POLICY NOTE

THE ASSET TRANSFER REQUEST (APPEALS) (SCOTLAND) REGULATIONS 2016

SSI 2016/359

The above instrument was made in exercise of the powers conferred by section 85(3) 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 in relation to decisions on asset transfer requests under the Community Empowerment (Scotland) Act 2016 ("the Act"). The regulations are framed mainly in terms of appeals directly to the Scottish Ministers under section 85(2) of the Act; Part 4 sets out how they apply to an appeal made under section 88(2) following a review by a local authority.

The procedure follows a model similar to that used in planning, and ensures that anyone with an interest in the request has the opportunity to see and comment on all the evidence submitted.

The community transfer body must give notice of its appeal in writing to the Scottish Ministers, setting out its reasons and providing copies of the documents relating to the original request, and any other evidence it intends to rely on (regulation 3). At the same time, under regulation 4, the community transfer body must send notice of the appeal to the relevant authority to which the original request was made. 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, together with any additional documents which were taken into account in the original decision and which the community transfer body has not listed in its notice of appeal. The community transfer body may send comments on the relevant authority's response to the Scottish Ministers.

The relevant authority must give notice of the appeal to each "interested party" - people who made representations on the original asset transfer request (regulation 5). They may make further representations to the Scottish Ministers. The Scottish Ministers must copy these to the community transfer body and the relevant authority, and give them an opportunity to comment. Regulation 14 also requires the Scottish Ministers to comply with the requirements for notifying and publishing the original request, if this was not done at the time.

Regulation 6 provides that the Scottish Ministers must make copies of all documents relating to the appeal available for inspection on a website or by other electronic means.

Regulation 7 provides that the Scottish Ministers may determine the appeal without further procedure, if they consider they have enough information in the appeal documents. If not, under regulation 8 they may decide how the appeal is to be conducted.

If the Scottish Ministers 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 9). 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 10 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, relevant authority and other relevant parties an opportunity to comment on that evidence.

Regulation 15 provides that the Scottish Ministers must give notice of their decision and any direction issued as a result, to the community transfer body, the relevant authority and every person who made representations on the appeal, and publish them online (regulation 15).

Regulations 13, 16 and 17 make general provisions about further copies of documents, the contact address for the community transfer body and electronic communications.

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. Many of the comments made related to practical implementation, such as ensuring consistency in decisions and providing support to community bodies, rather than the regulations themselves. There was no consensus for making any substantive changes 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