

# COMMUNITY EMPOWERMENT (SCOTLAND) ACT 2015

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 5: Asset transfer requests**

##### **Decisions**

331. A relevant authority must decide whether to agree to or refuse an asset transfer request in accordance with section 82. It must compare the benefits that might arise if the request is agreed to with those that might arise from any other proposal for the land, whether made through another asset transfer request, by the authority, or by any other person (subsection (3)(e) and (6)). In doing so it must consider whether the proposals will promote or improve economic development, regeneration, public health, social wellbeing or environmental wellbeing or reduce inequalities of outcome which result from socio-economic disadvantage, and any other benefits that might arise, and the decision must be reached in a manner which encourages equal opportunities and the observance of the equal opportunity requirements. The relevant authority must also consider other matters it considers relevant, including the functions and purposes of the authority, and any obligations that may affect its ability to agree to the request. Subsection (5) requires that the authority must agree to the request unless there are reasonable grounds for refusing it.
332. Subsection (7) requires the relevant authority to give notice to the community transfer body of its decision, and the reasons for that decision, within a specified period, as described in subsection (8). Subsection (9) gives the Scottish Ministers power to make regulations about the information to be included in this decision notice and how it is to be given.
333. **Section 83** sets out the process to be applied by a relevant authority when an asset transfer request is agreed to. The decision notice given by the relevant authority must specify the terms and conditions on which the authority is prepared to carry out the transfer. These terms and conditions may or may not reflect those included in the asset transfer request. The community transfer body must in turn submit an offer, within a period specified in the decision notice, reflecting the terms and conditions set out in the decision notice, and any other terms and conditions needed to make sure the transfer can take place, and that it takes place within a reasonable time. After this the community transfer body and the relevant authority will make arrangements to conclude a contract, as would happen with any sale or lease of property. Subsections (5) to (9) set out a timescale for this.
334. The period for concluding a contract is normally a minimum of 6 months from the date of the offer. A longer period can be agreed between the relevant authority and the community transfer body. If the relevant authority does not agree to extend the period, the community transfer body may apply to the Scottish Ministers seeking a direction under subsection (7)(b)(ii) that the period should be extended. This can be done more

than once. The Scottish Ministers may make regulations under subsection (10) about these directions and how to apply for them. Under subsection (6), if the contract is not concluded within the required period, an appeal can be made to the Scottish Minister under section 90 unless the relevant authority is the Scottish Ministers.

335. When an asset transfer request is made, section 84 prevents the authority from disposing of the land in question to anyone other than the body that made the request. This applies from the day the request is made to the day on which the request is disposed of. Subsections (4) to (9) set out the ways in which a request may be disposed of. Essentially these are when a contract for transfer of the land has been concluded, when all avenues of review and appeal have been exhausted, or when the community body abandons the process, by not taking any action within the required time limit. If the relevant authority enters into a contract with another person, during this period, to sell or lease the land to them, subsection (11) makes that contract unenforceable.
336. Subsection (12) provides that the prohibition on disposal does not apply where the relevant authority has advertised the land for sale, or has entered into negotiations with another person to transfer or lease the land, before the asset transfer request was made. Subsection (13) also allows the Scottish Ministers to direct that the prohibition on disposal of the land in question to any person other than the community transfer body that made the request does not apply in a specified case.