

This document has been prepared to assist readers of the Asset Transfer Request (Appeal Where No Contract Concluded) (Scotland) Regulations 2016 (SSI 2016/360). 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 (Appeal Where No Contract Concluded) (Scotland) Regulations 2016

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 23rd January 2017.

(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 regulation 11(6) to applications under section 83(8) of the Act (application for direction).

(4) These Regulations apply as specified in regulation 14(5) to applications under section 90(5) of the Act (application for direction).

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;

“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;

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

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

“review panel” means the persons appointed by the Scottish Ministers under regulation 5(1) to consider the appeal and 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

“working day” means every day except—

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

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 10 working days beginning with the expiry 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—

- (a) in accordance with and to the extent permitted by regulation 4(3); or
- (b) where the review panel or the Scottish Ministers make 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(1) of the Hearing Session Rules or otherwise).

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
- (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 holds.

(2) The relevant authority must, before the expiry of the period of 15 working 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 the period of 15 working 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 review panel or 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(1) of the Hearing Session Rules or otherwise).

Review panel

5.—(1) Where an appeal is made under section 83(6) of the Act 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 appeal 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 appeal; and
- (b) their recommendations as to the determination of the appeal,

to the Scottish Ministers.

PART 3

Procedure for determination

Determination without further procedure

6. Where the review panel consider that no further representations are, or information is, required to enable them to do so, the review panel may finalise their report without further procedure.

Further procedure

7.—(1) Where the review panel consider that further procedure is desirable to assist them in the preparation of their report, the review panel may determine the manner in which the appeal is to be conducted.

(2) The review panel may determine—

- (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 review panel 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;
- (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 review panel request that further representations should be made or further information should be provided by means of written submissions, the review panel 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 review panel 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 and how such further representations or information are to be sent to the review panel; 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 review panel 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 review panel 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

9. If, after conclusion of any further procedure or after consideration of any report by the review panel, 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.

Decision notice

10. The Scottish Ministers must give notice of their decision on the appeal to the community transfer body and to the relevant authority.

PART 4

Applications under section 83(8) of the Act

Application under section 83(8) of the Act

11.—(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—

- (a) include the name and contact address of the community transfer body and identify 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 such an offer 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; and
- (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 Part 1, regulation 7(2) and (3) and 8 and Part 6 of these Regulations and the Hearing Session Rules apply to an application for a direction under section 83(8) of the Act as if references in regulation 7(2) and (3) and 8 and the Hearing Session Rules to the review panel were references to the Scottish Ministers.
- (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; and
- “the relevant period” means the period which begins 30 working days before the relevant date and expires 20 working days before the relevant date.

Intimation of application to relevant authority

12.—(1) The community transfer body must at the same time as making an application under section 83(8) of the Act to the Scottish Ministers send a copy of the application to the relevant authority.

(2) The relevant authority may, within the period of 10 working days beginning with the date of receipt of the copy of the application, send comments on the application to the Scottish Ministers and the community transfer body.

Direction under section 83(7)(b)(ii) of the Act

13. The Scottish Ministers must 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.

PART 5

Applications under section 90(5) of the Act

Application under section 90(5) of the Act

14.—(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 20 working days beginning with the expiry 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 identify 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; and
 - (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, regulation 7(2) and (3) and 8 and Part 6 of these Regulations and the Hearing Session Rules apply to an application under section 90(5) of the Act as if references in regulation 7(2) and (3) and 8 and the Hearing Session Rules to the review panel were references to the Scottish Ministers.

Intimation of application to relevant authority

15.—(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 the period of 10 working days beginning with the date of receipt of the copy of the application, send comments on the application to the Scottish Ministers and the community transfer body.

Direction under section 90(5) of the Act

16. The Scottish Ministers must give a copy of any direction given to the relevant authority under section 90(5) of the Act to the community transfer body.

PART 6

General

Further copies of documents etc.

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

Contact address

18.—(1) In relation to an appeal or application 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 appeal or application, as the case may be, to be sent.

(2) The contact address is the address (or addresses) included in the notice of appeal or application, as the case may be, unless the community transfer body subsequently expressly informs the Scottish Ministers 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 appeal or application 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 date of 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 appeal or application, as the case may be, 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
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);

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

“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.

St Andrew’s House,
Edinburgh
8th November 2016

KEVIN STEWART
Authorised to sign by the Scottish Ministers

SCHEDULE

Regulation 2

Hearing Session Rules

Notice of hearing session and specified matters

1.—(1) Where the review panel 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 review panel 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 the period of 10 working days beginning with the date of such notice inform the review panel 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 rule 1(1), has informed the review panel 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 review panel.

(2) The review panel 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 review panel to be reasonable in the circumstances.

Service of hearing statements and documents

4.—(1) Where required to do so by notice given by the review panel, a person entitled to appear at the hearing session must, by such date as is specified in the notice, send to the review panel, the community transfer body, the relevant authority and to such other persons entitled to appear at the hearing session as the review panel 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.

(2) Any person who has served a hearing statement in accordance with this rule must—

- (a) when required by notice in writing from the review panel provide such further information about the matters contained in the hearing statement as the review panel 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.
- (3) Different dates and different persons may be specified for the purposes of paragraph (1).
- (4) Paragraph (1)(b) does not require a document (or part of a document) to be sent to another person entitled to appear at the hearing session if the person to whom the hearing statement is sent already holds that document (or that part of the document).
- (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 review panel determine.

(2) The review panel 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 review panel 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 review panel 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 review panel and cross examination is not permitted unless the review panel 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 review panel 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 review panel consider to be irrelevant or repetitious.

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

(9) The review panel 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 appeals to the Scottish Ministers under sections 83(6) of the Community Empowerment (Scotland) Act 2015 (“the Act”) and applications for directions under section 83(8) and 90(5) of the Act.

Part 2 and 3 of the Regulations make provision in relation to appeals under section 83(6) of the Act. Regulation 3 sets out how an appeal is to be made. Regulation 4 provides for intimation of the appeal to the relevant authority and sets out procedures for how the relevant authority are to respond. Regulation 5 requires the Scottish Ministers to appoint persons to form a review panel to consider the appeal and report to them on their findings and recommendations for disposal of the appeal. Regulation 6 to 8 make provision for the procedure, if any is considered to be required, to be followed by the review panel when considering an appeal. 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 Scottish Ministers where they propose to consider new evidence after the review panel has reported. Regulation 10 requires notice of the decision on appeal to be given to both the community transfer body and to the relevant authority.

Part 4 makes provision for the procedure to be followed in relation to applications for a direction under section 83(6) of the Act. Regulation 11 sets out how and when an application is to be made to the Scottish Ministers. An application must be made within the relevant period which is defined in regulation 11(7). Regulation 12 requires the community transfer body who applies for a direction to send a copy of the application to the relevant authority and gives the relevant authority an opportunity to comment. In terms of regulation 13 any direction must be sent to both the community transfer body and to the relevant authority.

Part 5 makes provision for the procedure to be followed in relation to applications for a direction under section 90(5) of the Act. Regulation 14 sets out how and by when an application is to be made to the Scottish Ministers. Regulation 15 requires the community transfer body who applies for a direction to send a copy of the application to the relevant authority and gives the relevant authority an opportunity to comment. A copy of any direction given to the relevant authority must be sent to the community transfer body in accordance with regulation 16.

Part 6 makes general provisions in relation to the provision of further copies of documents (regulation 17), the definition of ‘contact address’ (regulation 18) and the use of electronic communication (regulation 19).