

1. Process for Listing Assets of Community Value (ACV)

Community Group or Parish Council nominates Land or Building to be included in the List of Assets of Community Value by the Local Authority in accordance with the Act and Regulations 3, 4, 5 and 6

Local Authority decides whether to list the land or building as an ACV or not within 8 weeks of nomination in accordance with s88 of the Act and Regulations 7 and 8

Local Authority decides not to list the asset

Local Authority decides to list asset. Asset is listed for a fixed period of five years.

Local Authority notifies owner and others in accordance with s91 of the Act and Regulation 9 setting out the implications of listing and the right to request review. It also notifies the community group that nominated it

If a review of the listing is requested it is to be undertaken by a person of senior appropriate authority in accordance with s 92 of the Act and Regulation 10.

Owner's request for review is successful

Owner's request for review is unsuccessful. Owner can appeal to the First Tier Tribunal under Regulation 11

No objection from owner

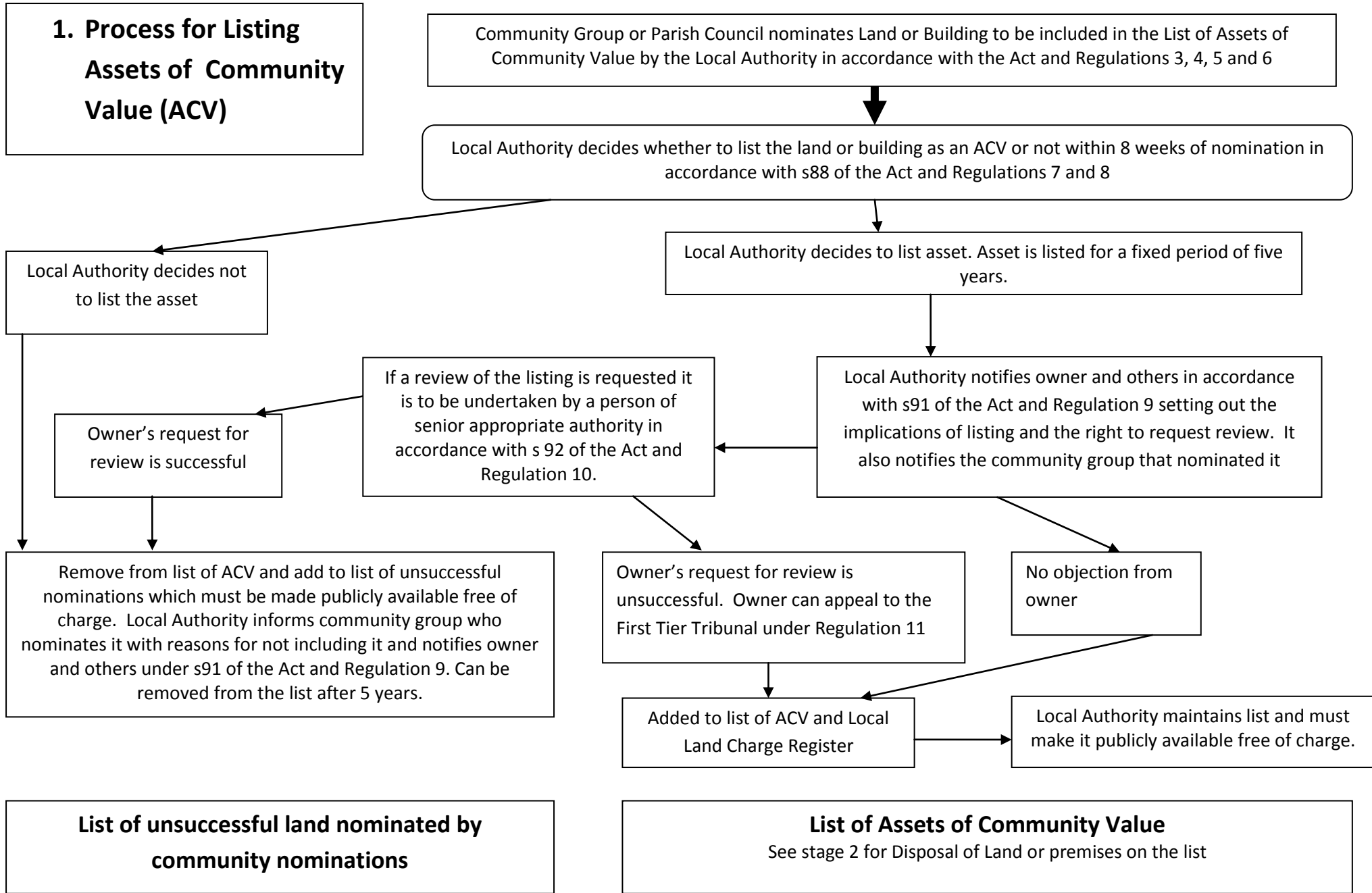
Remove from list of ACV and add to list of unsuccessful nominations which must be made publicly available free of charge. Local Authority informs community group who nominates it with reasons for not including it and notifies owner and others under s91 of the Act and Regulation 9. Can be removed from the list after 5 years.

Added to list of ACV and Local Land Charge Register

Local Authority maintains list and must make it publicly available free of charge.

List of unsuccessful land nominated by community nominations

List of Assets of Community Value
See stage 2 for Disposal of Land or premises on the list



2. Process for Disposing of an Asset of Community Value

Owner decides to dispose of the listed ACV and informs the Local Authority in writing. The Interim and the Full moratorium as well as the Protected Periods starts.

Local Authority informs community group nominator and publicises the owner's intention to sell. It also records this on the list of ACV under s97 of the Act and Regulation 2.

No community interest groups express interest in the Interim Moratorium Period.

A community interest group (as defined under Regulation 12) expresses interest in writing to the Local Authority in bidding for the ACV within the Interim Moratorium Period. Local Authority is required to inform the owner who then can not dispose of the ACV until the Full Moratorium Period ends.

Owner free to sell asset after Interim Moratorium period ends

Community interest groups prepare business plans and finance to bid for the ACV within the Full Moratorium Period

Owner can claim compensation under Regulation 14 which the Council will need to pay if the listing resulted in a loss or expense in relation to the land. The claim must be submitted within 13 weeks and be supported by evidence. Under Regulation 16 the claimant can ask the Council to review its decision for compensation and appeal against the review under Regulation 17

Owner can dispose of ACV to whoever they choose to once the full Moratorium Period ends. However, the owner must dispose of it within the Protected Period of 18 months. If they fail to do so then the process has to start again.

An owner of an ACV can sell to a community interest group at any time under Regulation 13

Interim Moratorium - 6 weeks

Full Moratorium Period - 6 months

Protected Period - 18 months

Annex 2 - Land that may not be listed as an Asset of Community Value

The principal one is residential property. This includes gardens, outbuildings and other associated land, including land that it is reasonable to consider as part of the land with the residence where it is separated from it only by a road, railway line, river or canal where they are in the same ownership as the associated residence. Details of this are set out in paragraphs 1 and 2 of Schedule 1 to the Regulations. "The same ownership" includes ownership by different trusts of land settled by the same settlor, as well as literally the same individual owner.

There is an exception to this general exclusion of residential property from listing. This is where an asset which could otherwise be listed contains integral residential quarters, such as accommodation as part of a pub or a caretaker's flat.

There are two further categories of assets excluded from listing:

- (a) Land licensed for use as a residential caravan site (and some types of residential caravan site which do not need a licence), in paragraph 3 of Schedule 1 to the Regulations.
- (b) Operational land of statutory undertakers as defined in section 263 of the Town and Country Planning Act 1990, in paragraph 4 of Schedule 1 to the Regulations.

Annex 3 - List of Sales that do not have to be notified to the Council

- a. disposal to a local community interest group, which can be made during a moratorium period (interim or full) – see regulation 13(1)
- b. disposals which are gifts (including transfer for no payment to trustees by way of settlement upon trusts)
- c. disposals by personal representatives in accordance with the will of the deceased owner or under intestacy rules
- d. disposal by personal representatives of the deceased owner in order to raise money for matters connected with administration of the estate
- e. disposals between family members (“family member” is defined in section 95(7) of the Act as the owner’s spouse or partner and descendants of grandparents – which includes the owner’s own parents, but not the grandparents)
- f. part-listed land – i.e. sale of a site only part of which has been listed – where it meets the requirements set out in the Regulations (see concluding paragraph for details)
- g. sale of land on which a business is carried on, together with sale of that business as a going concern (in such circumstances there would normally be payment separately for the business as a going concern, e.g. the value of equipment, stock and goodwill)
- h. disposals occasioned by somebody becoming or ceasing to be a trustee
- i. disposal by trustees in connection with the trust, as specified
- j. a disposal occasioned by a person becoming or ceasing to be a partner in a partnership
- k. transfers made in pursuance of a court order
- l. transfers (not in pursuance of a court order) as part of a separation agreement between spouses or civil partners (or ex ditto) including agreements for care of dependent children
- m. a transfer (not in pursuance of a court order) for the purposes of any enactment relating to incapacity, with “incapacity” being widely defined to include physical and mental impairment and any interference with capacity to deal with financial and property matters
- n. a disposal made in pursuance of a legally enforceable requirement that it should be made to a specific person, including disposals required under planning obligation agreements; and in the case of an option to buy, nomination right, pre-emption right or right of first refusal only if the agreement was entered into before the land was listed (and in this context it should be noted that an option etc entered into *after* the land is listed would count as a relevant disposal under section 96(4) of the Act)
- o. disposals of a description which brings them within the Crichton Down rules (where the land was acquired by compulsory purchase but is no longer needed, and the

disposal is by way of return to the original owner or their descendants) – see DCLG Circular 06/04 “Compulsory Purchase and the Crichton Down Rules”:
<http://www.communities.gov.uk/documents/planningandbuilding/pdf/1918885.pdf>

p. sale by a lender under a power of sale (i.e. where the land was security for a loan)

q. disposal of land under bankruptcy or other insolvency proceedings – the wording is “insolvency proceedings as defined by Rule 13.7 of the Insolvency Rules 1986”, which gives a very wide definition of insolvency proceedings

r. compulsory purchase disposals (see the wide definition of “statutory compulsory purchase” in regulation 1, which includes disposals by a purchaser deemed to acquire the land compulsorily under a statutory blight notice, and also disposals by agreement where a compulsory power could be used)

s. the grant of an agricultural tenancy to a successor on the death or retirement of the current tenant pursuant to Part 4 of the Agricultural Holdings Act 1986

t. transfers between connected companies in a group of companies (using the definition of “group undertaking” in section 1161(5) of the Companies Act 2006, modified to restrict “undertaking” to a body corporate)

u. disposals of part-listed land – this is the second part of the definition, the other part being in the Act – section 95(5)(e)¹. See final paragraph below for details.

v. disposals of closed Church of England churches under Part 6 of the Mission and Pastoral Measure 2011: the lengthy process in Part 6 of the Measure involves public consultation, and at the end of it the building will either be sold or leased for an agreed purpose, or demolished, or transferred to the Churches Conservation Trust for preservation – following which outcomes it will once more be possible to list the building and land if appropriate.

w. disposals by any owner for the purpose of continuing health service provision on the land (in accordance with section 1(1) of the National Health Service Act 2006)

x. a disposal of land to be held for the purpose of a school (excluding independent schools), further education institution or 16 to 19 Academy

y. disposal of land subject to a statutory requirement regarding the making of the disposal, where that requirement could not be observed if the Assets moratorium rules were complied with.

Details regarding part-listed land and land with a residence

Similar rules apply for determining how much land constitutes land with a residence (for exclusion from listing in Schedule 1 to the Regulations) and how much land constitutes a single site for qualifying as a part-listed site (as an exempt disposal in Schedule 3 to the Regulations). In order to ensure that the same rules apply to

¹ the disposal is a part-listed disposal of a description specified in regulations made by the appropriate authority, and for this purpose “part-listed disposal” means a disposal of an estate in land

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(1) part of which is land included in a local authority’s list of assets of community value, and
(2) part of which is land not included in any local authority’s list of assets of community value.

registered and unregistered land, the approach taken has not been based on title. Instead, it is necessary to look at whether the site in question is one coherent parcel of land all owned by a single owner, so that it is possible to reach one part from another without crossing land owned by somebody else. However there are two qualifications to be taken into account:

Firstly, “a single owner” has an expanded meaning covering more than simply the same person or joint owners. It includes also trustees of different trusts of land which was settled by the same settlor – see definition of “single owner” in regulation 1.

Secondly, where it would otherwise be reasonable to regard the land as one coherent parcel, the fact that it is crossed by a road, railway, canal or river in other ownership is to be ignored.

Annex 4 - Claims for Compensation

Under Regulation 14 of the Asset of Community Value (England) Regulations private owners of listed land may claim compensation for loss and expense incurred through the asset being listed or previously listed.

The Regulations specifically state that the following types of claim that this will include are:

- a claim arising from a period of delay in entering into a binding agreement to sell which is wholly caused by the interim or full moratorium period; or
- a claim for legal expenses incurred in a successful appeal to the Tribunal against the decision to list the land, refuse to pay compensation or with regard to the amount of compensation offered or paid.

The time limit for making a compensation claim is specified in Schedule 2 to the Regulations as whichever is earlier of 13 weeks from the end of the interim or full moratorium period (as appropriate) or from the date when the land ceases to be listed. The assumption is that most claims for compensation will arise from a moratorium period being applied; however the wording allows for claims for loss or expense arising simply as a result of the land being listed.

Claims must be made in writing, state the amount of compensation sought and provide supporting evidence. The burden of proving the claim falls on the owner.

The local authority must consider the claim and is required to give written reasons for its decision. No time limit is specified for responding to the claim. The reason for this is that it may take the authority some time to assemble all the necessary evidence; however once it has all the facts the authority should reach a decision as quickly as is practicable.

The compensation scheme does not extend to public authorities and bodies. These are defined as:

- Government departments, authorities and other bodies to which section 6 of the National Audit Act 1983 applies;
- bodies which receive the majority of their funding from public sources which may be examined by the Comptroller and Auditor General under section 7 of the National Audit Act 1983; and,
- local authorities and other public authorities and bodies that are required to be audited under section 2 of the Audit Commission Act 1998

In addition to the amount included within the new burdens assessment, the Government will meet costs of compensation payments of over £20k of compensation costs in a financial year. This could occur through a local authority paying out over £20k in one financial year either on one large claim or as a combined total on a number of smaller claims.

Internal review of compensation decision

The Regulations provide that an owner who is not satisfied with the local authority's response to the compensation claim may request a review by the local authority of its compensation decisions. Schedule 2 to the Regulations provides that the owner must make the request within a period of 8 weeks, beginning on the date on which the local authority provides the owner with written notification of the decision. The local authority may allow longer for a review request to be made.

The local authority must review their decision, and notify the owner of the result within 8 weeks of receiving the request, with reasons. The procedure for the review, in Schedule 2 to the Regulations, is the same as for the local authority's review of a listing decision.

Independent Appeal

An owner may appeal to a Tribunal against the local authority's review decisions on compensation. As with listing appeals, the deadline for the appeal is in the Tribunal Rules – 28 days from receiving the local authority's decision on the compensation review. Only the owner – or former owner – who requested the review may appeal against the review decision (i.e. unlike with listing appeals, a new owner who bought the land following a request for a review may not appeal against the compensation review decision).

As with listing appeals, the current position is that the appeal will be to the General Regulatory Chamber of the First-tier Tribunal.