and General Disposal Consent.

Section Four will set out the two main options for legislation, and consider in detail how General Disposal Consent legislation could be introduced in Northern Ireland.

Section One

Scope and content of legislative provisions for Community Asset Transfer and General Disposal Consent in England



Introduction

In England, the main pieces of primary legislation dealing with community empowerment, Community Asset Transfer and General Disposal Consent are:

- the Localism Act 2011; and
- the Local Government Act 1972.

The main piece of secondary legislation is the General Disposal Consent Circular 06/03 (2003).

Each piece of legislation is discussed below.

Primary legislation

1. The Localism Act 2011

The Localism Act is a significant piece of legislation dealing with community empowerment. It includes provisions on the following:

- Community Right to Bid
- Community Right to Build
- Community Right to Plan
- Community Right to Challenge
- General Power of Competence

A summary of these provisions and a link to the relevant section of the Act is included at Appendix One of this paper.

2. Local Government Act 1972

Section 123 of the Local Government Act 1972¹ has provisions dealing with the disposal of land at less than best consideration.

This is the primary enabling legislation in relation to General Disposal Consent in England.

123 Disposal of land by principal councils

- (1) Subject to the following provisions of this section, a principal council may dispose of land held by them in any manner they wish.
- (2) Except with the consent of the Secretary of State, a council shall not dispose of land under this section, otherwise than by way of a short tenancy, for a consideration less than the best that can reasonably be obtained.

In relation to this section 123 of the Local Government Act 1973, a DTNI review of community rights for Northern Ireland² states that section 123:

'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 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.'

Although it is not clear from a simple reading of the text of clause 123 that the wording of this section grants the specific power to the Secretary of State to issue the applicable secondary legislation, this is the primary legislation which enables General Disposal Consent in England.

In England, the secondary legislation which enshrines General Disposal Consent is the General Disposal Consent Circular 06/03 (2003).

¹ Local Government Act 1972 (legislation.gov.uk).

² Scoping-Paper-Community-Asset-Acquisition-Final.pdf (dti.org.uk) A Scoping Paper commissioned by Development Trusts NI with support from the Joseph Rowntree Charitable Trust and written by Lorraine Hart of Community Land Use



Secondary legislation

The General Disposal Consent 2003 - Circular 06/03 (2003) – Local Government Act 1972 general disposal consent (England) 2003

This circular³ provides 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 the undervalue is less than £2 million.

The General Disposal Consent Circular 06/03 (2003) enables the disposal of land for less than the best consideration that can reasonably be obtained.

This provides a mechanism that enables the local authority to transfer an asset at below market value where it contributes to community wellbeing. The specific circumstances are:

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

This paper considers that the content of the General Disposal Consent Circular 2003 provides a good model for potential General Disposal Consent legislation in Northern Ireland.

It contains two key protections that should be seriously considered for inclusion in any Northern Ireland equivalent legislation:

- the disposal must contribute to the economic, social or environmental wellbeing of the area or its residents.
- the difference between the full value of the property and the amount paid must not exceed a certain figure. In England that figure is £2 million.

Summary

1. The General Disposal Consent Circular 2003 provides a good model for potential General Disposal Consent secondary legislation in Northern Ireland, and the protections contained in this circular should be considered when preparing similar legislation for Northern Ireland.
2. In terms of primary legislation in England, the Local Government Act does date back 40 years to 1972. Without taking legal advice, it would be difficult to understand how the wording of the primary legislation in England provides the powers to create secondary legislation in the form of the General Disposal Consent Circular 2003. The primary legislation from England, therefore, is not necessarily the best model for future Northern Ireland legislation.

³ Disposal of land for less than the best consideration that can reasonably be obtained: circular 06/2003 - GOV.UK (www.gov.uk)

Section Two

Scope and content of legislative provisions for Community Asset Transfer and General Disposal Consent in Scotland

Introduction

The following points are made in the DTNI technical advisory paper 'Asset-based development and community wealth building'⁴:

- Scotland is now one of the most progressive transfer economies.
- In Scotland, Community Asset Transfer and land reform has made a significant impact on generating income for organisations, driving regeneration and repopulating remote communities.
- The Community Empowerment (Scotland) Act 2015 was part of a wider process of reform – asset transfer is embedded in a wider framework for local empowerment emphasising consultation, community engagement, and co-production.

In Scotland, the main pieces of primary legislation dealing with Community Asset Transfer and General Disposal Consent are:

- Local Government (Scotland) Act 2003.
- Community Empowerment (Scotland) Act 2015.

The main piece of secondary legislation is the Disposal of Land by Local Authorities (Scotland) Regulations 2010.

Primary legislation

1. Community Empowerment (Scotland) Act 2015

The Community Empowerment (Scotland) Act is a wide-ranging and significant piece of legislation dealing with community empowerment. It includes provisions on the following:

- Community Right to Buy land
- Asset transfer requests
- Participation in decisions

A summary of these provisions and a link to the relevant section of the Act is included at Appendix Two of this paper.

2. Local Government Scotland Act 2003

The Local Government Scotland Act 2003⁵ is the primary legislation in Scotland that introduces the power to transfer at less than market value.

The Act grants power to Scottish ministers to issue statutory rules on the circumstances in which local authorities can dispose of land at less than the best consideration that can reasonably be obtained (see Appendix Three).

The granting of powers to Scottish Ministers in this primary legislation is clear and unambiguous. Scottish ministers may, through regulations, provide the circumstances in which local authorities can dispose of land at less than the best consideration that can reasonably be obtained.

This is the primary legislation which grants the power to Scottish ministers to issue the statutory rules set out in the Disposal of Land by Local Authorities (Scotland) Regulations 2010 (below).

Secondary legislation

In Scotland, the secondary legislation which enshrines General Disposal Consent is the Disposal of Land by Local Authorities (Scotland) Regulations 2010⁶.

This statutory instrument 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.

In 2014, additional guidance was added to the Public Finance Manual in Scotland. This clarified and strengthened the process of disposing of public sector land and buildings.

In Scotland, therefore, a local authority can dispose of land for less than full consideration, in circumstances where the disposal is both reasonable and likely to contribute to the provision or improvement of economic development, or regeneration, health, social wellbeing, or environmental wellbeing.

⁴ DTNI Technical Advisory Paper – Asset based development and community wealth building - Layout 1 (dti.org.uk)

⁵ <https://www.legislation.gov.uk/asp/2003/1/contents> Local Government (Scotland) Act 1973 (legislation.gov.uk)

⁶ The Disposal of Land by Local Authorities (Scotland) Regulations 2010 (legislation.gov.uk)



Summary and some conclusions

1. The Scottish legislation, both primary and secondary, provides a valuable template for new Northern Ireland legislation on General Disposal Consent.
2. The Local Government Scotland Act 2003 is the primary legislation in Scotland, which introduces the power to transfer property at less than market value.
3. The Local Government Scotland Act 2003 (Section 74, 2C) is clear and unambiguous in granting power to Scottish ministers to issue statutory rules on the circumstances in which local authorities can dispose of land at less than best consideration.
4. The relevant secondary legislation in Scotland is the Disposal of Land by Local Authorities (Scotland) Regulations 2010. These regulations set out the circumstances in which local authorities can dispose of land at less than best consideration. These regulations also set out a number of protections which should be considered for inclusion in any Northern Ireland version of the General Disposal Consent legislation.
5. Scotland's legislation, both primary and secondary, provides Northern Ireland with a relatively recent and clear roadmap for the development of its own legislative architecture in relation to General Disposal Consent.

Section Three

Scope and content of current legislative provisions for Community Asset Transfer and General Disposal Consent in Northern Ireland

Introduction

In Northern Ireland, the most relevant piece of primary legislation is the Stormont Regulation and Government Property Act (Northern Ireland) 1933.

The most relevant document on the subject of Community Asset Transfer in Northern Ireland is the Land and Property Services guidance, 'Disposal of Surplus Public Sector Property in Northern Ireland' (October 2018).

Primary Legislation

In Northern Ireland, the key piece of primary legislation in this area is the Stormont Regulation and Government Property Act (Northern Ireland) 1933⁷.

Section 5(5) of the Stormont Regulation and Government Property Act (Northern Ireland) 1933 states that any disposal of government property must be 'at the best price or for the best rent or otherwise on the best terms' that can reasonably be obtained.

This section also states that if government property is to be transferred at less than 'best price or for the best rent or otherwise on the best terms', then the consent of the Department of Finance and Personnel is required.

Section 5(5) of the Stormont Regulation and Government Property Act (Northern Ireland) 1933

(5) A sale, exchange, lease, or surrender of land under this section shall be at the best price or for the best rent or otherwise on the best terms which, in the opinion of the Department of Finance and Personnel, can reasonably be obtained:

Provided that a nominal price or rent, or a price or rent or terms **other than the best that can reasonably be obtained, may be accepted with the consent of the Department of Finance and Personnel**, by a department of Northern Ireland, in a case where:

- (i) the land is to be sold, leased, or otherwise transferred to a local authority, or to a body or persons not trading for profit and authorised by or under any enactment to carry on a public undertaking; and
- (ii) the Department of Finance and Personnel is satisfied that such sale, lease or transfer will result in the development, improvement or general benefit of any land held by a Ministry of Northern Ireland.

Land and Property Services guidance (October 2018)

With regard to Community Asset Transfers, the key piece of official guidance in Northern Ireland is the Land and Property Services guidance of October 2018, 'Disposal of Surplus Public Sector Property in Northern Ireland' (the guidance)⁸.

The relevant paragraphs of the guidance are paragraphs 6.7 to 6.12. These paragraphs make direct reference to Section 5 of the Stormont Regulation and Government Property Act (Northern Ireland) 1933.

The key point here is that the express consent of the Department of Finance is required in order to transfer any government property which is for less than 'best price or for the best rent or otherwise on the best terms' which can reasonable be obtained.

Paragraph 6.9 sets out the criteria which must be satisfied in order for such consent to be granted by the Department of Finance:

- the sale, lease or transfer is to a local authority or other statutory body or to a not for profit body; and
- the sale, lease or transfer will result in the development, improvement, or general benefit of the land.

It should be emphasised that, if General Disposal Consent legislation were to be introduced in Northern Ireland, the current requirement for express consent from the Department of Finance would be removed.

⁷ Stormont Regulation and Government Property Act (Northern Ireland) 1933 (legislation.gov.uk)

⁸ Disposal of surplus public sector property in Northern Ireland - guidance (finance-ni.gov.uk)

Summary

1. There is no primary or secondary legislation in place in Northern Ireland at the moment which provides for General Disposal Consent.
2. In Northern Ireland, the express consent of the Department of Finance is required if property is to be transferred at less than best value.
3. The criteria to be applied by the Department of Finance in granting such express consent is set out in detail in the Land and Property Services guidance, 'Disposal of Surplus Public Sector Property in Northern Ireland' (October 2018). This guidance is part of a broader range of guidance which applies on matters such as procurement, consolidated budgeting, and financial appraisal. The introduction of General Disposal Consent legislation would assist in simplifying what is currently a very complex process.
4. Northern Ireland's position is very different to the position in England where General Disposal Consent is clearly provided under the General Disposal Consent Circular 2003. Ministerial consent for a disposal is not required there.
5. Northern Ireland's position is also different to the position in Scotland where General Disposal Consent is clearly provided under the Disposal of Land by Local Authorities (Scotland) Regulations 2010. Once again, ministerial consent for a disposal is not required.
6. Northern Ireland is currently out of step with the rest of the United Kingdom in relation to General Disposal Consent legislation. The absence of General Disposal Consent legislation in Northern Ireland makes it extremely difficult to increase the number of successful Community Asset Transfers across the region.





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Section Four

How to enact General Disposal Consent in Northern Ireland

Options for primary legislation:

There are two options for the introduction of primary legislation on General Disposal Consent in Northern Ireland:

Option One – short bill introducing General Disposal Consent only

A short bill could be introduced by, say, the Minister of Finance which contains a single provision – the introduction of General Disposal Consent.

The bill should perhaps contain wording similar to the Local Government (Scotland) Act 2003, which states clearly that ministers may ‘by regulations, provide as to the circumstances in which and procedure by which local authorities may, under this section, dispose of land for a consideration less than the best that can reasonably be obtained’.

In the Northern Ireland legislation, the definition of the term ‘local authorities’ should include all the various public bodies that might need which might need to consider a transfer of assets at less than full market value.

The advantage of a short bill is that both the politics and the process of its introduction into law should be much more straightforward. It should be reasonably possible for a cross-party consensus to be established to ensure a swift passage of the legislation.

Nothing is predictable or certain in politics, but it would perhaps be reasonable to predict that a short, single issue bill on a matter which has potential benefits to all communities in Northern Ireland - is more likely to pass into law quickly than a longer, more complex, and more controversial piece of legislation.

General Disposal Consent legislation would be a quick win for the Community Wealth Building agenda – and potentially build momentum towards even greater change.

Option Two – broader Community Rights and Empowerment Act including General Disposal Consent and a wider range of other provisions

The second option is to include General Disposal Consent as part of a wider Community Rights and Empowerment Act.

As noted in Sections One and Two of this paper, both England and Scotland already have wide-ranging community empowerment legislation on their statute books dealing with issues such as the following:

- Community Right to Bid/Buy Land
- Community Right to Build
- Community Right to Plan
- Community Right to Challenge
- Asset transfer requests

In England, these community empowerment provisions were introduced in the Locality Act 2011 (see Appendix One).

In Scotland, community empowerment provisions were introduced in the Community Empowerment (Scotland) Act 2015 (see Appendix Two).

The advantages of this Option Two are:

- the Act could potentially have a much greater long-term impact on Northern Ireland society and politics.
- Passing the Act would generate a much bigger political conversation about community empowerment and Community Wealth Building, and raise the profile of these issues.

The disadvantages are:

- legislation would be much more complex
- legislation would be much more likely to be controversial, with less likelihood of consensus
- General Disposal Consent would take much longer to deliver

Secondary legislation – following Option One

If Option One were to be followed – a short bill introducing General Disposal Consent only – secondary legislation would be required to set out the detail of how General Disposal Consent would operate in practice.

Statutory rules are one of the most common forms of secondary or delegated legislation in Northern Ireland. Statutory rules can only be made in accordance with powers granted in the primary/enabling legislation.

As noted in the section on Option One above, the relevant department to introduce General Disposal Consent legislation should perhaps be the Department for Finance, but consideration should also be given to how the Department for Communities and the Department for Infrastructure would work together to lead and deliver a comprehensive regulatory framework for Northern Ireland. In drafting the secondary legislation, the following provisions should be considered for inclusion:

- a list of all the public bodies covered by the General Disposal Consent provision
- a de minimis provision similar to that in place in Scotland, where it is set at £10,000
- a maximum amount for the difference between full market value and the amount actually paid by the transferee - in England this maximum amount is £2m⁹
- any disposal must be reasonable
- disposal is likely to contribute to the provision or improvement of economic development or regeneration, health, social wellbeing, environmental wellbeing
- provisions to ensure that any transferee is a legal entity with an asset lock, such as a charitable company limited by guarantee, or a community interest company.

A consideration of secondary legislation following Option Two is beyond the scope of this paper.

⁹ In England, the maximum amount for the difference between full market value and the amount paid by the transferee in a Community Asset Transfer is set at £2 million in the General Disposal Consent Circular 06/03 (2003). However, given the value of many publicly owned properties in Northern Ireland, this would be a relatively low figure to include in any NI legislation.





Appendix One

Summary of the community empowerment provisions of the Localism Act 2011 - England

1. Community Right to Bid

A community right to bid is contained in the Localism Act 2011 Part 5, Chapter 3.

Key points of the Community Right to Bid:

- community organisations nominate assets of community value to a local authority, regardless of who owns them
- local authority considers nomination
- the owner can challenge the listing
- if successful they are placed on a register
- if they are put up for sale, the community organisation that nominated them has a six-month window (moratorium) in which to put together an offer to buy it, and raise the capital
- the seller has no obligation to accept the bid from the community organisation at the end of the process
- the nominating community organisation can include a community group, society, parish council, neighbourhood forum, not-for-profit organisation, or group of at least 21 individuals locally connected to the area.

2. Community Right to Build

The Community Right to Build is contained in the Localism Act 2011, Schedule 9 – Neighbourhood Planning¹⁰.

Key points of the Community Right to Build:

- community organisations are able to bring forward development proposals
- these will go ahead without requiring a separate traditional planning application
- this is subject to minimum criteria and the demonstration of local support through a referendum
- government will fund sources of help and advice for communities to do this.

3. Community Right to Plan

The Community Right to Plan is contained in the Localism Act 2011, Schedule 10 – Process for Making of Neighbourhood Development Orders¹².

Key points of the Community Right to Plan:

- neighbourhood planning allows communities to come together through a local parish council or neighbourhood forum to say where they think new houses, businesses, or shops should go, and what they should look like
- local authorities are able to use neighbourhood planning to grant full or outline planning permission in areas where they most want to see new homes and businesses
- a Neighbourhood Development Plan may be voted on in a referendum, and if approved, enacted by the local authority.

4. Community Right to Challenge

The Community Right to Challenge is contained in the Localism Act 2011 Part 5, Chapter 2¹³

Key points of the Community Right To Challenge:

- groups, parish councils, and authority employees have the right to express an interest in taking over the running of a local authority service
- local authority must consider and respond to this challenge
- if it accepts the challenge, the local authority runs a procurement exercise for the service in which the challenging organisation can bid
- this right to challenge does not extend to some services related to children and vulnerable people, or services provided by the NHS
- local authority employees who want to use the right must form a suitable not-for-private-profit vehicle.

5. General Power of Competence

A General Power of Competence is contained in the Localism Act 2011 Part 1, Chapter 1, Section 1 & Section 2, Boundaries of Power¹⁴.

This allows councils the ability to do anything an individual can do, rather than only what they are directly empowered to do. Importantly, this General Power of Competence gives local authorities the freedom to act in the interests of voters.

¹⁰ Localism Act 2011 (legislation.gov.uk)

¹¹ Localism Act 2011 (legislation.gov.uk)

¹² Localism Act 2011 (legislation.gov.uk)

¹³ Localism Act 2011 (legislation.gov.uk)

¹⁴ Localism Act 2011 (legislation.gov.uk)

Appendix Two

Summary of the community empowerment provisions of the Community Empowerment (Scotland) Act 2015 - Scotland

Community Right to Buy Land - Part 4¹⁵

The wording of Part 4 is difficult to follow because this piece of legislation is amending Part 2 of the Land Reform (Scotland) Act 2003¹⁶.

The legislation is easier to follow by referring to the Land Reform (Scotland) Act 2003 on legislation.gov.uk, as all the 2015 amendments are included.

Key points:

- 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, or a lease, or other rights
- public authority must transparently assess any request against a specific list of criteria
- criteria include whether agreeing to the request would be likely to promote or improve economic development, regeneration, public health, social wellbeing or environmental wellbeing
- the public authority must agree the request unless there are reasonable grounds for refusal
- if refused, the community group has a right to appeal or ask for a review of that decision.

Asset Transfer Requests – Part 5¹⁷

Key points:

- encourages partnership working between service providers and communities
- enables communities to make requests, not just to local authorities but to a wide-ranging list of public bodies
- public authorities are required to publish a register of the land they own or lease to help local communities to identify suitable property

Participation in Decisions - Part 3¹⁸

Key points:

- subsequent guidance was published in April 2017¹⁹
- purpose is to start a dialogue with the service provider; contribute to the decision-making process; contribute to service changes; challenge decisions; seek support for alternatives.

¹⁴ Localism Act 2011 (legislation.gov.uk)

¹⁵ Community Empowerment (Scotland) Act 2015 (legislation.gov.uk)

¹⁶ Land Reform (Scotland) Act 2003 (legislation.gov.uk)

¹⁷ Community Empowerment (Scotland) Act 2015 (legislation.gov.uk)

¹⁸ Community Empowerment (Scotland) Act 2015 (legislation.gov.uk)

¹⁹ Community Empowerment (Scotland) Act: participation request guidance - gov.scot (www.gov.scot)

Appendix Three

Local Government (Scotland) Act 2003 – Amendment to Section 74 of the Local Government (Scotland) Act 1973

Section 74 - Disposal of land.

(1) Subject to Part II of the Town and Country Planning (Scotland) Act 1959, and to subsection (2) below, a local authority may dispose of land held by them in any manner they wish.

(2) Except in accordance with regulations under subsection (2C) below, a local authority shall not dispose of land under subsection (1) above for a consideration less than the best that can reasonably be obtained.

(2A) Subsection (2) does not extend to a disposal where—

(a) the best consideration that can reasonably be obtained is less than the threshold amount; or

(b) the difference between that consideration and the proposed consideration is less than the marginal amount.

(2B) The Scottish Ministers shall, by regulations, fix the threshold amount and the marginal amount for the purposes of subsection (2A) above.

(2C) The Scottish Ministers may, by regulations, provide as to the circumstances in which and procedure by which local authorities may, under this section, dispose of land for a consideration less than the best that can reasonably be obtained.

(2D) Those regulations may include provision—

(a) requiring a local authority proposing to dispose of land at less than the best consideration that can reasonably be obtained to appraise and compare the costs and other disbenefits and the benefits of the proposal;

(b) requiring the local authority, before deciding in favour of the proposal, to be satisfied that so deciding would be reasonable; and

(c) setting out factors to which the local authority must have regard when considering whether its decision would be reasonable.

Appendix Four

Disposal of Land by Local Authorities (Scotland) Regulations 2010

Scottish Statutory Instruments

2010 No. 160

Local Government

The Disposal of Land by Local Authorities (Scotland) Regulations 2010

Made - 20th April 2010

Laid before the Scottish Parliament - 21st April 2010

Coming into force - 1st June 2010

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 74(2B), (2C) and (2D) of the Local Government (Scotland) Act 1973(1) and all other powers enabling them to do so.

In accordance with section 74(2H) of that Act, they have consulted with such associations of local authorities and such other persons as they have thought fit.

Citation and commencement

1. These Regulations may be cited as the Disposal of Land by Local Authorities (Scotland) Regulations 2010 and come into force on 1st June 2010.

Threshold amount and marginal amount

2.—(1) The threshold amount for the purposes of section 74(2A)(a) of the Local Government (Scotland) Act 1973 is £10,000.

(2) The marginal amount for the purposes of section 74(2A)(b) of that Act is 25% of the best consideration that can reasonably be obtained

Procedure

3.—(1) The procedure for a disposal of land for a consideration less than the best that can reasonably be obtained is as follows.

(2) The local authority must—

(a) appraise and compare the costs and other disbenefits and the benefits of the proposal; and

(b) determine that the circumstances set out in regulation 4 are met.

Circumstances

4.—(1) The circumstances in which a local authority may dispose of land for a consideration less than the best that can reasonably be obtained are that—

(a) the local authority is satisfied that the disposal for that consideration is reasonable; and

(b) the disposal is likely to contribute to any of the purposes set out in paragraph (2), in respect of the whole or any part of the area of the local authority or any persons resident or present in that area.

(2) Those purposes are the promotion or improvement of—

(a) economic development or regeneration;

(b) health;

(c) social well-being; or

(d) environmental well-being.

Appendix Five

Extract from Land and Property Services Guidance (October 2018)

Disposal of Surplus Public Sector Property in Northern Ireland ('the Guidance') - Internal Transfer Value

6.7 At an early stage in the process the value to be paid to an asset owner for an internal market transfer should be determined. The value must comply with Section 5 of the Stormont Regulation and Government Property Act (NI) 1933 which states that;

6.8 "a sale, exchange, lease or surrender of land under this section shall be at the best price or for the best rent or otherwise on the best terms which, in the opinion of the Department of Finance and Personnel (Now Department of Finance), can reasonably be obtained:

6.9 Provided that a nominal price or rent, or a price or rent or terms other than the best that can reasonably be obtained, may be accepted with the consent of the Department of Finance and Personnel, by a department of Northern Ireland, in a case where-

(i) The land is to be sold, leased, or otherwise transferred to a local authority, or to a body or persons not trading for profit and authorised by or under any enactment to carry on a public undertaking; and

(ii) The Department of Finance and Personnel is satisfied that such a sale, lease or transfer will result in the development, improvement or general benefit of any land held by the Ministry in Northern Ireland"

6.10 Any transfer must be at best value and will only be at less than best value if the criteria at (i) and (ii) above apply.

Where the criteria do apply, any asset owner wishing to sell at less than best value must obtain their own accounting officer's approval (and if appropriate the approval of their Minister) before DoF i.e. Supply will agree to any transfer at less than best value.

6.11 Variations from the principle of obtaining best price are only feasible where an asset owner has specific legislative authority to disapply the Stormont Act as this enables that body to sell to any 3rd party at less than best price.

6.12 Examples of the latter are within Article 90 of the Planning (Northern Ireland) Order 1991, Article 6(6) of the Nature Conservation and Amenity lands (NI) 15 Annex 4.8.10 of Managing Public Money Northern Ireland 16 <https://www.legislation.gov.uk/apni/1933/6> 17 Now the Department of Finance (DoF) acting on recommendations made by Land & Property Services 24 Order 1985, Article 144(3) of the Roads (Northern Ireland) Order 1993, and Article 10 of the Strategic Investment and Regeneration of Sites (Northern Ireland) Order 2003.

All asset owners require to understand their own legislative powers when disposing of land. There will be limited circumstances where an asset owner will be able to accept less than best value.

NOTES



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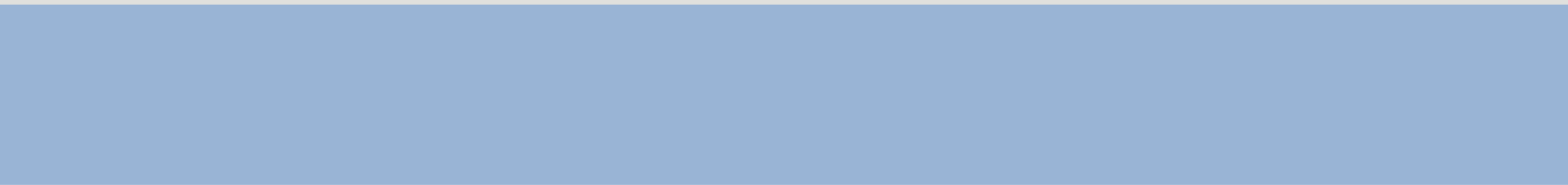
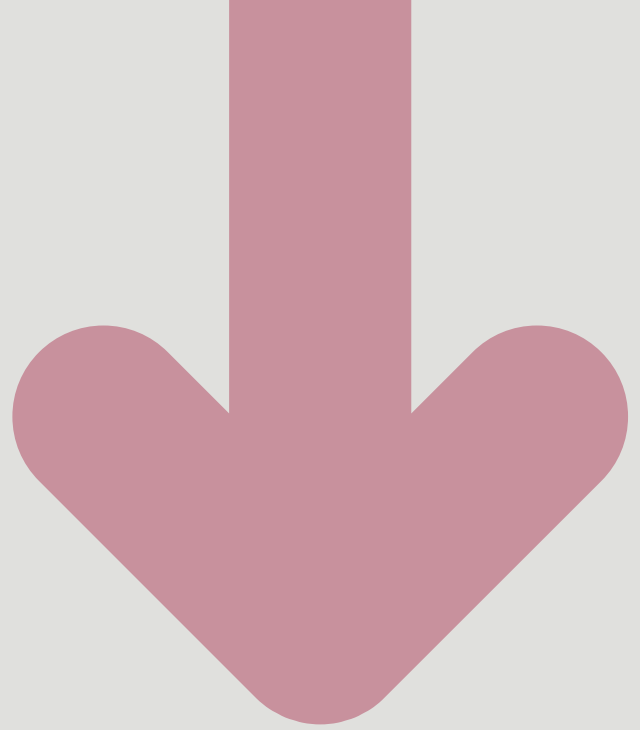
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Considering Legislation to Introduce General Disposal Consent in Northern Ireland



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