

Asset Transfer

under the Community Empowerment (Scotland) Act 2015

Consultation on Draft Regulations

March 2016

1. Introduction.....	1
1.1. Consultation on Draft Regulations.....	2
1.2. What do we mean by “asset transfer”?	4
1.3. I want to take over a public building or piece of public land – what do I need to do?.....	4
1.4. Best Practice in Asset Transfer	5
2. Valuation, Price and Discount	6
3. Summary of Asset Transfer under the Act	8
4. Relevant Authorities – who can an asset transfer request be made to?.....	10
5. Community Transfer Bodies – who can make a request?	12
5.1. Asset transfer request for ownership.....	12
5.2. Designation	13
5.3. Leasing	13
6. Registers of Land	14
6.1. What land need not be included in the register?	14
6.2. What should the register look like?	17
The Community Empowerment (Registers of Land) (Scotland) Regulations 2016	18
7. Information to be provided on request	21
8. Procedure for Making and Dealing with Requests	23
8.1. How to make a request	24
8.2. Acknowledgement of request.....	26
8.3. Power to decline repeat requests.....	27
8.4. Prohibition on disposal of land	27

8.5. Notification and publication	28
8.6. Making the decision	29
8.7. Decision-making process	30
8.8. Lease restrictions	31
8.9. Decision notice.....	31
The Asset Transfer Request (Procedure) (Scotland) Regulations 2016	33
9. After Agreement.....	38
10. Reviews and Appeals	40
10.1. Review of a request made to a local authority.....	40
10.2. Review of requests made to the Scottish Ministers.....	41
10.3. Appeal to the Scottish Ministers.....	41
10.4. Regulations on reviews and appeals.....	42
The Asset Transfer Request (Review Procedure) (Scotland) Regulations 2016	45
The Asset Transfer Request (Appeals) (Scotland) Regulations 2016	55
11. Failure to conclude a contract	66
The Asset Transfer Request (Appeal Where No Contract Concluded) (Scotland) Regulations 2016	70
12. Annual Reports	80
Annex A: Asset Transfer Implementation Steering Group	81
Annex B: Short-Life Working Group on Valuation and Assessment of Non-Financial Benefits.....	82
Annex C: Sources of Advice for Community Bodies	83
Annex D: How To Respond	84

1. Introduction

Empowering communities is key to creating a more prosperous and fairer Scotland. It is the role of central and local government to work in partnership with communities and support them to lead change for themselves, to create thriving and sustainable places to live.

Community ownership or control of land and buildings can make a major contribution towards strengthening communities in this way. In the first place it provides a base for activities and services that might not otherwise be accessible to local residents, and can provide jobs, training and bring income to the local area. More widely, it can provide stability and sustainability for the community organisation, allowing them to develop new initiatives and support other developing groups, and it can create a stronger sense of community identity, cohesion and involvement.

The Scottish Government has supported and promoted transfer of public sector assets to communities over several years. The Scottish Community Empowerment Action Plan published jointly with COSLA in 2009 highlighted the significant role of asset transfer within the range of different ways that communities can be supported to become empowered. Subsequently the Development Trusts Association Scotland was funded by the Scottish Government to deliver the Promoting Asset Transfer programme and then to create the Community Ownership Support Service (COSS). COSS provides advice and support to local authorities and other public sector bodies in establishing asset transfer schemes, and to community bodies seeking to take control of assets.

The Community Empowerment (Scotland) Act 2015 moves forward from this approach of support and encouragement and takes asset transfer to another level. Many local authorities, and some public bodies, have operated successful asset transfer schemes in relation to property they have identified for disposal. The Act introduces a right for community bodies to make requests to all local authorities, Scottish Ministers and a wide-ranging list of public bodies, for any land or buildings they feel they could make better use of. It requires those public authorities to assess requests transparently against a specified list of criteria, and to agree the request unless there are reasonable grounds for refusal. This shifts the balance of power clearly towards the community body, and ensures that, at minimum, asset transfer is available, through a standard process, throughout Scotland.

The text of the Act is available at <http://www.legislation.gov.uk/asp/2015/6/part/5> . More information about the development of the Act and its implementation can be found on the Scottish Government website at <http://www.gov.scot/Topics/People/engage/CommEmpowerBill>

1.1. Consultation on Draft Regulations

Part 5 of the Community Empowerment (Scotland) Act 2015 sets out the key rights and duties and provides a framework for the asset transfer process. It gives the Scottish Ministers powers to make regulations to fill in more detail of the procedures to be followed. Ministers can also publish guidance to explain further how the process should work.

This paper is a consultation on draft regulations for asset transfer, along with an indication of guidance and best practice in certain areas. The proposals have been developed with a steering group of stakeholders with experience of asset transfer, from public authorities and community organisations. Membership of the group is listed in Annex A, with a link to papers from its meetings. We are now seeking wider views on the proposed procedures from relevant authorities, who will be required to implement them, and community bodies who may wish to use them.

The draft regulations and questions on them appear in chapters 6, 7, 8 and 10. The other chapters explain the requirements of the Act, which cannot now be changed, to help give an overview of the whole process.

Please respond to this consultation using the Scottish Government's consultation platform, Citizen Space. You can view and respond to this consultation online at <https://consult.scotland.gov.uk/community-empowerment-unit/asset-transfer-procedures> . You can save and return to your responses while the consultation is still open. **Please ensure that your response is submitted before the closing date of 20 June 2016.**

Further information on responding to the consultation and what happens next is provided in Annex D.

Some terms used in this paper

Regulations are a type of “secondary legislation”. An Act (“primary legislation”), which has been agreed by the Scottish Parliament, may say that the Scottish Ministers may make regulations about certain things. Those regulations also have to be considered by the Parliament before they can come into effect. Regulations are used to set out detail and technical issues, because they can be updated more quickly than an Act if changes are needed. They are law and everyone has to comply with them.

Orders are another type of secondary legislation, very similar to regulations. The Scottish Ministers have powers to make orders to do various things under the Community Empowerment Act, for example to make changes to the list of relevant authorities and to designate organisations and community transfer bodies. We do not plan to make any orders at the moment, so there are no draft orders in this consultation.

Guidance gives advice about how to do what the Act and regulations require. Guidance can give examples and suggestions about best practice and can be flexible to allow for different circumstances. It can also provide links to other helpful information and organisations, and can be updated at any time.

Some parts of the Act allow Ministers to give **Directions**. A Direction is a piece of legislation that tells certain people or organisations that they must do or not do something. It only applies to the person/people or organisation(s) it is addressed to.

Numbering of legislation

This paper refers to the Community Empowerment (Scotland) Act 2015 (referred to as “the Act”) and the various draft regulations.

- Acts are divided into sections. These can be divided into subsections, eg “section 81(2)”, and paragraphs, eg “section 82(6)(a)”.
- Each piece within a set of regulations is a regulation, for example “regulation 2”, and these are divided into paragraphs, eg “regulation 5(4)”.

1.2. What do we mean by “asset transfer”?

An asset is something that has value to someone. In relation to “asset transfer” under the Community Empowerment Act it means land and any buildings or other structures on the land, like bridges, walls or piers. It does not include vehicles or equipment.

“Asset transfer” is a process to allow a community organisation to take over publicly-owned land or buildings, in a way that recognises the public benefits that the community use will bring. That may be a discounted price, a grant or other support, or simply the agreement to transfer something the public authority did not plan to sell. If the land is put up for sale or lease and a community body offers the best (or the only) bid, that is just a commercial transaction.

1.3. I want to take over a public building or piece of public land – what do I need to do?

This paper is not a practical guide to asset transfer. It is a consultation paper on how the new legislation will work. It asks what should be in the detailed regulations that have to be produced before asset transfer under the Community Empowerment Act comes into force and is ready to use. Guidance for community bodies on using the Act will be published when the final regulations are produced.

Even though the Act is not yet in force, community bodies can still take action on developing their ideas and approaching authorities. It takes time to work up a proposal, find funding and assess whether the property you have in mind is suitable.

There is lots of advice available for community bodies thinking of taking over assets. A list of websites is provided at Annex C.

If you know what you want to do in your community and have found a property or land you think will be suitable, contact the authority that owns it and start the conversation about your proposals, any other plans for the property, and whether they have an asset transfer scheme already in place.

1.4. Best Practice in Asset Transfer

Many communities in Scotland have already taken on ownership or control of assets. A baseline study carried out by the Community Ownership Support Service (COSS) in 2012¹ identified 2740 community assets owned by community bodies, and there has been increased interest in recent years. COSS has developed advice for both community bodies and public sector authorities, based on experience of supporting organisations through the existing, voluntary schemes. A range of other organisations can also provide support to community bodies in developing their proposals, depending on their location and the type of project they have in mind. Links to some helpful websites are in Annex C.

Much of this best practice will still be relevant to asset transfer under the Community Empowerment Act. Community bodies will still need to have a clear plan for how they will use the asset and how it will be funded; authorities will still need to provide support and information to community bodies and have clear procedures in place for decision making. Above all, honest and constructive dialogue from the earliest stages is the best way to ensure a successful outcome for everyone.

There is no requirement for all sales, leases or other arrangements with community bodies to go through the system provided for by the Act. If both parties are happy to make arrangements by negotiation, they can continue to do so. Authorities should also make sure that procedures are proportionate and should not, for example, require community bodies to go through an asset transfer process for short term lets or use of facilities which have routinely been available for community use in the past. Community bodies should not be required to meet a higher standard than a private company would in similar circumstances, for example where they are the sole bidder and no discount is sought.

All relevant authorities must, however, have the necessary statutory procedures in place, and if an asset transfer request is made under the terms of the Act, it must be processed in accordance with the Act's requirements. Community bodies should be aware that they will only be able to rely on the protections provided by the Act, and access the statutory review and appeal procedures, in relation to a request made under the Act.

As well as setting out the requirements of the Act and proposals for draft regulations, this paper highlights what would be good practice at various points in the process. This will help relevant authorities in developing their procedures. Where existing schemes are in place, we expect authorities will review these, in discussion with stakeholders, to take account of the Act and ensure they continue to deliver best practice.

¹ <http://www.dtascommunityownership.org.uk/resources/policy-and-research/community-ownership-scotland-baseline-study>

2. Valuation, Price and Discount

The Act does not say how much should be paid to purchase an asset or in rent, whether it should be at market value or at a discount. There are therefore no regulations to be made on this issue. However it is clear that issues about valuation and price are of great concern for both relevant authorities and community bodies, and we intend to provide guidance in this area. The Scottish Government has established a Short-Life Working Group on Valuation and Assessment of Non-Financial Benefits to help develop the guidance. Details of the group's membership and a link to its papers are provided in Annex B.

All relevant authorities have a duty to secure best value when disposing of property. However, it has long been recognised that best value does not always mean the highest possible price, and all authorities have the ability to dispose of property at less than market value where there are wider public benefits to be gained. This is set out in the Disposal of Land by Local Authorities (Scotland) Regulations 2010, and in the Scottish Public Finance Manual for other relevant authorities.

Community organisations can access a range of grant funding and have various options for income generation, including initiatives such as community renewables and community shares, as well as more traditional business like hire of premises and retail. In some circumstances it may be appropriate for them to offer market value for a property. On the other hand, relevant authorities should take into account the benefits that may be gained from the community body's proposals, and whether a discount may be justified in order to enable the asset transfer to go ahead and to realise those benefits to the community. It is also the case, particularly in the current financial climate, that public authorities need capital returns or rental income to fund new building or other services, so there is a need to assess what will provide the greatest overall benefit.

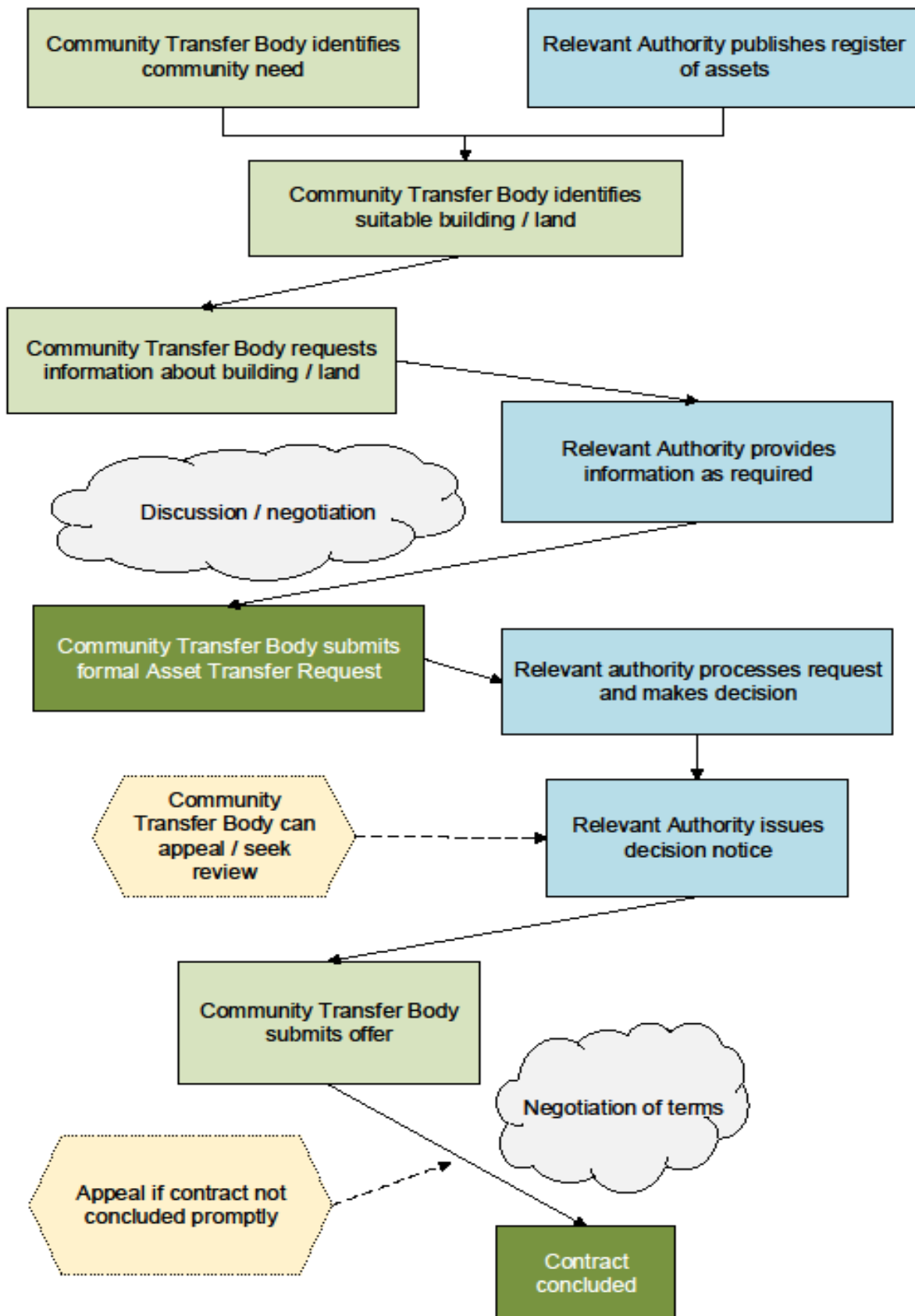
The Short-Life Working Group will seek to identify the most helpful approaches to assessing the non-financial benefits of proposals and give decision-makers confidence in dealing with offers at less than market value. This guidance will also need to be accessible to community bodies, so that they can clearly set out the benefits of their proposals.

Setting the initial value can also be a matter of contention, and the group will consider who should produce a valuation, how it should be commissioned and at what stage of the process.

Where a discount is granted in recognition of other benefits to be achieved from the transfer, relevant authorities may wish to protect that funding, in case the expected benefits are not delivered. Mechanisms such as "clawback" may be used, requiring a percentage of the discount to be repaid if the property is sold, usually reducing

over a number of years. The group will address how protection of discount can be implemented in a proportionate way, that is acceptable to funders and to regulators.

3. Summary of Asset Transfer under the Act



Summary of Asset Transfer under the Act

Under the Act, an asset transfer request is a request made by a community transfer body to a relevant authority (these terms are explained in chapters 4 and 5). The community transfer body can ask to buy, lease, manage or use any land or buildings which belong to or are leased to the relevant authority. They have to set out what they plan to do with the property, and how much they are prepared to pay.

The relevant authority has to decide whether to agree to the request or not, taking into account whether the community transfer body's proposals (including the price) provide more benefit than the current use, or any other proposals that have been made. Equalities and the relevant authority's functions and obligations are also considered. The request must be agreed to unless there are reasonable grounds for refusal. Then the community transfer body makes an offer, and a final contract is negotiated.

If the request is refused, or no answer is given, or the community transfer body does not agree with conditions set by the relevant authority, the community transfer body can ask for the decision to be reviewed or can appeal to the Scottish Ministers. They can also appeal if the request is agreed and an offer made but no contract is completed within 6 months of the date of the offer.

4. Relevant Authorities – who can an asset transfer request be made to?

Asset transfer requests can be made to any “relevant authority”. Relevant authorities are listed in schedule 3 to the Act. They are:

- Local authorities
- Scottish Ministers (including agencies such as Forest Enterprise Scotland and Transport Scotland)
- Crofting Commission
- Further Education colleges which are “incorporated colleges”
- Health Boards, both regional and Special Health Boards
- Highlands and Islands Enterprise
- National Park Authorities (Cairngorms and Loch Lomond and Trossachs)
- Regional Transport Partnerships
- Scottish Canals
- Scottish Courts and Tribunals Service
- Scottish Enterprise
- Scottish Environment Protection Agency
- Scottish Fire and Rescue Service
- Scottish Natural Heritage
- Scottish Police Authority (who own all land and buildings used by Police Scotland)
- Scottish Water

Section 78 of the Act says that the Scottish Ministers can add new relevant authorities or can remove relevant authorities or amend the list, for example if an organisation changes its name. Organisations which are not already on the list in Schedule 3 can only be designated as a relevant authority if they are:

- a part of the Scottish Administration
- a Scottish public authority with mixed functions or no reserved functions, or
- a publicly-owned company – this means any corporate body which is wholly owned by one or more relevant authorities already on the list.

This covers most public bodies and officers who deal with matters which are devolved to the Scottish Parliament.

UK Government departments and agencies cannot be listed as relevant authorities, nor can private or voluntary sector organisations. For example, people have asked whether the Ministry of Defence, Network Rail or the National Trust for Scotland could be included. The Act does not allow any of these to be listed as relevant authorities.

“Publicly owned companies” would include many organisations set up as ALEOs – Arm’s Length External Organisations – by local authorities and other public bodies. The Scottish Government is looking into how different ALEOs are structured and whether it would be helpful to include some or all of them as relevant authorities, but none are included at the moment. In many cases ALEOs manage property which is still owned by the local authority which set it up, so any asset transfer request would be made to the local authority.

5. Community Transfer Bodies – who can make a request?

A community transfer body is defined in section 77 of the Act. It can be either a community controlled body or a body designated by the Scottish Ministers.

A **community controlled body** is defined in section 19, because the term is used for participation requests as well as asset transfer requests.

A community controlled body does not have to be incorporated, but It does have to have a written constitution.

A **constitution** is a document which sets out what a group is for and how it is organised. It lets everyone know who can join the group, what the rules are and how decisions will be made. A group will usually need to have a constitution if it wants to open a bank account or apply for grants.

The constitution of a community-controlled body must define the community the body represents, and the aims and purposes of the body, which must include action to benefit that community. It must allow any member of that community to be a member of the body. The majority of members of the body must be members of the defined community, and they must have control of the body. This is likely to be arranged by restricting who can take part in the body's decisions or be on any managing committee. The constitution must also make sure that any surplus funds or assets of the body (after covering its running costs) are used for the benefit of the defined community.

Model constitutions will be provided to help community-controlled bodies make sure they meet these requirements.

If a group is **incorporated** it is legally a single body rather than just a group of individuals. This means the body can enter into contracts or leases itself, which continue even if the membership changes. Being incorporated may protect the members from liabilities, otherwise they could be required to pay for any debts or damages incurred by the body. Community-controlled bodies should consider becoming incorporated if they plan to take on any responsibilities for property or for providing services.

5.1. Asset transfer request for ownership

If a community transfer body wants to buy a property, rather than lease it or have other rights, it must meet additional requirements. It must be a community controlled body, and it must also be a company, a Scottish Charitable Incorporated Organisation (SCIO) or a Community Benefit Society (BenCom), and its constitution must require that it has at least 20 members. This is set out in section 80. If it is a company, its memorandum and articles of association must set out required arrangements about what happens to the body's assets if it is wound up, to make

sure they are passed on to another community or charitable organisation. (Similar arrangements are an automatic requirement for all SCIOs and BenComs.)

Model documents will be provided for the different types of body.

5.2. Designation

The Scottish Ministers can also designate a body to be a community transfer body. They will do this by making an order. Ministers can either designate an individual body, or could designate a class of bodies, if they decided in future that all organisations of a particular type should be able to make asset transfer requests.

Designation of individual bodies is intended to be used where a community organisation does not meet the criteria for a community controlled body, but should still be allowed to make an asset transfer request. This may be because for some reason it cannot change its constitution to meet the criteria; for example, some benevolent trusts might lose access to their founder's bequest if they change their management structure. Designation may also be used for very small communities where it is not reasonable to get 20 members.

If a designated community transfer body wants to make a request for ownership, the designation order must state that it is allowed to do that.

Ministers will issue guidance on how to apply to be designated as a community transfer body.

5.3. Leasing

The Act does not say what sort of structure a community transfer body must have to be able to make a request for lease or other rights over any land or building. This will be part of the relevant authority's decision-making, and will depend on the community transfer body's proposals, such as the length of lease and the responsibilities involved. If the community transfer body is taking on responsibilities for maintaining the property or providing services, it may be reasonable for the relevant authority to require that it is incorporated. Organisations providing funding to community transfer bodies may also have requirements about their legal structure.

Part 6 of the Act deals with leases of land from Forestry Commission Scotland for forestry purposes. It amends the Forestry Act 1967 so that any incorporated organisation, whose constitution meets the requirements, can apply for a lease for forestry purposes.

6. Registers of Land

In the past, asset transfer has usually only been available for land or buildings which a public authority has decided to dispose of, and has decided is suitable for community use. The Act puts more power in the hands of communities by allowing them to request whatever property will best meet their needs.

It is important for any community body to start by thinking about what they want their project to achieve – for example, to provide training for young people, a place for people to meet and hold events, or access to the natural environment. Then they can consider whether they need an asset to deliver their aims, and look for somewhere that will be suitable. Community projects which focus on “saving” a building threatened with closure or demolition often run into difficulties later if they have not fully thought through what they will do with it and the costs involved.

The Scottish Government encourages public sector bodies to work together to make best use of their assets as a whole. Where discussions are taking place about sharing space and transferring or disposing of property, communities should be involved at the earliest stages and the needs of community bodies that may be looking for assets should be included in the mix.

Section 94 of the Act requires each relevant authority to publish a register of land which it owns or leases, “to the best of its knowledge and belief”. This will help community bodies to know what might be available through asset transfer and who owns any property they might be interested in.

It is not always clear exactly who owns a building or piece of land, especially where public bodies have been reorganised over time. Sale or transfer documents in the past might not have been clear about the boundaries of the land that changed hands, or there may be gaps in the chain of information. The Scottish Government has committed to ensuring that all public sector land is included on the Land Register by 2019, which will ensure that more accurate information is available. In the meantime, relevant authorities are required to publish the information they have at present “to the best of their knowledge and belief”, which should cover the majority of their property.

An asset transfer request can still be made for land or buildings that are not on a relevant authority’s register. If a community transfer body believes something belongs to a particular authority, but it is not on their register, the community body can still ask about it, and the ownership can be investigated at that point.

6.1. What land need not be included in the register?

The Scottish Ministers can make regulations to list types of land that need not be included in the register, under section 94(4). A draft of the Community

Empowerment (Registers of Land) (Scotland) Regulations 2016 is on page 18. The following types of land are proposed to be covered by the regulations:

- Public roads. These are owned and managed by local authorities (for local roads) and the Scottish Ministers, through Transport Scotland (for trunk roads). Listing all roads in registers of land would make the register very big. We think it is unlikely that a community transfer body would want to take over a public road, and if they did, it is usually clear who it belongs to. Therefore we propose that they need not be included in registers.
- Underground railways. Strathclyde Partnership for Transport (SPT), which is a Regional Transport Partnership as listed in schedule 3, owns and operates the Glasgow Subway. It would not be possible for a community transfer body to take over operational parts of the Subway, and it is well known who owns it, so we propose that the tunnels and stations need not be included in the register. SPT will need to list all other property that it owns or leases.
- Canals. Scottish Canals owns and operates the five main canals in Scotland. As with the Subway, it would not be possible for a community transfer body to take over a section of the canal, as the whole network operates together, and it is clear who owns it. We propose that the canal itself and towpaths, locks, reservoirs etc which are essential to its operation need not be included in the register. However, Scottish Canals will need to list the other land and buildings it owns.
- Bus stations. Bus stations may be operated by local authorities or Regional Transport Partnerships. We propose they need not be included in registers of land, along with roads and other parts of the transport network.
- Houses, hostels and lodging-houses. If houses owned by relevant authorities were listed in the register, it would show that the people living at a particular address are tenants of that authority, which could be considered personal information. Community bodies do not often want to take over houses that are occupied, and special arrangements would apply if they wanted to transfer social housing to a new landlord. We propose that houses should not be included in the register unless they are surplus, which will usually mean they are empty and available for sale. The definition of a house in this case includes flats, and any garden, garage or other things that go with the house. Hostels and lodging houses are included to address concerns about revealing the location of accommodation such as women's refuges and drug rehabilitation centres.
- Controlled reservoirs subject to a non-disclosure notice. The Reservoirs (Scotland) Act 2011 requires SEPA to maintain a register of "controlled reservoirs", which may be publicly or privately owned. The UK Government can serve a notice preventing the publication of any information about a

controlled reservoir, if releasing such information is considered to be contrary to the interests of national security. Any reservoir subject to such a notice should also be excluded from the registers of land for asset transfer.

Q1: Do you agree that the types of land set out in the draft Community Empowerment (Registers of Land) (Scotland) Regulations 2016 need not be included in relevant authorities' registers? If not, please explain what you would change and why.

Q2: Are there any other types of land that relevant authorities should not have to include in their register? Please explain what should not be included and why.

6.2. What should the register look like?

Guidance will set out what information about the land should be on the register, and how it should be published.

We suggest that the register should simply include the location of the property, its name if it has one, and a basic description, such as “offices”, “clinic”, “depot”, “park”. The location would normally be a street address; where there is no street address it should include a grid reference (point at the centre of the site) and any description it is known by locally.

Users should be able to search the register for particular properties, and also to search for land in particular areas. National public bodies should identify at least the local authority area for each property; local authorities and other authorities with a lot of property might want to list them by smaller districts or neighbourhoods.

We do not propose to be prescriptive about the format of the register. Some relevant authorities may have the information in a form which allows them to publish a database for public use, others might just provide a text document or spreadsheet in PDF. The register must be made available online, and arrangements must also be made for members of the public to inspect it in person. This could, for example, be by a member of staff helping someone to use the register on a computer at the authority’s offices, or printing out extracts. We do not intend to create a central online system to hold the registers of different authorities, although there could be a central website with links to the individual registers.

The Act requires relevant authorities to “establish and maintain” their register of land, which means it must be updated regularly. How frequently updates should be made will depend on how often the authority acquires or disposes of property, but keeping it as accurate as possible will avoid wasted time in dealing with enquiries about properties they no longer own.

Q3: Do you have any comments on the proposals for guidance on what information registers should contain and how they should be published?

2016 No.

COMMUNITY EMPOWERMENT

**The Community Empowerment (Registers of Land) (Scotland)
Regulations 2016**

<i>Made</i> - - - -	***
<i>Laid before the Scottish Parliament</i>	***
<i>Coming into force</i> - -	***

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 94(1) of the Community Empowerment (Scotland) Act 2015(a) and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Community Empowerment (Registers of Land) (Scotland) Regulations 2016 and come into force on [] September 2016.

Land not included in registers of land

2. For the purposes of section 94(4) of the Community Empowerment (Scotland) Act 2015, the land that a relevant authority need not include in the register of land established and maintained under subsection (1) of that section are—

- (a) any public road within the meaning of section 151(1) of the Roads (Scotland) Act 1984(b);
- (b) (i) any subway tunnel forming part of an underground tunnelled railway system;
(ii) any chamber, station platform or building forming part of, or ancillary to the operation of, such a railway system which is at or above the level of the subway tunnel, including the stations, station entrances, kiosks, stairs and escalators;
- (c) any operational canal, including—
 - (i) any associated embankment, towpath or dock (which includes a pier, harbour, quay, wharf or jetty);
 - (ii) any associated cuttings, tunnels, aqueducts or bridges;
 - (iii) any associated reservoirs, feeders, sluices or weirs; and
 - (iv) any other land essential to the operation of the canal;
- (d) any bus station or associated facilities within the meaning of section 83(5) of the Transport Act 1985(c);

(a) 2015 asp 6.
(b) 1984 c.54.
(c) 1985 c.67,

Registers Regulations - Draft for Consultation

- (e) any—
 - (i) house within the meaning of section 165 of the Housing (Scotland) Act 2010^(d); and
 - (ii) lodging-house or hostel,but that does not include a house, lodging-house or hostel which is surplus to the requirements of a relevant authority; and
- (f) any controlled reservoir in respect of which a non-disclosure notice has been served under article 3 of the Reservoirs (Scotland) Act 2011 (Restrictions on Disclosure of Information in relation to National Security etc.) Order 2015^(e).

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
[] 2016

(d) 2010 asp 17.
(e) S.I. 2015/48.

Registers Regulations - Draft for Consultation

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations specify land, or descriptions of land, that need not be included in the register of land to be established and maintained by certain public authorities under section 94(1) of the Community Empowerment (Scotland) Act 2015.

7. Information to be provided on request

Once they have identified one or more properties that may be suitable for their project, a community body will need further information about them. They will need to decide whether the land or building is suitable for their planned activities, what the running costs will be, and how much to offer for it. If they intend to request ownership or a lease with repairing responsibilities, they will need information about the structural condition of any building, other rights on the land, and so on.

Section 81(3) of the Act allows the Scottish Ministers to make regulations to enable community transfer bodies to request information about land for which they intend to make an asset transfer request, and to specify how the relevant authority is to respond to such requests and what information they must or need not provide in different circumstances.

Community transfer bodies already have the same rights as anyone else to request information from public authorities under the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs). Further information on these rights is available on the Scottish Information Commissioner's website,

<http://www.itspublicknowledge.info/home/ScottishInformationCommissioner.aspx>

These rights cover a very wide range of information, and are backed by a right to a review and appeal to the Information Commissioner if information is withheld without good reason.

We have considered the types of information that a community transfer body might want to obtain about a property before making an asset transfer request. We have not identified any information that it would be reasonable to expect the relevant authority to provide, that would not be available under FOISA or the EIRs. For that reason we do not propose to make any regulations under section 81(3) at this stage.

Community transfer bodies are very likely to need information on the current condition of the land or building and the costs that will be involved in managing it and developing their project. For buildings this may include information on the structural condition and maintenance requirements, for land it may include what has been planted and when. Information on title burdens or servitudes and any environmental or cultural designations will also be important.

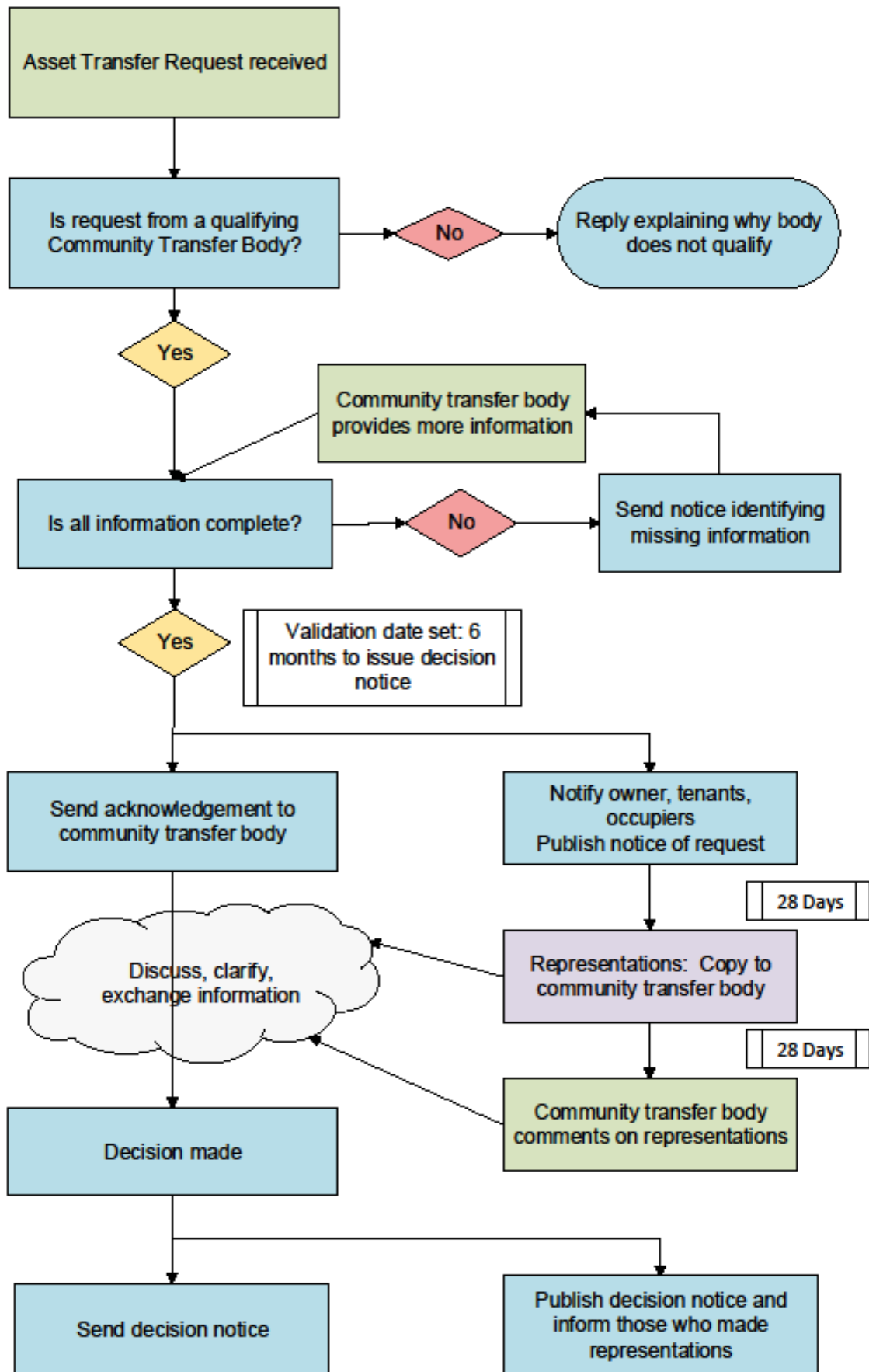
Authorities may not have current information for many of their properties, and where they do it will have been produced for the authority in relation to their use of the building, and may not be appropriate for the community transfer body to rely on. Professional surveys produced for the authority may also be confidential to them. The community transfer body would need to commission its own surveys for its own use. Funding for this kind of project development work may be available where the

community body is applying for a grant for acquisition of the property. It is less likely to be available for proposals for lease.

Ideally a community body should make contact with the relevant authority as early as possible and there should be an open discussion about the community's objectives and property that may be suitable. The relevant authority should be open about the information it has, including practical knowledge about managing the property, and how other information might be obtained. Most importantly, the authority should ensure that the community transfer body is aware of any information that is likely to be a significant factor in the authority's decision on the request.

Q4: Is there any information you think a community transfer body should be able to request from a relevant authority, that it would not be able to obtain under FOISA or the EIRs?

8. Procedure for Making and Dealing with Requests



Procedure for Making and Dealing with Requests

The Asset Transfer Request (Procedure) (Scotland) Regulations 2016 will set out what a community transfer body has to do to make a valid asset transfer request, and what a relevant authority has to do when it receives a request. These regulations (“the Procedure Regulations”) will be made under section 81(2) of the Act, and a draft is at page 33. They will operate alongside section 79 of the Act, on making a request, section 82 on how the relevant authority makes its decision, and section 83 on next steps after a request is agreed.

Relevant authorities should make sure that community bodies can easily identify the appropriate contact for enquiries about asset transfer, and any community transfer body working towards making a request should have a single point of contact to support them and guide them through the process. All relevant staff should be made aware of arrangements for dealing with asset transfer enquiries, particularly those who support community organisations or who manage buildings and land. There are deadlines throughout the process for taking action, so it is in the authority’s interest to make sure any requests or representations are passed to the appropriate team promptly.

8.1. How to make a request

An asset transfer request is a request made by a community transfer body, as described in chapter 5, to a relevant authority, as listed in chapter 4. Under section 79(2) of the Act, a request can be made:

- (a) for ownership of the land to be transferred to the community transfer body, if the request relates to land owned by the relevant authority (these requests can only be made by a community transfer body eligible to request a transfer of ownership under section 80); or
- (b) if the request relates 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 to the community transfer body.

Section 79(4) requires the following information to be specified in the request:

- (a) the land to which the request relates
- (b) whether the request falls within section 79(2)(a), (b)(i) or (b)(ii), ie, is it a request for transfer of ownership, grant of a lease or other rights
- (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) if the request is for ownership, the price the community transfer body is prepared to pay
- (f) if the request is for lease, the amount of rent the community transfer body is prepared to pay, the duration of the lease and any other terms and conditions the community transfer body considers should be included in the lease
- (g) if the request is for other rights, the nature and extent of the rights requested, and
- (h) any other terms and conditions applicable to the request.

Ministers may also make regulations about the manner in which requests are to be made, and additional information to be included in requests. Our proposals are set out in regulation 3 of the Procedure Regulations.

We propose that a request must be made in writing (regulation 12 allows for communication by email or other electronic means to be treated as “in writing”). It must include the name and contact address of the community transfer body, and state that it is an asset transfer request made under Part 5 of the Act. It must also be accompanied by:

- a copy of the constitution of the community transfer body
- information outlining how the community transfer body proposes to fund both the transfer of the land and its proposed use of the land, and
- information detailing the level and nature of support for the asset transfer request.

Some of this is basic practical information; clearly a request needs to identify the land the request relates to, the community transfer body making the request, and the rights being requested. We propose that a copy of the constitution of the community transfer body should be provided so that the relevant authority can check that the body is eligible to make the request.

The other information to be included is needed by the relevant authority to make its decision, assessing the benefits of the community transfer body’s proposals, comparing them to any other proposal (including current use) and looking at the potential impact on the authority’s own functions or other relevant issues. The community transfer body needs to explain what it plans to do with the land or building and what benefits will result from these proposals. It will be helpful to frame these in terms of the issues the relevant authority is required to consider (see chapter 8.6): economic development, regeneration, public health, social wellbeing, environmental wellbeing, socio-economic inequalities and equal opportunities.

We propose that the community transfer body should also outline how it proposes to fund any purchase or lease and the ongoing costs of the project. The relevant authority needs to be satisfied that the project will be financially viable, so that it can actually deliver the benefits it promises. Where possible community organisations should aim to avoid depending on grants in the long term. The information expected in relation to funding should be proportionate to the scale of the request, but should demonstrate that the community body has understood all the costs involved (drawing on information obtained as discussed in chapter 7) and their likely income.

We also propose that the community transfer body should provide information on the level and nature of support for the request. Unlike community right to buy under the Land Reform (Scotland) Act 2003, asset transfer does not require a ballot of people in the local area, but the community transfer body should be able to show that it has engaged with the wider community and has support for its proposals among those who may be affected. If a request is made by a body representing a community of interest it would be expected to engage with people in the area where the land or building is located, and take steps to try to address any concerns.

Q5: Do you think the proposed additional requirements for making an asset transfer request are reasonable? If not, please explain what you would change and why.

Q6: Is there any other information that should be required to make a valid request?

8.2. Acknowledgement of request

When a relevant authority receives a request, the first thing to do is to check it contains all the required information, and that the body making the request qualifies as a community transfer body (and is eligible to make a request for ownership, if appropriate).

If the body making the request is not eligible to do so, technically it is not an asset transfer request and no further action is required under the legislation. The relevant authority should reply explaining the criteria for a community transfer body and, if appropriate, highlighting any specific failings in the body's constitution.

In regulation 4(1) of the Procedure Regulations we propose that if all the information required to be included in or to accompany an asset transfer request is not provided, the relevant authority should send the community transfer body a notice saying what is missing. No further action needs to be taken until all the required information is received.

If the request is complete, or when the last of the required information has been received, the relevant authority must send an acknowledgement under regulation 4(2). We propose that the acknowledgement should include:

- the validation date – regulation 5 states that this is the date on which the last of the required information was received (the date the request was received if it was complete). This is the date from which other time limits will be calculated
- an explanation of the time period for the relevant authority to make its decision, and
- information about the right to appeal to the Scottish Ministers or request a review, as appropriate. This is required at the outset because of the option to appeal if no decision is made within the time limit.

Q7: Do you have any comments on the proposals for acknowledgement of requests?

8.3. Power to decline repeat requests

Section 93 of the Act allows a relevant authority to choose not to consider a request which is the same or very similar to a previous request which was refused. This applies if the new request relates to the same land or building, and seeks the same type of transfer, as a request made in the previous two years. It does not matter if the new request is made by the same body or a different one. For example, if one community transfer body requests to lease a particular building, and is refused, and another body requests to lease the same building for the same purposes within two years, the relevant authority may decline to consider that second request. On the other hand, if the second request was for transfer of ownership instead of a lease, the relevant authority would have to consider it. Declining to consider a request under these circumstances does not count as a refusal of the request and therefore is not eligible for appeal or review.

This is intended to help relevant authorities deal with repeated, vexatious requests which are unlikely to have a different outcome. They can still choose to consider a repeated request if they wish. If the community transfer body has worked to improve its proposal, or other circumstances have changed, or the new request is from a genuinely different organisation, it may well be appropriate to consider it.

8.4. Prohibition on disposal of land

Once an asset transfer request has been made, the relevant authority is not allowed to sell, lease or otherwise dispose of the land it relates to, to anyone other than the community transfer body that made the request, until the whole process is

completed. This is set out in section 84 of the Act. Subsection (11) provides that if the relevant authority tries to dispose of the property to anyone else, the contract to do so will have no effect.

Relevant authorities should make sure that anyone dealing with property management will be aware of the fact that an asset transfer request has been made for a particular property, in case another approach made for the same property while the process is underway. This might be done, for example, by putting a note on the property management system.

Subsections (4) to (10) of section 84 set out all the possible ways in which the asset transfer request process can come to an end. In summary, the process is completed when:

- a contract for the transfer is concluded
- the request is refused and the community transfer body has followed all routes of appeal without success, or
- the community transfer body fails to take the next action in the process within the time required. For example, if it does not make an offer, or does not request a review or appeal if the request is refused.

Under subsection (12), the prohibition on disposal does not apply if, before the asset transfer request is made, the land has already been advertised for sale or lease, or the relevant authority has entered into negotiations or begun proceedings to transfer or lease the land to another person. The Scottish Ministers can also make a direction to say that the prohibition does not apply. In these cases, an asset transfer request can still be made, but it will not override any other bid being made.

8.5. Notification and publication

Regulations 6 and 7 of the Procedure Regulations set out arrangements for other people to be made aware that an asset transfer request has been made, and for them to comment on it.

“As soon as practicable” after the validation date (the date the completed request was received) the relevant authority must notify any tenant or occupier of the land the request relates to, and the owner if the relevant authority leases the land. It must also publish a notice online, and put up a physical notice at the site. We suggest that a physical notice should not be required if the site is not regularly visited except by staff of the relevant authority. This is to avoid staff having to make a special journey to put up a notice at a remote site such as a nature reserve or water monitoring station.

The notices must state that an asset transfer request has been made, and identify the community transfer body making the request and the land to which the request

relates. They must give a brief description of the nature of the rights requested and how the community transfer body propose to use the land. The asset transfer request and associated documents must be published online, under regulation 9, and the notices must state how they can be inspected. Finally they must say how representations about the request may be made, and by what date. Regulation 8 proposes that at least 28 days must be allowed from the date of the notice being given or published.

If any representations are received in response to these notices, the relevant authority must send copies to the community transfer body and give the body at least 28 days to comment on them.

Q8: Do you have any comments on the proposed requirements for notification and publication of information about a request?

8.6. Making the decision

Section 82(2) of the Act states that, when an asset transfer request is made by a community transfer body to a relevant authority, “the relevant authority must decide whether to agree to or refuse the request”. Under subsection (5), “the authority must agree to the request unless there are reasonable grounds for refusal”.

Reasonable grounds will depend on the individual circumstances of each case, but are likely to include cases where the benefits of the asset transfer request are judged to be less than the benefits of an alternative proposal, or where agreeing to the request would restrict the relevant authority’s ability to carry out its functions.

There are no powers for Ministers to make regulations about the process of making the decision, all the requirements are set out in the Act.

In reaching its decision the authority must consider the reasons for the request and the information provided in the request and in support of the request, and compare the benefits of the community transfer body’s proposals with the benefits that might arise from any alternative proposal. Alternative proposals may be another asset transfer request, or another proposal made by the authority, or by any other person. If the relevant authority does not consider the property to be surplus, continuing the existing use would be treated as an alternative proposal; if the property has been identified for disposal, disposal on the open market could be an alternative.

In assessing the benefits of the request the relevant authority must consider whether agreeing to it would be likely to:

- promote or improve
 - economic development

- regeneration
- public health
- social wellbeing
- environmental wellbeing, or
- reduce inequalities of outcome which result from socio-economic disadvantage

The authority must also make the decision in a manner which encourages equal opportunities and the observance of the equal opportunities requirements.

The relevant authority must also consider any obligations that affect its ability to agree to the request, whether these arise from legislation or otherwise. For example, legislation may say that a public body is not allowed to dispose of certain property, or title conditions or planning restrictions may say that it cannot be used for certain purposes. The authority may also consider any other matters it believes are relevant, including how the benefits of any proposals relate to its functions and purposes. Public bodies, in particular, are set up to carry out particular functions and they are unlikely to be able to agree to a request which would interfere with carrying out their functions.

As noted in chapter 8.1, the community transfer body's proposals for funding the transfer and ongoing use of the asset will form part of the assessment, in order to satisfy the relevant authority that the project will be viable and able to deliver the benefits it promises. The price offered will also be included, particularly if a discount on market value is proposed – see chapter 2.

Other matters that are likely to be relevant will include community support for the proposals and how the community transfer body has engaged with the wider community. In particular, if the request is from a body representing a community of interest it should show how it has engaged with the community in the area where the asset is located.

The dialogue that should take place before the request is made should continue throughout the process. Relevant authorities can request clarification or more detail on any issues they feel are necessary for their decision. This will help to avoid situations where a request is refused on the basis of a lack of information which the community transfer body could have provided if they had been asked.

8.7. Decision-making process

To provide a robust decision-making process it is essential to bring together officers with key responsibilities within the authority, including property, legal, finance, community development and, where relevant, economic regeneration. Relevant authorities with a remit focused on particular issues may find it helpful to seek advice from others, for example through the community planning partnership. This may be

general advice or in relation to particular benefits included in a community body's proposals. For example, Scottish Water might seek help on assessing outcomes for mental health, or the Scottish Police Authority might need advice on environmental issues.

Each relevant authority will need to establish its own procedures for obtaining approval of decisions at an appropriate level, within the time limit required.

8.8. Lease restrictions

If the request is for land which is leased to the relevant authority by another relevant authority, in certain circumstances restrictions in the lease do not apply, as set out in section 92 of the Act. The circumstances are that:

- the land is leased by one relevant authority, or a company wholly owned by a relevant authority, to another relevant authority
- the request is for lease or a right of occupancy of the land, and
- no other person is entitled to occupy the land.

In this case, any restrictions in the lease which restrict the ability of the relevant authority to sub-let or share occupancy of the land, or restrict how the land may be used, do not prevent the relevant authority agreeing to lease the land to the community transfer body or allow them to occupy the land. This does not affect any restrictions on the power of the relevant authority to assign or transfer rights and liabilities under the lease, and the relevant authority continues to be subject to any obligations under the lease. For example, if the lease said sub-letting was not allowed, the relevant authority could agree to an asset transfer request for a sub-let, but would still be responsible to the landlord for any maintenance requirements include in the lease between them.

8.9. Decision notice

Having made its decision, the relevant authority must issue a decision notice to the community transfer body, under section 82(7) of the Act, setting out its decision and the reasons for it. This must be done within a period prescribed in regulations, or a longer period if agreed between the relevant authority and the community transfer body.

We propose in regulation 10 of the Procedure Regulations that the standard period for giving a decision notice should be 6 months from the validation date (when the request was received).

The information to be provided in a decision notice is set out in various parts of the legislation:

- section 82(7) requires the relevant authority to give notice of its decision and the reasons for it.
- section 83(2) requires that the decision notice must
 - specify the terms and conditions on which the authority is prepared to transfer ownership, lease the land or confer the rights requested
 - state that, to proceed with the process, the community transfer body must submit an offer, and
 - specify the period within which the offer must be submitted. Under section 83(3) this must be at least 6 months from the date of the decision notice
- in regulation 11 of the Procedure Regulations we propose that the decision notice must also set out:
 - the date on which the asset transfer request was made
 - the community transfer body which made the request
 - the land to which the request relates, and
 - notification of the right of appeal or review, how an appeal or application for review may be made, and the date by which it must be made.

The requirement for the relevant authority to give reasons for its decision is a key part of the legislation. An asset transfer request must be agreed unless there are reasonable grounds for refusal: it is the decision notice that will set out those grounds, and if the community transfer body does not believe they are reasonable they are likely to appeal or seek review of the decision. In particular, if a request is refused because an alternative proposal is preferred, the decision notice would need to describe the alternative proposal and how it was considered to provide greater benefits.

The terms and conditions (including price or rent) on which the relevant authority would be prepared to agree to the transfer may be the same or different from, or in addition to, any terms and conditions set out in the request. However, if they are significantly different the community transfer body may apply for a review or appeal against them.

Q9: Is 6 months a reasonable length of time for the relevant authority to make a decision on an asset transfer request? (This time may be extended if agreed with the community transfer body.) If not, how long should the period for making a decision be?

Q10: Do you agree with the proposals for additional information to be included in a decision notice? If not, please explain what you would change and why.

2016 No.

COMMUNITY EMPOWERMENT

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

<i>Made</i> - - - -	2016
<i>Laid before the Scottish Parliament</i>	2016
<i>Coming into force</i> - -	2016

The Scottish Ministers make the following Regulations in exercise of the power conferred by sections 81(1) and 82(8)(a) and (9) of the Community Empowerment (Scotland) Act 2015(a).

Citation and commencement

1. These Regulations may be cited as the Asset Transfer Request (Procedure) (Scotland) Regulations 2016 and come into force on [] 2016.

Interpretation

2. In these Regulations—

“the Act” means the Community Empowerment (Scotland) Act 2015; and

“validation date” in respect of an asset transfer request, is the date on which the asset transfer request is taken to have been made in terms of regulation 5.

Form and content of an asset transfer request

3.—(1) An asset transfer request is to be made in accordance with this regulation.

(2) An asset transfer request must be made in writing and must (in addition to the information required in accordance with section 79(4) of the Act)—

- (a) state that it is an asset transfer request made under Part 5 of the Act; and
- (b) contain the name and contact address of the community transfer body.

(3) The asset transfer request must be accompanied—

- (a) a copy the constitution of the community transfer body;
- (b) information outlining asset transfer request how the community transfer body proposes to fund both the transfer of the land and its proposed use of the land, should the request be agreed to by the relevant authority; and
- (c) information detailing the level and nature of support for the asset transfer request.

(a) 2015 asp 6.

Procedure Regulations - Draft for Consultation

Acknowledgment of requests

4.—(1) Where the asset transfer request is not made in accordance with regulation 3, the relevant authority must send to the community transfer body a notice identifying the information or documentation which the community transfer body still requires to submit in order to comply with regulation 3.

(2) When a relevant authority is in receipt of an asset transfer request made in accordance with regulation 3 and the information and documents referred to in regulation 3(3), the relevant authority must send an acknowledgement thereof to the community transfer body making the request.

(3) The acknowledgement sent under paragraph (2) is to—

- (a) include the validation date for the asset transfer request;
- (b) include an explanation of the timescales within which the relevant authority are to give notice to the applicant of their decision on the application; and
- (c) inform the community transfer body of the right to appeal to the Scottish Ministers under section 85 of the Act or to require a review under section 86 of the Act, as the case may be.

Validation date

5. An asset transfer request is taken to have been made on the date on which the last of the items or information required to be contained in or accompany the asset transfer request in accordance with regulation 3 is received by the relevant authority.

Notification of asset transfer request

6.—(1) As soon as practicable after the validation date the relevant authority must in accordance with this regulation give notice of the making of the asset transfer request to any person other than the relevant authority who is—

- (a) an owner of the land which is the subject of the asset transfer request; or
- (b) a tenant or occupier of that land.

(2) The notice under paragraph (1) must—

- (a) state that an asset transfer request has been made to the relevant authority for the transfer of land;
- (b) identify the community transfer body making the asset transfer request;
- (c) identify the land to which the asset transfer request relates;
- (d) give a brief description of—
 - (i) the nature of the rights in land sought by the asset transfer request; and
 - (ii) how the community transfer body propose the land should be used;
- (e) state how the asset transfer request and any other documents submitted in connection with it may be inspected; and
- (f) state that representations may be made to the relevant authority and include information as to how any representations may be made and by which date they must be made (being a date not earlier than 28 days after the date on which the notice given).

Publication of asset transfer request

7.—(1) As soon as practicable after the validation date the relevant authority must publish a notice in accordance with this regulation.

(2) Notice under paragraph (1) must—

- (a) be published on a website or by other electronic means;
- (b) be affixed to a conspicuous object or objects on or near the land to which the asset transfer request relates.

(3) Notice under paragraph (1) must—

- (a) state that an asset transfer request has been made to the relevant authority for the transfer of land;

Procedure Regulations - Draft for Consultation

- (b) identify the community transfer body making the asset transfer request;
- (c) identify the land to which the asset transfer request relates;
- (d) give a brief description of—
 - (i) the nature of the rights in land sought by the asset transfer request; and
 - (ii) how the community transfer body propose the land should be used;
- (e) state how the asset transfer request and any other documents submitted in connection with it may be inspected; and
- (f) state that representations may be made to the relevant authority and include information as to how any representations may be made and by which date they must be made (being a date not earlier than 28 days after the date on which the notice is first published).

(4) Paragraph (2)(b) does not apply where the land to which the asset transfer request relates is not regularly frequented by persons other than persons in the employment or service of the relevant authority.

Opportunity for the community transfer body to comment on representations

8. The relevant authority must send a copy of any representations received in response to a notice given under regulation 6 or published under regulation 7 to the community transfer body and are to inform the community transfer body how and by what date (being a date not less than 28 days after the date on which such copy is sent under this regulation) it may make comments to the relevant authority on such representations.

Publication of request documents

- 9.** The relevant authority must, in relation to an asset transfer request, make copies of—
- (a) the asset transfer request;
 - (b) documents or information accompanying the asset transfer request; and
 - (c) any representations or comments made by virtue of regulations 6, 7 or 8,

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

Time periods for decision

10. The period prescribed for the purposes of section 82(8)(a) of the Act is the period of six months after the validation date.

Decision notice

11.—(1) The decision notice must (in addition to any information required by sections 82(7) and 83(2))—

- (a) state the date on which the asset transfer request was made;
- (b) identify the community transfer body which made the asset transfer request;
- (c) identify the land to which the asset transfer request relates; and
- (d) contain notification of the right of appeal under section 85 of the Act or the right of review under section 86 of the Act, as the case may be, including—
 - (i) the circumstances in which an appeal may be made or an application for review may be made;
 - (ii) how an appeal or application for review may be made; and
 - (iii) the date by which an appeal or an application for review must be made

(2) The relevant authority must—

- (a) publish a copy of the decision notice on a website or by other electronic means; and

Procedure Regulations - Draft for Consultation

- (b) inform every person who made written representations in respect of the asset transfer request (and provided an address) of their decision on the request and where a copy of the decision notice is available for inspection.

Electronic communications

12.—(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 communications and any requirement in these Regulations that any document is to be in writing is fulfilled.

(2) The criteria are—

- (a) the recipient consents, or is deemed to have agreed under paragraph (3), to receive it electronically; and
- (b) that document transmitted by the 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 communications is to be taken to have agreed—

- (a) to the use of such communications for all purposes relating to the application which are capable of being carried out electronically; and
- (b) that the address for the purpose of such communications 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 communications or of revocation of agreement under paragraph (4) takes effect on a date specified by the person in the notice, but not less than seven days after the date on which the notice is given.

(6) In this regulation—

“address” includes any number or address used for the purpose of such communications or storage;

“document” includes any notice, consent, decision, representation, statement, list, report, form, plan, certificate or other information or communication; and

“electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000**(b)** (general interpretation);

“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

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

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh

2016

EXPLANATORY NOTE

(This note is not part of the Order)

9. After Agreement

Section 83 of the Act sets out the next steps after a relevant authority has issued a decision notice agreeing to an asset transfer request. The same process applies whether the request was agreed to initially or following a review or appeal.

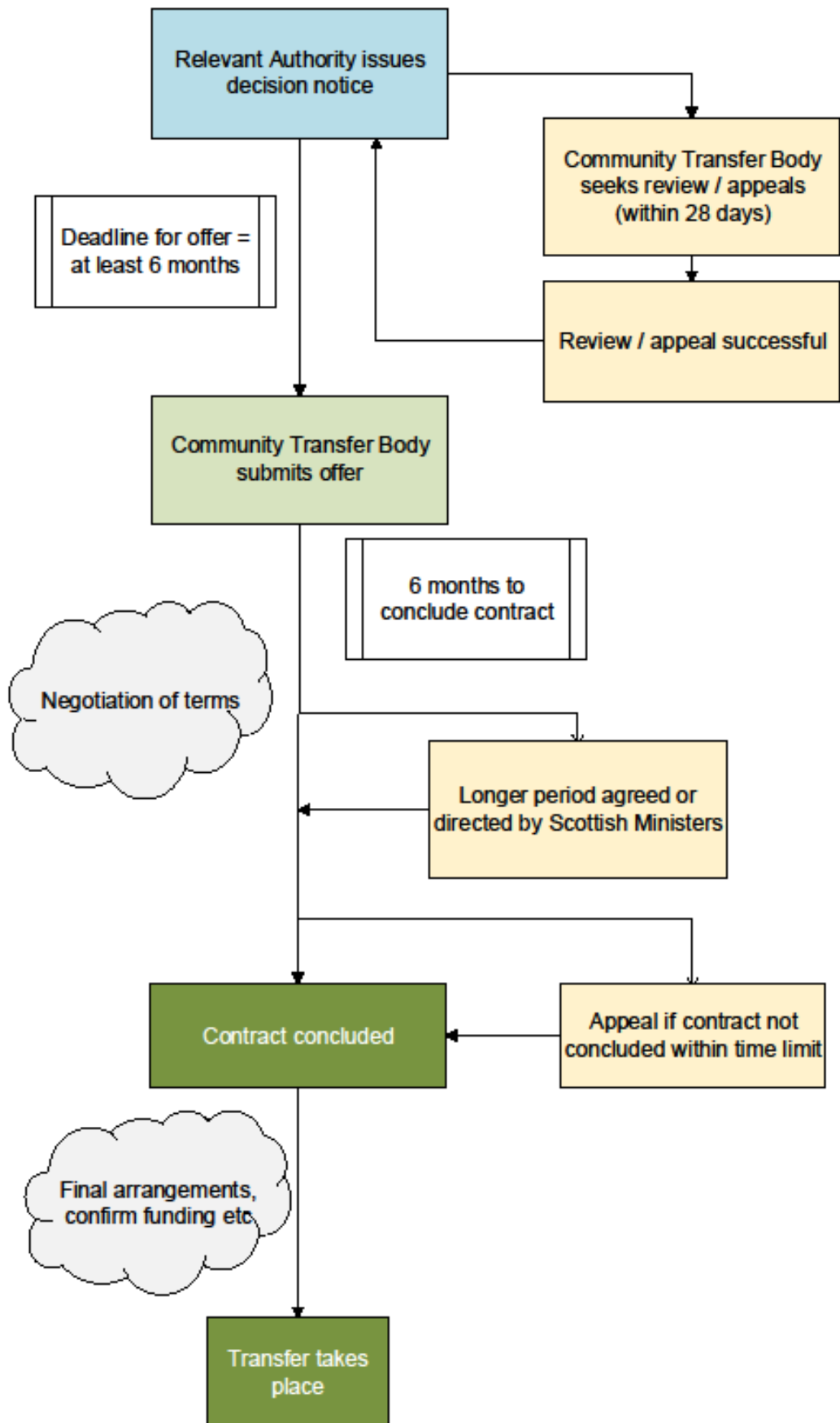
In response to the decision notice, the community transfer body must submit an offer to take ownership of the land, lease it or take up the rights covered by the request. That offer must reflect the terms and conditions set out in the decision notice; if those terms and conditions are significantly different from those included in the request, and are not acceptable to the community transfer body, it can appeal or request a review. The offer can also include other reasonable terms and conditions that may be needed to make sure the transfer goes ahead within a reasonable time.

The offer must be submitted to the relevant authority within the period stated in the decision notice, which must be at least 6 months. If no offer is made within that time (and the community transfer body does not appeal or request a review) the process comes to an end. The agreement to transfer the property to the community transfer body has no further effect, and the relevant authority is free to keep it or dispose of it as it wishes.

Once the community transfer body has submitted an offer, there can be further negotiations with the relevant authority to conclude the contract. If the request is for ownership or a long-term lease this will be like any other property transaction, with exchanges between lawyers to agree the final wording, although for other rights the process may be much simpler.

The contract must normally be concluded within 6 months of the community transfer body's offer. This does not mean the transfer has to take place within that time, but the date for the transfer, the price or rent and any other terms and conditions must be agreed. The contract may be conditional on other factors that are needed to allow the community proposals to go ahead, such as receipt of funding or planning permission.

The period for concluding a contract can be extended by agreement between the two parties. If the community transfer body wants to extend the period but the relevant authority does not agree, the community transfer body can apply to the Scottish Ministers for a direction to extend it. This can be done more than once. If a contract is not agreed within the required period, the community transfer body can appeal to the Scottish Ministers (see chapter 11).



10. Reviews and Appeals

A community transfer body can seek a review or appeal if:

- their request is refused,
- the terms and conditions in the decision notice are significantly different from those in the request, or
- no decision notice is issued within the required period.

The process depends on which relevant authority the request was made to. These are set out in 10.1, 10.2 and 10.3 below. In each case, Ministers can make regulations about the procedures to be followed in the review or appeal. The proposed procedures are outlined in chapter 10.4.

Section 91 of the Act provides that a community transfer body cannot seek a review or appeal in relation to the terms and conditions in the decision notice if it has already made an offer, unless it first withdraws that offer. If the community transfer body makes an offer after submitting an appeal or application for review, the appeal or review is treated as having been withdrawn.

A community transfer body can also appeal to the Scottish Ministers if a request is agreed, but no contract is concluded within the required time limit – see chapter 11.

In all cases the final decision lies with the Scottish Ministers. There is no further route of appeal beyond them (except by judicial review).

10.1. Review of a request made to a local authority

If the request is made to a local authority, the community transfer body can apply for an internal review by the authority, as set out in section 86 of the Act.

Section 89 allows Ministers to designate additional relevant authorities to which this route of review will apply. This could be the case, for example, if ALEOs are designated as relevant authorities in future.

Section 86(8) refers back to section 82. This means that, in carrying out a review, the local authority must consider the request in the same way as the original process, taking into account the same factors and benefits of the request and alternative proposals. Subsection (10) amends the Local Government (Scotland) Act 1973 so that a review of an asset transfer decision must be carried out by Councillors, it cannot be delegated to officers.

Proposed procedures for local authority review are set out in the draft Asset Transfer Request (Review Procedure) (Scotland) Regulations 2016 (“the Review Regulations”) at page 45.

Having carried out the review, the local authority may confirm the original decision, modify it or any part of it (including the terms and conditions set out in the decision notice) or substitute a different decision. They must issue a new decision notice, which replaces the previous decision notice. If the request is agreed following the review, the process continues as set out in chapter 9.

If the outcome of the review does not resolve the issue, or if no decision is made within the required period, the community transfer body can then appeal to the Scottish Ministers under section 88. Regulation 9 of the Review Regulations proposes that the required period for decision should be 6 months from the date of the application for review.

10.2. Review of requests made to the Scottish Ministers

If the request is made to the Scottish Ministers, the community transfer body can apply for a review by the Scottish Ministers under section 87. Under subsection (3), regulations may allow Ministers to appoint people to carry out parts of the process of a review and report back to Ministers.

Subsection (8) refers back to section 82. This means that, in carrying out a review, the Scottish Ministers must consider the request in the same way as the original process, taking into account the same factors and benefits of the request and alternative proposals.

Proposed procedures for review by the Scottish Ministers are set out in the draft Asset Transfer Request (Review Procedure) (Scotland) Regulations 2016 at page 45. These regulations generally refer to local authorities; Part 4 (regulations 11-14) shows how they work for a review by the Scottish Ministers.

After the review is carried out, and having regard to any report provided by the appointed people, the Scottish Ministers may confirm the original decision, modify it or any part of it (including the terms and conditions set out in the decision notice) or substitute a different decision. They must issue a new decision notice, which replaces the previous decision notice. If the request is agreed following the review, the process continues as in chapter 9. If the request is refused following the review, the asset transfer process comes to an end.

10.3. Appeal to the Scottish Ministers

If the request is made to any other relevant authority, the community transfer body can appeal to the Scottish Ministers under section 85 of the Act. The same procedures apply to this and to appeals from local authority reviews under section 88.

On appeal, the Scottish Ministers can consider any aspect of the previous decision, whether it is mentioned in the appeal or not. They can “allow” the appeal, meaning

that they agree with the community transfer body's case and the decision is to be changed, or they can "dismiss" it, meaning that the community transfer body loses the case and the original decision stands. If the appeal is allowed, the Scottish Ministers can overturn or change any part of the decision made by the relevant authority, including any of the terms and conditions attached to it, even if that part of the decision was not challenged in the appeal documents.

Proposed procedures for appeal to the Scottish Ministers are set out in the draft Asset Transfer Request (Appeals) (Scotland) Regulations 2016 (the Appeal Regulations) at page 55. These regulations generally refer to appeals of decisions made by other relevant authorities; Part 4 (regulation 11) sets out how they apply in relation to appeal of a decision made on review by a local authority.

If the appeal is allowed and the relevant authority is required to agree the transfer of the land or rights requested, or is required to agree to specified terms and conditions, the Scottish Ministers must give a direction to the relevant authority, requiring it to issue a new decision notice. This replaces the original decision notice. The direction must set out the terms and conditions which the Scottish Ministers require to be included in the decision notice, any other steps which the relevant authority is required to take, and the deadline by which these things must be done. Once the new decision notice is issued, the process continues as in chapter 9.

If the request is refused following an appeal, the asset transfer process comes to an end.

10.4. Regulations on reviews and appeals

The draft regulations set out the detailed procedures for reviews and appeals. These are all very similar; this section provides an overview of the general approach and specific differences.

A review is a relevant authority reconsidering its own decision on an asset transfer request made to it. The main evidence is the community transfer body's application for review.

To be fair, a review should be considered by people who were not involved in the original decision. The Act requires local authorities to have reviews carried out by Councillors, not delegated to officers. We propose that the Scottish Ministers should be required to appoint a panel of 3 people, of whom no more than one is a member of Scottish Government staff, to consider the review and make recommendations to Ministers. In these paragraphs we use the word "examiner" for the person or people carrying out any part of a review or appeal.

An appeal is the Scottish Ministers making a judgement on a dispute between a community transfer body and the relevant authority to which the request was made.

The initial evidence consists of the community transfer body's notice of appeal and the relevant authority's response to it.

We propose that any application for review or appeal should be made within 28 days of the decision notice, or within 28 days of the date the decision notice should have been given, if no decision has been made.

The community transfer body's application for review or notice of appeal must set out the reasons for the application or appeal, and be accompanied by a list of documents and other evidence supporting the case. The community transfer body must provide copies of all their documentation to the Scottish Ministers for an appeal. They must also provide copies to the relevant authority of any documents or evidence the relevant authority does not already have.

All parties will be required to set out all their arguments and provide all their evidence at the first stage. They will not be allowed to raise new issues or evidence later unless they are specifically asked to by the examiner.

Representations made on the original asset transfer request will be taken into account in the review or appeal. People who made representations ("interested parties") will also be notified of the review or appeal and given 14 days to make further representations; the community transfer body (and relevant authority for appeals) will have at least 14 days to comment on any representations.

At each stage, arrangements will be made to allow everyone involved to see all the arguments, evidence and representations submitted, and to comment on them. All papers will also be required to be published online. The examiner will be able to ask anyone who has submitted information to provide additional copies so that they can be made available to other people.

Once they have the initial evidence, any representations from interested parties and comments on those representations, the examiner may consider they have enough information to determine the appeal. If not, they will be able to decide what further procedure to use to get more information. This could be by written submissions, a hearing session, or other procedures such as a visit to the land to which the asset transfer request relates or to another relevant site (for example the community transfer body's existing premises or another similar community project). The community transfer body and relevant authority can say in their initial evidence what procedures they think should be used, but the final decision is with the examiner.

The examiner will be able to ask anyone to provide further information by written submissions, or by attending a hearing session, including people not previously involved in the case. The request or invitation must set out the matters on which the examiner wants further information.

If the examiner decides they should hold a hearing session to get more information on particular matters, they must send a notice to the community transfer body, the relevant authority (for appeals), any interested parties, and any other person the examiner wants to provide further information. The people invited must confirm within 14 days if they plan to attend the hearing session. Anyone who does not do so will not be entitled to be involved in the procedures that follow.

The examiner may (but will not have to) ask people who plan to attend the hearing session to submit a written statement of the case they plan to make, with supporting documents. These statements will be copied to everyone attending the hearing.

The hearing session is intended to be a discussion, led by the examiner, on the particular matters set out in the notice. The people attending will not normally be allowed to question each other on their statements, and the examiner will be able to stop anything being raised if they consider it is not relevant or is repeating previous points.

Q11: Do you agree that the Scottish Ministers should be required to appoint a panel of 3 people to consider reviews of Ministers' own decisions? If not, how do you think these reviews should be carried out?

Q12: Do you agree that a local authority should be required to make a decision on a review within 6 months? If not, how long should the period for making a decision be?

Q13: Do you have any other comments about the draft Asset Transfer Request (Review Procedure) (Scotland) Regulations 2016 or draft Asset Transfer Request (Appeals) (Scotland) Regulations 2016?

2016 No.

COMMUNITY EMPOWERMENT

**The Asset Transfer Request (Review Procedure) (Scotland)
Regulations 2016**

<i>Made</i> - - - -	2016
<i>Laid before the Scottish Parliament</i>	2016
<i>Coming into force</i> - -	2016

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 86(3) and 87(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 (Review Procedure) (Scotland) Regulations 2016 and come into force on [] 2016.

(2) These Regulations (other than Part 4) apply to applications for review made under section 86(2) of the Act (review by local authority).

(3) These Regulations apply as specified in Part 4 to applications for review made under section 87(2) of the Act (review of decisions by the Scottish Ministers).

Interpretation

2. In these Regulations—

“the Act” means the Community Empowerment (Scotland) Act 2015;

“asset transfer request” means the asset transfer request to which the application for review relates;

“community transfer body” means the community transfer body which made the asset transfer request;

“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;

“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;

(a) 2015 asp 6.

Review Regulations - Draft for Consultation

“period allowed for determination of the request” means—

- (a) the period of six months after the validation date; or
- (b) such longer period as may be agreed between the community transfer body and the local authority under section 82(8)(b) of the Act; and

“review documents” means the decision notice in respect of which the application for review is made, the application for review, all documents accompanying the application for review in accordance with regulation 3 and any representations or comments made under regulation 4(4) or (6);

“review panel” means the persons appointed by the Scottish Ministers under regulation 11(3) to consider the asset transfer request and to report to them on it;

“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 8 or to a particular hearing session, those matters which are set out in the notice given under regulation 8(1) or rule 1(1) of the Hearing Session rules, as the case may be; and

“validation date” has the same meaning as in the Asset Transfer Request (Procedure) (Scotland) Regulations 2016**(b)**.

PART 2

Application for review under section 86(2) of the Act

Application for review

3.—(1) An application for review to the local authority under section 86(2) of the Act is to be made in writing in accordance with this regulation.

(2) The application for review must be served on the local authority within the period of 28 days beginning with, in the case of an application for review made by virtue of—

- (a) section 86(1)(b)(i) or (ii) of the Act, the date of the decision notice; and
- (b) section 86(1)(b)(iii) of the Act, the date of expiry of the period allowed for determination of the request.

(3) The application for review must—

- (a) include the name and contact address of the community transfer body;
- (b) specify the land to which the asset transfer request relates;
- (c) include a statement setting out the community transfer body’s reasons for requiring a review of the case and by what, if any, procedure (or combination of procedures) the community transfer body considers the review should be conducted; and
- (d) be accompanied by a list of all documents, materials and evidence which the community transfer body intends to rely on in the review.

(4) Subject to paragraph (5)—

- (a) all matters which the community transfer body intends to raise in the review must be set out in the application for review or in the documents materials and evidence referred to on the list submitted in accordance with paragraph (3)(d); and
- (b) the application for review must be accompanied by 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 local authority in connection with the asset transfer request; or
 - (ii) the local authority otherwise already hold.

Review Regulations - Draft for Consultation

(5) In addition to matters set out in the application for review and in the documents, materials and evidence referred to the list submitted in accordance with paragraph (3)(d), the community transfer body may raise matters and submit further documents, materials or evidence only in accordance with and to the extent permitted by regulation 4(6) or where the local authority make a request (under regulation 8(1), rule 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.

Notification to interested parties and publication

4.—(1) The local authority must not later than 14 days following receipt of the application for review—

- (a) send an acknowledgement of the application for review to the community transfer body stating the date on which the application for review was made and inform the community transfer body how documents related to the review may be inspected; and
- (b) give notice of the review to each interested party.

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

- (a) by post to an interested party who is an owner, tenant or occupier of the land to which the asset transfer request relates; and
- (b) by post 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)(b) 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 with respect to the asset transfer request, will be considered by the local authority when determining the review;
- (d) state that further representations may be made to the local authority and include information as to how any representations may be made, by what date they must be made and that a copy of the representation will be sent to the community transfer body for comment; and
- (e) state how a copy of the application for review and other documents related to the review may be inspected.

(4) An interested party may, within 14 days beginning with the date on which notice is given under paragraph (1)(b) make representations in respect of the review to the local authority.

(5) The local authority must send a copy of any representations received under paragraph (4) to the community transfer body and must inform the community transfer body how and by what date (being a date not less than 14 days after the date on which such copy is sent under this paragraph) the community transfer body may make comments to the local authority on such representations.

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

(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 and to the extent that the local authority make a request (under regulation 8(1), rule 1 of the Hearing Session Rules or otherwise) for further representations to be made or further information to be provided to them by such interested party.

Publication of review documents

5. The local authority must, in relation to a review, make a copy of—

- (a) the review documents; and
- (b) any notice given under regulation 4(1)(b),

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

Review Regulations - Draft for Consultation

PART 3

Procedure for Determination

Determination without further procedure

6. Where the local authority considers that the review documents provide sufficient information to enable it to determine the review, it may determine the review without further procedure.

Decision as to further procedure

7.—(1) Where the local authority does not determine the review without further procedure, the local authority may determine the manner in which the review is to be conducted.

(2) The local authority may determine at any stage of the review—

- (a) that further representations should be made or further information should be made available or provided to enable the review to be determined; and
- (b) how such further representations or further information should be made available or provided.

(3) Where the local authority considers that further representations should be made or further information should be made available or provided by means of—

- (a) written submissions, regulation 8 applies; and
- (b) a hearing session, the Hearing Session Rules apply.

(4) Notices given under regulation 8(1), rule 1(1) of the Hearing Session Rules may be given separately or combined into a single notice.

Written submissions

8.—(1) Where the local authority has determined that further representations should be made or further information should be provided by means of written submissions, the local authority may request such further representations or information and is to do so by giving written notice to that effect to—

- (a) the community transfer body; and
- (b) any other person from whom the local authority wishes 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 local authority; and
- (c) provide 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 local authority 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 14 days from 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 local authority 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).

Review Regulations - Draft for Consultation

Time period for decision

9. The period prescribed for the purposes of section 86(7)(b)(i) of the Act is the period of 6 months beginning with the date on which the application for review under section 86(2) of the Act is made.

New evidence

10.—(1) If, after the conclusion of any further procedure conducted by virtue of regulation 8, the local authority proposes to take into consideration any new evidence which is material to the determination of the review, the local authority must not reach a decision on the review without first affording the community transfer body 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 8(1), any person to whom such notice was sent.

PART 4

Reviews under section 87(2) of the Act

Reviews under section 87(2) of the Act

11.—(1) An application for review under section 87(2) of the Act is to be made in writing in accordance with this regulation.

(2) The application for review must be served on the Scottish Ministers within the period of 28 days beginning with, in the case of an application for review made by virtue of—

- (a) section 87(1)(b)(i) or (ii) of the Act, the date of the decision notice; and
- (b) section 87(1)(b)(iii) of the Act, the date of expiry of the period allowed for determination of the request.

Review panel

12.—(1) Where an application for review is made the Scottish Ministers must appoint 3 persons, no more than one of whom is member of the staff of the Scottish Ministers, to consider the asset transfer request and report to them on it (“the review panel”).

(2) Following such consideration the review panel must report—

- (a) their findings in fact and conclusions in respect of the asset transfer request; and
- (b) their recommendations as to the determination of the asset transfer request,

to the Scottish Ministers.

Application of regulations

13. These Regulations, other than the regulations 3(1), (2) and (6), 9 and 10, apply to a review under section 87(2) of the Act as they apply to a review under section 86(2) of the Act as if—

- (a) in regulation 3(4), in regulation 4 (other than in paragraph (7)) and in regulation 5, references to the local authority were references to the Scottish Ministers; and
- (b) in regulations 3(5) and 4(7), in Part 3 and in the Hearing Session Rules references to the local authority were references to the review panel.

Review Regulations - Draft for Consultation

New evidence

14.—(1) If, after the consideration of the review panel’s report, the Scottish Ministers propose to take into consideration any new evidence which is material to the determination of the review, the Scottish Ministers must not reach a decision on the review without affording the community transfer body 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 5

General

Further copies of documents etc.

15.—(1) The relevant authority may require any person who has submitted documents, materials or evidence under these Regulations in connection with the review to—

- (a) provide to the relevant authority such number of additional copies of such of those documents, materials or evidence as they may specify; and
- (b) provide to such other persons as they may specify such copies or additional copies of any documents, materials or evidence as they may specify.

(2) The relevant authority must, until such time as the review is determined, make copies of such documents, materials or evidence provided under paragraph (1)(a) available for inspection at an office of the relevant authority and, where practicable, must afford any person who so requests a reasonable opportunity of taking copies of such documents (or any part thereof).

Compliance with notification and consultation procedures

16.—(1) The relevant authority must, to the extent not already done so, comply with regulation 6 (notification of asset transfer request) and 7 (publication of asset transfer request) of the Asset Transfer Request (Procedure) (Scotland) Regulations 2016(c) before determining the review.

(2) Where the relevant authority notify any person in accordance with paragraph (1) references in these Regulations (other than regulation 4) to an interested party includes any such person from whom the relevant authority received representations (which are not subsequently withdrawn) in connection with the asset transfer request.

Decision Notice

17. The relevant authority must—

- (a) give notice of the decision to the community transfer body; and
- (b) notify every person who has made (and did not subsequently withdraw) representations in respect of the review that a decision on the review has been made and where a copy of the notice of the decision is available for inspection

(c) S.S.I. 2013/155.

Review Regulations - Draft for Consultation

Electronic communications

18.—(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 communications and any requirement in these Regulations that any document is to be in writing is fulfilled.

(2) The criteria are—

- (a) the recipient consents, or is deemed to have agreed under paragraph (3), to receive it electronically; and
- (b) the document transmitted by the 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 communications is to be taken to have agreed—

- (a) to the use of such communications for all purposes relating to the review which are capable of being carried out electronically; and
- (b) that the address for the purpose of such communications 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 communications or of revocation of agreement under paragraph (4) takes effect on a date specified by the person in the notice, but not less than seven days after the date on which the notice is given.

(6) In this regulation—

“address” includes any number or address used for the purpose of such communications 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(d);

“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

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

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh

2016

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

SCHEDULE

Regulation 2

Hearing Session Rules

Notice of hearing session and specified matters

1.—(1) Where the local authority has determined that a hearing session should be held it is to give written notice to that effect to—

- (a) the community transfer body;
- (b) any interested party who made representations in relation to specified matters; and
- (c) any person who the local authority 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 14 days of the date of such notice inform the local authority 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; and
- (b) any other person who, in response to a notice given under paragraph (1), has informed the local authority 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 local authority.

(2) The local authority is 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 local authority to be reasonable in the circumstances.

Service of hearing statements and documents

4.—(1) Where required to do so by notice given by the local authority, a person entitled to appear at the hearing session must, by such date as is specified in the notice, send to—

- (a) the local authority—
 - (i) a hearing statement; and
 - (ii) 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 of such documents comprised in that hearing statement; and
- (b) the community transfer body and to such other persons entitled to appear at the hearing session as the local authority may specify in such notice—
 - (i) a hearing statement; and
 - (ii) 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 5, 15(2), or paragraph (2) of this rule.

Review Regulations - Draft for Consultation

(2) The local authority 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 it in accordance with this rule, available for inspection on a website or by other electronic means until such time as the review 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 local authority provide such further information about the matters contained in the statement as the local authority 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 local authority determines.

(2) The local authority is, 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 local authority proposes 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 local authority 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 local authority and cross examination is not permitted unless the local authority considers 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 local authority 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 local authority considers to be irrelevant or repetitious.

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

(9) The local authority 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.

Review Regulations - Draft for Consultation

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in connection with applications for review made to a local authority to the Scottish Ministers under section 86 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 the time period within which and how an application for review must be made.

Part 3 of the Regulations relates to the process of determination of the review.

Part 4 of the Regulations makes provision in respect of reviews under section 87(2) of the Act.

Part 5 of the Regulations contains general provisions.

2016 No.

COMMUNITY EMPOWERMENT

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

Made - - - - 2016

Laid before the Scottish Parliament 2016

Coming into force - - - 2016

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 [] 2016.

(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 Part 4 to appeals under section 88(2) of the Act (appeals from reviews under section 86).

Interpretation

2. 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;

“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;

“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’s response” has the meaning given in regulation 4(2)(a);

“rule” means a rule set out in the Schedule;

(a) 2015 asp 6.

Appeals Regulations - Draft for Consultation

“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.

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 28 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 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 in accordance with and to the extent permitted by regulations 4 or 5 or where the Scottish Ministers make a request (under regulation 9(1), paragraph 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 six months after 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**(b)**.

(b)

Appeals Regulations - Draft for Consultation

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, not later than 21 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;
- (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; and
- (c) the terms and conditions (if any) which the relevant authority presently considers should be imposed in the event that the Scottish Ministers decide that the asset transfer request be agreed to.

(3) The community transfer body may, within 14 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—
 - (i) any terms and conditions included in the relevant authority’s response by virtue of paragraph (2)(c); and
 - (ii) any matters raised in the relevant authority’s response which had not been raised in the decision notice; 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 make a request (under regulation 9(1), paragraph 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 not later than 14 days following 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) by post to an interested party who is an owner, tenant or occupier of the land to which the appeal relates; and
- (b) by post 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;

Appeals Regulations - Draft for Consultation

- (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 14 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 14 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 and to the extent that the Scottish Ministers make a request (under regulation 9(1), paragraph 1 of the Hearing Session Rules or otherwise) for further representations to be made or further information to be provided to them by such interested party.

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

Appeals Regulations - Draft for Consultation

- (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; and
 - (b) a hearing session, the Hearing Session Rules apply.
- (4) Notices given under regulation 9(1), 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 14 days from 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 28 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 relation to an appeal under section 88(2) of the Act—

- (a) this Part, Parts 1, 3 and 5 and the Hearing Session Rules apply; and
- (b) the following provisions of Part 2 apply as they apply to an appeal under section 85(2) of the Act with the modifications specified in paragraph (4)—
 - (i) regulation 3(3) to (5);
 - (ii) regulation 4;
 - (iii) regulation 5; and
 - (iv) regulation 6.

(4) The modifications are—

- (a) regulation 3(4)(e) applies as if the reference to section 85(1)(a) or (b) of the Act is a reference to section 88(1)(a) or (b) of the Act.

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

PART 5

General

Further copies of documents etc.

12.—(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 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 to 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.

(c) S.S.I. 2016/ .

Appeals Regulations - Draft for Consultation

Compliance with notification and consultation procedures

13.—(1) The Scottish Ministers must before determining the appeal—

- (a) in the case of an appeal under section 85(2) of the Act and to the extent not already done so by the relevant authority; and
- (b) in the case of an appeal under section 88(2) of the Act and to the extent that they have not already done so,

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.

(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 includes any such person from whom the Scottish Ministers received representations (which are not subsequently withdrawn) in connection with the asset transfer request.

Decision notice

14. 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; and
- (c) notify every person who has made (and did not subsequently withdraw) representations in respect of the appeal that a decision on the appeal has been made and where a copy of the notice of the decision and any direction issued under section 85(5)(c) or (d) of the Act is available for inspection.

Electronic communications

15.—(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 communications and any requirement in these Regulations that any document is to be in writing is fulfilled.

(2) The criteria are—

- (a) the recipient consents, or is deemed to have agreed under paragraph (3), to receive it electronically; and
- (b) the document transmitted by the 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 communications is to be taken to have agreed—

- (a) to the use of such communications 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 communications 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 communications or of revocation of agreement under paragraph (4) takes effect on a date specified by the person in the notice, but not less than seven days after the date on which the notice is given.

(6) In this regulation—

“address” includes any number or address used for the purpose of such communications or storage;

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

Appeals Regulations - Draft for Consultation

“electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000^(d);

“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

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

St Andrew’s House,
Edinburgh

2016

Authorised to sign by the Scottish Ministers

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

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 14 days of 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 paragraph (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—

- (a) the Scottish Ministers—
 - (i) a hearing statement; and
 - (ii) 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 of such documents comprised in that hearing statement; and
- (b) 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—
 - (i) a hearing statement; and
 - (ii) 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

Appeals Regulations - Draft for Consultation

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 person 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.

Appeals Regulations - Draft for Consultation

EXPLANATORY NOTE

(This note is not part of the Regulations)

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

Part 1 of the Regulations sets out how the Regulations apply to these various appeals and applications.

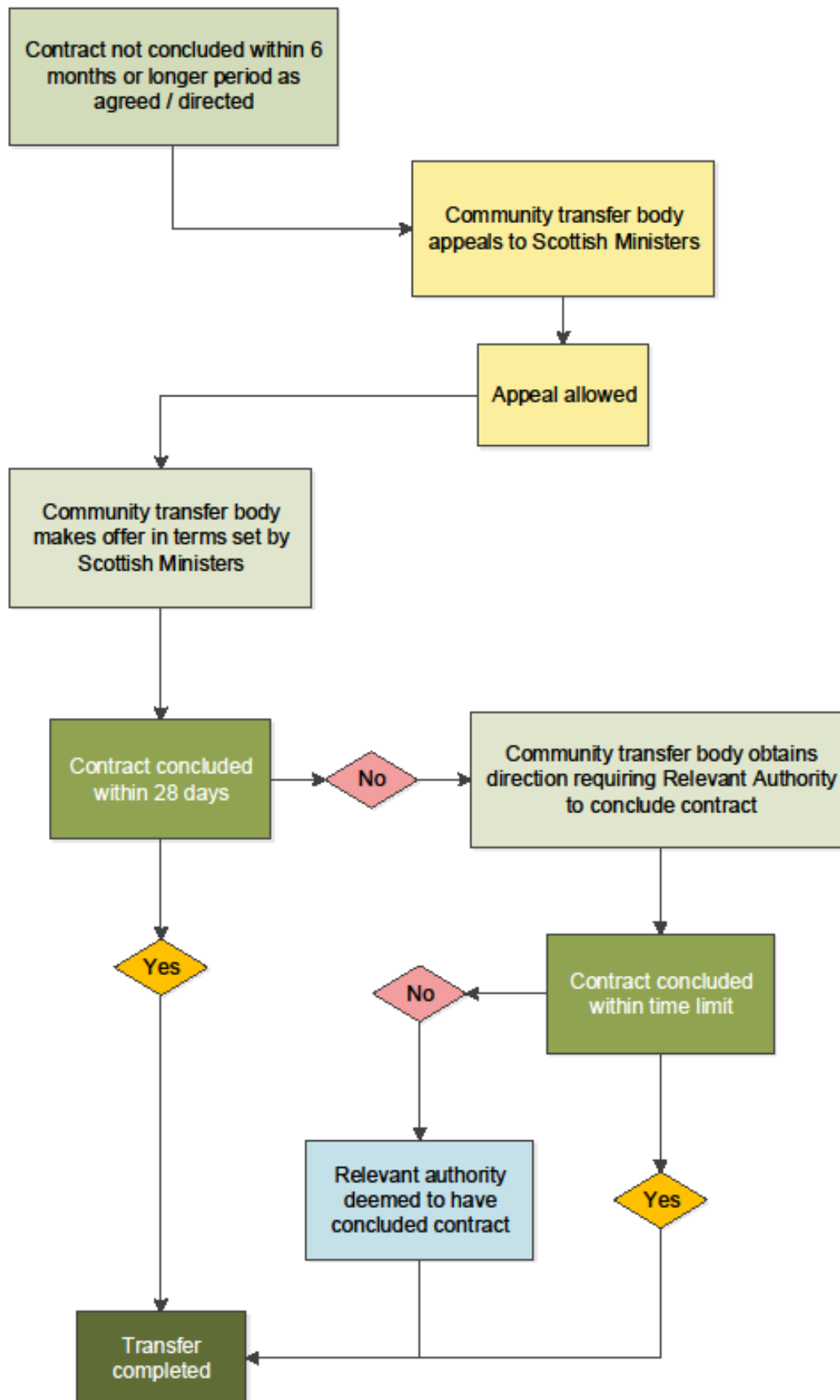
Part 2 of the Regulations makes provision in relation to the time period within which and how an appeal under section 85 must be made.

Part 3 of the Regulations relates to the process of determination of the appeal.

Part 4 of the Regulations makes provision relating to how an appeal under section 88 of the Act is made.

Part 5 of the Regulations contains general provisions.

11. Failure to conclude a contract



Failure to conclude a contract

If a contract for the transfer has not been concluded within 6 months of the community transfer body making an offer, the asset transfer request comes to an end and the agreement to transfer has no further effect. To prevent this happening, if they feel progress is being made, the community transfer body and the relevant authority can agree to extend the period for concluding a contract, or the community transfer body can apply to the Scottish Ministers for a direction to extend the period. This can be done more than once.

If the contract has not been concluded within the period allowed, the community transfer body can also appeal to the Scottish Ministers. (This does not apply if the Scottish Ministers are the relevant authority to which the request was made.)

The right to make such appeals is given in section 83(6) of the Act; further arrangements are set out in section 90.

If the appeal is successful (“allowed”), the Scottish Ministers must issue a notice setting out “sufficient and precise details of the terms and conditions of an offer” to be made by the community transfer body to the relevant authority, and the period within which the offer is to be submitted. In effect, the Scottish Ministers will write the contract which the two parties are required to agree.

If the community transfer body wants to go ahead, it must submit the offer in the terms set out in the notice, within the period specified in the notice. If the contract is not concluded within 28 days of the offer being made, the community transfer body may apply to the Scottish Ministers for a direction to require the relevant authority to conclude the contract within a set period, which may be further extended. If the authority does not voluntarily conclude the contract within that period, it will be deemed to have accepted the offer (treated as if it has accepted it) and concluded the contract.

Proposed procedures for appeal where no contract has been concluded are set out in the draft Asset Transfer Request (Appeal Where No Contract Concluded) (Scotland) Regulations 2016 at page 70. These regulations also include procedures for the community transfer body to apply for a direction to extend the period to conclude a contract, under section 83(8) (Part 5, regulations 12-13) or a direction to require the relevant authority to conclude a contract (Part 4, regulations 10 -11).

The proposed procedures are slightly different from other review and appeal regulations because, for an appeal or a direction to extend the period to conclude a contract, the Scottish Ministers will need to understand the progress of negotiations up to that point, and it does not seem appropriate to publish the details or allow other people to make representations. We propose that the Scottish Ministers may

appoint a single person to consider the issues and make recommendations on what the terms of the contract should be.

An application for a direction to extend the period to conclude a contract needs to be made before the period comes to an end. We propose it should be made at least 4 weeks (28 days) before the end of the period, to allow Ministers to make a decision, but no more than 6 weeks (42 days) before the end of the period.

We propose that an appeal should be made within 14 days of the end of the period to conclude a contract.

The procedure to apply for a direction to require the relevant authority to conclude a contract, following an appeal, is very straightforward. This additional step simply confirms that the community transfer body still wants to go ahead with the terms and conditions set by the Scottish Ministers, and the direction, if granted, enforces Ministers' earlier decision. The application should be made within 14 days of the period previously set by Ministers.

If the community transfer body:

- does not submit an offer based on the terms set out by Ministers within the required period
- withdraws its offer before the end of the period in which a contract is to be concluded, or
- does not apply for the Scottish Ministers to direct the relevant authority to agree the contract, or such an application is refused,

the asset transfer process comes to an end and the outcome of the appeal has no further effect.

Alternatively, the community transfer body and the relevant authority may agree a contract on different terms and conditions from those directed by the Scottish Ministers. If this is the case, the terms and conditions set by Ministers are no longer relevant.

Q14: Do you agree that the Scottish Ministers should appoint a single person to consider an appeal where no contract has been concluded? If not, how do you think these reviews should be carried out?

Q15: Do you agree that the documents should not be published in relation to appeals where no contract has been concluded? Please explain your reasons.

Q16: Do you agree that no third party representations should be allowed in relation to appeals where no contract has been concluded? Please explain your reasons.

Q17: Do you have any comments on the proposed procedures for appeals where no contract is concluded?

Q18: Do you have any comments on the proposed procedures for applications to Ministers for Directions?

2016 No.

COMMUNITY EMPOWERMENT

**The Asset Transfer Request (Appeal Where No Contract Concluded)
(Scotland) Regulations 2016**

<i>Made</i> - - - -	2016
<i>Laid before the Scottish Parliament</i>	2016
<i>Coming into force</i> - -	2016

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 83(10) and 90(12) and (14) 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 (Appeal Where No Contract Concluded) (Scotland) Regulations 2016 and come into force on [] 2016.

(2) These Regulations (other than Parts 4 and 5) apply to appeals under section 83(6) of the Act (appeal where no contract concluded).

(3) These Regulations apply as specified in Part 4 to applications under section 90(5) of the Act (application for direction).

(4) These Regulations apply as specified in Part 5 to applications under section 83(8) of the Act (application for direction).

Interpretation

2. In these Regulations—

“the Act” means the Community Empowerment (Scotland) Act 2015;

“appointed person” means the person appointed by the Scottish Ministers under regulation 5(1) to consider the appeal and report to them on it;

“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;

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

(a) 2015 asp 6.

No Contract Appeal Regulations - Draft for Consultation

“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;

“Hearing Session Rules” means the rules set out in the Schedule;

“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 8 or to a particular hearing session, those matters which are set out in the notice given under regulation 8(1) or rule 1(1) of the Hearing Session Rules, as the case may be.

PART 2

Appeals under section 83(6) of the Act

Appeals under section 83(6) of the Act

3.—(1) An appeal to the Scottish Ministers under section 83(6) 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 14 days beginning with the end of the period specified in section 83(7) of the Act.

(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 offer submitted to the relevant authority by the community transfer body;
- (b) a copy of the decision notice pursuant to which such offer was submitted;
- (c) a copy of all correspondence between the community transfer body and the relevant authority relating to the negotiation of terms and conditions for the transfer of the land to which the asset transfer request relates;
- (d) a statement specifying—
 - (i) the terms on which, and any conditions subject to which, the community transfer body considers the transfer of land should be made; and
 - (ii) how such terms and conditions differ from any terms and conditions specified in 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 in accordance with and to the extent permitted by regulation 4(3) or where the appointed person makes a request for further representations to be made or further information to be provided by the community transfer body (whether under regulation 8(1), rule 1 of the Hearing Session Rules or otherwise).

No Contract Appeal Regulations - Draft for Consultation

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 1(4) or (5)(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, not later than 21 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;
- (b) a copy of the documents (other than those specified on the list mentioned in paragraph (1)(b)) which the relevant authority intends to rely on in the appeal; and
- (c) the terms on which, and any conditions subject to which, the relevant authority considers the transfer of land should be made.

(3) The community transfer body may, within 14 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—
 - (i) any terms and conditions included in the relevant authority’s response by virtue of paragraph (2)(c); and
 - (ii) any other matters raised in the relevant authority’s response; 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 to which the Scottish Ministers make a request for further representations to be made or further information to be provided by the relevant authority (whether under regulation 8(1), rule 1 of the Hearing Session Rules or otherwise).

Appointed person

5.—(1) Where an appeal is made under section 83(6) the Scottish Ministers may appoint a person, who may be a member of the staff of the Scottish Ministers, to consider the case and report to them on it (“the appointed person”).

(2) Following such consideration the appointed person must report—

- (a) the appointed person’s findings in fact and conclusions in respect of the case; and
- (b) the appointed person’s recommendations as to the determination of the appeal,

to the Scottish Ministers.

(3) Regulations 7 and 8 and the Hearing Session Rules apply to the appointed person as if references to the Scottish Ministers were references to the appointed person.

PART 3

Procedure for determination

Determination without further procedure

6. 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.

Further procedure

7.—(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 request that further representations should be made or further information should be made available or provided to them by means of—

- (a) written submissions, regulation 8 applies; and
- (b) a hearing session, the Hearing Session Rules apply.

(4) Notices given under regulation 8(1), rule 1(1) of the Hearing Session Rules may be given separately or combined into a single notice.

Written submissions

8.—(1) Where the Scottish Ministers request that further representations should be made or further information should be provided by means of written submissions, the Scottish Ministers 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 14 days from 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).

No Contract Appeal Regulations - Draft for Consultation

New evidence

9. If, after conclusion of any further procedure or after consideration of any report by an appointed person, 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 and the relevant authority an opportunity of making representations on such new evidence.

PART 4

Applications under section 90(5) of the Act

Application under section 90(5) of the Act

10.—(1) An application to the Scottish Ministers under section 90(5) of the Act is to be made in writing in accordance with this regulation.

(2) The application must be served on the Scottish Ministers within the period of 28 days beginning with the end of the period mentioned in section 90(4)(c) of the Act.

(3) The application must—

- (a) include the name and contact address of the community transfer body and the relevant authority to which the asset transfer request is made;
- (b) specify the land to which the asset transfer request relates;
- (c) include a statement setting out details of the steps taken by the community transfer body and the relevant authority to conclude a contract pursuant to the appeal decision notice
- (d) contain the community transfer body's reasons why a direction should be given under section 90(5) of the Act and state the community transfer body's view as to the period which should be specified in such a direction.

(4) The application must be accompanied by—

- (a) a copy of the appeal decision notice; and
- (b) a copy of the offer submitted to the relevant authority by the community transfer body by virtue of the appeal decision notice.

(5) This Part and Part 1, regulations 7(2) and (3) and 8 and Part 6 apply to an application under section 90(5) of the Act.

Intimation of application to relevant authority

11.—(1) The community transfer body must at the same time as making an application under section 90(5) of the Act to the Scottish Ministers send a copy of the application to the relevant authority.

(2) The relevant authority may, within 14 days beginning with the date of receipt of the copy of the application, send to the Scottish Ministers and the community transfer body comments on the application.

PART 5

Applications under section 83(8) of the Act

Application under section 83(8) of the Act

12.—(1) An application to the Scottish Ministers under section 83(8) of the Act is to be made in writing in accordance with this regulation.

(2) The application must be made to the Scottish Ministers within the relevant period.

(3) The application must—

No Contract Appeal Regulations - Draft for Consultation

- (a) include the name and contact address of the community transfer body and the relevant authority to which the asset transfer request is made;
 - (b) specify the land to which the asset transfer request relates;
 - (c) include a statement setting out details of the steps taken by the community transfer body and the relevant authority —
 - (i) to conclude a contract in respect of the asset transfer request on the basis of an offer such as is mentioned in section 83(2)(b) of the Act; and
 - (ii) to agree, by virtue of section 83(7)(b)(i) of the Act, to a longer period;
 - (d) contain the community transfer body's reasons why a direction should be given under section 83(7)(b)(ii) of the Act and state the community transfer body's view as to the period which should be specified in such a direction.
- (4) The application must be accompanied by—
- (a) a copy of the decision notice in respect of the asset transfer request; and
 - (b) a copy of the offer submitted to the relevant authority by the community transfer body.
- (5) A direction under section 83(7)(b)(ii) of the Act, in addition to specifying the longer period in accordance with section 83(7)(b)(ii) of the Act, must specify—
- (a) the asset transfer request and the offer in respect of which the direction relates; and
 - (b) the land to which the asset transfer request relates;
- (6) This Part and Parts 1 and 6 of these Regulations apply to an application for a direction under section 83(8) of the Act.
- (7) In this regulation—
- “the relevant date” means the later of—
- (a) the date of expiry of the period of 6 months mentioned in section 83(7)(a) of the Act; or
 - (b) where a longer period—
 - (i) is agreed between the community transfer body and the relevant authority; or
 - (ii) is specified in a direction made under section 83(7)(b)(ii) of the Act,
- the date of expiry of such longer period.
- “the relevant period” means the period which begins 42 days before the relevant date and expires 28 days before the relevant date.

Intimation of application to relevant authority

13.—(1) The community transfer body must at the same time as making an application under section 90(5) of the Act to the Scottish Ministers send a copy of the application to the relevant authority.

(2) The relevant authority may, within 14 days beginning with the date of receipt of the copy of the application, send to the Scottish Ministers and the community transfer body comments on the application.

PART 6

General

Further copies of documents etc.

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

No Contract Appeal Regulations - Draft for Consultation

Decision notice

15.—(1) 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 90(5) of the Act to the community transfer body; and
- (c) give a copy of any direction made under section 83(7)(b)(ii) of the Act to the community transfer body and to the relevant authority.

Electronic communications

16.—(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 communications and any requirement in these Regulations that any document is to be in writing is fulfilled.

(2) The criteria are—

- (a) the recipient consents, or is deemed to have agreed under paragraph (3), to receive it electronically; and
- (b) the document transmitted by the 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 communications is to be taken to have agreed—

- (a) to the use of such communications 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 communications 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 communications or of revocation of agreement under paragraph (4) takes effect on a date specified by the person in the notice, but not less than seven days after the date on which the notice is given.

(6) In this regulation—

“address” includes any number or address used for the purpose of such communications 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(b);

“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

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

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh

2016

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

SCHEDULE

Regulation 2

Hearing Session Rules

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; and
- (c) 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 14 days of 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 paragraph (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—

- (a) the Scottish Ministers—
 - (i) a hearing statement; and
 - (ii) 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 of such documents comprised in that hearing statement; and
- (b) 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—
 - (i) a hearing statement; and
 - (ii) 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.

(2) 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 person provide such further information about the matters contained in the statement as the Scottish Ministers may specify; and

No Contract Appeal Regulations - Draft for Consultation

- (b) at the same time send a copy of such further information to any other person on whom the hearing statement has been served.
- (3) Different dates and different persons may be specified for the purposes of paragraph (1).
- (4) 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.

No Contract Appeal Regulations - Draft for Consultation

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in connection with appeals to the Scottish Ministers under sections 83(6) of the Community Empowerment (Scotland) Act (“the Act”).

DRAFT

12. Annual Reports

Section 95 of the Act requires every relevant authority to publish an annual report setting out the numbers of asset transfer request received and their outcomes. The report must state:

- how many asset transfer requests were received
- how many requests were agreed to or refused
- for requests agreed to, whether they resulted in transfer of ownership, lease or conferral of other rights
- for appeals relating to requests made to the relevant authority, how many have been allowed, dismissed, or have resulted in any part of the authority's decision being reversed or changed
- where decisions made by the authority have been reviewed, how many have been confirmed, modified or substituted by a different decision.

The report must also describe anything the relevant authority has done to promote the use of asset transfer requests and support community transfer bodies to make requests.

Annual reports cover each year from 1 April to 31 March and must be published by 30 June. Note that the report will show the number of requests received in that year and the numbers agreed to or refused in that year – the figures will not be the same as many requests may be received in one year and decided the next year.

There is no power for Ministers to change the information to be included in annual reports on asset transfer. Guidance may be issued to provide a standard format, and may suggest additional information to be included. For example, it may be helpful for relevant authorities to show transfers completed by negotiation, without using the Act. The same report could also capture information required to measure progress towards the Scottish Government's target of 1 million acres in community ownership by 2020, and information on the outcomes delivered as a result of community asset transfer.

Annex A: Asset Transfer Implementation Steering Group

Members:

Joanne Forbes	ACES, South Lanarkshire Council
Alison Fraser	SOLAR, Glasgow City Council
Linda Gillespie	Community Ownership Support Service
Angus Hardie	Scottish Community Alliance
Shona Harper	Scottish Government Property Division
Jon Hollingdale	Community Woodlands Association
Peter Peacock	Community Land Scotland
Brian Taylor	Scottish Government Finance Division
Ian Turner	Scottish Government Community Empowerment Team
Jean Waddie	Scottish Government Community Empowerment Team
Malcolm Wield	Forestry Commission Scotland

Notes of the Steering Group's meetings can be found on the Scottish Government website at

<http://www.gov.scot/Topics/People/engage/CommEmpowerBill/AssetTransfer>

Annex B: Short-Life Working Group on Valuation and Assessment of Non-Financial Benefits

Members:

Nick Allan	
Tim Bridle	Audit Scotland
Gareth Evans	NHS Grampian
Joanne Forbes	ACES, South Lanarkshire Council
Alison Fraser	SOLAR, Glasgow City Council
Paul Furbank	West Lothian Council
Linda Gillespie	Community Ownership Support Service
Angus Hardie	Scottish Community Alliance
Shona Harper	Scottish Government Property Division
Jon Hollingdale	Community Woodlands Association
Sandra Holmes	Highlands and Islands Enterprise
Robin Johnston	Historic Environment Scotland
Donald McLellan	Forest Enterprise Scotland
Pauline Megson	Historic Environment Scotland
Peter Peacock	Community Land Scotland
Susan Robinson	CIPFA
Eric Samuel	Big Lottery Fund / Scottish Funders' Forum
David Robertson	Director of Finance, Scottish Borders Council
Brian Taylor	Scottish Government Finance Division
Ian Turner	Scottish Government Community Empowerment Team
Jean Waddie	Scottish Government Community Empowerment Team
Malcolm Wield	Forestry Commission Scotland

Notes of the Working Group's meetings can be found on the Scottish Government website at

<http://www.gov.scot/Topics/People/engage/CommEmpowerBill/AssetTransfer>

Annex C: Sources of Advice for Community Bodies

Community Ownership Support Service <http://www.dtascommunityownership.org.uk/>

Highlands and Islands Enterprise (for bodies in the Highlands and Islands area)
<http://www.hie.co.uk/community-support/community-assets/>

Community Woodlands Association www.communitywoods.org

Community Energy Scotland <http://www.communityenergyscotland.org.uk/>

Community Land Advisory Service Scotland <http://sc.communitylandadvice.org.uk/>

Annex D: How To Respond

Responding to this Consultation

We are inviting responses to this consultation by 20 June 2016

Please respond to this consultation using the Scottish Government's consultation platform, Citizen Space. You can view and respond to this consultation online at <https://consult.scotland.gov.uk/community-empowerment-unit/asset-transfer-procedures> . You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 20 June.

If you are unable to respond online, please make sure you complete the Respondent Information Form on page 87 (see "Handling your Response" below) and send it with your response to:

AssetTransferGuidance@gov.scot

or by post to:

Asset Transfer Consultation
Community Empowerment Team
The Scottish Government
Area 3-J South
Victoria Quay
Edinburgh
EH6 6QQ

If you have any queries please email AssetTransferGuidance@gov.scot or telephone 0131 244 0688.

Handling your response

If you respond using Citizen Space, you will be directed to the Respondent Information Form. Please indicate how you wish your response to be handled and, in particular, whether you are happy for your response to be published.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document (page 87) with your response. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.scotland.gov.uk>. If you use Citizen Space to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us develop the final regulations and guidance. We expect to issue a report on this consultation and introduce regulations to the Scottish Parliament in September 2016.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to:

Ian Turner
Ian.Turner@scotland.gsi.gov.uk

Community Empowerment Team
The Scottish Government
Victoria Quay
Edinburgh
EH6 6QQ

Scottish Government consultation process

Consultation is an essential part the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.scotland.gov.uk>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Consultations may involve seeking views in a number of different ways, such as public meetings, focus groups, or other online methods such as Dialogue (<http://ideas.scotland.gov.uk>)

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Asset Transfer under the Community Empowerment (Scotland) Act 2015: Consultation on Draft Regulations



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response.

Are you responding as an individual or an organisation? (required)

- Individual
- Organisation

What is your name or your organisation's name? (required)

What is your phone number?

What is your address?

What is your postcode?

What is your email?

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference: (required)

- Publish response with name
- Publish response only (anonymous)
- Do not publish response

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Government to contact you again in relation to this consultation exercise?

- Yes
- No

Asset Transfer under the Community Empowerment (Scotland) Act 2015: Consultation on Draft Regulations

Questionnaire

Q1: Do you agree that the types of land set out in the draft Community Empowerment (Registers of Land) (Scotland) Regulations 2016 need not be included in relevant authorities' registers?

Yes No

If not, please explain what you would change and why.

Q2: Are there any other types of land that relevant authorities should not have to include in their register? Please explain what should not be included and why.

Q3: Do you have any comments on the proposals for guidance on what information registers should contain and how they should be published?

Q4: Is there any information you think a community transfer body should be able to request from a relevant authority, that it would not be able to obtain under FOISA or the EIRs?

Q5: Do you think the proposed additional requirements for making an asset transfer request are reasonable?

Yes No

If not, please explain what you would change and why.

Q6: Is there any other information that should be required to make a valid request?

Q7: Do you have any comments on the proposals for acknowledgement of requests?

Q8: Do you have any comments on the proposed requirements for notification and publication of information about a request?

Q9: Do you think 6 months is a reasonable length of time for the relevant authority to make a decision on an asset transfer request? (This time may be extended if agreed with the community transfer body.)

Yes No

If not, how long should the period for making a decision be?

Q10: Do you agree with the proposals for additional information to be included in a decision notice?

Yes No

If not, please explain what you would change and why.

Q11: Do you agree that the Scottish Ministers should be required to appoint a panel of 3 people to consider reviews of Ministers' own decisions?

Yes No

If not, how do you think these reviews should be carried out?

Q12: Do you agree that a local authority should be required to make a decision on a review within 6 months?

Yes No

If not, how long should the period for making a decision be?

Q13: Do you have any other comments about the draft Asset Transfer Request (Review Procedure) (Scotland) Regulations 2016 or draft Asset Transfer Request (Appeals) (Scotland) Regulations 2016?

Q14: Do you agree that the Scottish Ministers should appoint a single person to consider an appeal where no contract has been concluded?

Yes No

If not, how do you think these reviews should be carried out?

Q15: Do you agree that the documents should not be published in relation to appeals where no contract has been concluded?

Yes No

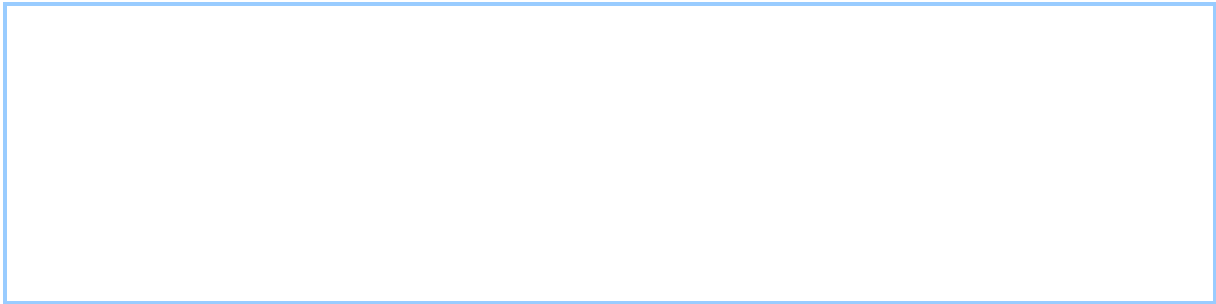
Please explain your reasons.

Q16: Do you agree that no third party representations should be allowed in relation to appeals where no contract has been concluded?

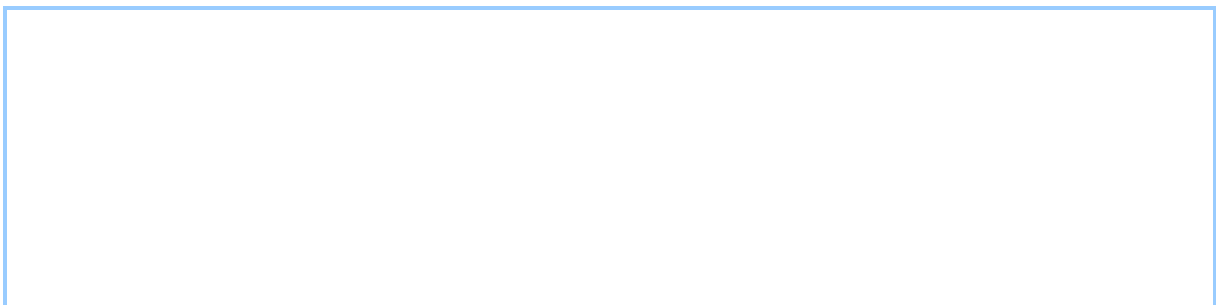
Yes No

Please explain your reasons.

Q17: Do you have any comments on the proposed procedures for appeals where no contract is concluded?

A large, empty rectangular box with a thin blue border, intended for providing comments on the proposed procedures for appeals where no contract is concluded.

Q18: Do you have any comments on the proposed procedures for applications to Ministers for Directions?

A large, empty rectangular box with a thin blue border, intended for providing comments on the proposed procedures for applications to Ministers for Directions.



© Crown copyright 2016

OGL

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at
The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-78652-151-4 (web only)

Published by The Scottish Government, March 2016

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS67378 (03/16)

W W W . G O V . S C O T