



Community Empowerment (Scotland) Act 2015

2015 asp 6

PART 5

ASSET TRANSFER REQUESTS

Appeals and reviews

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—
 - (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 - (d) the offer is not withdrawn before the expiry of that 28 day period.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

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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).
- (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.

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- (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.

Commencement Information

- I1** S. 90(1)-(11) in force at 23.1.2017 by S.S.I. 2016/363, **art. 3(b)**
- I2** S. 90(12)-(14) in force at 13.11.2015 for specified purposes by S.S.I. 2015/358, **art. 2, Sch.**
- I3** S. 90(12)-(14) in force at 23.1.2017 in so far as not already in force by S.S.I. 2016/363, **art. 3(b)**

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