
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 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⁽¹⁾.

(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) 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,

(1) 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.

- (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.