

## **POLICY NOTE**

### **THE ASSET TRANSFER REQUEST (REVIEW PROCEDURE) (SCOTLAND) REGULATIONS 2016**

#### **SSI 2016/358**

The above instrument was made in exercise of the powers conferred by section 86(3) and (7)(b)(i) and 87(3) of the Community Empowerment (Scotland) Act 2015. The instrument is subject to negative procedure.

#### **Policy Objectives**

These regulations make provision for procedures to be followed in relation to reviews of decisions on asset transfer requests under the Community Empowerment (Scotland) Act 2016 (“the Act”). The regulations are framed mainly in terms of a local authority review; Part 4 sets out how they apply to a review by the Scottish Ministers.

The procedure follows a model similar to that used in other systems, such as planning and some forms of licensing. It ensures that anyone with an interest in the request has the opportunity to see and comment on all the evidence submitted.

The community transfer body must make its application for review in writing, setting out its reasons for requiring a review and accompanied by a list of evidence it intends to rely on (regulation 3). They must provide copies of any documents the local authority does not already have.

The local authority must send an acknowledgement of the application for review to the community transfer body, and give notice of the review to each “interested party” - people who made representations on the original asset transfer request (regulation 4). They may make further representations, which the local authority must copy to the community transfer body, and give them an opportunity to comment. Regulation 16 also requires the local authority to comply with the requirements for notifying and publishing the original request, if this was not done at the time.

Regulation 5 provides that the local authority must make copies of all documents relating to the review available for inspection on a website or by other electronic means.

Regulation 6 provides that the local authority may determine the review without further procedure, if it considers it has enough information in the review documents. If not, under regulation 7 it may decide how the review is to be conducted.

If the local authority wants further representations or information to be submitted in writing, they must give notice to the community transfer body and any other person they want to provide that additional material (regulation 8). Any material provided to the local authority in response to the notice must be copied to anyone else the notice was given to, and they may make comments.

If a hearing session is to be held, the rules set out in the schedule to the regulations will apply.

Regulation 10 provides that if the local authority proposes to take into consideration any new evidence that was not obtained through the process for written representations or hearing sessions, they must not reach a decision on the review without giving the community transfer body and other relevant parties an opportunity to comment on that evidence.

Regulation 9 prescribes that the decision on a review by a local authority must be given within 6 months of the application being made (unless a longer period is agreed with the community transfer body). They must give notice to the community transfer body and every person who made representations on the review, and publish the decision notice online (regulation 17).

Regulations 15, 18 and 19 make general provisions about further copies of documents, the contact address for the community transfer body and electronic communications.

Part 4 of the regulations describe how they apply to reviews by the Scottish Ministers. Regulation 12 requires them to appoint a panel of 3 people to consider a review and report their findings to Ministers, who make the final decision.

### **Consultation**

Draft regulations were developed with a steering group of public sector and community sector stakeholders, and a public consultation was carried out from 17 March to 20 June 2016. Details of the consultation and responses are available at <https://consult.scotland.gov.uk/community-empowerment-unit/asset-transfer-procedures>

The majority of respondents were content with the proposed regulations. Many of the comments made related to practical implementation, such as ensuring consistency in decisions and providing support to community bodies, rather than the regulations themselves. There was no consensus for making any substantive changes to the regulations.

### **Impact Assessments**

Screening has been carried out and concluded that no impact assessments are required, as these regulations have no effect on equality, privacy, children's rights and welfare, or the environment.

### **Financial Effects**

A Business and Regulatory Impact Assessment (BRIA) has been completed for these regulations and others relating to asset transfer, and is attached. We do not consider that these provisions will lead to any increase in costs for relevant authorities or community transfer bodies.

Scottish Government  
Local Government and Communities Directorate

8 November 2016