POLICY NOTE

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

SSI 2016/357

The above instrument was made in exercise of the powers conferred by sections 81(1) and 82(8)(a) and (9) of the Community Empowerment (Scotland) Act 2015. The instrument is subject to negative procedure.

Policy Objectives

These regulations specify procedures to be followed and other requirements in relation to asset transfer requests under the Community Empowerment (Scotland) Act 2016 ("the Act").

Regulation 3 provides for the form and content of an asset transfer request. Regulation 3(1) specifies the most basic requirements: the request must be made in writing, it must contain the name and contact address for the community transfer body, and must state that it is an asset transfer request under the Act. Paragraph (2) specifies further information that must be included, in addition to that set out in section 79(4) of the Act, to allow the relevant authority to check that the community body is eligible and to assess the request.

Regulation 4 deals with the acknowledgement of requests. Paragraphs (1) and (2) provide that if a request is received that contains the basic information in regulation 3(1), but is missing any other required information, the relevant authority must send the community transfer body a notice setting out what still needs to be submitted. Paragraphs (3) to (5) provide that when all the required information for a request has been received, the relevant authority must send an acknowledgement to the community transfer body.

The acknowledgement must include the validation date for the asset transfer request, which is the date on which the request is taken to have been made, and explain the timescales within which the relevant authority must give notice of its decision on the request. Regulation 5 defines the validation date as the date on which the last of the required information in relation to the request is received by the relevant authority. Section 82(8) of the Act provides that the relevant authority must give notice of its decision to the community transfer body within a prescribed period set out in regulations, unless a longer period is agreed with the community transfer body. Regulation 10 sets this prescribed period as the period of 6 months beginning with the validation date.

Regulation 6 requires the relevant authority to give notice of the asset transfer request to any third party who is an owner of the land to which the request relates, or a tenant or occupier of that land. Regulation 7 requires a notice of the request to be published online, and displayed at a public place in the vicinity of the land.

In addition to details of the request, these notices must state how the request and associated documents can be inspected, and explain how and by what date representations may be made to the relevant authority. That date must be no less than 20 working days after the date the notice is given.

Regulation 8 provides that any representations made in response to these notices must be copied to the community transfer body, who must be given at least 20 working days to make comments to the relevant authority on those representations.

Under regulation 9, the relevant authority must make copies of the asset transfer request, any associated documents and any representations and comments on those representations available online until the asset transfer request is determined.

Regulation 11 specifies information that must be included in the decision notice, in addition to those set out in the Act, and requires the relevant authority to publish a copy of the decision notice on a website or by other electronic means, and inform everyone who made representations of the decision and where the decision notice can be inspected.

Regulation 12 makes provision for documents to be sent electronically. Regulation 13 defines the "contact address" for the community transfer body, to which any documents relating to the request may be sent.

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 agreed with the proposed regulations. A number of changes have been made to clarify the requirements, particularly in relation to the content of the request and the acknowledgement. Some concerns were expressed in relation to erecting notices on the land to which the request relates; article 7(2)(b) has been amended to allow the notice to be displayed at a public place in the vicinity of the land instead.

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