
SCOTTISH STATUTORY INSTRUMENTS

2018 No. 140

**The Community Right to Buy (Abandoned, Neglected
or Detrimental Land) (Applications, Ballots and
Miscellaneous Provisions) (Scotland) Regulations 2018**

PART 3

Ballot for purpose of section 97J of the Act

Conduct of ballot

Conduct of ballot

6.—(1) The ballot for the purpose of section 97J(1) of the Act (ballot to indicate approval for purposes of section 97H) must be conducted—

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

(2) The Part 3A 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 97D(2)(a), (3)(a) or (4)(a) of the Act as the case may be⁽¹⁾.

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

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

(4) The Part 3A community body must send to each person eligible to vote—

- (a) a description of the land and details of any rights or interests in respect of an owner, creditor or third party that are associated with the land;
- (b) the basis on which the Part 3A community body asserts that the land is eligible land for the purposes of Part 3A of the Act;
- (c) a description of the Part 3A community body’s proposals for the land;
- (d) details of how further information may be obtained on the Part 3A community body’s proposals for the land and other matters relating to the ballot;
- (e) the name of the Part 3A community body, as it appears on the Part 3A community body’s memorandum and articles of association, constitution or registered rules;
- (f) the Part 3A community body’s company number, charity number or registration number; and

⁽¹⁾ Section 97D(9) of the Act sets out how a community is defined for the purposes of section 97D(2)(a), (3)(a) or (4)(a) of the Act.

(g) the Part 3A community body's contact details, including a contact name, postal address, email address and telephone number.

(5) The Part 3A community body must provide to each person eligible to vote a stamped addressed envelope for returning the completed ballot paper.

Proxy votes

7.—(1) A person eligible to vote in the ballot may make a request to the Part 3A 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;
- (c) be signed by the eligible voter who is appointing the proxy;
- (d) contain a statement confirming that the eligible voter has consulted the proxy and that the proxy is capable and willing of acting as proxy; and
- (e) be received by the Part 3A community body not later than 1700 hours on the day before the ballot deadline.

(3) The Part 3A community body must permit the proxy vote if the request is made in accordance with this regulation.

Ballot result

Observer of ballot result

8.—(1) Before conducting the ballot, a Part 3A community body must appoint an observer to oversee, in person—

- (a) the 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 3A community body; and
- (b) sign the declaration on the form specified in schedule 4 confirming that the person oversaw, in person, the counting of the votes made on the completed ballot papers and the recording of the result in accordance with paragraph (1).

Publication of 10ballot result

9.—(1) The Part 3A community body must, not later than 14 days beginning with the ballot deadline, publish the result of the ballot in the form and manner provided in paragraphs (2) and (3).

(2) The result of the ballot must—

- (a) be provided in the form specified in schedule 3; and
- (b) include or be accompanied by information of the kind 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 a publicly accessible webpage or website that is operated by or on behalf of the Part 3A community body, if such a webpage or website exists.

Form of return to Ministers of ballot result

10. For the purposes of section 97J(4) of the Act a return to Ministers notifying the matters mentioned in paragraphs (a) to (d) of section 97J(4) must be in the form specified in schedule 4.

Requirement to retain and share ballot information

Retention and provision of information by the Part 3A community body

11.—(1) The Part 3A community body must retain the information 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 6 was complied with including a copy of all information provided to the community in advance of the ballot in accordance with regulation 6(3) and (4);
 - (b) all requests for a proxy vote under regulation 7;
 - (c) a record of the proxy votes permitted under regulation 7; and
 - (d) all completed and returned ballot papers.

Reimbursement of expense of conducting ballot

Application for reimbursement

12.—(1) A Part 3A community body may apply to Ministers for reimbursement of the expense of conducting a ballot in accordance with section 97J of the Act.

(2) An application under paragraph (1) must be made on or after the date that an application is made under section 97G of the Act and no later than the date as determined in accordance with paragraph (3) or (4) as the case may be.

(3) If the Part 3A community body is refused consent to exercise the right to buy land, the date is the earlier of—

- (a) the day after the expiry of the time period specified in section 97V(6) of the Act (appeals) for lodging an appeal against the decision on an application under section 97G of the Act, but only if no appeal is lodged within that period; or
- (b) the day on which the sheriff issues a decision in an appeal under section 97V of the Act, but only if the outcome of the appeal is that the Part 3A community body is refused consent to exercise the right to buy land.

(4) If the Part 3A community body is given consent to exercise the right to buy land, the date is the earliest of—

- (a) the expiry of the period specified in section 97P(1) of the Act (confirmation of intention to proceed with purchase and withdrawal), but only if the Part 3A community body did not, within that period, notify Ministers and the owner of the land of its intention to proceed to buy the land;
- (b) the date of notice of withdrawal of the application under section 97P(2)(a) of the Act;
- (c) the date of notice of withdrawal of the confirmation of intention to proceed under section 97P(2)(b) of the Act;

- (d) the date on which the Part 3A community body's application is treated as withdrawn under section 97R(5) of the Act (completion of transfer); or
- (e) the day on which the transfer of the land is completed under section 97R of the Act.

Information to be included in application for reimbursement

13.—(1) An application under regulation 12(1) for reimbursement of the expense of conducting a ballot must include the following information:—

- (a) the name of the Part 3A community body, as it appears on the body's memorandum and articles of association, constitution or registered rules;
 - (b) the Part 3A community body's company number, charity number or registration number;
 - (c) the Part 3A community body's contact details, including a contact name, postal address, email address and telephone number;
 - (d) the date on which the Part 3A community body made its application under section 97G of the Act;
 - (e) the ballot deadline;
 - (f) the question on which the vote was taken;
 - (g) details of the Part 3A community body's bank account into which the amount of any reimbursement is to be paid; and
 - (h) a statement setting out all costs that were incurred in conducting the ballot in accordance with paragraph (2).
- (2) For each cost the Part 3A 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 3A community body may include with its application any other information that it considers to be relevant.

Ministers may request further information before making decision

14.—(1) No later than the expiry of 30 days beginning with the date on which Ministers receive an application under regulation 12(1), Ministers may request from the Part 3A community body any further information that Ministers consider to be necessary for the purpose of making a decision under regulation 15.(1)

(2) The Part 3A community body must respond to a request under paragraph (1) no later than 7 days after the date on which the Part 3A community body receives it, by—

- (a) providing the requested information; or
- (b) explaining why the information cannot be provided.

Decision of Ministers on application for reimbursement

15.—(1) No later than the expiry of 60 days beginning with the date on which Ministers receive an application for reimbursement under regulation 12(1), Ministers must—(1)

- (a) calculate the amount to be reimbursed by—
 - (i) calculating the expense of conducting the ballot in accordance with paragraphs (2) and (3); and

- (ii) subtracting from the total amount any expense that they consider would not have been reasonably incurred in the conduct of the ballot;
 - (b) notify the Part 3A community body 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 3A community body the amount calculated under sub-paragraph (a), if any amount is to be paid.
- (2) When calculating the expense of conducting the ballot, Ministers must disregard that portion of each expense identified in the application that they consider to be—
- (a) directly attributable to activities other than those specified in regulation 6; 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 initially provided on a no-cost basis.

Appeal against Ministers' decision under regulation 15

16.—(1) A Part 3A community body has a right of appeal to the Lands Tribunal against a decision of Ministers under regulation 15.

(2) Any appeal under paragraph (1) must be lodged within 28 days beginning with the date that the Part 3A community body receives notice of the decision.

(3) The Lands Tribunal may, after making its own assessment under regulation 15 of the amount, if any, to be reimbursed, make an order requiring Ministers to reimburse a specified amount of expense to a Part 3A community body.

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