SCOTTISH STATUTORY INSTRUMENTS

2016 No. 359

COMMUNITY EMPOWERMENT

The Asset Transfer Request (Appeals) (Scotland) Regulations 2016

Made - - - -	*8th November 2016*
Laid before the Scottish Parliament	*10th November 2016*
Coming into force - -	*23rd January 2017*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 85(3) of the Community Empowerment (Scotland) Act 2015(**a**) and all other powers enabling them to do so.

PART 1

Preliminary

Citation, commencement and application

1.—(1) These Regulations may be cited as the Asset Transfer Request (Appeals) (Scotland) Regulations 2016 and come into force on 23rd January 2017.

(2) These Regulations (other than Part 4) apply to appeals under section 85(2) of the Act (appeals).

(3) These Regulations apply as specified in regulation 12 to appeals under section 88(2) of the Act (appeals from reviews under section 86).

Interpretation

2.—(1) In these Regulations—

"the Act" means the Community Empowerment (Scotland) Act 2015;

"asset transfer request" means the asset transfer request to which the appeal relates;

"community transfer body" means the community transfer body which made the asset transfer request;

"contact address" has the meaning given in regulation 16;

"decision notice" means the notice given by the relevant authority of its decision on the asset transfer request;

"hearing session" means a hearing held or to be held into matters specified in a notice given under rule 1(1) of the Hearing Session Rules;

(**a**) 2015 asp 6. Section 85(3) is applied in respect of appeals under section 88(2) by section 88(3).

"Hearing Session Rules" means the rules set out in the schedule;

"interested party" means any person from whom the relevant authority received representations (which were not subsequently withdrawn) in connection with the asset transfer request;

"relevant authority" means the relevant authority to whom the asset transfer request is made;

"relevant authority's response" has the meaning given in regulation 4(2)(a);

"rule" means a rule set out in the schedule;

"specified matters" are, in relation to a request for further written representations or information under regulation 9 or to a particular hearing session, those matters which are set out in the notice given under regulation 9(1) or rule 1(1) of the Hearing Session Rules, as the case may be; and

"working day" means every day except—

(a) Saturday and Sunday;

(b) 25th and 26th December; and

(c) 1st and 2nd January.

PART 2

Appeals under section 85(2) of the Act

Notice of appeal

3.—(1) An appeal to the Scottish Ministers under section 85(2) of the Act is to be made by giving notice in writing in accordance with this regulation.

(2) The notice of appeal must be served on the Scottish Ministers within the period of 20 working days beginning with, in the case of an appeal made by virtue of—

(a) section 85(1)(a) or (b) of the Act, the date of the decision notice; and

(b) section 85(1)(c) of the Act, the date of expiry of the period allowed for determination of the request.

(3) The notice of appeal must—

(a) include the name and contact address of the community transfer body;

(b) specify the land to which the asset transfer request relates; and

(c) include a statement setting out full particulars of the appeal including a note of the matters which the community transfer body considers require to be taken into account in determining the appeal and by what, if any, procedure (or combination of procedures) the community transfer body considers the appeal should be conducted.

(4) The notice of appeal must be accompanied by—

(a) a copy of the asset transfer request;

(b) a copy of the documents provided by the community transfer body to the relevant authority in connection with the asset transfer request; and

(c) where the appeal is made by virtue of section 85(1)(a) or (b) of the Act, a copy of the decision notice.

(5) Subject to paragraph (6)—

(a) all matters which the community transfer body intends to raise in the appeal must be set out in the notice of appeal or in the documents which accompany the notice of appeal; and

(b) all documents, materials and evidence which the community transfer body intends to rely on in the appeal must accompany the notice of appeal.

(6) In addition to matters set out in the notice of appeal and documents which accompany the notice of appeal, the community transfer body may raise matters and submit further documents, materials or evidence only—

(a) in accordance with and to the extent permitted by regulation 4 or 5; or

(b) where the Scottish Ministers make a request (under regulation 9(1), rule 1(1) of the Hearing Session Rules or otherwise) for further representations to be made or further information to be provided to them by the community transfer body.

(7) In this regulation—

"period allowed for determination of the request" means—

(a) the period of 6 months beginning with the validation date; or

(b) such longer period as may be agreed between the community transfer body and the relevant authority under section 82(8)(b) of the Act; and

"validation date" has the same meaning as in the Asset Transfer Request (Procedure) (Scotland) Regulations 2016(**a**).

Intimation to relevant authority and relevant authority's response

4.—(1) The community transfer body must at the same time as giving the notice of appeal to the Scottish Ministers send to the relevant authority—

(a) a copy of the notice of appeal;

(b) a list of all documents, materials and evidence which the community transfer body intends to rely on in the appeal and which accompanied the notice of appeal in accordance with regulation 3(4)(b); and

(c) a copy of all documents, materials and evidence specified on such list other than any documents, materials or evidence which—

(i) the community transfer body has already provided to the relevant authority in connection with the asset transfer request; or

(ii) the relevant authority otherwise already hold.

(2) The relevant authority must, before the expiry of the period of 15 working days beginning with the date of receipt of notification of an appeal under paragraph (1), send to the Scottish Ministers and the community transfer body—

(a) a note ("the relevant authority's response") of the matters which the relevant authority considers require to be taken into account in determining the appeal and by what, if any, procedure (or combination of procedures) the relevant authority considers the appeal should be conducted; and

(b) a copy of the documents (other than those specified on the list mentioned in paragraph (1)(b)) which were before the relevant authority and which were taken into account in reaching its decision.

(3) The community transfer body may, within the period of 15 working days beginning with the date of receipt of the relevant authority's response, send to the Scottish Ministers and the relevant authority—

(a) comments on any matters raised in the relevant authority's response which had not been raised in any decision notice given by the relevant authority; and

(b) any documents, materials or evidence on which the community transfer body intends to rely in relation to such comments.

(4) In addition to matters set out in the relevant authority's response and related documents, the relevant authority may raise matters and submit further documents, materials or evidence only in accordance with and to the extent permitted by regulation 5(6) or where the Scottish Ministers

(**a**) S.S.I. 2016/357.

make a request (under regulation 9(1), rule 1(1) of the Hearing Session Rules or otherwise) for further representations to be made or further information to be provided to them by the relevant authority.

Notification to interested parties

5.—(1) The relevant authority must before the expiry of the period of 10 working days beginning with the date of receipt of notification of the appeal under regulation 4(1) give notice of the appeal to each interested party.

(2) Notice under paragraph (1) is to be given—

(a) in writing to an interested party who is an owner, tenant or occupier of the land to which the asset transfer request relates; and

(b) in writing or by advertisement in a newspaper circulating in the locality where the land is situated, to any other interested party.

(3) Notice under paragraph (1) is to—

(a) state the name of the community transfer body;

(b) specify the land to which the asset transfer request relates;

(c) state that copies of any representations previously made to the relevant authority, will be sent to the Scottish Ministers and the community transfer body and will be taken into consideration in the determination of the appeal;

(d) state that further representations may be made to the Scottish Ministers and include information as to how any representations may be made and by what date they must be made; and

(e) state how a copy of the notice of appeal and other documents related to the appeal may be inspected.

(4) An interested party may, within the period of 10 working days beginning with the date on which notice is given under paragraph (1), make representations in respect of the appeal to the Scottish Ministers.

(5) The Scottish Ministers are to send a copy of any representations received under paragraph (4) to the community transfer body and to the relevant authority and are to inform them how and by what date (being a date not less than 10 working days after the date on which such copy is sent under this paragraph) they may make comments to the Scottish Ministers on such representations.

(6) The community transfer body and the relevant authority may, on or before that date, make comments on such representations to the Scottish Ministers.

(7) An interested party may, in addition to any representations made by virtue of paragraph (4), raise matters and submit further documents, materials or evidence only in accordance with a request made by the Scottish Ministers (under regulation 9(1), rule 1(1) of the Hearing Session Rules or otherwise).

Publication of appeal documents

6. The Scottish Ministers must, in relation to an appeal, make copies of—

(a) the notice of appeal;

(b) the relevant authority's response and any comments sent under regulation 4(3)(a);

(c) the documents—

(i) specified on the list mentioned in regulation 4(1)(b);

(ii) sent in accordance with regulation 4(2)(b) and (3)(b);

(d) any notice given under regulation 5(1); and

(e) any representations or comments made under regulation 5(4) or (6),

available for inspection on a website or by other electronic means until such time as the appeal is determined.

PART 3

Procedure for determination

Determination without further procedure

7. Where the Scottish Ministers consider that no further representations are, or information is, required to enable the appeal to be determined, the Scottish Ministers may determine the appeal without further procedure.

Decision as to further procedure

8.—(1) Where the Scottish Ministers do not determine the appeal without further procedure, the Scottish Ministers may determine the manner in which the appeal is to be conducted.

(2) The Scottish Ministers may determine at any stage of the appeal—

(a) that further representations should be made or further information should be made available or provided to enable the appeal to be determined; and

(b) how such further representations or further information should be made available or provided.

(3) Where the Scottish Ministers consider that further representations should be made or further information should be made available or provided by means of—

(a) written submissions, regulation 9 applies;

(b) a hearing session, the Hearing Session Rules apply.

(4) Notices given under regulation 9(1) or rule 1(1) of the Hearing Session Rules may be given separately or combined into a single notice.

Written submissions

9.—(1) Where the Scottish Ministers have determined that further representations should be made or further information should be provided by means of written submissions, the Scottish Ministers may request such further representations or information and are to do so by giving written notice to that effect to—

(a) both the community transfer body and the relevant authority; and

(b) any other person from whom the Scottish Ministers wish to receive further representations or information.

(2) The notice given under paragraph (1) is to—

(a) set out the matters on which such further representations or information is requested;

(b) specify the date by which such further representations or information are to be sent to the Scottish Ministers; and

(c) state the name and address of any person to whom the notice is given.

(3) Any further representations made or information provided in response to the notice given under paragraph (1) ("additional material") are to be sent to the Scottish Ministers on or before the date specified for that purpose in the notice and a copy of any additional material is to be sent on or before that date to any other person to whom the notice was given.

(4) Within a period of 10 working days beginning with the date of receipt of a copy of the additional material, any person to whom the notice under paragraph (1) was given—

(a) may send comments to the Scottish Ministers in respect of the additional material; and

(b) must, when doing so, send a copy of such comments to any other person to whom the notice was given under paragraph (1).

(5) A copy of any additional material or any comments required to be sent to a person under this regulation is to be sent to the person at the address stated for that person in the notice given under paragraph (1).

(6) In this regulation "additional material" has the meaning given in paragraph (3).

New evidence

10.—(1) If, after the conclusion of any further procedure conducted by virtue of regulation 8, the Scottish Ministers propose to take into consideration any new evidence which is material to the determination of the appeal, the Scottish Ministers must not reach a decision on the appeal without affording the community transfer body, the relevant authority and any other relevant party an opportunity of making representations on such new evidence.

(2) In this regulation—

"relevant party" means—

(a) where the new evidence relates to a specified matter considered at a hearing session, any person entitled to appear at that hearing session;

(b) where the new evidence relates to matters in respect of which further written representations or information was sought by a notice under regulation 9, any person to whom such notice was sent.

PART 4

Appeals under section 88(2) of the Act

Appeals under section 88(2) of the Act

11.—(1) An appeal to the Scottish Ministers under section 88(2) of the Act is to be made by giving notice in writing in accordance with this regulation.

(2) The notice of appeal must be served on the Scottish Ministers within the period of 20 working days beginning with, in the case of an appeal made by virtue of—

(a) section 88(1)(a) or (b) of the Act, the date of the decision notice; and

(b) section 88(1)(c) of the Act, the date of expiry of the period allowed for determination of the review.

(3) In this regulation, "period allowed for determination of the review" means—

(a) the period specified in regulation 9 of the Asset Transfer Request (Review Procedure) (Scotland) Regulations 2016(**a**); or

(b) such longer period as may be agreed between the community transfer body and the relevant authority under section 86(7)(b)(ii) of the Act.

Application of regulations

12.—(1) These Regulations, other than regulation 3(1) and (2), apply to an appeal under section 88(2) of the Act as they apply to an appeal under section 85(2) of the Act with the modification specified in paragraph (2).

(2) Regulation 3(4)(c) applies as if the reference to section 85(1)(a) or (b) of the Act were a reference to section 88(1)(a) or (b) of the Act.

(**a**) S.S.I. 2016/358.

PART 5

General

Further copies of documents etc.

13.—(1) The Scottish Ministers may require any person who has submitted documents, materials or evidence under these Regulations in connection with the appeal to—

(a) provide to the Scottish Ministers such number of additional copies of such of those documents, materials or evidence as the Scottish Ministers may specify;

(b) provide to such other persons as the Scottish Ministers may specify such copies or additional copies of any document, materials or evidence as the Scottish Ministers may specify.

(2) The Scottish Ministers may require the relevant authority to—

(a) make copies of such documents, materials or evidence as the Scottish Ministers may specify available for inspection at an office of that relevant authority until such time as the appeal is determined; and

(b) afford to any person who so requests a reasonable opportunity to inspect and, where practicable, take copies of any such documents, materials or evidence (or any part thereof) which, or a copy of which, has been sent to the relevant authority in accordance with this regulation.

Compliance with notification and consultation procedures

14.—(1) The Scottish Ministers must before determining the appeal, to the extent not already done so by the relevant authority, comply with regulation 6 (notification of asset transfer request) and regulation 7 (publication of asset transfer request) of the Asset Transfer Request (Procedure) (Scotland) Regulations 2016(**a**).

(2) Where the Scottish Ministers notify any person in accordance with paragraph (1), references in these Regulations (other than regulation 5) to an interested party include any such person from whom the Scottish Ministers received representations (which are not subsequently withdrawn) in connection with the asset transfer request.

Decision notice

15. The Scottish Ministers must—

(a) give notice of the decision to the community transfer body and to the relevant authority;

(b) give a copy of any direction issued under section 85(5)(c) or (d) of the Act to the community transfer body;

(c) notify every person who made (and did not subsequently withdraw) representations in respect of the appeal that a decision on the appeal has been made and how a copy of the notice of the decision and of any such direction may be inspected; and

(d) make a copy of the decision notice and any such direction available for inspection on a website or by other electronic means.

(**a**) S.S.I. 2016/357.

Contact address

16.—(1) In relation to an appeal to which these Regulations apply, the "contact address" is the address (including any address for the purposes of electronic communication within the meaning of regulation 17) to which the community transfer body making that request wishes any document relating to the appeal to be sent.

(2) The contact address is as stated in the notice of appeal unless the community transfer body has subsequently informed the Scottish Ministers of a change to the contact address, in which case the contact address is the address most recently provided to the Scottish Ministers by the community transfer body as the contact address.

Electronic communication

17.—(1) Where the criteria in paragraph (2) are met, any document required or authorised to be sent by these Regulations may be sent by electronic communication and any requirement in these Regulations that any document is to be in writing is fulfilled.

(2) The criteria are—

(a) the recipient agrees,, or is deemed to have agreed under paragraph (3), to receive it electronically; and

(b) the document transmitted by electronic communication is—

(i) capable of being accessed by the recipient;

(ii) legible in all material respects; and

(iii) sufficiently permanent to be used for subsequent reference.

(3) Any person sending a document using electronic communication is to be taken to have agreed—

(a) to the use of such communication for all purposes relating to the appeal which are capable of being carried out electronically; and

(b) that the address for the purpose of such communication is the address incorporated into, or otherwise logically associated with, that communication.

(4) Deemed agreement under paragraph (3) subsists until that person gives notice to revoke the agreement.

(5) Notice of withdrawal of consent to the use of electronic communication or of revocation of agreement under paragraph (4) takes effect on the later of—

(a) the date specified by the person in the notice; or

(b) the expiry of the period of 5 working days beginning with the date on which the notice is given.

(6) In this regulation—

"address" includes any number or address used for the purpose of such communication or storage;

"document" includes any notice, consent, agreement, decision, representation, statement, report or other information or communication;

"electronic communication" has the meaning given in section 15(1) of the Electronic Communications Act 2000(**a**);

"legible in all material respects" means that the information contained in the document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form; and

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(**a**) 2000 c.7. Section 15 was amended by the Communications Act 2003 (c.21), schedule 17, paragraph 158.

"sent" includes served, submitted or given and cognate expressions are to be construed accordingly.

KEVIN STEWART
Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
8th November 2016

SCHEDULE

Regulation 2

Hearing Session Rules

Notice of hearing session and specified matters

1.—(1) Where the Scottish Ministers have determined that a hearing session should be held they are to give written notice to that effect to—

(a) the community transfer body;

(b) the relevant authority;

(c) any interested party who made representations in relation to specified matters; and

(d) any person who the Scottish Ministers wish to make further representations or to provide further information on specified matters at the hearing session.

(2) The notice given under paragraph (1) is to specify the matters to be considered at the hearing session.

(3) Only specified matters are to be considered at the hearing session.

(4) A person given notice under paragraph (1) and who intends to appear at the hearing session must within the period of 10 working days beginning with the date of such notice inform the Scottish Ministers in writing of that intention.

Appearances at hearing session

2. The persons entitled to appear at a hearing session are—

(a) the community transfer body;

(b) the relevant authority; and

(c) any other person who, in response to a notice given under rule 1(1), has informed the Scottish Ministers of their intention to appear at the hearing session in accordance with rule 1(4).

Date and notification of hearing session

3.—(1) The date, time and place at which the hearing session is to be held is to be determined (and may subsequently be varied) by the Scottish Ministers.

(2) The Scottish Ministers are to give to those persons entitled to appear at the hearing session such notice of the date, time and place fixed for the holding of a hearing session (and any subsequent variation thereof) as may appear to the Scottish Ministers to be reasonable in the circumstances.

Service of hearing statements and documents

4.—(1) Where required to do so by notice given by the Scottish Ministers, a person entitled to appear at the hearing session must, by such date as is specified in the notice, send to the Scottish Ministers, the community transfer body, the relevant authority and to such other persons entitled to appear at the hearing session as the Scottish Ministers may specify in such notice—

(a) a hearing statement; and

(b) where that person intends to refer to or rely on any documents when presenting their case a copy of every document (or the relevant part of a document) on the list comprised in that hearing statement which is not already available for inspection under regulation 6 or paragraph (2) of this rule.

(2) The Scottish Ministers must make a copy of any hearing statement or other document (or any part thereof) which, or a copy of which, has been sent to them in accordance with this rule, available for inspection on a website or by other electronic means until such time as the appeal is determined.

(3) Any person who has served a hearing statement in accordance with this rule must—

(a) when required by notice in writing from the Scottish Ministers provide such further information about the matters contained in the statement as the Scottish Ministers may specify; and

(b) at the same time send a copy of such further information to any other person on whom the hearing statement has been served.

(4) Different dates and different persons may be specified for the purposes of paragraph (1).

(5) In this rule, "hearing statement" means, and is comprised of—

(a) a written statement which fully sets out the case relating to the specified matters which a person proposes to put forward to a hearing session;

(b) a list of documents (if any) which the person putting forward such case intends to refer to or rely on; and

(c) a list of any other persons who are to speak at the hearing session in respect of such case, any matters which such persons are particularly to address and any relevant qualifications of such persons to do so.

Procedure at hearing

5.—(1) Except as otherwise provided in these Hearing Session Rules, the procedure at a hearing session shall be as the Scottish Ministers determine.

(2) The Scottish Ministers are, having considered any submission by the persons entitled to appear at the hearing session, to state at the commencement of the hearing session the procedure the Scottish Ministers propose to adopt.

(3) Any person entitled to appear may do so on that person's own behalf or be represented by another person.

(4) Where there are two or more persons having a similar interest in the issues being considered at the hearing session, the Scottish Ministers may allow one or more persons to appear on behalf of some or all of any persons so interested.

(5) A hearing shall take the form of a discussion led by the Scottish Ministers and cross examination is not permitted unless the Scottish Ministers consider that cross examination is required to ensure a thorough examination of the issues.

(6) Subject to paragraph (7), a person entitled to appear at a hearing session is entitled to call evidence.

(7) The Scottish Ministers may refuse to permit—

(a) the giving or production of evidence;

(b) the cross examination of persons giving evidence; or

(c) the presentation of any other matter,

which the Scottish Ministers consider to be irrelevant or repetitious.

(8) The Scottish Ministers may proceed with a hearing session in the absence of any person entitled to appear at the hearing session.

(9) The Scottish Ministers may from time to time adjourn the hearing session and, if the date, time and place of the adjourned hearing session are announced before the adjournment, no further notice is required, otherwise rule 3 applies as it applies to the variation of the date, time or place at which a hearing session is to be held.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in connection with appeals made to the Scottish Ministers under sections 85 and 88 of the Community Empowerment (Scotland) Act 2015 ("the Act").

Part 1 of the Regulations sets out how the Regulations apply and are to be interpreted. Part 2 of the Regulations makes provision in relation to procedure for making an appeal under section 85(2) of the Act. Regulation 3 sets out the time period within which and how such an appeal must be made. Regulation 4 provides for notification of the appeal to the relevant authority and how the relevant authority is to respond. Regulation 5 provides for notification to interested parties and gives such parties an opportunity to make representations and for the community transfer body to comment on any such representations. In terms of regulation 6 the Scottish Ministers are to publish copies of documents relating to the review on a website or by other electronic means.

Part 3 of the Regulations relates to the process of determination of an appeal. Regulations 7 to 9 make provision for the procedure, if any is considered to be required, to be followed by the Scottish Ministers when considering an appeal. Regulation 9 sets out procedures for how written submissions are to be sought and the Hearing Session Rules set out in the schedule contain rules as to how hearings are to be conducted. Regulation 10 relates to further procedure by the Scottish Ministers if they propose to consider new evidence after the conclusion of any procedure under regulation 9 or the Hearing Session Rules.

Part 4 of the Regulations makes provision in respect of appeals under section 88(2) of the Act. Regulation 11 sets out the time period within which and how such an appeal must be made. Regulation 12 applies provisions of the Regulations to appeals under section 88(2) of the Act with a minor modification.

Part 5 makes general provisions in relation to the provision of further copies of documents (regulation 13), notification of the decision on review (regulation 15), the definition of 'contact address' (regulation 16) and the use of electronic communications (regulation 17). Regulation 14 requires the Scottish Ministers to ensure that publication and notification procedures set out in the Asset Transfer Request (Procedure) (Scotland) Regulations 2016 are fulfilled if this has not already been done.

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