

This document has been prepared to assist readers of the Asset Transfer Request (Procedure) (Scotland) Regulations 2016 (SSI 2016/357). 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 (Procedure) (Scotland) Regulations 2016

### Citation and commencement

1. These Regulations may be cited as the Asset Transfer Request (Procedure) (Scotland) Regulations 2016 and come into force on 23rd January 2017.

### Interpretation

2. In these Regulations—

“the Act” means the Community Empowerment (Scotland) Act 2015;

“community transfer body” means the community transfer body which made the asset transfer request;

“contact address” has the meaning given in regulation 13;

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

“validation date” in respect of an asset transfer request is the date on which the asset transfer request is taken to have been made in terms of regulation 5; and

“working day” means every day except—

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

### Form and content of an asset transfer requests

3.—(1) An asset transfer request must be made in writing and must—

- (a) state that it is an asset transfer request made under Part 5 of the Act; and
- (b) contain the name of the community transfer body and the contact address.

(2) An asset transfer request must (in addition to the information to be specified in accordance with section 79(4) of the Act)—

- (a) describe how the community transfer body proposes that the land to which the request relates is to be used;
- (b) outline how it is proposed that—
  - (i) the transfer of ownership of the land, the lease of the land or the conferral of other rights in respect of the land on the community transfer body (as the case may be) is to be funded; and
  - (ii) the proposed use of the land is to be funded;
- (c) describe the level and nature of support for the asset transfer request from the community to which the community transfer body relates;
- (d) if the request is made by a body which is not a community-controlled body, explain the basis on which the body is a community transfer body; and

- (e) be accompanied by a copy of the constitution of the community transfer body.

### **Acknowledgment of requests**

**4.**—(1) Paragraph (2) applies where a relevant authority has received an asset transfer request which complies with regulation 3(1) but does not contain, or is not accompanied by, all the information or documentation which the community transfer body is required to submit in order to comply with section 79(4)(a) to (g) of the Act and regulation 3(2).

(2) Where this paragraph applies, the relevant authority must send to the community transfer body a notice identifying the information or documentation which the community transfer body still requires to submit in order to comply with section 79(4)(a) to (g) of the Act and regulation 3(2).

(3) Paragraph (4) applies where a relevant authority has received—

- (a) an asset transfer request which complies with regulation 3(1); and
- (b) all the information or documentation which the community transfer body is required to submit in order to comply with section 79(4)(a) to (g) of the Act and regulation 3(2).

(4) Where this paragraph applies, the relevant authority must send an acknowledgement thereof to the community transfer body.

(5) The acknowledgement sent under paragraph (4) is to—

- (a) include the validation date for the asset transfer request;
- (b) include an explanation of the period within which the relevant authority is to give notice to the community transfer body of its decision on the asset transfer request; and
- (c) inform the community transfer body—
  - (i) of the right to appeal to the Scottish Ministers under section 85 of the Act or the right to require a review under section 86 or 87 of the Act, as the case may be;
  - (ii) whether another asset transfer request has already been made to the relevant authority in respect of the land (or part of the land) to which the asset transfer request relates; and
  - (iii) whether or not the relevant authority considers, as at the date on which the acknowledgment is sent, that the relevant authority is prohibited by section 84(2) of the Act from selling, leasing or otherwise disposing of the land to which the asset transfer request relates other than to the community transfer body.

### **Validation date**

**5.** An asset transfer request is taken to have been made on the date on which the last of the items or information required to be contained in or accompany the asset transfer request in accordance with section 79(4)(a) to (g) of the Act and regulation 3(2) is received by the relevant authority.

### **Notification of asset transfer request**

**6.**—(1) As soon as practicable after the validation date the relevant authority must in accordance with this regulation give notice of the making of the asset transfer request to any person (other than the relevant authority or the community transfer body) who is—

- (a) an owner of the land which is the subject of the asset transfer request; or
- (b) a tenant or occupier of that land.

(2) The notice under paragraph (1) must—

- (a) state that an asset transfer request has been made to the relevant authority for the transfer of land;
- (b) identify the community transfer body;
- (c) identify the land to which the asset transfer request relates;

- (d) give a brief description of—
  - (i) the nature of the rights in land sought by the asset transfer request; and
  - (ii) how the community transfer body proposes the land should be used;
- (e) state how the asset transfer request and any other documents submitted in connection with it may be inspected; and
- (f) state that representations may be made to the relevant authority and include information as to how any representations may be made and by which date they must be made (being a date not earlier than 20 working days after the date on which the notice is given).

**Publication of asset transfer request**

7.—(1) As soon as practicable after the validation date the relevant authority must publish a notice in accordance with this regulation.

- (2) The notice under paragraph (1) must—
  - (a) be published on a website or by other electronic means; and
  - (b) be displayed at a public place in the vicinity of the land to which the asset transfer request relates.
- (3) The notice under paragraph (1) must—
  - (a) state that an asset transfer request has been made to the relevant authority;
  - (b) identify the community transfer body;
  - (c) identify the land to which the asset transfer request relates;
  - (d) give a brief description of—
    - (i) the nature of the rights in land sought by the asset transfer request; and
    - (ii) how the community transfer body proposes the land should be used;
  - (e) state how the asset transfer request and any other documents submitted in connection with it may be inspected; and
  - (f) state that representations may be made to the relevant authority and include information as to how any representations may be made and by which date they must be made (being a date not earlier than 20 working days after the date on which the notice is first published).

**Opportunity for the community transfer body to comment on representations**

- 8. The relevant authority must—
  - (a) send a copy of any representations received in response to a notice given under regulation 6 or published under regulation 7 to the community transfer body; and
  - (b) inform the community transfer body how and by what date (being a date not less than 20 working days after the date on which such copy is sent under this regulation) it may make comments to the relevant authority on such representations.

**Publication of request documents**

- 9. The relevant authority must, in relation to an asset transfer request, make copies of—
  - (a) the asset transfer request;
  - (b) the documents or information accompanying the asset transfer request; and
  - (c) any representations or comments made by virtue of regulations 6, 7 or 8,
 available for inspection on a website or by other electronic means until such time as the asset transfer request is determined.

### **Time periods for decision**

**10.** The period prescribed for the purposes of section 82(8)(a) of the Act is the period of 6 months beginning with the validation date.

### **Decision notice**

**11.—**(1) The decision notice must (in addition to any information required by sections 82(7) and 83(2) of the Act—

- (a) identify the community transfer body;
- (b) identify the land to which the asset transfer request relates; and
- (c) contain notification of, as the case may be, the right of appeal under section 85 of the Act or the right to require a review under section 86 or 87 of the Act, including—
  - (i) the circumstances in which an appeal or an application for review may be made;
  - (ii) how an appeal or an application for review may be made; and
  - (iii) the date by which an appeal or an application for review must be made.

(2) The relevant authority must—

- (a) publish a copy of the decision notice on a website or by other electronic means; and
- (b) inform every person who made written representations in respect of the asset transfer request (and provided an address) of its decision on the request and where a copy of the decision notice is available for inspection.

(3) The relevant authority may give the decision notice to the community transfer body by sending it to the contact address.

### **Electronic communication**

**12.—**(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 consents, or is deemed to have agreed under paragraph (3) or (5A), to receive it electronically; and
- (b) that 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 asset transfer request 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 asset transfer request 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, decision, representation, statement, list, report, form, plan, certificate or other information or communication;

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

“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 submitted or given and cognate expressions are to be construed accordingly.

### Contact address

13.—(1) In relation to an asset transfer request 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 12, to which the community transfer body wishes any document relating to the asset transfer request to be sent.

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

*KEVIN STEWART*

Authorised to sign by the Scottish Ministers

St Andrew’s House,  
Edinburgh  
8th November 2016

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(a) 2000 c.7 Section 15(1) was amended by the Communications Act 2003 (c.21), schedule 17, paragraph 158.

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations make provisions in relation to how an asset transfer request is to be made under Part 5 of the Community Empowerment (Scotland) Act 2015 (“the Act”). They also sets out the period within which a relevant authority is, unless otherwise agreed, to give notice of its decision on an asset transfer request to the community transfer body and provide for the information which the decision notice is to contain.

Regulation 3 sets out that an asset transfer request must be made in writing and specifies information which must be included in or accompany a request. Regulations 4 to 9 specify procedures to be followed in relation to an asset transfer request. Regulation 4 provides for the acknowledgement of asset transfer requests by the relevant authority and the information to be included in such acknowledgement. Regulation 5 provides how the date on which the asset transfer request is to be taken to have been made is established. Regulation 6 requires notice of the making of an asset transfer request to be given to owners, tenants and occupiers of the land to which the request relates and sets out how this is to be done. Regulation 7 requires the relevant authority to publish notice of the making of the asset transfer request and sets out how this is to be done. In terms of regulation 8 the relevant authority is to give the community transfer body an opportunity to comment on any representations received in response to notices given or published under regulations 6 or 7. Regulation 9 requires that the relevant authority makes documents relating to the asset transfer request available for inspection on a website or by other electronic means.

Regulation 10 prescribes a period of 6 months after the date on which the asset transfer request is treated as having been made under regulation 5 as the period within which the relevant authority is to give notice of its decision unless a longer period is agreed with the community transfer body.

Regulation 11 specifies the information to be contained in the decision notice in addition to the information required to be given in the notice in terms of section 82(7) and 83(2) of the Act.

Regulation 12 makes provision for the use of electronic communication and regulation 13 defines the term “contact address”.