

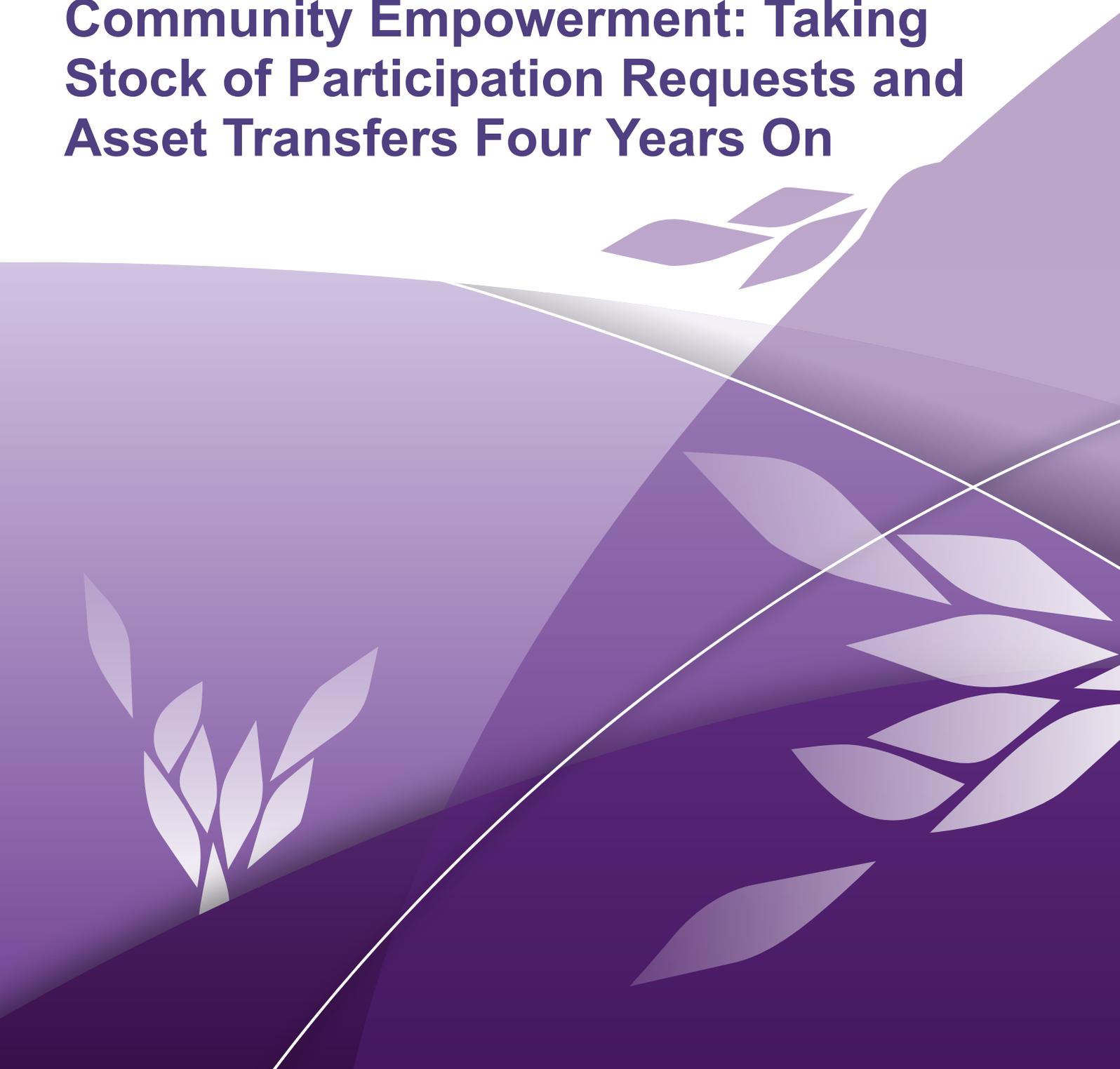


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Local Government and Communities Committee Comataidh Riaghaltas Ionadail is Coimhearsnachdan

Community Empowerment: Taking Stock of Participation Requests and Asset Transfers Four Years On



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Local Government and Communities Committee

To consider and report on communities, housing, local government, measures against poverty, planning and regeneration matters falling within the responsibility of the Cabinet Secretary for Communities and Local Government.



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Executive Summary

1. The Community Empowerment (Scotland) Act 2015 is landmark legislation passed during the last Parliamentary session. It seeks to encourage and promote community participation and engagement in local decision-making, by enshrining it as a right in law in a variety of different situations.
2. With 4 years having passed since the Act came into force, we felt the time was right to look at how well two parts of the Act designed to bring about greater community involvement in local decision-making had bedded in:
 - Part 3 on participation requests, and
 - Part 5 on asset transfers.
3. Our post-legislative scrutiny was informed by an extensive period of online and in-person engagement with people across Scotland on what makes good community wellbeing. The overwhelming message was that people wanted to have more say and influence over the services and amenities provided in their local areas, highlighting that community wellbeing goes hand in hand with community empowerment.

Participation requests

4. Part 3 of the 2015 Act introduces the right for a community to make a ‘participation request’, which is a request to participate in a process to improve an outcome of a public service. The public body must agree to the request for dialogue unless there are reasonable grounds for refusal.
5. We find it difficult to say whether Part 3 has been successful in making public bodies more responsive to the communities they serve. Only a little over 60 requests have been made since April 2017. Whilst there is some evidence to suggest that where a public body has good links with communities, formal requests can be low or non-existent, there is no formal data back this up. We heard that only 18% of Scots feel they can influence decisions affecting their local area, adding further to doubts that low requests indicate high levels of satisfaction with local services or that local communities feel more empowered.
6. We encountered evidence that some councils and public bodies have an intentional policy of trying to avoid participation requests, because a request is deemed a “failure” in their community engagement. These institutionalised attitudes – even if well-meant – are holding back progress and must be challenged.
7. We recommend that the Scottish Government work with relevant public service authorities and COSLA to ensure communities are aware of their rights to challenge and influence decisions and services and remove any further barriers to the use of participation requests.
8. We also recommend that the Scottish Government introduces an appeals mechanism to give communities the right to ask a third party to review a decision not to agree to a participation request under a formal process. Amongst other things, this might encourage public bodies to up their game in the way they handle

requests.

Asset transfer requests

9. Part 5 of the 2015 Act sets out how a community can request to buy, lease, manage, occupy or use land or buildings belonging to a public authority and how that authority is to deal with such requests. They must transparently assess requests against a specified list of criteria laid out in the Act, and agree to them unless there are reasonable grounds for refusal.
10. Stakeholders we consulted generally have a positive view of asset transfer requests. But we ask the Scottish Government to respond to criticism that, after just 4 years, the process is already becoming more onerous and bureaucratic. We also ask it to investigate why leasing options are increasingly preferred over transfer of ownership.
11. We were concerned to hear evidence that asset transfer requests can run into a wall, when the asset belongs to, or is operated by, an Arms-Length External Organisation (ALEO). Given the huge range of public assets now controlled by ALEOS, this is a major gap in the current law, and, we believe, not in keeping with the spirit of Part 5 of the Act.
12. Assets owned or operated by ALEOs are public assets. There is a need to clarify the consequences that flow from public land or facilities being controlled by an ALEO. We call on the Scottish Government to undertake this work so to clarify or amend the law early in the next session of the Parliament.

Improving the culture

13. Some public authorities have embraced the spirit of the 2015 Act and it has been immensely encouraging to hear a number of good news stories during this inquiry. Unfortunately, not all stories about engagement with public bodies have been so positive. A persistent complaint during the inquiry is of bodies coming across as indifferent to or unaware of the rights created under Parts 3 and 5 and even of pockets of hostility towards the new opportunities created by the Act. There remains a need for an ongoing culture change to embrace the spirit of the Act.
14. In order to drive that culture change, we ask the Scottish Government to work with public bodies to publicise and promote opportunities that might help community bodies make informed requests and to reduce unneeded bureaucracy. We also ask the Scottish Government work with COSLA to help bring down barriers on the local government side.
15. We strongly believe that more must be done to empower community groups in more deprived areas to take advantage of the 2015 Act, to avoid it being a vehicle that “empowers the empowered”. We heard evidence that resource might be part of the issue, and that some communities need more grassroots support to help unlock the potential of the 2015 Act. Simple things like better signposting and publicising of services would also help. We would also strongly encourage public bodies and councils to appoint a single point of contact to deal with asset transfer and participation requests, as we think this too would help avoid requests getting lost in the system.
16. With this still being young legislation, we recommend that the Scottish Government

work with COSLA to encourage local authorities to maintain networks for sharing good practice on participation and asset transfer requests. It is clear that some councils and public bodies have much to learn from their peers – and, crucially, from community bodies themselves.

17. Finally, we raise concerns that low levels of compliance with formal reporting requirements have made it difficult to obtain an accurate and clear picture of how the legislation is working on the ground. We recommend that the Scottish Government work with public bodies and COSLA to improve the way that information is reported, in order to help future evaluations of how the Act is being implemented.

Introduction: community wellbeing and community empowerment

18. In 2019, Committee Members held a blue skies discussion with experts on localism, local government and community empowerment, to help us determine future priorities. In a nutshell, we discussed what makes communities “work”: what is it that makes a community happy, successful and thriving? What factors are needed to make that happen? What obstacles hold communities back from reaching their full potential, and what help do they need in overcoming them?
19. A visit to the Raploch Community Campus in Stirling in September in 2019 was also instrumental in shaping our early views. We saw in action how imaginative local leadership and a well-used resource such as the Campus could make a positive difference to people's lives.
20. The discussion and the visit led the Committee to agree to launch a major online consultation, seeking views from the public about what community wellbeing means to them. We would see what key themes emerged from this consultation and follow up on them. The consultation ran from November 2019 to January 2020, on the [Your Priorities digital platform](#). It was backed up by a number of community events held across Scotland and the promotion of the platform via social media.ⁱ
21. We received over 220 separate ideas and suggestions from over 700 people, from a wide range of backgrounds, ages and locations. All of these [remain online](#). We were pleased by both the number of people our engagement reached, and the number and strength of responses. Clearly, the subject of how to make communities thrive is one that people are passionate about. An analysis by the Scottish Parliament Information Centre of the key themes raised during the exercise and a summary of related engagement events can be found [here](#).
22. "Community" means different things to different people. Communities may be communities of interest, or people brought together by similar backgrounds or life stories. During extended periods of lockdown over the past few months, many people have drawn comfort and support from their online community, whether that is friends, family or people who share the same hobbies . We went into the consultation with no preconceptions about how people might define "community". However, it became clear from responses that the community most important to most people is the one they live in; their community of place. This might be an area covered by a community council; it might be a council ward; it might be a village, an

ⁱ The online consultation was supported by community engagement with groups across Scotland. Five community sessions were developed in partnership with voluntary organisations to engage members of the public who were unlikely to participate in a digital or other public consultation. 65 members of the public aged from 5 to 95 took part in sessions in Lerwick, Kirkwall, Springburn, Leith and Dumbiedykes. Other community groups submitted directly to the online platform. We sought to hear views from a range of people within the following groups; island and rural communities, older people, people with learning and or physical disabilities, young people, people who are socially and/or economically excluded.

island, a suburb, or a country district with informal boundaries that are well understood locally. It might also be a community of interests within a particular area: for instance people in the same congregation, or who help out the same local charity, or have a shared interest in local conservation or heritage. All are local communities.

23. "Community wellbeing" is another term with a wide meaning, and scores of discrete issues were raised with us during the consultation. But one issue emerged more strongly than any other. For many people, community wellbeing and community empowerment are practically synonyms: community wellbeing *is* community empowerment. If a community does not feel in control, feels it has no say over local services and resources, and feels it has things "done" to it, there is unlikely to be much community wellbeing.
24. Conversely, we have been very struck by testimony throughout this inquiry from individuals telling us about the positive impact taking charge of a situation and making a difference has had, both personally and at a group level; for, instance, bringing life back to a neglected local asset. A positive ripple effect runs through the community, as people realise what they can do, and turn their attention to new challenges. People also enjoy feeling useful and needed, and putting their talents to use for the benefit of others.ⁱⁱ We have seen this more than ever in the past few months, as people have worked selflessly to support the most vulnerable around them during the pandemic.
25. The main idea we therefore decided to take forward from our engagement exercise, and to work with, was that of the appetite for people to have more involvement in, and influence over, services and amenities in their local area.

The Community Empowerment (Scotland) Act 2015

26. We agreed to explore this theme by way of post-legislative scrutiny of landmark legislation passed during the last (2011-2106) Parliamentary session: the Community Empowerment (Scotland) Act 2015.ⁱⁱⁱ
27. Post-legislative scrutiny means assessing the impact of legislation passed by the Parliament in the past few years, by reference to the original aims set out for it. It is an important way for the Parliament to benchmark the Scottish Government's effectiveness in drawing up good laws that work the way they are intended. It is also an important way for the Parliament to hold itself to account, by assessing whether it provided an adequate quality check on legislation it ultimately agreed to. Finally, and most importantly, post-legislative scrutiny is an opportunity to learn any lessons and suggest improvements; either to the legislation itself (i.e. through legislative amendment) or to the way it is being implemented in practice. Such proposals are usually made to the Scottish Government.
28. The 2015 Act was ambitious legislation that was several years in the making. The Act arose in large part from the work of the Commission on the Future Delivery of

ii Breakout session 4 - Asset Transfers available at https://www.parliament.scot/S5_Local_Gov/Breakout_Room_4.pdf

iii Community Empowerment (Scotland) Act 2015, available at <https://www.legislation.gov.uk/asp/2015/6/contents/enacted>

Public Services (the Christie Commission). The Christie Commission's 2011 report called for a radical change in the way public services were delivered. It said they "must be designed with and for people and communities - not delivered 'top down' for administrative convenience". Key recommendations included a proposal for a—

” ...Community Empowerment and Renewal Bill to embed community participation in the design and delivery of services.^{iv}

29. The Act arises from the same belief in the positive power of community empowerment that we outlined above. It seeks to encourage and promote community participation and engagement in local decision-making by enshrining it as a right in law, in a variety of different situations. The Policy Memorandum accompanying the Bill that became the Act stated—
- ” When people feel they can influence what happens in their community and can contribute to delivering change, there can be many benefits. Communities can often achieve significant improvements by doing things for themselves, because they know what will work for them. They become more confident and resilient; there are often opportunities for people to gain new skills and for increased employment as well as improved access to services and support. These in turn can lead to improvements in a wide range of areas such as crime, health, and reducing inequalities.^v
30. Our predecessor Committee, the Local Government and Regeneration Committee took the lead in scrutinising the Bill. It supported the general principles of the Bill at Stage 1, but also highlighted some concerns; in particular, the risk of the Bill widening inequalities by “empowering the empowered”, i.e. communities with greater capacity to access and navigate the processes created by the Bill. It asked the Scottish Government to make sure communities would have the resources they needed to turn the rights in the Bill into reality.^{vi} The Bill was passed in June 2015.
31. People do not always need laws to bring about positive change in their community, and the 2015 Act did not “invent” community empowerment. But effective legislation can have a catalysing role and help remove legal obstructions to positive change, and it was how effective the 2015 Act had been in this way that we wanted to investigate. For its part, the Scottish Government recognised that legislation alone would not bring about the culture change intended by the Act. A number of Scottish Government funds and policies exist to complement rights found in the Act and other legislation. These include:
- the [Empowering Communities Fund](#), which funds community-led regeneration
 - [participatory budgeting](#), funded through the £1.5 million Community Choices Fund, to give people power to make decisions on local spending;

iv Christie Commission on the future delivery of public services, available at <https://www.gov.scot/publications/commission-future-delivery-public-services/>

v Community Empowerment (Scotland) Bill, Policy Memorandum, available at [https://www.parliament.scot/S4_Bills/Community%20Empowerment%20\(Scotland\)%20Bill/b52s4-introd-pm.pdf](https://www.parliament.scot/S4_Bills/Community%20Empowerment%20(Scotland)%20Bill/b52s4-introd-pm.pdf)

vi Local Government and Regeneration Committee 2nd Report, 2015, available at https://www.parliament.scot/S4_LocalGovernmentandRegenerationCommittee/Reports/lgR-15-02w.pdf

- supporting [community councils](#);
 - setting out [National Standards for Community Engagement](#) to encourage best practice by public bodies;
 - providing guidance on [common good property](#);
 - Promoting [community planning](#) to encourage service providers and communities to work together on local service delivery.^{vii}
32. Local government has a key role in community empowerment. A local government sector that has the confidence to devolve decision-making down and can share with communities the resources and knowledge they need to take informed decisions can help turn the 2015 Act from rights on paper to rights on the ground. Much of the Scottish Government's preparatory and consultative work on the 2015 Act was done with COSLA and other local government partners. Since near the start of this Parliamentary session, the Scottish Government has been engaged, with COSLA, in a long-running [Local Governance Review](#). This is a comprehensive review of how local decisions are made and how local democracy is working.

Committee remit

33. The 2015 Act is very broad in scope, with 11 substantive parts, covering diverse matters from allotments to non-domestic rates. With a number of other priorities taking up the Committee's time, it made sense to focus on the two parts that chimed most with themes raised in our online engagement.
- Part 3, creating a right for a community participation body to make a participation request to a public service authority;
 - Part 5, giving a body representing a community a right to request the transfer of an asset to them.

(We discuss in more detail below what both of these mean in practice.) With both Parts having been in force for nearly four years,^{viii} and, as discussed further below, both having recently been through an independent evaluation, now seemed an opportune time to take a closer look.

34. Accordingly, early in 2020, the Committee agreed this inquiry remit—

” The Community Empowerment Act 2015 aimed to empower communities through strengthening their voices in the decision-making process and helping them to own and manage land and buildings. Focussing on Parts 3 and 5 of the Act, the Committee will assess the extent to which this has happened and explore what impact the Act has had on community wellbeing.

vii Scottish Government, Community Empowerment, available at <https://www.gov.scot/policies/community-empowerment/>

viii Part 3 came into force in April 2017; Part 5 in January 2017.

Committee scrutiny

35. Our inquiry was delayed by the crisis in local government and housing caused by the COVID-19 pandemic, which diverted our attention to more urgent matters. Regrettably, the crisis also means we have been unable to make any visits in connection with this work.
36. We held scene-setting evidence sessions in September 2020. On 9 September 2020, we heard first from the team at Glasgow Caledonian University, led by Professor Artur Steiner, that had just concluded evaluations commissioned by the Scottish Government into Parts 3 and 5 of the 2015 Act ("the GCU evaluation").^{ix} We then heard from representatives from the [Development Trust Association Scotland](#) and the [Scottish Community Development Centre](#), two organisations with experience of assisting community groups seeking to use the powers in Parts 3 and 5.^x
37. Then, on 16 September 2020, we heard from a range of organisations representing and working with communities across Scotland - [Community Development Alliance Scotland](#), [Scottish Community Alliance](#), [Community Enterprise](#) and [Community Land Scotland](#).^{xi}
38. During October and November, we gathered further information. We conducted an online questionnaire of community organisations and public bodies about their experiences of asset transfers and participation requests. Parliamentary staff contacted public bodies appearing to be relevant stakeholders for the purposes of Parts 3 and 5, as well as community councils and some other community groups with whom the Committee has made contact over the years. It was of course up to respondents whether to reply and, in the case of community groups, we expect that those more comfortable handling formal processes might have been slightly more inclined to reply. Any data from the questionnaire cited below should be considered with this in mind. Summaries of responses are available [here \(public bodies\)](#) and [here \(community organisations\)](#).
39. Some Committee Members also took part in an online meeting on November 11 hosted by [Midlothian Voluntary Action](#). Participants, who included representatives of various community organisations, discussed their personal experiences of asset transfers and participation requests. A summary of discussions held during the meeting are available [here \(Participation Requests 1\)](#), [here \(Participation Requests 2\)](#), [here \(Asset Transfers 1\)](#) and [here \(Asset Transfers 2\)](#).^{xii}

ix [Participation Requests: Evaluation of Part 3 of the Community Empowerment \(Scotland\) Act 2015 and Asset Transfer Requests: Evaluation of Part 5 of the Community Empowerment \(Scotland\) Act 2015](#)

x [Local Government and Communities Committee, Official Report 9 September 2020, <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12812>](#)

xi [Local Government and Communities Committee, Official Report 16 September 2020, <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12828>](#)

xii *Committee Members took part in an online meeting on 11 November hosted by Midlothian Voluntary Action. 31 individuals attended from community councils, voluntary sector*

40. We resumed formal evidence-taking on 2 December 2020, taking evidence from three community organisations that had participated in the survey: Community Out West Trust, based in Wester Ross, Cramond and Barnton Community Council in Edinburgh, and F.R.I.E.N.D.S. (Stevenston Conservation), from North Ayrshire.^{xiii} We also heard from two councils; North Ayrshire and Dumfries and Galloway, and another public body, Forestry and Land Scotland on 9 December 2020.^{xiv}
41. There then followed a concluding evidence session with the Cabinet Secretary for Communities and Local Government, Aileen Campbell, on 13 January 2021.^{xv}
42. COSLA were offered an opportunity to give oral evidence but declined, on the ground that they did not consider they had adequate data and information to make an informed contribution to the discussion.
43. We're grateful to everyone who took part in our inquiry, and to everyone who helped shape it by taking part in our earlier consultation.

organisations and community groups across Scotland to discuss their experiences of asset transfers and participation requests.

^{xiii} Local Government and Communities Committee, Official Report 2 December 2020, <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12991>

^{xiv} Local Government and Communities Committee, Official Report 9 December 2020, <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=13011>

^{xv} Local Government and Communities Committee, Official Report 13 January 2021, <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=13054>

Part 3 – Participation Requests

44. [Part 3 of the 2015 Act](#) introduces the right to make ‘participation requests’. The aim is to ensure engagement and dialogue between "community participation bodies"^{xvi} and "public service authorities". A community participation body is defined to include community councils and community development trusts amongst other bodies. A public service authority includes, for example, a local authority or a health board, as well as bodies with public service roles in discrete policy areas; for instance Forestry and Land Scotland.
45. A participation request is a request to participate in a process to improve an outcome of a public service. The community body must explain what experience it has of the service and how it could contribute to its improvement, and the public body must agree to the request for dialogue unless there are reasonable grounds for refusal. The Policy Memorandum for the then Community Empowerment (Scotland) Bill explains that the idea behind this is that if public bodies involve people who use their services in shaping their decisions their services will improve. It says that, under the participation request process—
- ” The community body will need to explain what experience it has of the service and how it could contribute to its improvement; this could be as simple as showing that its members are users of the service and outlining their ideas. The public body must agree to the request for dialogue unless there are reasonable grounds for refusal. If it refuses the request, it must explain the reasons.
46. In terms of likely demand, the Memorandum refers to the "strong history" of public bodies in Scotland seeking to engage with communities and adds that—
- ” The Scottish Government sets clear expectations that all public sector organisations must engage with communities and support their participation in setting priorities and in the design and delivery of services. The provisions in Part 3 of the Bill are not intended to replace that activity, but they give community bodies an additional power to initiate that dialogue on their own terms, and a right to have their views properly considered.^{xvii}
47. This suggests that the Scottish Government may have envisaged participation requests being a reserve power, to be resorted to when it was felt a public body was not really listening. In line with this, the Scottish Government did not set out clear expectations about how often the power would, or should, be used. During the

^{xvi} This is defined in section 20 of the Act. It can be either a community controlled body (defined in section 19), a community council, a community body without a written constitution (set out in section 20(4)) or a body designated by the Scottish Ministers. <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2017/05/community-empowerment-participation-request-guidance/documents/participation-requests-guidance-pdf/participation-requests-guidance-pdf/govscot%3Adocument/Participation%2Brequests%2B-%2Bguidance.pdf>

^{xvii} A Policy Memorandum is a document prepared by or on behalf of the Member responsible for the Bill (in this case a Scottish Government Minister) to explain what provisions in the Bill are for and why they were chosen.

Stage 1 debate on the Bill, the Minister in Charge said—

” We have been up front throughout the bill process in saying that elements that the bill provides for—participation requests, the community right to buy, asset transfer requests and allotments—will be driven by the demand from communities, and we cannot predict with any degree of certainty what that demand will be.^{xviii}

48. [Government guidance on participation requests was published in April 2017](#) as Part 3 was coming into force. It says they are not intended to replace existing participation processes that work well locally but to complement them. Nor are they to be used as an extension of complaints procedures. They are an opportunity for communities to establish formal dialogue with public bodies operating in their area. The Guidance requires public service authorities to promote participation requests online and through social media channels. It also suggests further good practice in promoting the process, like appointing a point of contact for requests and having policies for hard to reach groups who might benefit from making them.
49. Following the publication of the guidance, local authorities and community planning partnerships began to explore and introduce local policies and procedures for embedding the processes. The Scottish Community Development Centre developed a [Summary Guidance](#) on Participation Requests and organised a series of awareness raising events, research and training activities.

General findings on the process

50. Key findings of the GCU evaluation of Part 3 were that:
- Between 2017 and 2019 public service authorities received 46 participation requests. Of these, 27 were accepted and 14 were refused (with 5 presumably ongoing).
 - Almost all participation requests were to local authorities (95% in 2017-2018 and 100% in 2018-2019) and most were submitted by community councils.
 - The promotion of participation requests has been constrained by financial and time pressures on public service authorities.
 - Some public service authorities struggled to see the added value in the introduction of participation requests.
 - The absence of an appeals mechanism may act to undermine the rationale behind Part 3 of the Act.
 - Many community bodies and public bodies believe that participation requests can encourage a change in culture within public service authorities.
 - There are potential limitations to the participation request process, for example cost implications, lengthened decision-making timelines, conflicting commercial interests and local community participation.
 - Some community participation bodies reported that participation requests had

enabled aspects of empowerment.

- There is some evidence that participation requests are more likely to be successfully used by higher capacity groups, for example those with professional members.
- As such, this may lead to an *increase* in inequalities, but there is insufficient evidence to draw conclusions on this point as of yet.^{xix}

51. Over three-quarter of total respondents (including public bodies) to our online questionnaire said they were aware of the participation request process. As with the GCU evaluation, the vast majority (97%) of respondents who had made requests had made them to local authorities. Issues requests had related to included:
- Anti-social behaviour
 - Housing
 - Planning
 - Traffic management and other transport issues
 - Grass cutting and landscape maintenance
 - Large events impacting communities
 - Social services
 - Parks
 - Development of town centres.
52. Sixty percent of respondents told us they had found the process “straightforward” or “fairly straightforward”. Nine respondents (25%) found the process “fairly complex” or “complex”. Some 40% of those submitting requests indicated to us that public bodies had been unsupportive or even hostile in their response.
53. A view communicated both via the questionnaire and in oral evidence was of a gulf between the right enshrined in the Act and the guidance and the everyday reality on the ground. Some respondents suggested that local authorities might “talk the talk”, but that achieving real change was far harder. One community attributed this to the fundamental imbalance of power between community bodies and local authorities. However, some respondents highlighted the positive role played by councillors in ensuring officers dealt seriously with participation requests.
54. Negative experiences included participation requests being lost or passed around different council departments. One community body told us about a request seemingly disappearing down a “black hole” for nine months. It took persistent engagement with the Council to get the request back on track.^{xx}
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^{xix} [Participation Requests: Evaluation of Part 3 of the Community Empowerment \(Scotland\) Act 2015](#)

^{xx} Official Report 2 December 2020, Col 21 and Community empowerment questionnaire –

Frequency of Participation Requests

55. Professor Steiner and his GCU colleagues told us their Part 3 data had to be handled with slight caution. This was because not all public authorities had provided annual information on participation requests, even though this was a formal requirement. The data the team had access to indicated that just 46 participation requests had been submitted since Part 3 came into force. There was a slight upward trend during this period. When the Cabinet Secretary gave evidence in January, she said total requests numbered 63.^{xxi}
56. The GCU team said the number of requests seemed quite low. They said this might be because the legislation was still quite new, with awareness of the right still low amongst community groups. They also suggested it might be because it was a more vague and more abstract right than the right to request an asset transfer under Part 5.
57. The GCU team told us the limitations of the data, and on its interpretation, made it difficult to draw conclusions on some matters. For example, it was not possible to conclude whether the low take-up meant that non-formal processes for communication between community groups and public bodies were, on the whole effective. But they knew of cases where community groups had let a public body know they were minded to use Part 3 procedures, and they had felt this had led to improved dialogue. This could be called a successful use of the Part 3 power but it would not formally count as one.^{xxii}
58. The GCU evaluation had recommended that—
- ” To avoid a situation in which public service authorities view participation requests as a failure of other engagement mechanisms, it is important to support public service authorities in developing a better understanding of the intentions of Part 3 of the Act. Lack of understanding and support towards participation requests has the potential to create an environment in which participation requests are more likely to be refused, or not submitted. Such positions are contrary to the intention of the Act and may limit the achievement of intended outcomes.^{xxiii}
59. Professor Steiner told the Committee that some public bodies seemed concerned that a participation request made to them might be interpreted as a mark of failure. He knew of two examples from annual reports of public bodies expressly stating that they sought to minimise them. He said this was a misreading of the intentions behind the Act, as participation requests—

SPICe summary available at https://www.parliament.scot/S5_Local_Gov/Summary_of_questionnaire_responses_community_orgs.pdf

^{xxi} Official Report 9 September 2020, Col 6 and 13 January 2021, Col 7

^{xxii} Official Report 9 September 2020, Cols 13 and 17

^{xxiii} [Participation Requests: Evaluation of Part 3 of the Community Empowerment \(Scotland\) Act 2015](#)

” ... are not supposed to replace existing good practice. Some public authorities said that they were really confident in their other practices, and so if those were not working a PR would be seen as a bad thing. In one case, that created an environment that did not feel very open and participative for some community groups. Therefore, clarity of policy intent and a bit more discussion about what a PR represents is important.^{xxiv}

60. Evidence from representatives of North Ayrshire and Dumfries and Galloway Councils confirmed that some public bodies do not have a positive or even a neutral view of requests. They told us that the council tended to see a low level of recorded requests as indicating that other tools in the box (for instance "community conversations" at ward level or participatory budgeting) were working well. The witness from Dumfries and Galloway Council confirmed that there was a perception when Part 3 came into force that—

” it was almost a failure of the council’s engagement approach if people had to resort to their entitlement. Because we had not enabled people’s engagement and involvement in other ways, we should not necessarily need people to go down the formal route in order to be involved in our activity.^{xxv}

61. The GCU evaluation said some public service authorities had "conceded that they have not been overly active in specifically promoting participation requests to the wider public". Some participants in the evaluation had felt this had been a cause of requests not being made. The Scottish Community Alliance told us that communities did not seem to perceive the request process as accessible: it had "not resonated" with them. They said the low take-up of requests should be considered in the context of Electoral Reform Society research showing that around three quarters of Scots felt that they had little influence over the decisions of their local council. We also note data from the most recent Scottish Household Survey (2020) indicating that only 18% of respondents felt they could influence decisions affecting their local area. This is 5% lower than in 2017.^{xxvi}

62. The Cabinet Secretary said—

” The issue of whether low numbers of participation requests signal success is tricky, because we know that lots of local authorities have a well-established dialogue with the community and good and effective community links. Whether such dialogue and links act as suppressants to participation requests is difficult to say with confidence. That is why the annual reporting will be important, and we established the template to provide us with a degree of consistency. It is also why it is important to continue with the evaluation that we have supported through Glasgow Caledonian University. That will ensure that we get a better understanding—a deeper and richer sense of the situation—in order to draw more conclusions about what is working and why, as well as about what that means for activity in a local authority or a public body with regard to what it needs to do and how it needs to support that.^{xxvii}

xxiv Official Report 9 September 2020, Col 18

xxv Official Report 9 December 2020, Col 9

xxvi Official Report 16 December 2020, Col 7 and [Scottish Household Survey](#)

xxvii Official Report 13 January 2021, Cols 11 and 12

63. It is difficult to know whether the advent of the participation request process has been successful in making public bodies more responsive to the communities they serve. Just over 60 have been made since April 2017. Rightly, the Scottish Government did not set a bar as to what would be the "right" number when the legislation was being agreed, but this number seems low. There is evidence that where a public body has good links with communities, formal requests will be low or non-existent. There is also some evidence that the fact that the process exists can be used as a tool to bring a public body to the table but, if so, this would not appear in any formal data. We also heard positive stories of dialogue between public bodies and communities that has led to change. In some cases, this may have arisen from the public conversation the 2016 Act has helped create about the importance of dialogue and listening.
64. However, the Committee doubts whether the low number of requests being submitted indicates high levels of satisfaction with local services or that local communities feel more empowered. This would not accord with evidence gathered from our own inquiry, nor with wider evidence, for instance the very concerning statistic that only 18% of Scots feel they can influence decisions affecting their local area. Work therefore needs to be done to make the participation request process appear less remote from communities and more real. Knowledge is power, and a lack of awareness or understanding of the process has been a practical barrier. The right to make a request has often not been publicised sufficiently, yet those bodies least successful at raising awareness of the participation request process, and explaining how to use it, might be those who need it most. Some bodies have institutionalised a belief that a participation request is a sign of "failure" by that body, and this too could be a barrier.

65. The Committee recommends that the Scottish Government works with public service authorities covered by the Act, and with COSLA, to ensure communities are aware of their rights to challenge and influence decisions and services. This will involve understanding and removing barriers to the use of participation requests where these could lead to improved outcomes for the local communities involved. Institutional views that participation requests denote "failure", while to an extent understandable, are holding back progress and should be challenged. The Scottish Government should also:
- remind all public bodies of their reporting responsibilities in relation to participation requests and their role in promoting the process,
 - pay specific attention to the very low level of requests made to public bodies (including health boards) other than local authorities.
66. We welcome confirmation from the Cabinet Secretary that the independent evaluation of Part 3 is to continue. We recommend that the Scottish Government discuss our findings with project leaders so that that the evaluation can take forward issues we have raised in relation to participation requests.

Appeals

67. When the Community Empowerment Bill was introduced, there was no provision for appeals where a participation requests is refused. At Stage 2 of the Bill, an amendment to allow appeals to the Scottish Government was lodged and agreed to. This was against the advice of the Minister in charge of the Bill who argued that this approach was not in the spirit of the Bill as "we cannot legislate to make people talk to each other", and that it could worsen relations in practice.^{xxviii}
68. At the final stage of Parliamentary proceedings, this amendment was overturned. The Minister argued that it risked leading to "a sweeping range of requests coming to ministers centrally for their decision-making." Instead, he lodged a compromise amendment, allowing the Scottish Ministers to set up an appeals process by Regulations, if experience showed that they were needed. This was agreed to and is now section 30 of the Act.
- ” ...we must be clear that being able to appeal any participation request, as the bill currently allows, would, I expect, see a sweeping range of requests coming to minister centrally for their decision making... We are proposing to make provision for appeals to be introduced on participation requests, if experience shows that they are needed. Amendment 42 gives ministers the power to make regulations about appeals or reviews of decisions relating to participation requests. That also allows for the appeals or reviews to be carried out by persons other than the Scottish ministers. I am sure that appeals or reviews will be needed only in exceptional cases, and we need to make sure that the system is proportionate.^{xxix}
69. During the same sitting, the Minister also successfully moved another amendment (now section 33) requiring the Scottish Ministers to prepare a report on the operation of Part 3 within three years of its coming into effect. In moving it, the Minister said that consideration of whether the system would benefit from an appeals process is a matter that could be considered in the report.
70. The GCU evaluation of Part 3 is the direct result of this amendment. The evaluation report said that the lack of an appeals process might have undermined the rationale behind Part 3. This was because—
- ” ... public service authorities can refuse requests based on loosely and locally-defined criteria. Although it is too early to determine whether an appeals process is needed, this should be kept under review as the data on the numbers of participation requests, acceptances and refusals develop.^{xxx}
71. In oral evidence, Professor Steiner elaborated that—

xxviii Local Government and Regeneration Committee, Official Report 11 March 2015, <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=9830&mode=pdf>

xxix Scottish Parliament, Official Report 3 February 2015, Col 87

xxx Participation Requests: Evaluation of Part 3 of the Community Empowerment (Scotland) Act 2015

” If an application is rejected for some reason, the community group is capable of finding out why it was rejected but that is basically the end point for the community... Given that the legislation is on community empowerment, it should truly empower communities, and a rational way forward would be to introduce an appeal process, particularly in cases in which collaboration between public service authorities and community groups is not healthy or is antagonistic. In those cases, community groups want the right to appeal the process and be heard by someone outside the public service authority.^{xxxix}

72. The overwhelming majority of community groups whose opinion the Committee canvassed on this issue said they would welcome an appeals process for groups who are unhappy with having a request rejected. Going further, there were views that there should be a separate right to appeal a failure to agree between a community group and a public body. (It is not clear that section 30, as currently drafted, would permit appeals on this ground.) Mick Doyle of the Scottish Community Development Centre said an appeals process, and an appeals process, and more access in general to legal remedies by community groups, would encourage public bodies to be more disciplined not only in handling participation requests but on their whole approach to participation. He cited two recent court cases concerning participation " which might mean that the way that we deal with participation requests will have to be taken a lot more seriously."^{xxxix}

73. Section 30 of the 2016 Act gives the Scottish Ministers the power to specify who may consider appeals. Witnesses agreed that the role should go to a person or organisation skilled in mediation, external to government, and with no connection to the relevant public body. Suggestions included the Scottish Community Development Centre (or another similar body) or the Scottish Public Services Ombudsman.^{xxxix}

74. The Cabinet Secretary said—

” Because the numbers have been lowish in that area, it is difficult to come to a definitive conclusion on that. Again, I am sorry if that is unsatisfactory but, sometimes, it is about our continuing to monitor what might be best, how best to ensure that activity increases in that area and whether appeals would be beneficial. We are not ruling it out, but we will continue to consider and monitor that, particularly given that it is a recommendation from Glasgow Caley. The national asset transfer action group is looking at those recommendations. We do not want to rule it out, and we will continue to actively monitor whether that would be useful in the future.^{xxxix}

75. The Committee recommends that the Scottish Government introduces an appeals mechanism for community bodies under section 30 of the 2016 Act, and ask it to consider proposing a timeline for this. Section 30 was agreed to in order that the Parliament could take stock of the need for an appeals process, following

^{xxxix} Official Report 9 September 2020, Col 14

^{xxxix} Official Report 2 December 2020, Cols 22 and 23 and 9 September 2020, Cols 6 and 7

^{xxxix} Official Report 16 September 2020, Cols 20 and 21

^{xxxix} Official Report 13 January 2021, Col 20

a first evaluation of participation requests. This has taken place and, in our view, the verdict is now in. We agree with views that the introduction of an appeals process would help keep public bodies disciplined and focussed in their handling of participation requests, as it will require them to take requests seriously, and give clear reasons for refusing them, if they want to avoid a reversal on appeal. It also seems very unlikely that an appeals body would be flooded with appeals - a concern when the legislation was passed - given the low number of requests so far. .

76. The Committee agrees with evidence that appeals should be considered by a body or person independent of both government and the relevant public body. We suggest the body should also be skilled in mediation, as helping to mend damaged relationships is likely to be an informal but important element of any appeals process.

Part 5 - Asset Transfers

77. Part 5 of the Act sets out how a “community transfer body” can request to buy, lease, manage, occupy or use land or buildings belonging to a “relevant authority” and how the authority is to deal with such requests. A “community transfer body” is either a “community controlled body” (as defined in section 19 of the Act, which is in Part 3) or a body, or type of body, designated by Order by the Scottish Ministers. In essence, while there is not complete overlap, the sort of community body that can make a participation request under Part 3 is also often likely to be a body that can request an asset transfer under Part 5.^{xxxv}
78. Public authorities must transparently assess requests against a specified list of criteria, laid out in the Act, and agree to them unless there are reasonable grounds for refusal. After Part 5 came into force in January 2017, the [Government published guidance](#) for public bodies and community groups. Unlike the participation requests process, there is an appeal process for community transfer bodies which have had their requests refused. If the request was turned down by a local authority, the community transfer body can ask councillors to review the decision. There is then a right to appeal to the Scottish Ministers.
79. The Policy Memorandum for the Community Empowerment (Scotland) Bill stated—
- ” The public sector owns a wide range of land and buildings throughout Scotland, ranging from forests to schools, hospitals to waterworks. Many communities may wish to take control of assets in their area, enabling them to address local needs and deliver community benefit. In many cases this will also contribute to achieving the outcomes set by public sector bodies, and can lead to reduced demand for public services.^{xxxvi}
80. It is clear that many people are enthused by the idea of the community having more control of a local building or plot of land and putting it to good use. Some of the most popular discussions during our [public engagement on community wellbeing](#) related to community-led facilities and services, such as:
- Food-based community spaces and services, like **community cafes**, **community kitchens** where people could prepare food together, and **community orchards and allotments**.
 - Community forests and **green spaces**.
 - **Community centres** and facilities, with services like tool libraries, and local organisations and clubs.
 - **Community shops**.
 - Places where people can come together, such as **churches and forums**.

^{xxxv} This is defined in section 77 of the Act. See also <https://www.gov.scot/publications/asset-transfer-under-community-empowerment-scotland-act-2015-guidance-community-9781786527509/pages/5/>

^{xxxvi} [Community Empowerment \(Scotland\) Bill, Policy Memorandum](#)

Part 5 of the Act was specifically intended to promote this sort of community involvement as, potentially, a win-win for the public body selling, lending or leasing an asset they did not have the resource or focus to support, and the local community being given the opportunity to put it to better use.

Experience and views on Asset Transfers

81. The Scottish Government was not statutorily obliged to report on Part 5 of the Act, as it was for Part 3, but asked Glasgow Caledonian University to include it in their evaluation. Their main findings were:
- Between 2017 and 2019, relevant authorities received 139 asset transfer requests, agreed to 81 and refused 10 (presumably the remaining requests were still under consideration).
 - The majority of asset transfer requests were submitted to local authorities (85% in 2017-2018 and 79% in 2018-2019).
 - Between 2017 and 2019, 53 requests were made for buildings.
 - Extensive promotion of asset transfers was constrained by financial and time pressures on relevant authorities.
 - The culture of authorities can be a barrier to effective implementation of asset transfer requests.
 - Some community transfer bodies experienced difficulties with public authorities, describing authorities as hostile or obstructive.
 - The asset transfer process may be 'transformational' for small communities, supporting increased community cohesion/involvement and capacity building.
 - The asset transfer request process may be more easily accessible to communities with sufficient levels of capacity, skills and knowledge.
 - Findings suggest that some communities will need additional support to be able to undertake an asset transfer process successfully.^{xxxvii}
82. It's immediately apparent that take up of asset transfer requests has been markedly higher than that of participation requests since the legislation came into force. The GCU assessment said this might be down in large part to the more tangible nature of the right, which made it easier for communities to visualise the benefits and "take ownership". Another factor raised in evidence was that community asset transfers predated the 2015 Act, and awareness of them was already relatively high.^{xxxviii}
83. Our online questionnaire also showed a higher awareness (almost 90%) of asset transfers. Satisfaction levels were also higher: the vast majority of respondents were positive about asset transfers. Results from our questionnaire also correlate with the GCU evaluation's finding that the vast majority of asset transfer requests

^{xxxvii} [Asset Transfer Requests: Evaluation of Part 5 of the Community Empowerment \(Scotland\) Act 2015](#)

^{xxxviii} Official Report 9 September 2020, Cols 23 and 24

were to local authorities. Assets mentioned by respondents to our questionnaire as subjects of requests included town halls, community centres, police stations, a former hospital, bowling greens, woodlands, playing fields, public toilets, old schools, tennis courts and former tourist information centres. These were to be used for various purposes, the most common being:

- Community centre or hub
- Heritage centre or museum
- Community garden, park or woodland
- Improved and accessible public toilets
- Men’s sheds or other workshop
- Improved car-parking
- Playing fields or other sport-related amenities.^{xxxix}

84. Our witnesses were also generally positive about the process, and this applied both to community groups (and those assisting them) and public bodies. Apart from the benefit, in itself, of giving an asset a new lease of life, it was a process that could help unlock further potential within a community. North Ayrshire's witnesses told us the process left communities—

” ...better and stronger by the end of the process because they have worked through and been questioned on their constitution, business plan, financial stability and so on. I have beautiful case studies that I could share with you that extol the benefits that people feel they have gained from the process.”^{xl}

Dumfries and Galloway Council's representative told us that asset transfers had made financial sense for the Council, as there had been a £3.47 return for every £1 discount given on a transfer.^{xli}

85. Angus Hardie of the Scottish Community Alliance attributed the relative success of Part 5 since coming into force to a "vigorous" appetite for asset transfers, sustained by an "ecosystem of support" from bodies like Community Ownership Support Service, the Development Trusts Association Scotland and Community Land Scotland.^{xlii}

86. The GCU team said that enshrining the right to request an asset transfer in legislation had, overall, created a more level playing field. However, aspects of the system remained somewhat ad hoc. Professor Steiner told us—

^{xxxix} [Community empowerment questionnaire – SPICe summary](#)

^{xl} Official Report 9 December 2020, Col 12

^{xli} Official Report 9 December 2020, Col 11

^{xlii} Official Report 9 September 2020, Cols 23 and 24 and 16 September 2020, Col 8

- ” There is a bit of frustration and anger among community groups that apply for asset transfer, about the lengthy process and lack of commitment. Some community groups mention that their knowledge about asset transfer under the legislation was better than that of the person who was dealing with the asset transfer in the relevant authority. Therefore, although the legislation opens the door for community groups and tries to systematise applications and the process, there is obviously a bit of variation in the experiences of community groups.^{xliii}
87. The GCU team, and other witnesses, also agreed that the process would go more smoothly where there was a mutual interest in, as it were, a distress transfer or fire sale of an asset that had become a burden to the public body, for instance an community hall or public conveniences. The relevant authority would often charge less, make the process easier and ask fewer questions and this could often be a win-win. Conversely, some witnesses agreed that in some bodies there was a culture of viewing asset transfers as "a diminution in the crown jewels". This cut against the Act's underlying aim of advancing community wellbeing through better use of public assets.^{xliv}
88. Angus Hardie of the Scottish Community Alliance said there had been a shift towards communities being offered leases rather than ownership. He had concerns this reflected a lack of confidence communities could manage and own assets responsibly, despite little evidence of transfers going wrong. He also said that public bodies had been reluctant to transfer assets at below market value, and that the process needed to be better at recognising non-monetary benefits of asset transfer. He said this would require a cultural change.^{xlv}
89. Douglas Westwater of Community Enterprise also agreed that the process seemed, with time, to be becoming more onerous and more detailed. Some public bodies were "combative not collaborative" in their approach to transfers. Reminding the Committee that most community bodies were run by volunteers, he told us that—
- ” the trajectory is away from supportive transfer towards putting communities through the wringer when it comes to getting the assets. Eligibility under the 2015 act has been increasingly strictly implemented, which has forced people to make lots of minor legal changes to their memorandum and articles of association before they are allowed to proceed. There is a lot of questioning of their capacity to keep things financially sustainable—which is ironic because, often, the council has been unable to do so and the asset is already closed.^{xlvi}
90. The Cabinet Secretary outlined the support the Scottish Government provided in relation to asset transfer requests, for instance through the Community Ownership Support Service and the National Asset Transfer Group which enables the sharing of best practice to drive improvements. She acknowledged that for some of the communities, the process had been a “bumpy experience” and aspects might need fixed, but that it was a complicated issue and that it was important that time was

xliii Official Report 9 September 2020, Cols 16

xliv Official Report 9 September 2020, Cols 11 and 12

xlv Official Report 16 September 2020, Cols 11 and 12

xlvi Official Report 16 September 2020, Col 12

taken to get it right. She said that the NATG would look to use the recommendations from the GCU evaluation and bring people together to make those improvements, where necessary.^{xlvii}

91. The Committee welcomes the generally positive view stakeholders have of Part 5 of the 2015 Act, on asset transfer requests. It is encouraging to hear that, in the main, communities' experiences have been positive. The Scottish Government has acknowledged that there are some teething issues with the process and we ask it to clarify what specific changes it is minded to make.

92. The Committee invites the Scottish Government to respond to views that the process has, with time, become more onerous and more bureaucratic, and that lease arrangements are increasingly preferred over transfers of ownership. Does the Scottish Government agree? If so, are there good reasons for this change? If not, is there a need for the Scottish Government to clarify best practice? We also ask the Scottish Government to address views that the process does not always take into account the intangible or non-monetary benefits of an asset transfer.

ALEOs and Asset Transfers

93. The issue of asset transfer and ALEOs arose repeatedly during evidence sessions. ALEOs are arms-length external organisations set up by councils to manage certain services. Whether ALEOs are a charity, a limited company a not-for-profit, or have some other corporate status, they are not "public bodies" in the conventional sense. This different corporate identity means they can do things councils cannot, or can access tax breaks or reliefs not available to councils, and is usually why they were set up in the first place. ALEOs are nowadays a quite common feature of the local government landscape particularly in relation to leisure services. Council sports facilities in many council areas, including Edinburgh and Glasgow, are now run by ALEOs.

94. ALEOs' different status may, however sometimes constrain them by comparison with a local authority. For instance, if an ALEO is a company, it must act in accordance with company law, which includes having duties to shareholders.

95. A number of community groups, or bodies supporting them, told us of problems with asset transfer requests running into the sand when it emerged that the relevant body was an ALEO. Examples given included a conservation body trying to acquire green space to prevent it being used for housing and a community group trying to acquire a disused bowling club to turn it into a communal garden. In these cases, the groups' understandable disappointment was turned into frustration by the complex legal issues that arose; questions about who actually owned the asset (a participation request to a council can only be made in respect of land owned or leased by the council^{xlviii}) or about whether an ALEO that said it was "unable" to consider an asset transfer request under Part 5 was making a legally correct

statement.^{xlix}

96. Edinburgh and Glasgow Councils were both mentioned during the inquiry as local authorities where groups making asset transfer requests could run into problems with ALEOs. The Committee wrote to both councils seeking more information and views.^l City of Edinburgh Council did not reply. We received a late reply from Glasgow City Council Leader, Councillor Aitken, as we were finalising this report. The reply mentioned three ALEOs connected to the Council:
- Glasgow Life which manages and operates various "community facing assets". The Committee understands this to mean museums, libraries, sports halls and pitches, etc. The letter says these properties remain Glasgow City Council assets and that they are "subject to the Council's transfer processes",
 - City Property Glasgow (Investments) LLP, which since 2010 has owned approximately 1800 mainly commercial properties that formerly belonged to the Council. The letter says about 100 of these are "community type facilities" (e.g., museums and music venues), and mentions some of the better known ones,
 - Jobs and Business Glasgow which holds various mainly commercial properties on lease from the Council. The Council does not consider any of its assets to be community assets.
97. Councillor Aitken said the Council had received a total of 17 validated community asset transfer requests on properties it owned, five of these operated by Glasgow Life. There had been 11 decisions, with seven approved and four not approved. The letter does not say whether any of the approved transfers were for assets managed by Glasgow Life. Of around 120 initial enquiries about asset transfers made to the Council, 13 related to properties owned by CPGI or JBG. These would have been passed on to the ALEO for its consideration. The letter said that CPGI has a voluntary transfer scheme and that CPGI had received around 30 expressions of interest. Two transfers had completed on CGPI properties, with nine further live applications.
98. Councillor Aitken said it was the Council's view that ALEOs should not be covered by Part 5 of the 2015. Retrospectively applying the Act would "impose a regime upon ALEOs and Councils which would fail to take account of established legal and commercial frameworks which ALEOs currently operate within". By way of example, the letter mentioned CPGI's financial arrangements with a bank which required it to generate an income stream to manage its liabilities. Under the arrangement, the bank also had a right of veto over most proposed disposal of properties. She said—
- ” The legislation as it stands provides ALEOs with the necessary protection that recognises their particular and separate purpose but does not prevent an ALEO from undertaking CATs [community asset transfers], particularly where it is the case – as it is in Glasgow – that Council policy favours a broadly permissive approach to community control.^{li}

xlvi Section 79 of the 2015 Act

xlix Official Report 2 December 2020, Col 28 and [Breakout Session 4 - Asset Transfers](#)

l Letters available here: <https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/113602.aspx>

99. We also asked COSLA for views on ALEOs and Part 5. Their short reply said that they held no relevant data and that—

” COSLA does not currently have a political mandate from our members to extend the 2015 Act to cover ALEO’s.^{lii}

100. The Cabinet Secretary told us there should be no barrier to ALEOs acting within the spirit of the Act and that they should face no negative consequences for doing so. Giving evidence alongside the Cabinet Secretary, Kathleen Glazik, who heads the National Asset Transfer Action Group, said the group had heard similar concerns to the Committee from community groups. In her view, the main issue was as to transparency about who owns the asset. Uncertainty can be compounded when it turns out the ALEO is a company owned by several local authorities. She said the whole issue was on the Group’s agenda.^{liii}

101. In follow-up written evidence, the Scottish Government told us—

” ALEO could be designated by Ministers as a ‘relevant authority’ by order under section 78(3), but only if it is a publically owned company (section 78(4)(c)), defined in section 78(5) as a company wholly owned by one or more of the relevant authorities. In terms of section 78(6)(b) a company is wholly owned by one or more of relevant authorities if it has no members other than other companies that are wholly owned by the relevant authority.

However, there is no set procedure or guidance to enable this and a practical first step is to engage with the key stakeholders such as the relevant authority and ALEO. Designation is not the only option as there is nothing to prevent the ALEO adopting a voluntary process that mirrors the local authority’s asset transfer policy and act within the spirit of the law. This will be explored further and the Scottish Government will work with COSS [Community Ownership Support Service], appropriate local authorities, ALEOs, community groups and interested parties to consider what action may be required. The ALEO discussion paper for the National Asset Transfer Group’s next meeting in March 2021 (date to be confirmed) will help inform this work.^{liv}

102. The Committee is concerned by evidence that asset transfer requests can run into a wall, causing frustration and demoralisation, when it turns out that the asset might belong to, or be operated by, an Arms-Length Community Organisation and not the council. Given the huge range of public assets now controlled by ALEOS, this is a major gap in the current law, and not in keeping with the spirit of Part 5 of the Act. We welcome confirmation that the Scottish Government’s National Asset Transfer Group is looking at this issue and the Committee would welcome an update before the election, together with any timeline for action. Assets owned or operated by ALEOs are *public* assets. The Committee believes that there is a need to clarify the consequences that flow from this status and, where necessary, to clarify or amend the law. In recognition of the complexities involved, we believe

li [Glasgow City Council Written Submission](#)

lii [COSLA Written Submission](#)

liii Official Report 13 January 2021, Col 16

liv [Scottish Government Written Submission](#)

that this issue should be revisited early in the next session of Parliament.

103. Practical steps can be taken in the meantime to reduce confusion and frustration. In particular, it appears there is work to be done by some councils and ALEOs to agree who owns which assets, and to make this information public and accessible. Clear publicly available statements from Councils, and ALEOs, about how they will handle asset transfers where they concern an asset owned or managed by an ALEO, would also help. We ask the Scottish Government to work with COSLA to encourage this.

More General Issues about Parts 3 and 5

Organisational culture and the 2015 Act

104. Clearly some public authorities have embraced the spirit of the 2015 Act. Professor Steiner told us—
- ” There is evidence that different community groups created good relationships as a result of the legislation. Especially when they were successful, participation requests led to enhanced trust and better collaboration between community bodies and public service authorities. Some community groups decided to go ahead with other community projects, including asset transfer. There is evidence that the legislation works to the extent that, if participation requests are successful, there is an opportunity to rebuild or develop collaboration between the two parties.^{iv}
105. It has been immensely encouraging to hear a number of good news stories during this inquiry. For instance from Mary Peart of Community Out West told us about the "brilliant" experience of taking over local public conveniences. She said this was in large part due to the asset transfer team at Highland Council who had been "helpful and supportive" from the outset and had "chivvied along" other council departments when it was needed.^{lvi}
106. Unfortunately, not all stories about engagement with public bodies have been so positive. A persistent complaint during the inquiry is of bodies coming across as indifferent to or unaware of the rights created under Parts 3 and 5, or even hostile to them, and of a need for a culture change. For example, one witness told us of their concerns after hearing comments at a conference from a senior council official about the importance of a local authority being able to "defend itself" from asset transfer requests.^{lvii}
107. Some, not all, of these concerns related to experiences with councils. We appreciate that 2020 was an exceptionally difficult year for councils but have been somewhat disappointed by the level of local government engagement with our work. Nine councils out of 32 accepted an invitation to take part in our online questionnaire. As noted earlier, City of Edinburgh Council did not take up an invitation to provide evidence on ALEOs, whilst COSLA considered they did not hold views or data on community empowerment that the Committee would find useful.
108. It is important to acknowledge that councils are entrusted to take decisions in the long-term best interests of the whole community they serve, and that councillors are ultimately answerable at the ballot box for the decisions they take. The Committee therefore accepts that at times councils might take decisions under Part 3 or 5 that a community group finds frustrating, but which were made in good faith. It should

^{iv} Official Report 9 September 2020, Cols 5 and 6

^{lvi} Official Report 2 December 2020, Col 20

^{lvii} Official Report 2 December 2020, Iain Hamlin, Col 20, Peter Scott, Col 33 and 16 September 2020, Calum MacLeod, Community Land Scotland, Col 21

also be acknowledged that it is natural for local government to have sometimes been in the firing line because so many requests under Parts 3 or 5 have been made to councils rather than other bodies, and councils have had to say "No" more often. We would have liked to have heard a stronger local government voice during this inquiry, putting across its distinct and important perspective on community empowerment.

109. Just five public bodies of the many that Committee staff contacted took part in our questionnaire. Again, allowances must be made for the present challenging circumstances, but this too is disappointing. It is reasonable to ask whether low levels of engagement with our inquiry confirm that, for many organisations, supporting the community engagement processes set out in the 2015 Act is a low priority.
110. The same shortlist of concerns (some already touched on earlier in the report) were raised with us. These were mainly about the same four related matters:
- Bureaucratic processes that took too long and often demanded more information than seemed necessary;
 - A lack of clear and accessible information about the issue that is the subject of the request;
 - A lack of clear and accessible information about how the public body handles participation or asset transfer requests, and what applicants need to do;
 - A lack of a single point of contact at the public body, and sometimes a sense of being shuffled around different departments, leading to the thread of the process getting lost.^{lviii}
111. Professor Steiner from the GCU team told us that—
- ” ... community groups have found the process to be very long. Some also said that there was no specific contact person who could deal with requests under the 2015 act. The timeline of the whole process was completely skewed, and community groups often complained about waiting a very long time to hear back from relevant authorities, and in particular local authorities, about specific assets. In that way, momentum is lost. Community groups get frustrated. There is not good collaboration.^{lix}
- The team told us that some bodies were making progress in addressing internal barriers. But many organisations would need a cultural shift if the mismatch between national policy and the reality on the ground was to be addressed. They said that public bodies themselves needed more help, to better understand the Act, and that it was not something to "fight against".^{lx}
112. The GCU evaluation had recommended that public bodies appoint a person as key internal contact, to take the lead on participation requests and asset transfers. It appears that this is often not the case at present. Such a person should understand

lviii Official Report 9 September 2020, Col 27

lix Official Report 9 September 2020, Col 10

lx Official Report 9 September 2020, Col 21

the legislation and the practical realities of asset transfers and participation requests. They should be the conduit between community bodies and other departments or key people in the organisation. The GCU team told us that currently community groups often seemed far better informed about the relevant issues than the public bodies they were dealing with.^{lxi}

113. This recommendation was strongly supported by community groups and bodies supporting them as a practical way to make the legislation work better. They agreed that was important that the point of contact should be a person immersed in the culture and practice of community empowerment.^{lxii}

114. The Cabinet Secretary said—

” .. there is no denying that we need to see a culture shift and a change across the public landscape and public life in how we trust our communities and respect that they know best what they need and are best placed to achieve it. It is about how we disentangle the red tape and bureaucracy that stymie some of that. The past 10 months or so have shown what we stand to gain if we get that right and be a bit more relaxed if things do not work as well. We must ensure that there is an understanding that, if people take a bit of a punt on something, the chances are that it will work well. However, if it does not, it is about what learning can be taken from that and how it can be used to help to inform other communities. There is a lot of risk aversion in the system. That is not just in relation to the community engagement policy; it is across a great swathe of public life in Scotland. In this space, what people see is that, when communities are trusted, empowered, supported and nurtured, they stand to gain more than they lose. Part of that is about the culture shift and the change that we need to see across the wider public landscape. However, I engage with COSLA—its president, for instance— and we have worked very well on the local governance review, and we talk similarly about wanting to see our communities empowered.^{lxiii}

115. In relation to whether bodies should have a single points of contact, the Cabinet Secretary reserved her judgement. She said that leadership on community empowerment from the top of the council could be just as effective in driving positive change as any particular configuration with a council's staffing structure.^{lxiv}

116. Community empowerment is a work in progress. There are pockets within the public sector where culture change is needed if the full benefits of the 2015 Act are to be realised. We ask the Scottish Government to ensure that the next phase of evaluation drills down into the detail of how different public bodies are handling requests under Part 3 and 5 of the Act and, for example, what steps they are taking:

^{lxi} D&G and North Ayrshire evidence, Official Report 9 September 2020, Col 20 and 21

^{lxii} Official Report 9 September 2020, Scottish Community Development Centre Col 25 and 16 September 2020, Col 22

^{lxiii} Official Report 13 January 2021, Col 14

^{lxiv} Official Report 13 January 2021, Col 24

- To publicise and promote the right to make a request;
- to make publicly available other information that might help community bodies make informed requests;
- to reduce unneeded bureaucracy in relation to the process.

We also ask the Scottish Government work with COSLA to address some of the concerns about attitudes and processes, in relation to Parts 3 and 5 of the 2015 Act, raised during this inquiry.

117. The Committee agrees with the finding of the Glasgow Caledonian University evaluation, and with most witnesses, that participation and asset transfer request processes would generally benefit from public bodies appointing a single point of contact to deal with them. The contact could be a person or a small team, and it should be a visible and well-promoted role, so that communities know who they are. They should have sufficient seniority and status to drive cultural change within the organisation, and to ensure requests get a fair hearing. This involves building effective relationships with senior staff and (where relevant) with elected politicians. We invite the Scottish Government to clarify whether it agrees with this recommendation, and if so, what steps it can take to drive it forward. We ask the Scottish Government to work with COSLA to raise awareness of the recommendation with local authorities.

Raising grassroots awareness

118. The GCU evaluation recommended that the Scottish Government "continue to work with key partners to identify actions that may help to overcome any barriers to the use of asset transfer and participation requests by marginalised groups or disadvantaged communities." Consideration should also be given to mapping funding options and support/capacity services, and providing better signposting to these services.^{ixv}
119. When they gave evidence, the GCU team indicated that it was hard to draw firm conclusions from the data about the sort of groups who make request, and what demographics they are drawn from. But they said their research raised questions about whether groups making requests were "fully representative of the diverse communities that we have in Scotland". They added that it would, however, be "misleading" to conclude that the Act widens inequalities, not least because a good outcome from a request can benefit a far wider group than the group making the request.^{ixvi} In this connection, the Committee recognises that altruism can be a major motivating factor for people who get involved in community groups, including relatively more well-off people who want to "give something back" to the community - and this is a good thing.

^{ixv} [Participation Requests: Evaluation of Part 3 of the Community Empowerment \(Scotland\) Act 2015 and Asset Transfer Requests: Evaluation of Part 5 of the Community Empowerment \(Scotland\) Act 2015](#)

120. Community groups we took evidence from agreed that grassroots awareness needed to be higher. They also tended to agree that more marginalised communities would have lower awareness of the rights created by the 2015 Act and be less likely to make asset transfer or participation requests than more middle class communities. The Scottish Community Development Centre said public bodies were not doing enough to promote the right make requests under the 2015 Act. They said this could be a problem of organisational culture. But it could also often be an issue of resources, with an organisation lacking the wherewithal to do the promotional and support work it wanted to do.^{lxvii} The SCDC told us there there was “no clear evidence yet on whether marginalised and disadvantaged groups have used participation requests to any great extent.”^{lxviii}
121. Louisa Macdonell of the Development Trusts Association Scotland said that some of the most successful development trusts were in “challenged” areas, such as Easterhouse and Beith. This was a useful reminder to the Committee not to make assumptions about which areas would be the most “winners” from the 2015 Act. She said it had taken time and effort to help these communities grow in confidence and capacity.^{lxix} Overall, most witnesses agreed that more marginalised communities needed additional and targeted support to make best use of the processes set out in Parts 3 and 5.^{lxx}
122. We heard views that important capacity has been lost, with fewer community development officers (or others with similar titles or roles) embedded in communities than there had been around 20 years ago. This was attributed to prior cuts in council services in a climate of austerity. Witnesses agreed that the Community Ownership Support Service (a Scottish Government-funded programme) does good work in communities, but that it had not fully substituted for that lost capacity. There were also positive views about community anchor organisations as beacons of community empowerment. These are independent community-led bodies, usually operating out of a centre that acts as a hub (the Raploch Campus being an example). They often provide some local services which generate some income, for instance through running social enterprises out of the hub.^{lxxi}
123. The Cabinet Secretary said the Scottish Government recognised the issues more deprived or marginalised communities faced in seeking to unlock the potential of the Act. It had funded the Community Ownership Support Service and the Scottish Community Development Centre to provide free support and advice to help communities navigate the legislation. She agreed there were challenges in making the rights under Parts 3 and 5 “come to life” in more marginalised communities and said that because of this she had recently decided that both bodies would be “specifically and explicitly tasked” to work with more marginalised and deprived communities, and help build up capacity.^{lxxii}
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^{lxvi} Official Report 9 September 2020, Cols 4 and 5

^{lxvii} Official Report 9 September 2020, Col 26

^{lxviii} Official Report 9 September 2020, Col 25

^{lxix} Official Report 9 September 2020, Cols 28 and 29

^{lxx} Official Report 16 September 2020, Cols 9 and 10

^{lxxi} Official Report 16 September 2020, Col 9

124. This is clearly work to be done in raising awareness of participation and asset transfer requests, particularly in more deprived communities. Resources are part of the issue, with evidence that some communities do not have the support they need at grassroots level to help unlock the potential of the 2015 Act. We support the conclusion of the Glasgow Caledonian University evaluation that the Scottish Government continue to work with key partners to identify actions that may help to overcome barriers, and that there be better signposting of services.
125. The Committee welcomes the Scottish Government's commitment to require the Community Ownership Support Service and the Scottish Community Development Centre to target communities in disadvantaged and marginalised areas. We would welcome more information on what this will involve, and on what additional resources (if any) they have been given to help them in this important work.

Sharing good outcomes and best practice

126. With the 2015 Act still bedding in, sharing good practice on participation and asset transfer requests is important. We sought views on how well best practice was being shared, both between public bodies who have duties under the Act and between community groups and the bodies who support them.
127. As already noted, there are plenty of good news stories to be told, from different parts of Scotland, about communities making good use of their powers under Part 3 or, more commonly, Part 5. Amongst local authorities, East Ayrshire Council was held up as a beacon of leadership and good practice in community empowerment and community planning.^{lxxiii} It is disappointing that COSLA were not able to share with us information and views on how councils share good practice.
128. Evidence on how well this good news was being shared, was mixed. Overall, witnesses felt more could be done. We heard that there was no shortage of useful data "out there" in relation to asset transfer in particular (for instance by the Scottish Land Fund) but it needed to be shared more and subjected to more analysis.^{lxxiv} The bodies supporting community groups that we heard from confirmed that networking and peer-to-peer support were an important part of their role. The Scottish Government's Community Ownership Support Service also had a role to play in this area. The last few months have of course been challenging, and sharing experiences has been harder.^{lxxv} Linda Gillespie of the Development Trust Association told us she felt there was scope to make even better use of these networks and to provide a more practical focus, especially in work with more inexperienced community groups".^{lxxvi}

^{lxxii} Official Report 13 January 2021, Col 9

^{lxxiii} Official Report 16 September 2020, Col 5 and 13 January 2021, Col 24

^{lxxiv} Official Report 16 September 2020, Cols 4 and 6

^{lxxv} Official Report 9 September 2020, Col 35

^{lxxvi} Official Report 9 September 2020, Col 36

129. Questions were raised about whether public bodies were taking as much advantage as they should of the expertise and networking on offer.^{lxxvii} Mick Doyle of the SCDC told us public authorities should show more evidence that they are sharing knowledge with each other, learning from experience, and actively working to improve their processes, in order to have better outcomes for community bodies. He said this work was needed to realise the full potential of the 2015 Act. He said the SCDC would in 2021 be running learning events focussed on outcome improvement.^{lxxviii}
130. The Cabinet Secretary strongly agreed there was a need to prioritise good practice sharing to drive improvement to the poor experiences some communities had faced. She said the Scottish Government was committed to this. She told us there is a national asset transfer action group, whose role includes "calculating social value and measuring outcomes" against the national performance framework. She said that the Scottish Government would "ensure that we raise awareness of it and demonstrate the positive outcomes from good use of the legislation."^{lxxix}

131. With both public authorities and communities still on a learning curve in relation to the participation and asset transfer request processes, the effective sharing of good practice is absolutely crucial. This is underlined by the widely varying experiences of the processes that groups have shared with us. The Committee asks the Scottish Government to elaborate on the work the asset transfer action group, the Community Ownership Support Service and others are doing to step up efforts to share good practice and to promote networks of advice, support and information sharing at community level.

132. We recommend that the Scottish Government work with COSLA to encourage local authorities to maintain networks for sharing good practice on participation and asset transfer requests. We also recommend that the Scottish Government work with public bodies to drive a culture of improvement and information sharing in relation to Parts 3 and 5 of the Act. This could include:

- providing more opportunities and vehicles for shared learning. Crucially, this must include opportunities for councils and other public bodies to learn from community groups who can share their experiences - good or bad - of making use of the participation and asset transfer request processes;
- promoting frameworks for best practice, such as those provided by Audit Scotland and promoting the work of organisations that support community empowerment, with an emphasis on the resources and advice they can offer councils and public bodies;
- encouraging public bodies to publish and share data or information on participation or asset transfer requests in a format and manner that others will find usable and helpful.

^{lxxvii} Colette McGarva, Community Alliance Scotland, Official Report 16 September 2020, Col 5

^{lxxviii} Official Report 9 September 2020, Cols 35 and 36

^{lxxix} Official Report 13 January 2021, Col 21

Reporting

133. The GCU evaluation found that almost a third of local authorities did not publish an annual report on asset transfers in 2018-19, even though this is a statutory duty under the 2015 Act. Nearly half did not publish annual reports on participation requests. In oral evidence, Professor Steiner elaborated that there appeared to be a downward trend in reporting since the Act came into force; from "60-odd in the first year of the legislation to 40-odd."
134. The GCU team explained that this had had direct consequences on their work. Without all the reporting data that ought to have been available, the evaluation was not as precise as it could have been and they had been limited to evaluating "broad generalisations and trends". They also told us that those public bodies that had reported had interpreted and applied their reporting duties diversely; in a variety of lengths and formats. Some were heavy on data; others were more descriptive. Information was not always captured in a clear way. For instance, it was sometimes not clear whether an asset transfer had taken place within or outwith the terms of the Act. All of this had added to the complexity of the task and had had a direct impact on what could be said in the evaluation. The GCU team told us that in any future evaluation of Parts 3 and 5, there should be careful consideration of what information public bodies should be asked to record and provide.^{lxxx}
135. Witnesses from bodies working with community groups agreed this issue was significant and needed to be addressed. It might be a symptom of a body's lack of interest in or engagement with the whole issue. Dr MacLeod said that the downward trajectory in reporting indicated "that something is not working effectively in the implementation of that really important aspect of transparency in the system and process to enable the system to work effectively". He said that, whatever the reasons behind poor compliance - organisational culture, resources, or simply a lack of understanding - these were barriers to the legislation working effectively in practice.^{lxxxi}
136. The Cabinet Secretary agreed that reporting standards must improve. She said the Scottish Government had been working with partners on an annual report template. This had been used for the first time in 2020 and she said it had already improved both reporting levels and the quality of information provided. She told us—
- ” It is also why it is important to continue with the evaluation that we have supported through Glasgow Caledonian University. That will ensure that we get a better understanding—a deeper and richer sense of the situation—in order to draw more conclusions about what is working and why, as well as about what that means for activity in a local authority or a public body with regard to what it needs to do and how it needs to support that.^{lxxxii}
137. The Committee is very concerned by the low level of compliance with formal reporting requirements under the 2015 Act. Limitations in reporting over the

^{lxxx} Official Report 9 September 2020, Cols 4, 14 and 15

^{lxxxi} Official Report 16 September 2020, Cols 10 and 11 and 2 December 2020, Col 22

^{lxxxii} Official Report 13 January 2021, Cols 6, 12 and 14

review period made it difficult for the Glasgow Caledonian evaluation to obtain an accurate and clear picture of how the legislation was working on the ground. We welcome the Scottish Government's recent work to address this information deficit, but ask it to continue to remind public bodies of their duties and to monitor "persistent offenders", making clear that a failure to report is unacceptable. We also ask it to work with COSLA on this issue.

138. We recommend that the Scottish Government continue to work with public bodies to improve consistency in the way information is reported. We also recommend that the Scottish Government issue guidance to public authorities on reporting participation and asset transfer requests. Guidance should include practical advice to councils on what information to record, with a focus on information that will serve a practical purpose and help future evaluations of the legislation.

