



# Community Empowerment (Scotland) Act 2015

2015 asp 6

## PART 5

### ASSET TRANSFER REQUESTS

#### *Appeals and reviews*

#### **85 Appeals**

- (1) Subsection (2) applies where—
- (a) an asset transfer request is refused by a relevant authority,
  - (b) an asset transfer request is agreed to by a relevant authority but the decision notice relating to the request specifies material terms or conditions which differ to a significant extent from those specified in the request, or
  - (c) a relevant authority does not give a decision notice relating to an asset transfer request to the community transfer body making the request within the period mentioned in paragraph (a) or (where applicable) paragraph (b) of section 82(8).
- (2) The community transfer body making the request may appeal to the Scottish Ministers unless the relevant authority is—
- (a) the Scottish Ministers,
  - (b) a local authority, or
  - (c) a person, or a person that falls within a class of persons, specified in an order made by the Scottish Ministers for the purposes of this section.
- (3) The Scottish Ministers may by regulations prescribe—
- (a) the procedure to be followed in connection with appeals under subsection (2),
  - (b) the manner in which such appeals are to be conducted, and
  - (c) the time limits within which such appeals must be brought.

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- (4) The provision that may be made by virtue of subsection (3) includes provision that the manner in which an appeal, or any stage of an appeal, is to be conducted is to be at the discretion of the Scottish Ministers.
- (5) On an appeal under subsection (2), the Scottish Ministers—
- (a) may allow or dismiss the appeal,
  - (b) may reverse or vary any part of the decision of the relevant authority (whether the appeal relates to that part of it or not),
  - (c) must, in the circumstances mentioned in either paragraph (a) or (b) of subsection (6), issue a direction to the authority requiring the authority to take such steps, or achieve such outcomes, as are specified in the direction within such time periods as are so specified,
  - (d) may, in any other circumstances, issue such a direction, including a direction relating to any aspects of the asset transfer request to which the appeal relates (whether or not the authority's decision relates to those aspects).
- (6) The circumstances are—
- (a) that the appeal is allowed,
  - (b) that any part of the decision of the relevant authority is reversed or varied to the effect that the authority is required to—
    - (i) transfer ownership of any land, lease any land or confer rights in respect of any land, or
    - (ii) agree to the asset transfer request subject to such terms and conditions as may be specified in the direction.
- (7) The references in subsections (5)(b) and (6)(b) to any part of the decision includes any terms and conditions specified in the decision notice relating to the asset transfer request.
- (8) A direction issued under subsection (5)(c) must require the relevant authority to issue a further decision notice—
- (a) specifying the terms on which, and any conditions subject to which, the authority would be prepared to transfer ownership of the land, lease the land or (as the case may be) confer rights in respect of the land, including any terms and conditions required to be included by virtue of the direction,
  - (b) stating that, if the community transfer body wishes to proceed, it must submit to the authority an offer to acquire ownership of the land, lease the land or (as the case may be) assume rights in respect of the land, and
  - (c) specifying the period within which such an offer is to be submitted (which must be at least 6 months beginning with the date on which the further decision notice was issued).
- (9) A further decision notice issued by virtue of a direction mentioned in subsection (8) replaces any decision notice relating to the asset transfer request in respect of which the appeal was made.
- (10) Subsections (4) to (10) of section 83 apply in relation to a further decision notice issued by virtue of a direction mentioned in subsection (8) as they apply in relation to a decision notice referred to in that section; but as if in subsection (4) of that section—
- (a) the reference to an offer such as is mentioned in subsection (2)(b) of that section were a reference to an offer such as is mentioned in subsection (8)(b) of this section, and

- (b) the reference to the period specified in the decision notice under subsection (2) (c) of that section were a reference to the period specified in a further decision notice by virtue of subsection (8)(c) of this section.

## **86 Review by local authority**

- (1) Subsection (2) applies in a case where—
  - (a) an asset transfer request is made to a local authority by a community transfer body, and
  - (b) the authority—
    - (i) refuses the request,
    - (ii) agrees to the request but the decision notice relating to the request specifies material terms or conditions which differ to a significant extent from those specified in the request, or
    - (iii) does not give a decision notice relating to the request to the community transfer body within the period mentioned in paragraph (a) or (where applicable) paragraph (b) of section 82(8).
- (2) On an application made by the community transfer body, the local authority must carry out a review of the case.
- (3) The Scottish Ministers may by regulations prescribe—
  - (a) the procedure to be followed in connection with reviews under subsection (2),
  - (b) the manner in which such reviews are to be carried out, and
  - (c) the time limits within which applications for reviews must be brought.
- (4) The provision that may be made by virtue of subsection (3) includes provision that the manner in which a review, or any stage of a review, is to be carried out by a local authority is to be at the discretion of the authority.
- (5) A local authority may, in relation to a decision reviewed under subsection (2)—
  - (a) confirm its decision,
  - (b) modify its decision, or any part of its decision (including any terms and conditions specified in the decision notice to which the asset transfer request relates), or
  - (c) substitute a different decision for its decision.
- (6) Following a review under subsection (2), the local authority must—
  - (a) issue a decision notice as respects the asset transfer request to which the review relates, and
  - (b) provide in the decision notice the reasons for its decision.
- (7) A decision notice issued under subsection (6)—
  - (a) replaces any decision notice relating to the asset transfer request in respect of which the review was carried out, and
  - (b) must be issued within—
    - (i) a period prescribed in regulations made by the Scottish Ministers, or
    - (ii) such longer period as may be agreed between the local authority and the community transfer body that made the asset transfer request.

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- (8) Subsections (3) to (5) of section 82 apply in relation to a decision relating to an asset transfer request in a review under subsection (2) of this section as they apply in relation to a decision relating to the request under subsection (2) of that section.
- (9) Section 83 applies in relation to a decision to agree to an asset transfer request (including a decision to confirm such an agreement) following a review under subsection (2) as it applies in relation to a decision mentioned in subsection (1) of that section.
- (10) In section 56 of the Local Government (Scotland) Act 1973 (arrangements for the discharge of functions by local authorities), after subsection (6A) insert—
- “(6B) The duty to carry out a review of a case imposed on an authority under section 86(2) of the Community Empowerment (Scotland) Act 2015 (reviews by local authorities of asset transfer requests) must be discharged only by the authority or a committee or sub-committee of the authority; and accordingly no such committee or sub-committee may arrange for the discharge under subsection (2) of the duty by an officer of the authority.
- (6C) In subsection (6B), the reference to section 86(2) of the Community Empowerment (Scotland) Act 2015 includes a reference to that section as applied by subsection (2) of, and modified in such application by virtue of subsection (4) of, section 89 of that Act.”.

## **87 Review of decisions by the Scottish Ministers**

- (1) Subsection (2) applies in a case where—
- (a) an asset transfer request is made to the Scottish Ministers by a community transfer body, and
  - (b) the Scottish Ministers—
    - (i) refuse the request,
    - (ii) agree to the request but the decision notice relating to the request specifies material terms or conditions which differ to a significant extent from those specified in the request, or
    - (iii) do not give a decision notice relating to the request to the community transfer body within the period mentioned in paragraph (a) or (where applicable) paragraph (b) of section 82(8).
- (2) On an application made by the community transfer body, the Scottish Ministers must carry out a review of the case.
- (3) The Scottish Ministers may by regulations make provision about reviews carried out under subsection (2) including, in particular, provision in relation to—
- (a) the procedure to be followed in connection with reviews,
  - (b) the appointment of such persons, or persons of such description, as may be specified in the regulations for purposes connected with the carrying out of reviews,
  - (c) the functions of persons mentioned in paragraph (b) in relation to reviews (including a function of reporting to the Scottish Ministers),
  - (d) the manner in which reviews are to be conducted, and
  - (e) the time limits within which applications for reviews must be brought.
- (4) The provision that may be made by virtue of subsection (3) includes provision that—

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- (a) the manner in which a person appointed by virtue of paragraph (b) of that subsection carries out the person's functions in relation to a review, or any stage of a review, is to be at the discretion of the person,
  - (b) the manner in which a review, or any stage of a review, is to be carried out by the Scottish Ministers is to be at the discretion of the Scottish Ministers.
- (5) Having regard to any report they receive by virtue of subsection (3)(c), the Scottish Ministers may, in relation to a decision reviewed under subsection (2)—
- (a) confirm the decision,
  - (b) modify the decision, or any part of the decision (including any terms and conditions specified in the decision notice to which the asset transfer request relates), or
  - (c) substitute a different decision for the decision.
- (6) Following a review under subsection (2), the Scottish Ministers must—
- (a) issue a decision notice as respects the asset transfer request to which the review relates, and
  - (b) provide in the decision notice the reasons for their decision.
- (7) A decision notice issued under subsection (6) replaces any decision notice relating to the asset transfer request in respect of which the review was carried out.
- (8) Subsections (3) to (5) of section 82 apply in relation to a decision relating to an asset transfer request in a review under subsection (2) of this section as they apply in relation to a decision relating to the request under subsection (2) of that section.
- (9) Section 83 applies in relation to a decision to agree to an asset transfer request (including a decision to confirm such an agreement) following a review under subsection (2) as it applies in relation to a decision mentioned in subsection (1) of that section.

## **88 Appeals from reviews under section 86**

- (1) Subsection (2) applies in a case where, following a review carried out under section 86(2), a local authority—
- (a) refuses the asset transfer request to which the review relates,
  - (b) agrees to the request but the decision notice issued under section 86(6) specifies material terms or conditions which differ to a significant extent from those specified in the request, or
  - (c) does not issue the decision notice within the prescribed period mentioned in sub-paragraph (i) or (where applicable) (ii) of paragraph (b) of subsection (7) of section 86.
- (2) The community transfer body making the asset transfer request may appeal to the Scottish Ministers.
- (3) Subsections (3) to (10) of section 85 apply to an appeal under subsection (2) of this section as they apply to an appeal under subsection (2) of that section, subject to the modification that any references to the relevant authority in the subsections so applied are to be read as references to the local authority mentioned in subsection (1) of this section.

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- (4) In subsection (1), references to section 86 include references to the provisions of that section as applied by subsection (2) of, and modified in such application by virtue of subsection (4) of, section 89.

**89 Decisions by relevant authority specified under section 85(2)(c): reviews**

- (1) Subsection (2) applies in a case where—
- (a) an asset transfer request is made to a relevant authority specified in an order under section 85(2)(c), and
  - (b) the relevant authority—
    - (i) refuses the request,
    - (ii) agrees to the request but the decision notice relating to the request specifies material terms or conditions which differ to a significant extent from those specified in the request, or
    - (iii) does not give a decision notice relating to the request to the community transfer body within the period mentioned in paragraph (a) or (where applicable) paragraph (b) of section 82(8).
- (2) Subsections (2) to (9) of section 86 apply to the case mentioned in subsection (1) (and, for the purposes of that application, references in that section to any of those subsections are to be read as references to those subsections as so applied and modified in such application by virtue of subsection (4)).
- (3) Subsection (2) is subject to subsection (4).
- (4) The Scottish Ministers may by order—
- (a) make provision for subsections (2) to (9) of section 86 to apply as mentioned in subsection (2) subject to such modifications (if any) as they think appropriate,
  - (b) specify, in relation to an application for a review under section 86(2) applied as mentioned in subsection (2)—
    - (i) the local authority to which the application is to be made,
    - (ii) factors determining the local authority to which the application is to be made.

**90 No concluded contract: appeals**

- (1) Subsections (2) to (11) apply where—
- (a) no contract is concluded as mentioned in subsection (5) of section 83 between a relevant authority and a community transfer body, and
  - (b) the community transfer body appeals under subsection (6) of that section.
- (2) The Scottish Ministers may allow or dismiss the appeal.
- (3) If the Scottish Ministers allow the appeal, they must issue a notice (an “appeal decision notice”) that specifies—
- (a) sufficient and precise details of the terms and conditions of an offer which may be made by the community transfer body to the relevant authority in relation to the asset transfer request made by the body, and
  - (b) the period within which any such offer is to be submitted.
- (4) Subsection (5) applies where—

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- (a) the community transfer body submits an offer to the relevant authority containing all and only those terms and conditions the details of which are specified in the appeal decision notice,
  - (b) the offer is submitted within the period so specified,
  - (c) no contract is concluded on the basis of the offer before the end of the period of 28 days beginning with the day on which the offer is submitted, and
  - (d) the offer is not withdrawn before the expiry of that 28 day period.
- (5) The Scottish Ministers may, on an application made by the community transfer body, give the relevant authority a direction requiring the authority to conclude a contract with the community transfer body on the terms and conditions the details of which are specified in the appeal decision notice within such period as may be specified in the direction.
- (6) The Scottish Ministers may, on more than one occasion, extend the period mentioned in subsection (5) (including that period as extended by a direction given under this subsection) by giving a further direction to the relevant authority.
- (7) Where a direction under subsection (5) is given to a relevant authority, and the authority does not within the period specified in the direction (or that period as extended under subsection (6)) conclude the contract as mentioned in subsection (5), the authority is deemed to have accepted the offer and accordingly to have concluded a contract with the community transfer body.
- (8) Subsection (7) does not apply where—
  - (a) the community transfer body and the relevant authority have entered into a contract on terms and conditions different from those the details of which are specified in the appeal decision notice, or
  - (b) the offer is withdrawn before the end of the period specified in the direction (or that period as extended by a direction under subsection (6)).
- (9) The asset transfer request in relation to which an appeal mentioned in subsection (1) is made is to be treated, for the purposes of this Part (other than section 93), as if it had not been made if the appeal is allowed but—
  - (a) the community transfer body does not submit an offer as mentioned in subsection (4)(a),
  - (b) the community transfer body does not submit such an offer within the period specified in the appeal decision notice,
  - (c) the community transfer body has not, before the expiry of any time limit for making applications under subsection (5) by virtue of regulations under subsection (14), applied for a direction under subsection (5), or
  - (d) any application for such a direction is refused.
- (10) Where the appeal is dismissed by the Scottish Ministers, the decision to agree to the asset transfer request in relation to which the appeal is made is of no effect (but that is not to be taken to mean that the asset transfer request is to be treated as having been refused for the purposes of any appeal or review under this Part).
- (11) In subsection (1), references to any subsections of section 83 include references to those subsections as applied—
  - (a) by sections 85(10), 86(9) and 87(9), and
  - (b) by virtue of section 88(3).

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- (12) The Scottish Ministers may by regulations make provision about appeals under section 83(6) including, in particular, provision in relation to—
- (a) the procedure to be followed in connection with appeals,
  - (b) the appointment of such persons, or persons of such description, as may be specified in the regulations for purposes connected with appeals,
  - (c) the functions of persons mentioned in paragraph (b) in relation to appeals (including a function of reporting to the Scottish Ministers),
  - (d) the manner in which appeals are to be conducted, and
  - (e) the time limits within which appeals must be brought.
- (13) The provision that may be made by virtue of subsection (12) includes provision that—
- (a) the manner in which a person appointed by virtue of paragraph (b) of that subsection carries out the person's functions in relation to an appeal, or any stage of an appeal, is to be at the discretion of the person,
  - (b) the manner in which an appeal, or any stage of an appeal, is to be carried out by the Scottish Ministers is to be at the discretion of the Scottish Ministers.
- (14) The Scottish Ministers may by regulations make provision about applications under subsection (5) including, in particular, provision in relation to—
- (a) the form of, and procedure for making, such applications,
  - (b) the time limits within which such applications must be brought.

## **91 Effect of offers on appeals and reviews**

- (1) Subsection (2) applies where—
- (a) a community transfer body makes an asset transfer request to a relevant authority,
  - (b) the relevant authority agrees to the request as mentioned in section 85(1)(b), 86(1)(b)(ii), 87(1)(b)(ii) or 88(1)(b),
  - (c) the community transfer body makes an offer as mentioned in section 83(2), and
  - (d) the offer has not been withdrawn.
- (2) The community transfer body may not—
- (a) make an appeal under section 85 or 88, or
  - (b) apply for a review under section 86 or 87.
- (3) Where an offer as mentioned in section 83(2) is made by a community transfer body after the body has made an appeal, or applied for a review, as mentioned in subsection (2), the appeal or (as the case may be) application for review is to be treated as having been withdrawn by the body.
- (4) A reference in this section to—
- (a) section 83(2) includes a reference to that section as applied—
    - (i) by section 86(9) and 87(9), and
    - (ii) by virtue of section 89(2),
  - (b) section 85 includes a reference to that section as applied by section 88(3),
  - (c) section 86 includes a reference to that section as applied by subsection (2) of, and modified in such application by virtue of subsection (4) of, section 89.