

This document has been prepared to assist readers of the Asset Transfer Request (Review Procedure) (Scotland) Regulations 2016 (SSI 2016/358). It is for illustrative purposes only. It contains the Regulations as amended by the Community Empowerment (Miscellaneous Amendments) (Scotland) Regulations 2016 (SSI 2016/411).

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

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 23rd January 2017.

(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 regulation 13 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;

“contact address” has the meaning given in regulation 18;

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party” means any person from whom the relevant authority received representations (which were not subsequently withdrawn) in connection with the asset transfer request;

“period allowed for determination of the request” means—

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

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

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

“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 12(1) 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;

“validation date” has the same meaning as in the Asset Transfer Request (Procedure) (Scotland) Regulations 2016(a); and

“working day” means every day except—

- (a) Saturday and Sunday;
- (b) 25th and 26th December; and
- (c) 1st and 2nd January.

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 made to the local authority within the period of 20 working 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 holds.

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

(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—

- (a) in accordance with and to the extent permitted by regulation 4(6); or
- (b) where the local authority makes a request (under regulation 8(1), rule 1(1) of the Hearing Session Rules or otherwise) for further representations to be made or further information to be provided by the community transfer body.

Notification to interested parties and publication

4.—(1) The local authority must before the expiry of the period of 10 working days beginning with the date on which the application for review is made—

- (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) in writing to an interested party who is an owner, tenant or occupier of the land to which the asset transfer request relates; and
- (b) in writing or by advertisement in a newspaper circulating in the locality where the land is situated, to any other interested party.

(3) Notice under paragraph (1)(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 the period of 10 working 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 10 working 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 a request made under regulation 8(1), rule 1(1) of the Hearing Session Rules or otherwise.

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.

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

(4) Notices given under regulation 8(1) or 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 10 working days beginning with the date of receipt of a copy of the additional material, any person to whom the notice under paragraph (1) was given—

- (a) may send comments to the 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).

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 7, 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 20 working 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 may be a 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 regulations 3(1) and (2), 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 and in regulation 5, references to the local authority were references to the Scottish Ministers;
- (b) in Part 3 and in the Hearing Session Rules references to the local authority were references to the review panel; and
- (c) in regulation 6 for “it to determine the review, it may determine the review” there were substituted “them to do so, the review panel may finalise their report”;
- (d) in regulation 7(1)—
 - (i) for “does not determine the review without” there were substituted “consider that”; and
 - (ii) after “procedure” there were inserted “is desirable to assist them in the preparation of their report”.

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 8(1), 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 regulations 6 (notification of asset transfer request) and 7 (publication of asset transfer request) of the Asset Transfer Request (Procedure) (Scotland) Regulations 2016(a) before determining the review.

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

(2) Where the relevant authority notifies any person in accordance with paragraph (1), references in these Regulations (other than regulation 4) to an interested party include 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;
- (b) notify every person who made (and did not subsequently withdraw) representations in respect of the review that a decision on the review has been made and how a copy of the notice of the decision may be inspected; and
- (c) make a copy of the decision notice available for inspection on a website or by other electronic means.

Contact address

18.—(1) In relation to a review to which these Regulations apply, the “contact address” is the address (or addresses), including any address (or addresses) for the purposes of electronic communication within the meaning of regulation 19, to which the community transfer body wishes any document relating to the review to be sent.

(2) The contact address is the address (or addresses) included in the application for review unless the community transfer body subsequently expressly informs the relevant authority of a change to the contact address.

Electronic communication

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

(2) The criteria are—

- (a) the recipient agrees, or is deemed to have agreed under paragraph (3) or (5A), to receive it electronically; and
- (b) the document transmitted by electronic communication is—
 - (i) capable of being accessed by the recipient;
 - (ii) legible in all material respects; and
 - (iii) sufficiently permanent to be used for subsequent reference.

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

- (a) to the use of such communication for all purposes relating to the review which are capable of being carried out electronically; and
- (b) that the address for the purpose of such communication is the address incorporated into, or otherwise logically associated with, that communication.

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

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

- (a) the date specified by the person in the notice; or
- (b) the expiry of the period of 5 working days beginning with the date on which the notice is given.

(5A) Where the contact address includes an address (or addresses) for the purposes of electronic communication (“electronic communication contact address”) the community transfer body is taken to have agreed—

- (a) to the use of electronic communication for all purposes relating to the review which are capable of being carried out electronically; and
- (b) that the address for the purposes of such communication is the electronic communication contact address.

(5B) Where any document is sent to the community transfer body by electronic communication by virtue of this regulation, the address (or addresses) for the purpose of such communication—

- (a) where there is an electronic communication contact address, must be the electronic communication contact address; and
- (b) may, in addition, be any address which the community transfer body has agreed, or is deemed to have agreed under paragraph (3), may be used for the purpose of electronic communication.

(6) In this regulation—

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

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

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

“electronic communication contact address” has the meaning given in paragraph (5A);

“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.

KEVIN STEWART

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
8th November 2016

(a) 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 wishes 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)(b) or (c) and who intends to appear at the hearing session must within the period of 10 working days beginning with the date of such notice inform the 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 rule 1(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 the local authority, 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—

- (a) a hearing statement; and
- (b) where that person intends to refer to or rely on any documents when presenting their case a copy of every document (or the relevant part of a document) on the list comprised in that hearing statement which is not already available for inspection under regulation 5, 15(2), or paragraph (2) of this rule.

(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.

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 under section 86 of the Community Empowerment (Scotland) Act 2015 (“the Act”) and applications for reviews made to the Scottish Ministers under section 87 of the Act.

Part 1 of the Regulations sets out how the Regulations apply and are to be interpreted. Part 2 of the Regulations makes provision in relation to procedure for making an application for review under section 86(2) of the Act. Regulation 3 sets out the time period within which and how such an application for review must be made. Regulation 4 provides for notification of the review to interested parties and gives such parties an opportunity to make representations and for the community transfer body to comment on any such representations. In terms of regulation 5 the local authority are to publish copies of documents relating to the review on a website or by other electronic means.

Part 3 of the Regulations relates to the process of determination of a review. Regulation 6 to 8 make provision for the procedure, if any is considered to be required, to be followed by the local authority when considering a review. Regulation 8 sets out procedures for how written submissions are to be sought and the Hearing Session Rules set out in the schedule contain rules as to how hearings are to be conducted. Regulation 9 relates to further procedure by the local authority if the local authority proposes to consider new evidence after the conclusion of any procedure under regulation 8 or the Hearing Session Rules.

Part 4 of the Regulations makes provision in respect of reviews under section 87(2) of the Act. Regulation 11 sets out the time period within which and how such an application for review must be made. Regulation 12 requires the Scottish Ministers to appoint persons to form a review panel to consider the review and report to them on their findings and recommendations for disposal of the review. Regulation 13 applies provisions of the Regulations to applications for review under section 87 of the Act with modifications to take account of the fact that applications are made to the Scottish Ministers rather than the local authority and the procedure for section 87 reviews is to be conducted by a review panel. Regulation 14 relates to further procedure by the Scottish Ministers if they propose to consider new evidence after the conclusion of any procedure under regulation 8 or the Hearing Session Rules.

Part 5 makes general provisions in relation to the provision of further copies of documents (regulation 15), notification of the decision on review (regulation 17), the definition of ‘contact address’ (regulation 18) and the use of electronic communications (regulation 19). Regulation 16 requires the relevant authority to ensure that publication and notification procedures set out in the Asset Transfer Request (Procedure) (Scotland) Regulations 2016 are fulfilled if this has not already been done.