

Community Empowerment (Scotland) Act 2015

Frequently Asked Questions (For Public)

These Frequently Asked Questions (FAQs) have been developed by the West Lothian Community Planning Partnership to provide individuals and community groups with information on the different parts of the Community Empowerment (Scotland) Act 2015.

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Community Empowerment (Scotland) Act 2015 - Overview

The Community Empowerment Bill received Royal Assent and became an Act on 24 July 2015. Different parts of the Act will come in to force at different times. The Act will help to empower community bodies through the ownership of land and buildings and by strengthening their voices in the decisions that matter to them.

What does this mean for me and my community?

It means that your community will have more say on public services and how they are planned. The Act also enables communities to be more involved in improving public services and gives communities rights to owning land.

What is the Community Empowerment (Scotland) Act 2015?

The Act is a new piece of legislation that gives communities additional rights. These are through:

- **having more say in how public services are planned and provided**
- **owning or leasing land, assets and estate** (through asset transfer and community right to buy)
- **becoming involved in improving the outcomes of services** (e.g. participation requests)

There are 11 parts to the Act:

Part 1: National Outcomes – Scottish Ministers set goals for Scotland. Ministers will be required to consult on these goals and report progress on them at least every 5 years. This part of the Act came into force on 15 April 2016.

Part 2: Community Planning – As a Community Planning Partnership, local public sector bodies (e.g. West Lothian Council, Police, NHS) are expected to work together and with local communities to improve services. This part of the Act came into force on 20 December 2016.

Part 3: Participation Requests – Community groups have been given the power to ask to be involved with local public sector bodies (e.g. West Lothian Council, Police and NHS) to improve services. This part came into force on 1 April 2017.

Part 4: Community Right to Buy Land – The Act will extend community right to buy to urban communities and now covers the whole country. This means that groups right across West Lothian will now be able to use the process. Some provisions in this part of the Act came into force on 15 April with amendments to Part 2 of the Land Reform (Scotland) Act. Other provisions are likely to be implemented by spring 2017.

Part 5: Asset Transfer Requests – Sets out how a community group can ask to buy, lease, manage or occupy land or buildings owned by public sector bodies. Public sector bodies

must publish and maintain a list of assets that they own or lease. This part came into force 23 January 2017.

Part 6: Delegation of Forestry Commissioners' Functions – The Act allows for different types of community groups to be involved in forestry leasing. This opportunity is available under the new Community Asset Transfer Scheme (CATS) for Scotland's National Forest Estate.

Part 7: Football Clubs – Gives Scottish Ministers power to make rules about the role supporters play with the clubs they support. Ministers have not decided when this part will come into force.

Part 8: Common Good Property – The council is required to publish a list of common good property in West Lothian and to make sure that community councils and other community groups are consulted on any proposed changes. Draft guidance is to be issued for consultation following the 2017 local government elections.

Part 9: Allotments – Makes the law about allotments easier to understand and sets out how waiting lists should be managed. Ministers have not decided when this part will come into force.

Part 10: Participation in Public Decision Making – Gives Scottish Ministers the power to request that public authorities publicise and support the involvement of the community in the decisions and activities of the authority, including the allocation of resources. The detail of this part of the Act is still to be developed by the Scottish Government.

Part 11: Non-Domestic Rates – The Act allows the Council to set local business rates. This part of the Act came into force on 31st October 2015.

Different parts of the Act apply to different 'public authorities' and these are set out in the sections below.

Part 2 of the Act talks about Community Planning

What is Community Planning?

Community Planning is about local public sector organisations working closely together and with local communities, the third sector and businesses to improve services. This may be through joint working, agreeing joint policies or just making sure everyone knows what each other is doing.

To make sure this happens the Act specifies who is responsible to make sure it works and who else needs to be involved.

The Community Planning Partners that are responsible for making sure Community Planning in West Lothian works are:

- West Lothian Council
- NHS Lothian
- Police Scotland
- Scottish Fire and Rescue Service
- Scottish Enterprise

The West Lothian Community Planning Partnership (CPP) also includes:

- West Lothian College
- Scotland's Rural College (Oatridge Campus)
- Integration Joint Board
- Jobcentre Plus
- West Lothian Leisure
- Skills Development Scotland
- Voluntary Sector Gateway West Lothian
- Youth Congress
- Scottish Water
- West Lothian Chamber of Commerce
- SEStran

We are currently engaging with statutory partners identified in the Act that were not previously involved with the West Lothian CPP:

- Scottish Environment Protection Agency
- Scottish Natural Heritage
- Historic Environment Scotland
- Sportscotland
- Visit Scotland

The Act puts Community Planning on a statutory basis for the first time and places specific duties on partners around improving outcomes and tackling inequalities.

Guidance for Community Planning and a **Plain English Guide** can be found on the Scottish Government's website:

www.gov.scot/Topics/Government/PublicServiceReform/CP/cpinfo

What is an outcome?

An outcome is the change that results from what organisations provide or deliver, e.g. increase in physical activity levels arising from the development of a community park. The increase in physical activity is the outcome.

What is a Local Outcomes Improvement Plan?

CPPs were previously required to prepare Single Outcome Agreements (SOAs) to outline how local outcomes would be improved. CPPs are now required to prepare a Local Outcomes Improvement Plan (LOIP) in place of the SOA. A LOIP will contain the outcomes that are a priority for the CPP and the actions that will be taken in order to improve the outcomes. Appropriate community groups must be consulted when developing the LOIP. The LOIP will cover the whole of West Lothian.

The West Lothian CPP reviewed what is required from a LOIP and was satisfied that the existing SOA met these requirements. Some minor changes were made to the document and this was adopted as the CPP's LOIP:

https://www.westlothian.gov.uk/media/17003/West-Lothian-Local-Outcomes-Improvement-Plan-2013-2023/pdf/West_Lothian_Local_Outcomes_Improvement_Plan_2013-2023.pdf

For more information on the LOIP please contact the Community Planning team on, E: community.planning@westlothian.gov.uk; T: 01506 281086.

How does the LOIP differ from locality plans?

Locality plans will focus on the areas within West Lothian that experience poorer outcomes than elsewhere in the local authority area. There is no limit to the number of locality plans that can be developed.

In West Lothian, eight local regeneration plans are being developed in the areas in the bottom 20% of the Scottish Index of Multiple Deprivation. These will be the CPP's locality plans:

- Armadale
- Bathgate
- Blackburn
- Bridgend
- Craigshill
- Livingston Central – Knightsridge, Dedridge, Ladywell
- The Breich Valley – Fauldhouse, Stoneyburn, Addiewell, Polbeth
- Whitburn

For more information on locality plans, please contact the Community Regeneration Team Leader, Laura Wilson, E: laura.wilson2@westlothian.gov.uk, T: 01506 281085.

Part 3 of the Act talks about Participation Requests

What is a participation request?

A participation request is a request that comes from the community that asks for them to be involved in a process that will improve an outcome which they specify. This is a new piece of legislation.

A participation request can be made to:

- Help people **start a dialogue** about something that matters to their community, through highlighting needs, issues or opportunities for improvement;
- Help people have their voice heard in policy and service development through **contributing to decision-making processes**;
- Help people to participate in the design, delivery, monitoring or review of service provision, through contributing to **service change** or improvement;
- To help people challenge decisions and **seek support for alternatives** which improve outcomes.

Who can participation requests be made to?

- West Lothian Council
- NHS Lothian
- West Lothian College
- Scotland's Rural College (Oatridge Campus)
- Scottish Enterprise
- Police Scotland
- Scottish Fire & Rescue Service
- Scottish Natural Heritage
- SEStran
- Scottish Environment Protection Agency

Who can make a participation request?

To make a participation request, the community organisation needs to be a 'community participation body'. They can be either a 'community controlled body', a community council, a community body without a written constitution or a body designated by Scottish Ministers.

A 'community controlled body' does not have to be incorporated but must have a written constitution, which should include:

- A definition of the community to which the body relates*;
- Provision that membership is open to any member of that community;
- Provision that the majority of members are from that community;
- A statement of the body's aims and purposes, including the promotion of a benefit for that community; and
- Provision that any surplus funds or assets are to be applied for the benefit of that community.

A community participation body could also be a more loosely associated group of people. To make a request, the group must have similar features to that provided by a community controlled body as set out above (but will have no written constitution). It will be for the public service authority to determine whether a group meets the requirements under the Act but it will be for the community group to provide such information as the authority needs to be satisfied.

** Community groups do not need to be geographically defined in order to make a participation request but can also be formed around a shared interest or characteristic. Communities of interest could include faith groups, ethnic or cultural groups, people affected by a particular illness or disability, sports clubs, conservation groups, etc.*

When can a participation request be made?

A community body can make a request to a public body (e.g. West Lothian Council) at any time when it believes it can improve the outcome of a public service. Requests are subject to a timescale and the acceptance or decline of a participation request is required to be publicly reported, providing a reason for the decision by the public authority. Community bodies are strongly encouraged to contact the public service authority to discuss proposals before making the formal request, in order to discuss if joining existing processes may be more suitable, to ensure that they are applying to the right public body, to find out if a joint application might be better and to discuss any support and capacity needs.

What is the process for making a participation request in West Lothian?

West Lothian Council has developed a process for managing participation requests. The application form and further information on the process can be found on the council's website: <https://www.westlothian.gov.uk/article/21540/Participation-Requests>. It is up to each public authority to have its own process for dealing with requests; however work is ongoing between partners in West Lothian to ensure complementary approaches to participation requests. A community body may request that more than one public service authority should participate in the outcome improvement process and it is up to the lead authority to make the appropriate contact.

Further Guidance

- Scottish Government: www.gov.scot/Topics/People/engage/ParticipationRequests
- The Scottish Community Development Centre (SCDC): www.scdc.org.uk/media/resources/policy-and-practice/SCDC%20briefing%201-16%20on%20participation%20requests.pdf

What information does the community body need to provide when it makes a participation request?

The Act outlines the information that is required when making a request. The community body will need to:

- Set out the outcome which results from (or is contributed to by virtue of) a service provided by the public authority (e.g. West Lothian Council) or on behalf of the authority;
- Set out the reasons why it considers it should participate in the outcome improvement process;
- Provide details of any relevant knowledge, expertise or experience it has in relation to the outcome; and
- Provide an explanation of the improvement it expects will be achieved as a result of its participation.

The West Lothian Council participation request application form sets out what information is required.

Can a participation request be refused?

A public authority must agree to a participation request unless there are reasonable grounds for refusal.

In making a decision, the public authority must consider whether agreeing to the request would be likely to promote or improve the following:

- Economic Development;
- Regeneration;
- Public Health;
- Social wellbeing;
- Environmental wellbeing;
- Reduce inequalities of outcome which result from socio-economic disadvantage.

Authorities must also consider “any other benefits that might arise”. Decisions must also be made “in a manner which encourages equal opportunities”. The public service authority will also look at whether agreeing to the request would be likely to reduce inequalities of outcome which result from socio-economic disadvantage and to lead to an increase in participation by persons who experience socio-economic disadvantage. The Act does not currently provide a mechanism for a review or appeal.

Who should I contact if I am interested in making a request?

West Lothian Council’s Community Planning and Regeneration team are the gatekeepers for requests coming into the council. If you are interested in making a participation request to the council, or would like more information, please contact, E: community.planning@westlothian.gov.uk; T: 01506 281086. If you are interested in making a request to another local public body, the Community Planning team can also help direct you to the appropriate person. Community bodies are strongly encouraged to contact the public service authority and discuss the proposals before making the formal request.

Part 4 of the Act talks about the Right to Buy Land

Didn't we have community right to buy in West Lothian before the Act? How is it different?

Community right to buy legislation now applies to urban as well as rural areas. The change in law means that community groups right across West Lothian can now use community right to buy. This means that if the owner of land or a building decides to sell, they have to sell it to any community organisation which can afford to pay the market value, if Scottish Ministers agree. Community bodies must demonstrate that they have sufficient support from the wider community to buy land or a building. Communities can now also buy land that is seen to be Abandoned, Neglected or Detrimental where the owner is not willing to sell that land.

The Act also means that more types of community group can buy land in this way, including companies limited by guarantee, Scottish Charitable Incorporated Organisations (SCIOs) and Community Benefit Societies.

Further information on Community Right to Buy can be accessed from the Scottish Government website: www.gov.scot/Topics/farmingrural/Rural/rural-land/right-to-buy/Community

Part 5 of the Act talks about Asset Transfer Requests

What is an asset?

In the Act, an asset refers to estates, land or buildings owned or leased by public authorities.

What can be subject to an asset transfer request?

A community transfer body can make a request to buy or lease land (in relation to the legislation the word 'land' includes buildings and any other structure on the land such as a bridge, wall or pier) or to have other rights, for example to occupy or use the land for a particular purpose. Each public authority is required to publish an online register of all assets.

Guidance has been published for both **relevant authorities** and for **community transfer bodies**: www.gov.scot/Topics/People/engage/AssetTransfer

Who can make asset transfer requests?

The term 'community transfer body' is used in relation to a community that is requesting the transfer of the asset. To make an asset transfer request, an organisation needs to be a

community transfer body. It can be either a community controlled body or a body designated by the Scottish Ministers.

A community controlled body does not have to be incorporated, but the body's constitution, Articles of Association or registered rules must include the following:

- A definition of the community to which the body relates;
- Provision that membership of the body is open to any member of that community;
- Provision that the majority of the members of the body is to consist of members of that community;
- If the asset transfer request is for ownership, the governing documents must require the body to have at least 20 members;
- Provision that the members of the body who consist of members of that community have control of the body;
- A statement of the body's aims and purposes, including the promotion of a benefit for that community;
- Provision that any surplus funds or assets of the body are to be applied for the benefit of that community; and
- If the request is for ownership, and the community transfer body is a company, the Articles of Association must include arrangements for what happens to the body's assets if it is wound up. This must require that the property is transferred: to another community transfer body, to a charity, to such community as may be approved by the Scottish Ministers, to such crofting community body.

There are two main forms of asset transfer, ownership and leasing; however community transfer bodies also have other rights, for example to occupy or use the land for a particular purpose.

A group can request the transfer of ownership if it:

- A company limited by guarantee
- A SCIO (Scottish Charitable Incorporated Organisation)
- Community Benefit Society

If the asset transfer request is for ownership, the governing documents must require the body to have at least 20 members.

A group that can request to lease land from a public authority if it:

- Has a written constitution;
- Is open to anyone in the community it covers community to join;
- Is community led;
- Is the majority of members who are from that community;
- Is for the benefit of the community; and
- Uses any surplus funds/assets for the benefit of the community.

Who can asset transfer requests be made to?

Asset transfer requests can be made to:

- West Lothian Council
- NHS Lothian
- West Lothian College
- Scotland's Rural College (Oatridge Campus)
- Scottish Enterprise
- Police Scotland
- Scottish Fire & Rescue Service
- Scottish Natural Heritage
- SEStran
- SEPA
- Scottish Water
- Scottish Courts & Tribunals Service
- Scottish Canals

Assets have been transferred from West Lothian Council to community groups before, how will it change under the Act?

The Act introduces a right for community bodies to make requests to all local authorities, Scottish Ministers and a wide-ranging list of public bodies, for any land or buildings they feel they could make better use of. The Act also introduces timescales within the asset transfer process and specifies the information that a group must provide when requesting an asset transfer. All public authorities must publish an annual report about the asset transfer requests they have received, approved, rejected and appealed.

What information needs to be provided in an asset transfer request?

A community transfer body must include the following information when making an asset transfer request:

- The land or building to which the request relates;
- Whether it wishes to own, lease or use the land or building;
- The reason for making the request;
- The benefit which the groups believes will arise if the transfer goes ahead;
- The price that the group will be willing to pay for the land or building if requesting to buy it;
- The rent that the group would be willing to pay if requesting to lease it;
- State that it is an asset transfer request made under Part 5 of the Community Empowerment (Scotland) Act 2015;
- Contain the name and contact address of the community transfer body;
- Be accompanied by a copy of the constitution of the community transfer body;
- If the request is for other rights, specify the nature and extent of the rights sought;
- Describe how the community transfer body proposes that the land is to be used;
- Specify the benefits which the community transfer body considers will arise if the authority were to agree to the request;
- Outline how it is proposed that the transfer of ownership of the land, the lease of the land or the conferral of other rights in respect of the land on the community transfer body (as the case may be), and the proposed use of the land, are to be funded;

- Describe the level and nature of support for the request from the community to which the community transfer body relates; and
- Any other terms or conditions applicable to the request.

Can an asset transfer request be refused?

In deciding whether to agree to or refuse the request, the relevant authority must consider the following things:

- The reasons for the request;
- Any other information provided in support of the request;
- Whether agreeing to the request would be likely to promote or improve economic development, regeneration, public health, social wellbeing, environmental wellbeing, or;
- Whether agreeing to the request would be likely to reduce socio-economic inequalities;
- Any other benefits that might arise if the request were agreed to;
- How the request relates to the relevant authority's duties under Equalities legislation; and
- Any obligations that may prevent, restrict or otherwise affect the authority's ability to agree to the request.

The public authority must agree the request unless there are reasonable grounds for refusal. In reaching a decision on transfer the relevant authority must compare the benefits of the proposal in the request to the benefits of any alternative proposals, whether those come from the authority itself or anyone else, and consider how the potential benefits relate to the functions and purposes of the authority, and any other matters they consider relevant.

The public authority must report the number of requests agreed, refused and appealed each year in an annual report submitted to the Scottish Government.

Can I appeal if a transfer request is refused?

A community transfer body can seek a review or appeal if:

- Their request is refused;
- The request is agreed but the terms and conditions in the decision notice are significantly different from those in the request; or
- No decision notice is issued within the required period.

The process depends on which relevant authority the request was made to.

- If the request was made to a local authority, the community transfer body can apply for an internal review by the authority. If the outcome of the review does not resolve the issue, or if no decision is made within the required period, the community transfer body can then appeal to the Scottish Ministers.
- If the request is made to the Scottish Ministers, or to any other relevant authority, the community transfer body can apply for a review by the Scottish Ministers.

In all cases the final decision lies with the Scottish Ministers. There is no further route of appeal beyond them.

How do I find out more information on submitting an asset transfer request?

West Lothian Council is currently reviewing its existing asset transfer policies and practices. If you are interested in taking over a West Lothian Council asset, please contact scott.hughes@westlothian.gov.uk.

Community are encouraged to have an informal conversation with the relevant public sector organisation before submitting an asset transfer request.

Part 6 of the Act talks about Delegation of Forestry Commission Functions

The Act allows for different types of community groups to be involved in forestry leasing. This opportunity is available under the new Community Asset Transfer Scheme (CATS) for Scotland's National Forest Estate.

You can find out more on the Forestry Commission Scotland website:
www.scotland.forestry.gov.uk/managing/get-involved/community-asset-transfer-scheme

Part 7 of the Act talks about Supporter Involvement in Football Clubs

This part of the Act gives Scottish Ministers future power to make rules about the role supporters play with the clubs they support. Ministers have not decided when this part will come into force.

Part 8 of the Act talks about Common Good

What is common good?

The Scottish Government defines common good assets as “a special type of property owned by local authorities in Scotland...These Funds are of ancient origin and consist of property that previously belonged to one of Scotland's burghs. They include both moveable property (for example, cash, securities, civic regalia) and heritable property (land and buildings). By far the largest component of Common Good Funds is heritable property and while this mainly consists of public buildings and public spaces, such as parks, it also includes in some cases farm land and other heritable property, such as salmon fishing.”

The Scottish Government plans to issue draft guidance for consultation following the 2017 local government elections. The final guidance will be published when this part of the Act comes into force.

How does the Act change things?

All councils in Scotland will have to create and publish a list of all common good property in their area. Councils will have to consult with community councils and other community groups before selling or changing the use of any common good property.

More information is available on the Scottish Government's website:

www.gov.scot/Topics/People/engage/commongood

Part 9 of the Act talks about Allotments

How do I apply for an allotment? Has it changed under the new Act?

The process for applying for an allotment hasn't changed much although the law has been simplified. Local authorities will have to manage waiting lists for allotments and take reasonable steps to address high demand. The Act sets the standard size of allotment as 250m². You will need to say if you are happy to have an allotment that is less than this size. You may have to wait longer if you wish to lease an allotment that is 250m² than if you are willing to take a smaller one.

Local authorities also have to seek permission from Scottish Ministers before they sell off land used for allotments or use it for something else. They will also have to specify rules for what people can and can't do on their allotments, report on their allotment provision every year and develop a food growing strategy.

For further information on allotments please contact West Lothian Council's Open Space Officers: becky.plunkett@westlothian.gov.uk; simon.scott@westlothian.gov.uk

Part 10 of the Act talks about Participation in Public Decision Making

What does the 'Participation in Public Decision Making' part of the Act mean?

This part of the Act gives Scottish Ministers future powers to require that public authorities, such as West Lothian Council, promote and support the involvement of the community in the decisions and activities of the organisation, such as the allocation of resources. At the moment Ministers have not set out exactly what this will mean but have reserved the right to do so at a later date.

Part 11 of the Act talks about Non-Domestic Rates

The Act allows the council to set local business rate relief schemes to better reflect local needs and support communities. This part of the Act came into force on 31st October 2015.

Where can I find out more information about the Community Empowerment Act?

If you have any queries that aren't dealt with here, please email the Community Planning team at community.planning@westlothian.gov.uk or call us on **01506 281086**.

Information is also available on the West Lothian Community Planning Partnership website: www.westlothian.gov.uk/communityplanning

The full Act is available at: www.legislation.gov.uk/asp/2015/6/contents

The explanatory notes can be downloaded from: www.legislation.gov.uk/asp/2015/6/notes/contents