
SCOTTISH STATUTORY INSTRUMENTS

2020 No. 21

**The Right to Buy Land to Further Sustainable
Development (Applications, Written Requests, Ballots
and Compensation) (Scotland) Regulations 2020**

PART 1

Introductory

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Right to Buy Land to Further Sustainable Development (Applications, Written Requests, Ballots and Compensation) (Scotland) Regulations 2020 and come into force on 26 April 2020.

(2) In these Regulations—

“the Act” means the Land Reform (Scotland) Act 2016,

“ballot deadline” has the meaning given in regulation 8(3)(b),

“charity number” means the number used by the Office of the Scottish Charity Regulator to identify a charity that is registered on the Scottish Charity Register in accordance with the Charities and Trustee Investment (Scotland) Act 2005⁽¹⁾,

“company number” means the unique number allocated to every company, known as the company’s registered number, in accordance with section 1066 of the Companies Act 2006 (company’s registered numbers)⁽²⁾,

“Lands Tribunal” means the Lands Tribunal for Scotland,

“Part 5 community body” is to be construed in accordance with section 49(1) of the Act (Part 5 community bodies),

“registered rules” has the meaning given by section 149 of the Co-operative and Community Benefit Societies Act 2014 (interpretation of act)⁽³⁾,

“registration number” means a number attributed to a community benefit society when it is registered under section 3 of the Co-operative and Community Benefit Societies Act 2014 (registration).

(1) 2005 asp 10.

(2) 2006 c.46.

(3) 2014 c.14.

PART 2

Applications under section 54 of the Act

Application for consent of the Scottish Ministers

2. For the purposes of section 54 of the Act (right to buy: application for consent), an application must—

- (a) be made in the form specified in schedule 1, and
- (b) include or be accompanied by information where specified in that form.

Specifications for maps, plans or other drawings relating to land or tenant's interest

3. A map, plan or other drawing that is referred to in schedule 1 and schedule 2 must—

- (a) be drawn to a metric scale corresponding to a scale used by the Ordnance Survey for that land,
- (b) be taxative and not demonstrative only,
- (c) show the compass orientation of north,
- (d) contain map grid reference numbers and sufficient surrounding details (fences, houses etc.) to enable the position of the land to be fixed accurately,
- (e) show the boundaries of the land, and
- (f) where measurements are given, give those measurements to one decimal place.

Manner in which application for consent must be publicly notified

4. The Scottish Ministers must give public notice of an application as required by section 55(3) of the Act (right to buy: application procedure) by way of an advertisement in one or both of the following—

- (a) a digital or paper edition of a newspaper circulating in the area where the community is located,
- (b) a publicly accessible webpage or website maintained by the Scottish Ministers for purposes which include making available for inspection any public notice of an application for consent under this regulation.

PART 3

Written request to an owner or tenant under section 56 of the Act

Written request to an owner or tenant under section 56 of the Act

5. A written request—

- (a) to the owner of the land for the purpose of section 56(3)(a) of the Act (right to buy: Ministers' decision on application), or
- (b) to the tenant for the purpose of section 56(7)(a) of the Act,

must be in the form specified in schedule 2.

Response from the owner of the land

6. A response from the owner of the land to a request sent for the purpose of section 56(3)(a) of the Act must be in the form specified in Part B of schedule 2.

Circumstances in which the owner of the land is taken not to have responded or agreed to the request

7.—(1) The owner of the land is to be taken—

- (a) not to have responded to a request sent for the purpose of section 56(3)(a) of the Act in the circumstances specified in paragraph (2), or
- (b) not to have agreed to a request sent for the purpose of section 56(3)(a) of the Act in the circumstances specified in paragraph (3).

(2) The owner of the land is taken not to have responded to a request if they have not returned Part B of the form in schedule 2 to the Part 5 community body within the period of 6 months beginning on the date of receipt of Part A of the form in schedule 2.

(3) The owner of the land is taken not to have agreed to a request if—

- (a) they have chosen Option 2 or Option 3 in Part B of the form in schedule 2,
- (b) they have chosen Option 1 in Part B of the form in schedule 2, but within the period of 6 months beginning on the date of receipt of Part A of the form in that schedule they have not concluded missives with the Part 5 community body or, as the case may be, the third party purchaser or,
- (c) they have left Part B of the form in schedule 2 blank or spoiled it.

PART 4

Ballot for the purpose of section 57 of the Act

Conduct of ballot

Conduct of ballot

8.—(1) The ballot for the purpose of section 57(1) of the Act (ballot to indicate approval for the purposes of section 56) must be conducted—

- (a) in a fair and reasonable manner, and
- (b) as a secret postal ballot.

(2) The Part 5 community body must ascertain the persons eligible to vote in the ballot, those persons being members of the community as defined for the purposes of section 49(2)(a), (3)(a), (4)(a) or (5)(a) of the Act as the case may be⁽⁴⁾.

(3) The Part 5 community body must send to each person eligible to vote a ballot paper indicating—

- (a) the question on which the vote is being taken,
- (b) the date and time, being not less than 10 days after the date of posting of the ballot paper to the person, by which the ballot must be returned (“ballot deadline”), and
- (c) the information specified in paragraph (4).

(4) Section 49(9) of the Act sets out how a community is defined for the purposes of section 49(2)(a), (3)(a), (4)(a) or (5)(a) of the Act.

- (4) The Part 5 community body must send to each person eligible to vote—
- (a) a description of—
 - (i) the land subject to an application under section 54 of the Act, or
 - (ii) the land to which the tenant's interest subject to an application under section 54 relates,
 - (b) details of any rights or interests in respect of an owner, creditor, third party and, where the ballot is in respect of the proposed purchase of a tenant's interest, the tenant,
 - (c) a description of the Part 5 community body's proposals for the land or, where the application is in respect of a tenant's interest, the land to which the tenant's interest relates,
 - (d) details of how further information may be obtained on the Part 5 community body's proposals for the land or, where the application is in respect of a tenant's interest, the land to which the tenant's interest relates, and other matters relating to the ballot,
 - (e) the name of any proposed third party purchaser, if applicable,
 - (f) the name of the Part 5 community body, as it appears in the Part 5 community body's memorandum and articles of association (or as adopted by a resolution of its members), constitution or registered rules, and
 - (g) the Part 5 community body's contact details, including a contact name, postal address, email address and telephone number.
- (5) The Part 5 community body must provide each person eligible to vote with a stamped addressed envelope for returning the completed ballot paper.

Proxy votes

9.—(1) A person eligible to vote in the ballot may make a request to the Part 5 community body to be permitted a proxy vote.

- (2) The request under paragraph (1) must be made in writing and must—
- (a) state the name and address of the eligible voter,
 - (b) state the name and address of another person who is eligible to vote whom the eligible voter wishes to appoint as a proxy voter,
 - (c) be signed by the eligible voter who is appointing the proxy voter,
 - (d) contain a statement confirming that the eligible voter has consulted the proxy and that the proxy is capable and willing to act as a proxy voter, and
 - (e) be received by the Part 5 community body not later than 1700 hours on the day before the ballot deadline.
- (3) The Part 5 community body must permit the proxy vote if the request is made in accordance with this regulation.

Ballot result

Observer of ballot result

10.—(1) Before sending the ballot papers in accordance with regulation 8(3), the Part 5 community body must appoint an observer to oversee, in person—

- (a) the opening and counting of the votes made on the completed ballot papers, and
 - (b) the recording of the result.
- (2) The observer must—
- (a) be an individual who is independent of the Part 5 community body, and

- (b) sign a declaration in the form specified in schedule 4 confirming that the person oversaw, in person, the opening and counting of the votes made on the completed ballot papers and the recording of the ballot result.

Publication of ballot result

11.—(1) The Part 5 community body must, within the period of 14 days beginning on the date of the ballot deadline, publish the result of the ballot in the form and manner provided for in paragraphs (2) and (3).

- (2) The result of the ballot must—
 - (a) be published in the form specified in schedule 3, and
 - (b) include or be accompanied by information where specified in that schedule.
- (3) The result of the ballot must be published—
 - (a) in a digital or paper edition of a newspaper circulating in the area where the community is located, and
 - (b) on any publicly accessible webpage or website that is operated by or on behalf of the Part 5 community body, if such a webpage or website exists.

Form of return to the Scottish Ministers of the ballot result

12. For the purposes of section 57(5) of the Act, a return to the Scottish Ministers notifying the matters mentioned in section 57(5)(a) to (d) must be in the form specified in schedule 4.

Requirement to retain and share ballot information

Retention and provision of information by the Part 5 community body

13.—(1) For the purposes of complying with section 57(6) of the Act, the Part 5 community body must retain the information specified in paragraph (2) for a period of 2 years after the ballot deadline.

- (2) The information referred to in paragraph (1) is—
 - (a) evidence that regulation 8 was complied with including a copy of all information provided to eligible voters in advance of the ballot in accordance with regulation 8(3) and (4),
 - (b) all requests for a proxy vote under regulation 9,
 - (c) a record of the proxy votes permitted under regulation 9, and
 - (d) all completed and returned ballot papers.

Reimbursement of expense of conducting a ballot

Application for reimbursement

14.—(1) A Part 5 community body may apply to the Scottish Ministers for reimbursement of the expense of conducting a ballot under section 57 of the Act.

(2) An application under paragraph (1) may only be made on or after the date that the associated application was made under section 54 of the Act and must be made no later than the date determined in accordance with paragraph (3) or (4).

(3) If the Part 5 community body is refused consent to exercise a right to buy under section 54 of the Act, the date is the earlier of—

- (a) the day after the expiry of the time period specified in section 69(7) (appeals to the sheriff) of the Act for lodging an appeal against the decision on an application under section 54 of the Act, if no appeal is lodged within that period,

- (b) the day on which the sheriff issues a decision in an appeal under section 69(3) of the Act, that the Part 5 community body is not given consent to exercise the right to buy under section 54 of the Act.
- (4) If the Part 5 community body is given consent to exercise a right to buy under section 54 of the Act, the date is the earliest of—
- (a) the day on which the sheriff issues a decision in an appeal under section 69(1), (2), (5) or (6) of the Act, that the Part 5 community body is not given consent to exercise the right to buy under section 54 of the Act,
 - (b) the expiry of the period—
 - (i) specified in section 62(1) of the Act, or
 - (ii) where an application under section 54 nominated a third party purchaser, section 62(2) of the Act,

but only if the Part 5 community body did not, within that period, notify the Scottish Ministers, the owner of the land and, where the application is to buy a tenant's interest, the tenant, of its intention to proceed to buy the land or, as the case may be, the tenant's interest,
 - (c) the date of notice of withdrawal of the application—
 - (i) under section 62(3)(a) of the Act where an application does not nominate a third party purchaser, or
 - (ii) under section 62(4)(a) of the Act where an application nominates a third party purchaser,
 - (d) the date of the notice of withdrawal of the confirmation of intention to proceed—
 - (i) under section 62(3)(b) of the Act where an application does not nominate a third party purchaser, or
 - (ii) under section 62(4)(b) of the Act where an application nominates a third party purchaser,
 - (e) the date on which the Part 5 community body's or, as the case may be, the third party purchaser's confirmation of intention to proceed made under section 62 is treated as withdrawn under section 64(7) of the Act, or
 - (f) the date on which the transfer is completed under section 64 of the Act.

Information to be included in application for reimbursement

- 15.—**(1) An application under regulation 14(1) must include the following information—
- (a) the name of the Part 5 community body, as it appears in the body's memorandum and articles of association (or as adopted by a resolution of its members), constitution or registered rules,
 - (b) the Part 5 community body's company number, charity number or registration number,
 - (c) the Part 5 community body's contact details, including a contact name, postal address, email address and telephone number,
 - (d) the date on which the Part 5 community body made its application under section 54 of the Act,
 - (e) the ballot deadline,
 - (f) the question on which the vote was taken,
 - (g) details of the Part 5 community body's bank account into which the amount of any reimbursement is to be paid, and

- (h) a statement, in accordance with paragraph (2), setting out all costs that were incurred in conducting the ballot.
- (2) For each cost the Part 5 community body must provide—
 - (a) the date on which the cost was incurred,
 - (b) a brief description of the goods or services to which the cost relates,
 - (c) evidence that the cost was incurred in conducting the ballot, and
 - (d) the date on which the goods or services to which the cost relates were provided.
- (3) The Part 5 community body may include with its application any other information that it considers to be relevant.

Request for further information before making decision

16.—(1) Within the period of 30 days beginning on the date on which the Scottish Ministers receive an application under regulation 14(1), they may request from the Part 5 community body any further information that the Scottish Ministers consider to be necessary for the purpose of making a decision under regulation 17(1).

- (2) No later than the expiry of the period of 7 days beginning on the date on which the Part 5 community body receives a request under paragraph (1), it must respond by—
 - (a) providing the requested information, or
 - (b) explaining why the information cannot be provided.

Decision of the Scottish Ministers on application for reimbursement

17.—(1) No later than the expiry of the period of 60 days beginning on the date on which the Scottish Ministers receive an application under regulation 14(1), they must—

- (a) calculate the amount to be reimbursed, if any, by—
 - (i) calculating the claimed expense of conducting the ballot in accordance with paragraphs (2) and (3), and
 - (ii) subtracting from that amount any expense that they consider not to have been reasonably incurred in the conduct of the ballot,
 - (b) notify the Part 5 community body in writing of the amount calculated under sub-paragraph (a) and the reasons for any decisions made in the course of making that calculation, and
 - (c) pay to the Part 5 community body the amount calculated under sub-paragraph (a), if it is an amount greater than zero.
- (2) When calculating the expense of conducting the ballot, the Scottish Ministers must disregard any cost, or part thereof, identified in the application that they consider to be—
- (a) directly attributable to activities other than those specified in regulation 8, 9 and 10, or
 - (b) incurred retrospectively.
- (3) For the purpose of paragraph (2)(b), an expense is incurred retrospectively if it is incurred after the provision of the goods or services to which it relates, where those goods or services were originally provided on a no-cost basis.

Appeal against the Scottish Ministers' decision under regulation 17

18.—(1) A Part 5 community body has a right of appeal to the Lands Tribunal against a decision of the Scottish Ministers under regulation 17.

(2) An appeal under paragraph (1) must be lodged within the period of 28 days beginning on the date three days after the day on which the notice of the decision is sent to the Part 5 community body.

(3) The Lands Tribunal may, after making its own assessment in accordance with regulation 17 of the amount, if any, to be reimbursed, make an order requiring the Scottish Ministers to reimburse a specified amount of expense to the Part 5 community body.

(4) There is no right of appeal of a decision of the Lands Tribunal made under this regulation.

PART 5

Compensation

Procedure for claiming compensation

19.—(1) A claim under section 67(1) or 67(2)(b) of the Act must be submitted to the Part 5 community body which is liable to pay the compensation, at the registered office or official address of that body.

(2) A claim under section 67(2)(a) of the Act must be submitted to the third party purchaser which is liable to pay the compensation, at the address specified in the application form provided for in schedule 1.

(3) A claim under section 67(4) of the Act must be submitted to the Scottish Ministers.

(4) A claim under section 67(1) or 67(2) of the Act must be submitted within the period of 90 days beginning, as the case may be, on—

- (a) the final settlement date within the meaning of section 64(2) to (4) of the Act,
- (b) the date that the notice in writing to the Scottish Ministers that the Part 5 community body has withdrawn its application or withdrawn the confirmation of its intention to proceed with the purchase under section 62(3) of the Act is received,
- (c) the date that the notice in writing to the Scottish Ministers that—
 - (i) the Part 5 community body has withdrawn its application or,
 - (ii) the Part 5 community body or the nominated third party purchaser has withdrawn the confirmation of intention to proceed,
 under section 62(4) of the Act, or
- (d) the date on which the Part 5 community body's or the third party purchaser's confirmation of intention to proceed made under section 62 of the Act is treated as withdrawn under section 64(7) of the Act.

(5) A claim under section 67(4) of the Act must be submitted within the period of 90 days beginning on the date of notification under section 60(1) (b), (c), (d) or (e) of the Act (notification of Ministers' decision on application) of the refusal by the Scottish Ministers to grant the Part 5 community body's application made under section 54 of the Act.

(6) A claim mentioned in paragraph (1), (2) or (3) must—

- (a) specify under which paragraph of section 67(1) or 67(2) of the Act the loss or expense falls and, where applicable, which sub-paragraph of section 67(2)(a), and
- (b) be fully vouched by supporting documentation.

(7) For the purposes of section 67(6) of the Act, the period of time fixed is 60 days beginning on the date that the claim for compensation was received.

Grant towards liability for compensation

20.—(1) An application for a grant under section 68 of the Act (grants towards liabilities to pay compensation) must—

- (a) be in the form specified in schedule 5, and
- (b) include or be accompanied by information where specified in that schedule.

(2) An application for a grant under section 68 of the Act must be submitted to the Scottish Ministers within the period of 90 days beginning on—

- (a) the date on which the Part 5 community body or third party purchaser and the claimant agreed the amount of compensation payable, or
- (b) the date on which the Lands Tribunal determined a question referred to it under section 67(6) of the Act as to the amount, if any, of compensation payable.

(3) The Scottish Ministers must—

- (a) acknowledge receipt of an application for a grant made in accordance with paragraphs (1) and (2) within the period of 7 days beginning on the date that they receive it, and
- (b) issue their decision on that application within the period of 28 days beginning on the date that they receive it.

St Andrew's House,
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5th February 2020

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