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SCOTTISH STATUTORY INSTRUMENTS

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**2018 No. 140**

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

**PART 1**

Introductory

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Community Right to Buy (Abandoned, Neglected or Detrimental Land) (Applications, Ballots and Miscellaneous Provisions) (Scotland) Regulations 2018 and come into force on 27th June 2018.

(2) In these Regulations, unless the context requires otherwise—

“the Act” means the Land Reform (Scotland) Act 2003;

“ballot deadline” has the meaning given in regulation 6(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);

“constitution” has the meaning given in section 50 of the Charities and Trustee Investment (Scotland) Act 2005 (constitution and powers)(3);

“Part 3A community body” means a Part 3A community body within the meaning given in section 97D(1) of the Act (part 3A community bodies);

“registered rules” has the meaning given by section 149 of the Co-operative and Community Benefit Societies Act 2014 (interpretation of act)(4); and

“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).

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(1) 2005 asp 10.

(2) 2006 c.46.

(3) 2005 asp 10.

(4) 2014 c.14.

## PART 2

### Applications under section 97G of the Act

#### **Form of application for consent of Ministers**

2. For the purposes of section 97G of the Act (right to buy: application for consent), an application by a Part 3A community body must—(1)

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

#### **Specifications for maps, plans or other drawings relating to land**

3. A map, plan or other drawing that is referred to in schedule 1 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. Ministers must give public notice of an application as required by section 97G(11) of the Act 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 Ministers for purposes which include making available for inspection any public notice of an application for consent under this regulation.

#### **Notification of Ministers' decision on application**

5. For the purposes of section 97M(1) of the Act (notification of Ministers' decision on application), the form of written notice of Ministers' decision on an application under section 97G is specified in schedule 2.

## 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<sup>(5)</sup>.
- (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
  - (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.

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<sup>(5)</sup> 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.

### *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.

## PART 4

### Miscellaneous matters

#### Prescribed types of area for defining community

17.—(1) For the purposes of section 97D(9) of the Act, the types of area by reference to which a community is defined are—

- (a) an electoral ward;
- (b) the area of a community council;
- (c) a postcode area;
- (d) a postcode district;
- (e) a postcode sector;
- (f) an island;
- (g) a locality delineated on the maps included in the Population Estimates for Settlements and Localities in Scotland, Mid-2016 published on 12th March 2018<sup>(6)</sup>; or
- (h) a settlement delineated on the maps included in the Population Estimates for Settlements and Localities in Scotland, Mid-2016 published on 12th March 2018.

(2) In this regulation—

“electoral ward” means a ward within the meaning of section 1 of the Local Governance (Scotland) Act 2004<sup>(7)</sup>;

“area of a community council” means an area of a community council established in accordance with Part IV of the Local Government (Scotland) Act 1973<sup>(8)</sup>;

“postcode area” means an area that—

- (a) is given a unique alphabetic coding to facilitate the delivering of mail; and
- (b) is identified by one or two alphabetical characters at the start of the full postcode, the letters being derived from a town, city or district falling within that postcode area;

“postcode district” means a sub-area of a postcode area and is identified by the characters within the first half of a full postcode, which may be numeric, alphabetic or alpha-numeric; and

“postcode sector” means a sub-area of a postcode district and is identified by the postcode district, the single space and the first character of the second half of the postcode unit.

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<sup>(6)</sup> A National Statistics publication, available via the following weblink: <https://www.nrscotland.gov.uk/news/2018/population-estimates-for-settlements-and-localities-mid-2016>.

<sup>(7)</sup> 2004 asp 9.

<sup>(8)</sup> 1973 c.65. Section 51 is amended by the Local Government etc. (Scotland) Act 1994 (c.39), schedule 14. Section 53 is amended by the Local Government (Miscellaneous Provisions) (Scotland) Act 1981 (c.23), section 25 and schedules 2 and 4.

### **Charges for copies of entries in register**

**18.**—(1) The charges for copies of entries in the Register of Applications by Community Bodies to Buy Land kept under section 52(1) of the Land Reform (Scotland) Act 2016<sup>(9)</sup> (register of applications by community bodies to buy land) are—

- (a) £30 for an extract of registration or colour plan; and
- (b) £16 for a plain copy of registration or black and white plan.

(2) The amounts specified in paragraph (1) are subject to the addition of VAT.

### **Grant towards liability for compensation**

**19.**—(1) An application for a grant under section 97U of the Act (grants towards Part 3A community bodies' liabilities to pay compensation) must—

- (a) be in the form specified in schedule 5; and
- (b) include information of the kind specified in that schedule.

(2) An application for a grant under paragraph (1) must be submitted to Ministers within the period of 90 days beginning with—

- (a) the date on which the Part 3A community body 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 97T(5) of the Act (compensation) as to the amount, if any, of compensation payable.

(3) Ministers must—

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

St Andrew's House,  
Edinburgh  
1st May 2018

*ROSEANNA CUNNINGHAM*  
A member of the Scottish Government