

# COMMUNITY EMPOWERMENT (SCOTLAND) ACT 2015

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 5: Asset transfer requests**

##### **Appeals and reviews**

337. [Sections 85 to 90](#) set out arrangements for appeals and reviews in relation to asset transfer requests. A community transfer body can appeal or apply for a review if:
- the request has been refused;
  - the request has been agreed but the relevant authority has required terms and conditions which are significantly different to those proposed in the request; or
  - no decision has been made within the required period.
338. The arrangements depend on the relevant authority to which the asset transfer request was made, and therefore by which the original decision was made.
- Decisions made by a local authority are subject to review by the local authority, under section 86.
  - Decisions made by a relevant authority specified by the Scottish Ministers in an order under section 85(2)(c) are subject to review by a local authority.
  - Decisions made by the Scottish Ministers are subject to review by the Scottish Ministers under section 87.
  - Decisions made by any other relevant authority are subject to appeal to the Scottish Ministers under section 85.
  - Decisions made by local authorities following a review under section 86 (or provided for by section 89) are subject to appeal to the Scottish Ministers under section 88, following the procedures set out in section 85.
339. For each type of appeal or review, the Scottish Ministers may make regulations about how they are to be carried out and the time limits for making the application. These regulations may allow the authority undertaking the process to determine how certain stages are carried out.
340. In the case of an appeal to the Scottish Ministers under section 85 or section 88, the Scottish Ministers may allow the appeal or may dismiss it and may reverse or vary any part of the decision of the relevant authority, including changing any terms and conditions that were imposed. The Scottish Ministers may reverse or vary part of the decision of the relevant authority even if the appeal does not relate to that part. If the Scottish Ministers decide the relevant authority must transfer ownership, lease or confer rights in or in relation to land, or agree to certain terms and conditions, they must issue

a direction requiring the relevant authority to issue a new decision notice in line with the appeal decision. That notice will replace the original decision notice.

341. In a review carried out by a local authority, section 86(8) means that the local authority must consider the same issues when reviewing a decision as it would in making an initial decision on an asset transfer request, and must agree to the request unless there are reasonable grounds for refusal. Subsection (10) displaces the general rule set out in section 56 of the Local Government (Scotland) Act 1973 (that a local authority may delegate any of its functions to any of its committees, sub-committees or officers or another local authority) to require that the review must be carried out by the authority or a committee or sub-committee of the authority, and may not be delegated to officers. Subsection (5) provides that, having carried out a review, the local authority may confirm or change its decision, including altering any terms and conditions set out in the original decision notice. It must then provide a new decision notice, providing the reasons for the decision made on review. This notice replaces the original decision notice, and must be issued within a period prescribed in regulations, or a longer period agreed between the local authority and the community transfer body.
342. A review of a decision made by the Scottish Ministers under section 87 follows much the same procedures as a local authority review. However, it allows for the Scottish Ministers to appoint persons in connection with carrying out the review. This might, for example, allow for an independent reporter or panel to scrutinise the original decision and make a report to Ministers. There is no time limit for the Scottish Ministers to issue their decision notice following the review.
343. [Section 89](#) provides that decisions made by a relevant authority specified by the Scottish Ministers in an order under section 85(2)(c) are subject to review by a local authority. The local authority to which an application for review is to be made may be specified or determined by factors set out in an order under section 89(4)(b). This allows certain decisions to be reviewed by the local authority rather than the Scottish Ministers. For example where the relevant authority is a company wholly owned by one or more local authorities. The review procedures set out in section 86 will apply, subject to such modifications as the Scottish Ministers think appropriate.
344. When an appeal or review results in an asset transfer request being agreed (with or without amended terms or conditions), the process then continues under the provisions of section 83, with the community transfer body making an offer and the two parties proceeding to conclude a contract.
345. If no contract is concluded within the required period as set out in section 83, the community transfer body may appeal to the Scottish Ministers under section 90, unless the request was made to the Scottish Ministers. If the appeal is allowed, the Scottish Ministers will issue an appeal decision notice setting out the terms and conditions of an offer to be made by the community transfer body. If such an offer is made and no contract is concluded within 28 days, the Scottish Ministers may direct the relevant authority to conclude the contract, and ultimately the relevant authority may be deemed to have accepted the offer and concluded the contract, under subsection (7). As with other forms of appeal and review, the Scottish Ministers may make regulations about procedures, time limits etc., under subsections (12) to (14). Subsections (8) to (10) provide for other ways in which the asset transfer request process may come to an end.
346. [Section 91](#) provides that, when a request has been agreed, a community transfer body may not appeal or apply for a review in relation to the terms and conditions set out in the decision notice at the same time as making an offer. An appeal or review may not be brought if an offer has already been made and not withdrawn; if an offer is made after the appeal or application for review is made, that appeal or application for review is treated as having been withdrawn.