



# Community Empowerment (Scotland) Act 2015

2015 asp 6

## PART 5

### ASSET TRANSFER REQUESTS

#### *Key definitions*

#### **77 Meaning of “community transfer body”**

- (1) In this Part, “community transfer body” means—
  - (a) a community-controlled body, or
  - (b) a body mentioned in subsection (2).
- (2) The body is a body (whether corporate or unincorporated)—
  - (a) that is designated as a community transfer body by an order made by the Scottish Ministers for the purposes of this Part, or
  - (b) that falls within a class of bodies designated as community transfer bodies by such an order for the purposes of this Part.
- (3) Where the power to make an order under subsection (2)(a) is exercised in relation to a trust, the community transfer body is to be the trustees of the trust.

#### **78 Meaning of “relevant authority”**

- (1) In this Part, a “relevant authority” means—
  - (a) a person listed, or of a description listed, in schedule 3, or
  - (b) a person mentioned in subsection (3).
- (2) The Scottish Ministers may by order modify schedule 3 so as to—
  - (a) remove an entry listed in it,
  - (b) amend an entry listed in it.
- (3) The person is a person—

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- (a) that is designated as a relevant authority by an order made by the Scottish Ministers for the purposes of this Part, or
  - (b) that falls within a class of persons designated as relevant authorities by such an order for the purposes of this Part.
- (4) An order under subsection (3) may designate a person, or a class of persons, only if the person or (as the case may be) each of the persons falling within the class is—
- (a) a part of the Scottish Administration,
  - (b) a Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998), or
  - (c) a publicly-owned company.
- (5) In subsection (4)(c), “publicly-owned company” means a company that is wholly owned by one or more relevant authorities.
- (6) For that purpose, a company is wholly owned by one or more relevant authorities if it has no members other than—
- (a) the relevant authority or (as the case may be) authorities,
  - (b) other companies that are wholly owned by the relevant authority or (as the case may be) authorities, or
  - (c) persons acting on behalf of—
    - (i) the relevant authority or (as the case may be) authorities, or
    - (ii) such other companies.
- (7) In this section, “company” includes any body corporate.

### *Requests*

## **79 Asset transfer requests**

- (1) A community transfer body may make a request in accordance with this section (in this Part, an “asset transfer request”) to a relevant authority.
- (2) An asset transfer request is a request—
- (a) in relation to land owned by the relevant authority, for ownership of the land to be transferred to the community transfer body, or
  - (b) in relation to land owned or leased by the relevant authority—
    - (i) for the land to be leased to the community transfer body, or
    - (ii) for the authority to confer rights in respect of the land on the community transfer body (including, for example, rights to manage or occupy the land or use it for a purpose specified in the request).
- (3) An asset transfer request of the type mentioned in subsection (2)(a) may be made only by a community transfer body falling within section 80; and references in the remainder of this Part to the making of an asset transfer request by a community transfer body are to be read accordingly.
- (4) A community transfer body making an asset transfer request must specify in the request—
- (a) the land to which the request relates,
  - (b) whether the request falls within paragraph (a), (b)(i) or (b)(ii) of subsection (2),

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- (c) the reasons for making the request,
- (d) the benefits which the community transfer body considers will arise if the authority were to agree to the request,
- (e) where the request falls within subsection (2)(a), the price that the community transfer body would be prepared to pay for the transfer of ownership of the land,
- (f) where the request falls within subsection (2)(b)(i)—
  - (i) the amount of rent that the community transfer body would be prepared to pay in respect of any lease resulting from the request,
  - (ii) the duration of any such lease, and
  - (iii) any other terms and conditions that the community transfer body considers should be included in any such lease,
- (g) where the request falls within subsection (2)(b)(ii), the nature and extent of the rights sought, and
- (h) any other terms or conditions applicable to the request.

## **80 Community transfer bodies that may request transfer of ownership of land**

- (1) A community transfer body falls within this section if—
  - (a) it is a company the articles of association of which include provision such as is mentioned in subsection (2),
  - (b) it is a Scottish charitable incorporated organisation the constitution of which includes provision that the organisation must have not fewer than 20 members,
  - (c) it is a community benefit society the registered rules of which include provision that the society must have not fewer than 20 members,
  - (d) in the case of a body designated by an order under paragraph (a) of subsection (2) of section 77, the order includes provision that the body may make an asset transfer request of the type mentioned in section 79(2)(a), or
  - (e) in the case of a body falling within a class of bodies designated in an order made under paragraph (b) of that subsection, the order includes provision that bodies falling within the class may make an asset transfer request of that type.
- (2) The provision mentioned in subsection (1)(a) is provision that—
  - (a) the company must have not fewer than 20 members, and
  - (b) on the winding up of the company and after satisfaction of its liabilities, its property (including any land, and any rights in relation to land, acquired by it as a result of an asset transfer request under this Part) passes—
    - (i) to another community transfer body,
    - (ii) to a charity,
    - (iii) to such community body (within the meaning of section 34 of the Land Reform (Scotland) Act 2003) as may be approved by the Scottish Ministers,
    - (iv) to such crofting community body (within the meaning of section 71 of that Act) as may be so approved, or
    - (v) if no such community body or crofting community body is so approved, to the Scottish Ministers or to such charity as the Scottish Ministers may direct.

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## **81 Asset transfer requests: regulations**

- (1) The Scottish Ministers may by regulations make further provision about asset transfer requests.
- (2) Regulations under subsection (1) may in particular make provision for or in connection with—
  - (a) specifying the manner in which requests are to be made,
  - (b) specifying the procedure to be followed by a relevant authority in relation to requests,
  - (c) specifying the information to be included in requests (in addition to that required under section 79(4)),
  - (d) requiring publication, by such method as may be prescribed in the regulations, of the fact that a request is being made,
  - (e) requiring notification of the making of a request to be given to such persons or descriptions of persons, and in such circumstances, as may be prescribed in the regulations.
- (3) The Scottish Ministers may make regulations for or in connection with—
  - (a) enabling a community transfer body to request information from a relevant authority about land in respect of which it proposes to make an asset transfer request,
  - (b) specifying how the authority is to respond to the request for information,
  - (c) specifying the circumstances in which the authority must provide information,
  - (d) specifying the type of information the authority must provide in circumstances specified under paragraph (c),
  - (e) specifying the circumstances in which the authority need not provide information.

### *Decisions*

## **82 Asset transfer requests: decisions**

- (1) This section applies where an asset transfer request is made by a community transfer body to a relevant authority.
- (2) The authority must decide whether to agree to or refuse the request.
- (3) In reaching its decision, the authority must take into consideration the following matters—
  - (a) the reasons for the request,
  - (b) any other information provided in support of the request (whether such other information is contained in the request or otherwise provided),
  - (c) whether agreeing to the request would be likely to promote or improve—
    - (i) economic development,
    - (ii) regeneration,
    - (iii) public health,
    - (iv) social wellbeing, or
    - (v) environmental wellbeing,
  - (d) whether agreeing to the request would be likely to reduce inequalities of outcome which result from socio-economic disadvantage,

- (e) any other benefits that might arise if the request were agreed to,
  - (f) any benefits that might arise if the authority were to agree to or otherwise adopt an alternative proposal in respect of the land to which the request relates,
  - (g) how such benefits would compare to any benefits such as are mentioned in paragraphs (c) and (e),
  - (h) how any benefits such as are mentioned in paragraph (f) relate to other matters the authority considers relevant (including, in particular, the functions and purposes of the authority),
  - (i) any obligations imposed on the authority, by or under any enactment or otherwise, that may prevent, restrict or otherwise affect its ability to agree to the request, and
  - (j) such other matters (whether or not included in or arising out of the request) as the authority considers relevant.
- (4) The authority must exercise the function under subsection (2) in a manner which encourages equal opportunities and in particular the observance of the equal opportunity requirements.
- (5) The authority must agree to the request unless there are reasonable grounds for refusing it.
- (6) In subsection (3)(f), an “alternative proposal” includes—
- (a) another asset transfer request,
  - (b) a proposal made by the authority or any other person.
- (7) The authority must, within the period mentioned in subsection (8), give notice (in this Part, a “decision notice”) to the community transfer body of—
- (a) its decision to agree to or refuse the request, and
  - (b) the reasons for its decision.
- (8) The period is—
- (a) a period prescribed in regulations made by the Scottish Ministers, or
  - (b) such longer period as may be agreed between the authority and the community transfer body.
- (9) The Scottish Ministers may by regulations make provision about—
- (a) the information (in addition to that required under this Part) that a decision notice is to contain, and
  - (b) the manner in which a decision notice is to be given.

### **83 Agreement to asset transfer request**

- (1) This section applies where a relevant authority decides to agree to an asset transfer request made by a community transfer body.
- (2) The decision notice relating to the request must—
- (a) specify the terms on which, and any conditions subject to which, the authority would be prepared to transfer ownership of the land, lease the land or (as the case may be) confer rights in respect of the land to which the request relates (whether or not such terms and conditions were specified in the request),

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- (b) state that, if the community transfer body wishes to proceed, it must submit to the authority an offer to acquire ownership of the land, lease the land or (as the case may be) assume rights in respect of the land, and
  - (c) specify the period within which such an offer is to be submitted.
- (3) The period specified under subsection (2)(c) must be a period of at least 6 months beginning with the date on which the decision notice is given.
- (4) An offer such as is mentioned in subsection (2)(b)—
- (a) must reflect any terms and conditions specified in the decision notice,
  - (b) may include such other reasonable terms and conditions as are necessary or expedient to secure—
    - (i) the transfer of ownership, the lease or (as the case may be) the conferral of rights, and
    - (ii) that such a transfer, lease or (as the case may be) conferral of rights takes place within a reasonable time,
  - (c) must be made before the end of the period specified in the decision notice under subsection (2)(c).
- (5) Subsection (6) applies where no contract is concluded on the basis of such an offer before the end of the period mentioned in subsection (7).
- (6) The community transfer body may appeal to the Scottish Ministers under section 90 (except in a case where the relevant authority is the Scottish Ministers).
- (7) The period is—
- (a) the period of 6 months beginning with the date of the offer, or
  - (b) such longer period—
    - (i) as may be agreed between the authority and the community transfer body, or
    - (ii) in the absence of any such agreement, as may be specified in a direction by the Scottish Ministers.
- (8) A direction under subsection (7)(b)(ii) may be made only on the application of the community transfer body.
- (9) An application under subsection (8) may be made on more than one occasion.
- (10) The Scottish Ministers may by regulations make provision about—
- (a) the form of, and procedure for making, an application such as is mentioned in subsection (8),
  - (b) the manner in which a direction under subsection (7)(b)(ii) is to be given,
  - (c) the information that such a direction is to contain.

#### *Prohibition on disposal of land*

### **84 Prohibition on disposal of land**

- (1) Subsection (2) applies where an asset transfer request is made by a community transfer body to a relevant authority.

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- (2) During the relevant period, the authority must not sell, lease or otherwise dispose of the land to which the request relates to any person other than the community transfer body.
- (3) In subsection (2), the “relevant period” is the period beginning on the day on which the asset transfer request is made and ending on the day on which the request is disposed of.
- (4) For the purposes of subsection (3), a request is disposed of—
  - (a) if the request is refused by the relevant authority and no appeal under section 85 or 88, or application for review under section 86 or 87, is made by the community transfer body within the time limit applicable to the making of such an appeal or review,
  - (b) if the request is refused after—
    - (i) an appeal under section 85 or 88 is determined, or
    - (ii) a review under section 87 is carried out,
  - (c) if—
    - (i) the request is agreed to,
    - (ii) no offer as mentioned in section 83(2) is made within the time limit applicable to the making of such an offer,
    - (iii) no appeal under section 85 is made within the time limit applicable to the making of such an appeal, and
    - (iv) no application for a review under section 86 or 87 is made within the time limit applicable to the making of such an application,
  - (d) if—
    - (i) the request is agreed to after an appeal under section 85 or 88 is determined, and
    - (ii) no offer as mentioned in section 85(8) is made within the time limit applicable to the making of such an offer,
  - (e) if—
    - (i) the request is agreed to after a review under section 86 is carried out,
    - (ii) no offer as mentioned in section 83(2) is made within the time limit applicable to the making of such an offer, and
    - (iii) no appeal under section 88 is made within the time limit applicable to the making of such an appeal,
  - (f) if—
    - (i) the request is agreed to after a review under section 87 is carried out, and
    - (ii) no offer as mentioned in section 83(2) is made within the time limit applicable to the making of such an offer, or
  - (g) if—
    - (i) the request is agreed to (including after an appeal under section 85 or 88 is determined, or a review under section 86 or 87 is carried out),
    - (ii) an offer as mentioned in section 83(2) or 85(8) is made within the time limit applicable to the making of such an offer, and
    - (iii) subsection (5), (6), (7) or (8) applies.
- (5) This subsection applies where, before the expiry of the period mentioned in paragraph (a) or (where applicable) paragraph (b) of subsection (7) of section 83, a

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contract is concluded on the basis of an offer as mentioned in subsection (2) of that section or in section 85(8).

- (6) This subsection applies where—
- (a) the period mentioned in paragraph (a) or (where applicable) paragraph (b) of subsection (7) of section 83 expires,
  - (b) no contract is concluded on the basis of an offer as mentioned in subsection (2) of that section or in section 85(8), and
  - (c) an appeal under section 83(6)—
    - (i) is not made within the time limit applicable to the making of such an appeal, or
    - (ii) is timeously made but dismissed.
- (7) This subsection applies where—
- (a) the relevant authority to whom the request is made is the Scottish Ministers,
  - (b) the period mentioned in paragraph (a) or (where applicable) paragraph (b) of subsection (7) of section 83 expires, and
  - (c) no contract is concluded on the basis of an offer as mentioned in subsection (2) of that section or in section 85(8).
- (8) This subsection applies where—
- (a) the period mentioned in paragraph (a) or (where applicable) paragraph (b) of subsection (7) of section 83 expires,
  - (b) no contract is concluded on the basis of an offer as mentioned in subsection (2) of that section or in section 85(8),
  - (c) an appeal under section 83(6) is allowed, and
  - (d) a condition mentioned in any of paragraphs (a) to (f) of subsection (9) is satisfied.
- (9) The conditions are—
- (a) no offer as mentioned in subsection (4) of section 90 is submitted within the period specified in the appeal decision notice under subsection (3) of that section relating to the appeal,
  - (b) such an offer is submitted within that period and a contract is concluded on the basis of the offer—
    - (i) before the expiry of the period of 28 days beginning on the day on which the offer is submitted, or
    - (ii) within such period as is specified in a direction under subsection (5) of that section (including such period as extended under subsection (6) of that section),
  - (c) no application under subsection (5) of that section is made within the time limit applicable to the making of such applications,
  - (d) such an application is refused,
  - (e) following the giving of a direction under subsection (5) of section 90 in relation to an offer as mentioned in subsection (4) of that section—
    - (i) the offer is withdrawn, or
    - (ii) the community transfer body and the relevant authority conclude a contract on terms and conditions different from those in the offer,

- (f) the relevant authority is deemed, under subsection (7) of that section, to have accepted such an offer and have concluded a contract with the community transfer body.
- (10) A reference in this section to—
- (a) subsection (2), (6) or (7) of section 83 includes a reference to those subsections as applied—
    - (i) by sections 85(10), 86(9) and 87(9), and
    - (ii) by virtue of section 89(2),
  - (b) section 85 includes a reference to that section as applied by section 88(3),
  - (c) section 86 includes a reference to that section as applied by subsection (2) of, and modified in such application by virtue of subsection (4) of, section 89.
- (11) Where, by virtue of subsection (2), a relevant authority is prevented from selling, leasing or otherwise disposing of any land, any contract by virtue of which the authority is obliged to sell, lease or otherwise dispose of the land to a person other than the community transfer body referred to in that subsection is void.
- (12) Subsection (2) does not apply where, before the date on which the asset transfer request referred to in that subsection is made, the relevant authority or a person acting on behalf of the authority—
- (a) has, in relation to the land to which the request relates, advertised or otherwise exposed the land for sale or lease,
  - (b) has, in relation to the land, entered into negotiations with another person with a view to transferring or leasing the land, or
  - (c) proceeds further with a proposed transfer or lease of the land which was initiated before the date on which the asset transfer request is made.
- (13) The Scottish Ministers may direct that subsection (2) does not apply to such land to which an asset transfer request relates as may be specified in the direction.

### *Appeals and reviews*

## **85 Appeals**

- (1) Subsection (2) applies where—
- (a) an asset transfer request is refused by a relevant authority,
  - (b) an asset transfer request is agreed to by a relevant authority but the decision notice relating to the request specifies material terms or conditions which differ to a significant extent from those specified in the request, or
  - (c) a relevant authority does not give a decision notice relating to an asset transfer request to the community transfer body making the request within the period mentioned in paragraph (a) or (where applicable) paragraph (b) of section 82(8).
- (2) The community transfer body making the request may appeal to the Scottish Ministers unless the relevant authority is—
- (a) the Scottish Ministers,
  - (b) a local authority, or
  - (c) a person, or a person that falls within a class of persons, specified in an order made by the Scottish Ministers for the purposes of this section.

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- (3) The Scottish Ministers may by regulations prescribe—
- (a) the procedure to be followed in connection with appeals under subsection (2),
  - (b) the manner in which such appeals are to be conducted, and
  - (c) the time limits within which such appeals must be brought.
- (4) The provision that may be made by virtue of subsection (3) includes provision that the manner in which an appeal, or any stage of an appeal, is to be conducted is to be at the discretion of the Scottish Ministers.
- (5) On an appeal under subsection (2), the Scottish Ministers—
- (a) may allow or dismiss the appeal,
  - (b) may reverse or vary any part of the decision of the relevant authority (whether the appeal relates to that part of it or not),
  - (c) must, in the circumstances mentioned in either paragraph (a) or (b) of subsection (6), issue a direction to the authority requiring the authority to take such steps, or achieve such outcomes, as are specified in the direction within such time periods as are so specified,
  - (d) may, in any other circumstances, issue such a direction, including a direction relating to any aspects of the asset transfer request to which the appeal relates (whether or not the authority's decision relates to those aspects).
- (6) The circumstances are—
- (a) that the appeal is allowed,
  - (b) that any part of the decision of the relevant authority is reversed or varied to the effect that the authority is required to—
    - (i) transfer ownership of any land, lease any land or confer rights in respect of any land, or
    - (ii) agree to the asset transfer request subject to such terms and conditions as may be specified in the direction.
- (7) The references in subsections (5)(b) and (6)(b) to any part of the decision includes any terms and conditions specified in the decision notice relating to the asset transfer request.
- (8) A direction issued under subsection (5)(c) must require the relevant authority to issue a further decision notice—
- (a) specifying the terms on which, and any conditions subject to which, the authority would be prepared to transfer ownership of the land, lease the land or (as the case may be) confer rights in respect of the land, including any terms and conditions required to be included by virtue of the direction,
  - (b) stating that, if the community transfer body wishes to proceed, it must submit to the authority an offer to acquire ownership of the land, lease the land or (as the case may be) assume rights in respect of the land, and
  - (c) specifying the period within which such an offer is to be submitted (which must be at least 6 months beginning with the date on which the further decision notice was issued).
- (9) A further decision notice issued by virtue of a direction mentioned in subsection (8) replaces any decision notice relating to the asset transfer request in respect of which the appeal was made.

- (10) Subsections (4) to (10) of section 83 apply in relation to a further decision notice issued by virtue of a direction mentioned in subsection (8) as they apply in relation to a decision notice referred to in that section; but as if in subsection (4) of that section—
- (a) the reference to an offer such as is mentioned in subsection (2)(b) of that section were a reference to an offer such as is mentioned in subsection (8)(b) of this section, and
  - (b) the reference to the period specified in the decision notice under subsection (2) (c) of that section were a reference to the period specified in a further decision notice by virtue of subsection (8)(c) of this section.

## **86 Review by local authority**

- (1) Subsection (2) applies in a case where—
- (a) an asset transfer request is made to a local authority by a community transfer body, and
  - (b) the authority—
    - (i) refuses the request,
    - (ii) agrees to the request but the decision notice relating to the request specifies material terms or conditions which differ to a significant extent from those specified in the request, or
    - (iii) does not give a decision notice relating to the request to the community transfer body within the period mentioned in paragraph (a) or (where applicable) paragraph (b) of section 82(8).
- (2) On an application made by the community transfer body, the local authority must carry out a review of the case.
- (3) The Scottish Ministers may by regulations prescribe—
- (a) the procedure to be followed in connection with reviews under subsection (2),
  - (b) the manner in which such reviews are to be carried out, and
  - (c) the time limits within which applications for reviews must be brought.
- (4) The provision that may be made by virtue of subsection (3) includes provision that the manner in which a review, or any stage of a review, is to be carried out by a local authority is to be at the discretion of the authority.
- (5) A local authority may, in relation to a decision reviewed under subsection (2)—
- (a) confirm its decision,
  - (b) modify its decision, or any part of its decision (including any terms and conditions specified in the decision notice to which the asset transfer request relates), or
  - (c) substitute a different decision for its decision.
- (6) Following a review under subsection (2), the local authority must—
- (a) issue a decision notice as respects the asset transfer request to which the review relates, and
  - (b) provide in the decision notice the reasons for its decision.
- (7) A decision notice issued under subsection (6)—
- (a) replaces any decision notice relating to the asset transfer request in respect of which the review was carried out, and

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- (b) must be issued within—
  - (i) a period prescribed in regulations made by the Scottish Ministers, or
  - (ii) such longer period as may be agreed between the local authority and the community transfer body that made the asset transfer request.
- (8) Subsections (3) to (5) of section 82 apply in relation to a decision relating to an asset transfer request in a review under subsection (2) of this section as they apply in relation to a decision relating to the request under subsection (2) of that section.
- (9) Section 83 applies in relation to a decision to agree to an asset transfer request (including a decision to confirm such an agreement) following a review under subsection (2) as it applies in relation to a decision mentioned in subsection (1) of that section.
- (10) In section 56 of the Local Government (Scotland) Act 1973 (arrangements for the discharge of functions by local authorities), after subsection (6A) insert—
  - “(6B) The duty to carry out a review of a case imposed on an authority under section 86(2) of the Community Empowerment (Scotland) Act 2015 (reviews by local authorities of asset transfer requests) must be discharged only by the authority or a committee or sub-committee of the authority; and accordingly no such committee or sub-committee may arrange for the discharge under subsection (2) of the duty by an officer of the authority.
  - (6C) In subsection (6B), the reference to section 86(2) of the Community Empowerment (Scotland) Act 2015 includes a reference to that section as applied by subsection (2) of, and modified in such application by virtue of subsection (4) of, section 89 of that Act.”.

## **87 Review of decisions by the Scottish Ministers**

- (1) Subsection (2) applies in a case where—
  - (a) an asset transfer request is made to the Scottish Ministers by a community transfer body, and
  - (b) the Scottish Ministers—
    - (i) refuse the request,
    - (ii) agree to the request but the decision notice relating to the request specifies material terms or conditions which differ to a significant extent from those specified in the request, or
    - (iii) do not give a decision notice relating to the request to the community transfer body within the period mentioned in paragraph (a) or (where applicable) paragraph (b) of section 82(8).
- (2) On an application made by the community transfer body, the Scottish Ministers must carry out a review of the case.
- (3) The Scottish Ministers may by regulations make provision about reviews carried out under subsection (2) including, in particular, provision in relation to—
  - (a) the procedure to be followed in connection with reviews,
  - (b) the appointment of such persons, or persons of such description, as may be specified in the regulations for purposes connected with the carrying out of reviews,

- (c) the functions of persons mentioned in paragraph (b) in relation to reviews (including a function of reporting to the Scottish Ministers),
  - (d) the manner in which reviews are to be conducted, and
  - (e) the time limits within which applications for reviews must be brought.
- (4) The provision that may be made by virtue of subsection (3) includes provision that—
- (a) the manner in which a person appointed by virtue of paragraph (b) of that subsection carries out the person’s functions in relation to a review, or any stage of a review, is to be at the discretion of the person,
  - (b) the manner in which a review, or any stage of a review, is to be carried out by the Scottish Ministers is to be at the discretion of the Scottish Ministers.
- (5) Having regard to any report they receive by virtue of subsection (3)(c), the Scottish Ministers may, in relation to a decision reviewed under subsection (2)—
- (a) confirm the decision,
  - (b) modify the decision, or any part of the decision (including any terms and conditions specified in the decision notice to which the asset transfer request relates), or
  - (c) substitute a different decision for the decision.
- (6) Following a review under subsection (2), the Scottish Ministers must—
- (a) issue a decision notice as respects the asset transfer request to which the review relates, and
  - (b) provide in the decision notice the reasons for their decision.
- (7) A decision notice issued under subsection (6) replaces any decision notice relating to the asset transfer request in respect of which the review was carried out.
- (8) Subsections (3) to (5) of section 82 apply in relation to a decision relating to an asset transfer request in a review under subsection (2) of this section as they apply in relation to a decision relating to the request under subsection (2) of that section.
- (9) Section 83 applies in relation to a decision to agree to an asset transfer request (including a decision to confirm such an agreement) following a review under subsection (2) as it applies in relation to a decision mentioned in subsection (1) of that section.

## **88 Appeals from reviews under section 86**

- (1) Subsection (2) applies in a case where, following a review carried out under section 86(2), a local authority—
- (a) refuses the asset transfer request to which the review relates,
  - (b) agrees to the request but the decision notice issued under section 86(6) specifies material terms or conditions which differ to a significant extent from those specified in the request, or
  - (c) does not issue the decision notice within the prescribed period mentioned in sub-paragraph (i) or (where applicable) (ii) of paragraph (b) of subsection (7) of section 86.
- (2) The community transfer body making the asset transfer request may appeal to the Scottish Ministers.

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- (3) Subsections (3) to (10) of section 85 apply to an appeal under subsection (2) of this section as they apply to an appeal under subsection (2) of that section, subject to the modification that any references to the relevant authority in the subsections so applied are to be read as references to the local authority mentioned in subsection (1) of this section.
- (4) In subsection (1), references to section 86 include references to the provisions of that section as applied by subsection (2) of, and modified in such application by virtue of subsection (4) of, section 89.

## **89 Decisions by relevant authority specified under section 85(2)(c): reviews**

- (1) Subsection (2) applies in a case where—
  - (a) an asset transfer request is made to a relevant authority specified in an order under section 85(2)(c), and
  - (b) the relevant authority—
    - (i) refuses the request,
    - (ii) agrees to the request but the decision notice relating to the request specifies material terms or conditions which differ to a significant extent from those specified in the request, or
    - (iii) does not give a decision notice relating to the request to the community transfer body within the period mentioned in paragraph (a) or (where applicable) paragraph (b) of section 82(8).
- (2) Subsections (2) to (9) of section 86 apply to the case mentioned in subsection (1) (and, for the purposes of that application, references in that section to any of those subsections are to be read as references to those subsections as so applied and modified in such application by virtue of subsection (4)).
- (3) Subsection (2) is subject to subsection (4).
- (4) The Scottish Ministers may by order—
  - (a) make provision for subsections (2) to (9) of section 86 to apply as mentioned in subsection (2) subject to such modifications (if any) as they think appropriate,
  - (b) specify, in relation to an application for a review under section 86(2) applied as mentioned in subsection (2)—
    - (i) the local authority to which the application is to be made,
    - (ii) factors determining the local authority to which the application is to be made.

## **90 No concluded contract: appeals**

- (1) Subsections (2) to (11) apply where—
  - (a) no contract is concluded as mentioned in subsection (5) of section 83 between a relevant authority and a community transfer body, and
  - (b) the community transfer body appeals under subsection (6) of that section.
- (2) The Scottish Ministers may allow or dismiss the appeal.
- (3) If the Scottish Ministers allow the appeal, they must issue a notice (an “appeal decision notice”) that specifies—

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- (a) sufficient and precise details of the terms and conditions of an offer which may be made by the community transfer body to the relevant authority in relation to the asset transfer request made by the body, and
  - (b) the period within which any such offer is to be submitted.
- (4) Subsection (5) applies where—
  - (a) the community transfer body submits an offer to the relevant authority containing all and only those terms and conditions the details of which are specified in the appeal decision notice,
  - (b) the offer is submitted within the period so specified,
  - (c) no contract is concluded on the basis of the offer before the end of the period of 28 days beginning with the day on which the offer is submitted, and
  - (d) the offer is not withdrawn before the expiry of that 28 day period.
- (5) The Scottish Ministers may, on an application made by the community transfer body, give the relevant authority a direction requiring the authority to conclude a contract with the community transfer body on the terms and conditions the details of which are specified in the appeal decision notice within such period as may be specified in the direction.
- (6) The Scottish Ministers may, on more than one occasion, extend the period mentioned in subsection (5) (including that period as extended by a direction given under this subsection) by giving a further direction to the relevant authority.
- (7) Where a direction under subsection (5) is given to a relevant authority, and the authority does not within the period specified in the direction (or that period as extended under subsection (6)) conclude the contract as mentioned in subsection (5), the authority is deemed to have accepted the offer and accordingly to have concluded a contract with the community transfer body.
- (8) Subsection (7) does not apply where—
  - (a) the community transfer body and the relevant authority have entered into a contract on terms and conditions different from those the details of which are specified in the appeal decision notice, or
  - (b) the offer is withdrawn before the end of the period specified in the direction (or that period as extended by a direction under subsection (6)).
- (9) The asset transfer request in relation to which an appeal mentioned in subsection (1) is made is to be treated, for the purposes of this Part (other than section 93), as if it had not been made if the appeal is allowed but—
  - (a) the community transfer body does not submit an offer as mentioned in subsection (4)(a),
  - (b) the community transfer body does not submit such an offer within the period specified in the appeal decision notice,
  - (c) the community transfer body has not, before the expiry of any time limit for making applications under subsection (5) by virtue of regulations under subsection (14), applied for a direction under subsection (5), or
  - (d) any application for such a direction is refused.
- (10) Where the appeal is dismissed by the Scottish Ministers, the decision to agree to the asset transfer request in relation to which the appeal is made is of no effect (but that is not to be taken to mean that the asset transfer request is to be treated as having been refused for the purposes of any appeal or review under this Part).

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- (11) In subsection (1), references to any subsections of section 83 include references to those subsections as applied—
  - (a) by sections 85(10), 86(9) and 87(9), and
  - (b) by virtue of section 88(3).
- (12) The Scottish Ministers may by regulations make provision about appeals under section 83(6) including, in particular, provision in relation to—
  - (a) the procedure to be followed in connection with appeals,
  - (b) the appointment of such persons, or persons of such description, as may be specified in the regulations for purposes connected with appeals,
  - (c) the functions of persons mentioned in paragraph (b) in relation to appeals (including a function of reporting to the Scottish Ministers),
  - (d) the manner in which appeals are to be conducted, and
  - (e) the time limits within which appeals must be brought.
- (13) The provision that may be made by virtue of subsection (12) includes provision that—
  - (a) the manner in which a person appointed by virtue of paragraph (b) of that subsection carries out the person's functions in relation to an appeal, or any stage of an appeal, is to be at the discretion of the person,
  - (b) the manner in which an appeal, or any stage of an appeal, is to be carried out by the Scottish Ministers is to be at the discretion of the Scottish Ministers.
- (14) The Scottish Ministers may by regulations make provision about applications under subsection (5) including, in particular, provision in relation to—
  - (a) the form of, and procedure for making, such applications,
  - (b) the time limits within which such applications must be brought.

## **91 Effect of offers on appeals and reviews**

- (1) Subsection (2) applies where—
  - (a) a community transfer body makes an asset transfer request to a relevant authority,
  - (b) the relevant authority agrees to the request as mentioned in section 85(1)(b), 86(1)(b)(ii), 87(1)(b)(ii) or 88(1)(b),
  - (c) the community transfer body makes an offer as mentioned in section 83(2), and
  - (d) the offer has not been withdrawn.
- (2) The community transfer body may not—
  - (a) make an appeal under section 85 or 88, or
  - (b) apply for a review under section 86 or 87.
- (3) Where an offer as mentioned in section 83(2) is made by a community transfer body after the body has made an appeal, or applied for a review, as mentioned in subsection (2), the appeal or (as the case may be) application for review is to be treated as having been withdrawn by the body.
- (4) A reference in this section to—
  - (a) section 83(2) includes a reference to that section as applied—
    - (i) by section 86(9) and 87(9), and
    - (ii) by virtue of section 89(2),

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- (b) section 85 includes a reference to that section as applied by section 88(3),
- (c) section 86 includes a reference to that section as applied by subsection (2) of, and modified in such application by virtue of subsection (4) of, section 89.

*Disapplication of certain lease restrictions*

**92 Disapplication of restrictions in lease of land to relevant authority**

- (1) This section applies where—
  - (a) land is leased to a relevant authority,
  - (b) an asset transfer request is made to the authority by a community transfer body for the authority to—
    - (i) lease the land to the body, or
    - (ii) confer a right of occupancy on the body in respect of the land,
  - (c) the land is leased to the relevant authority by another relevant authority or by a company that is wholly owned by another relevant authority, and
  - (d) no other person is entitled to occupy the land to which the request relates (whether by virtue of a sublease by the authority or otherwise).
- (2) Any restrictions in the lease of the land to which the request relates such as are mentioned in subsection (3) do not apply as between the relevant authority and the person from whom the authority leases the land.
- (3) The restrictions are any restrictions—
  - (a) on the power of the relevant authority to sublet the land,
  - (b) on the power of the authority to share occupancy of the land,
  - (c) relating to how the land may be used by the authority or any other occupier of the land.
- (4) Nothing in this section affects any restrictions in the lease of the land to the relevant authority on the power of the authority to assign or transfer rights and liabilities under the lease.
- (5) If the relevant authority leases the land to, or confers a right of occupancy in respect of the land on, a community transfer body, the authority continues to be subject to any obligations under the lease of the land to the authority.

*Power to decline subsequent requests*

**93 Power to decline certain asset transfer requests**

- (1) Subsection (2) applies where—
  - (a) an asset transfer request (a “new request”) relating to land is made to a relevant authority,
  - (b) the new request relates to matters that are the same, or substantially the same, as matters contained in a previous asset transfer request (a “previous request”) made in relation to the land,
  - (c) the previous request was made in the period of two years ending with the date on which the new request is made, and

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- (d) the authority refused the previous request (whether following an appeal or not).
- (2) The relevant authority may decline to consider the new request.
- (3) Where a new request is declined to be considered under subsection (2), that is not to be treated as a refusal of the new request for the purposes of—
  - (a) an appeal under section 85 (including the provisions of that section as applied by section 88(3)), or
  - (b) a review under section 86 (including the provisions of that section as applied by subsection (2) of, and modified in such application by virtue of subsection (4) of, section 89) or section 87.
- (4) For the purposes of subsection (1)(b), a new request relates to matters that are the same, or substantially the same, as matters contained in a previous request only if both requests, in relation to the land to which they relate, seek (or sought)—
  - (a) transfer of ownership of the land,
  - (b) lease of the land, or
  - (c) the same or substantially the same rights in respect of the land.
- (5) For the purposes of this section, it is irrelevant whether the body making a new request is the same body as, or a different body from, that which made the previous request.

*Registers of relevant authorities' land*

**94      Duty to publish register of land**

- (1) Each relevant authority must establish and maintain a register of land mentioned in subsection (2).
- (2) The land is land which, to the best of the authority's knowledge and belief, is owned or leased by the authority.
- (3) Every relevant authority must—
  - (a) make arrangements to enable members of the public to inspect, free of charge, its register of land at reasonable times and at such places as the authority may determine, and
  - (b) make its register of land available on a website, or by other electronic means, to members of the public.
- (4) The Scottish Ministers may by regulations specify land, or descriptions of land, that a relevant authority need not include in its register of land.
- (5) Relevant authorities must have regard to any guidance issued by the Scottish Ministers in relation to the duties imposed on the authorities under this section.
- (6) Before issuing such guidance, the Scottish Ministers must consult the relevant authorities.
- (7) The omission of any land owned or leased by a relevant authority from the authority's register of land does not prevent an asset transfer request being made in respect of the land.

### *Annual reports*

#### **95 Annual reports**

- (1) A relevant authority must publish an asset transfer report for each reporting year.
- (2) An asset transfer report is a report setting out, in respect of the reporting year—
  - (a) the number of asset transfer requests the relevant authority received,
  - (b) the number of such requests which the relevant authority—
    - (i) agreed to, and
    - (ii) refused,
  - (c) the number of such requests made to the relevant authority which resulted in—
    - (i) a transfer of ownership of land to a community transfer body,
    - (ii) a lease of land to such a body,
    - (iii) rights in respect of land being conferred on such a body,
  - (d) the number of appeals under section 85 relating to such requests made to the relevant authority that have—
    - (i) been allowed,
    - (ii) been dismissed,
    - (iii) resulted in any part of the decision of the authority being varied or reversed,
  - (e) in relation to a decision of the relevant authority reviewed under section 86 or 87, the number of such decisions that have been—
    - (i) confirmed,
    - (ii) modified,
    - (iii) substituted by a different decision, and
  - (f) any action taken by the relevant authority during the reporting year—
    - (i) to promote the use of asset transfer requests,
    - (ii) to support a community transfer body in the making of an asset transfer request.
- (3) An asset transfer report is to be published under subsection (1) no later than 30 June following the end of the reporting year to which it relates.
- (4) In this section, “reporting year” means a period of one year beginning on 1 April.
- (5) A reference in this section to—
  - (a) section 85 includes a reference to that section as applied by section 88(3),
  - (b) section 86 includes a reference to that section as applied by subsection (2) of, and modified in such application by virtue of subsection (4) of, section 89.

### *Guidance*

#### **96 Guidance**

- (1) A relevant authority must have regard to any guidance issued by the Scottish Ministers about the carrying out of functions by the authority under this Part.
- (2) Before issuing such guidance, the Scottish Ministers must consult such persons as they think fit.

### *Interpretation of Part 5*

#### **97 Interpretation of Part 5**

(1) In this Part—

“asset transfer request” has the meaning given by section 79(2),  
“charity” means a body entered in the Scottish Charity Register,  
“community benefit society” means a registered society (within the meaning of section 1 of the Co-operative and Community Benefit Societies Act 2014) registered as a community benefit society under section 2 of that Act; and  
“registered rules” has the meaning given by section 149 of that Act (as that meaning applies in relation to community benefit societies),  
“community-controlled body” has the meaning given by section 19,  
“community transfer body” has the meaning given by section 77(1),  
“decision notice” is to be construed in accordance with section 82(7),  
“equal opportunities” and “equal opportunity requirements” have the same meanings as in Section L2 (equal opportunities) of Part 2 of Schedule 5 to the Scotland Act 1998,  
“relevant authority” has the meaning given by section 78,  
“Scottish charitable incorporated organisation” has the meaning given by section 49 of the Charities and Trustee Investment (Scotland) Act 2005.

(2) References in this Part to land include references to part of the land.