

POLICY NOTE

THE ASSET TRANSFER REQUEST (APPEAL WHERE NO CONTRACT CONCLUDED) (SCOTLAND) REGULATIONS 2016

SSI 2016/360

The above instrument was made in exercise of the powers conferred by sections 83(10) and 90(12) and (14) of the Community Empowerment (Scotland) Act 2015. The instrument is subject to negative procedure.

Policy Objectives

These regulations make provision for procedures to be followed in relation to appeals to the Scottish Ministers where the parties have failed to conclude a contract following agreement to an asset transfer request under the Community Empowerment (Scotland) Act 2015 (“the Act”). They also make provision for applications to the Scottish Ministers under section 83(8) for directions to extend the time to agree a contract, or under section 90(5) to require a relevant authority to conclude the contract following an appeal.

Unlike other appeals and reviews in relation to asset transfer, the procedure does not allow for third party representations or publication of documents, since negotiation of a contract is likely to be complex and include commercially sensitive information.

Appeal where no contract concluded

Regulation 3 requires the community transfer body must give notice of its appeal in writing to the Scottish Ministers. This must be accompanied by copies of all the correspondence between the community transfer body and the relevant authority in relation to the negotiation of the contract, and a statement of the terms and conditions on which the community transfer body considers the transfer of land should be made. At the same time, under regulation 4, the community transfer body must send notice of the appeal to the relevant authority. It must provide a list of the documents sent to the Scottish Ministers, and copies of any documents the relevant authority does not already have.

The relevant authority must send its response to the Scottish Ministers and the community transfer body, including a note of the terms and conditions on which it considers the transfer of land should be made. The community transfer body may send comments on the relevant authority’s response to the Scottish Ministers.

Regulation 5 requires the Scottish Ministers to appoint a panel of 3 people to consider the appeal and report their findings to Ministers, who make the final decision.

Regulation 6 provides that the panel may determine the appeal without further procedure, if they consider they have enough information to do so. If not, under regulation 7 they may decide how the appeal is to be conducted.

If the panel want further representations or information to be submitted in writing, they must give notice to the community transfer body, the relevant authority and any other person they want to provide that additional material (regulation 8). Any material provided in response to

the notice must be copied to anyone else the notice was given to, and they may make comments.

If a hearing session is to be held, the rules set out in the schedule to the regulations will apply.

Regulation 9 provides that if the Scottish Ministers propose to take into consideration any new evidence that was not obtained through the process for written representations or hearing sessions, they must not reach a decision on the appeal without giving the community transfer body and the relevant authority an opportunity to comment on that evidence.

Regulation 10 provides that the Scottish Ministers must give notice of their decision to the community transfer body and the relevant authority.

Regulations 17, 18 and 19 make general provisions about further copies of documents, the contact address for the community transfer body and electronic communications.

Part 4 of the regulations deals with an application for a direction to extend the time allowed to conclude a contract. Under regulation 11, the community transfer body's application must include details of the steps taken by the community transfer body and the relevant authority to agree a contract, and to agree a longer period to conclude it, and must state the period which the community transfer body considers should be specified in the direction.

Regulation 12 requires the community transfer body to copy the application to the relevant authority, who may send comments to the Scottish Ministers and the community transfer body. The Scottish Ministers may seek further representations or information, following the procedures in Part 3 and Part 6 of the regulations.

Part 5 of the regulations deals with an application for a direction to require a relevant authority to conclude a contract, following an appeal under section 83(6). Under regulation 14, the community transfer body's application must include details of the steps taken by the community transfer body and the relevant authority to conclude a contract and the community transfer body's reasons why a direction should be given, and must state the period within which the community transfer body considers the contract should be concluded. Regulation 15 requires the community transfer body to copy the application to the relevant authority, who may send comments to the Scottish Ministers and the community transfer body. The Scottish Ministers may seek further representations or information, following the procedures in Part 3 and Part 6 of the regulations.

Consultation

Draft regulations were developed with a steering group of public sector and community sector stakeholders, and a public consultation was carried out from 17 March to 20 June 2016. Details of the consultation and responses are available at

<https://consult.scotland.gov.uk/community-empowerment-unit/asset-transfer-procedures>

The majority of respondents were content with the proposed regulations. However, a substantial minority suggested that a panel should be appointed to consider these appeals, and the regulations have been changed to require this. 90% of respondents agreed that third party representations should not be allowed. A substantial majority also agreed that documents should not be published, although some suggested that summary information might be

published after the appeal was concluded. There was no consensus on any other changes to be made to the regulations.

Impact Assessments

Screening has been carried out and concluded that no impact assessments are required, as these regulations have no effect on equality, privacy, children's rights and welfare, or the environment.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed for these regulations and others relating to asset transfer, and is attached. We do not consider that these provisions will lead to any increase in costs for relevant authorities or community transfer bodies.

Scottish Government
Local Government and Communities Directorate

8 November 2016