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## SCOTTISH STATUTORY INSTRUMENTS

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### 2015 No. 400

## The Community Right to Buy (Scotland) Regulations 2015

### PART 7

#### Ballots

##### Information to be provided to the ballotter by Ministers

**13.** The information that Ministers must provide to a ballotter under section 51A(2)(b)(1) of the Act is—

- (a) the date by which the ballotter must notify Ministers, the community body, the owner of the land to which the ballot relates and any creditor in a standard security with a right to sell the land of the information referred to in section 52(3)(2) of the Act; and
- (b) where Ministers have given the community body their consent in writing under section 35(1)(3) of the Act, a copy of the community body's modified memorandum, articles of association, constitution or registered rules.

##### Information to be provided to ballotter by community body

**14.** The information that the community body must provide to a ballotter under section 51A(6) of the Act must—

- (a) be provided in the form specified in Schedule 10; and
- (b) consist of the information specified in that Schedule.

##### Conduct of ballot

**15.—(1)** The ballot must be conducted as a secret postal ballot.

(2) The ballotter must ascertain the persons eligible to vote in the ballot, those persons being the members of the community as defined for the purposes of section 34(1)(a), (1A)(a) or (1B)(a) of the Act as the case may be(4).

(3) The ballotter must send to each person eligible to vote a ballot paper with—

- (a) the question on which the vote is to be taken;
- (b) a description of the land and any salmon fishings or mineral rights to which that question pertains; and
- (c) the date and time, being not less than 10 days after the date of posting, by which the paper must be returned.

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(1) Section 51A is inserted by section 49 of the 2015 Act.

(2) Section 52(3) is amended by paragraph 8(4)(a) of schedule 4 to the 2015 Act.

(3) Section 35(1) is amended by section 38(3) of the 2015 Act.

(4) Section 34(5) of the Act sets out how a community shall be defined for the purposes of section 34(1)(a), (1A)(a) and (1B)(a) of the Act.

(4) The ballotter must provide to each person eligible to vote a stamped addressed envelope for returning the completed ballot paper.

### **Proxy Votes**

**16.—**(1) A person eligible to vote in the ballot may make a request, in writing, to the ballotter to be permitted a proxy vote.

(2) A request under paragraph (1) must—

- (a) state the name and address of the person eligible to vote;
- (b) state the name and address of the person whom the person eligible to vote wishes to appoint as a proxy;
- (c) be signed by the person eligible to vote;
- (d) contain a statement confirming that the person who is eligible to vote has consulted the proxy and that the proxy is capable and willing of acting as proxy; and
- (e) be received by the ballotter not later than 1700 hours on the day before the date on which the ballot paper must be returned.

(3) The ballotter must permit a proxy vote to a person who makes a valid request in accordance with paragraphs (1) and (2).

### **Ballot results**

**17.—**(1) The ballotter must, not later than 14 days from the date specified for the return of the ballot papers, publish in a newspaper circulating in the vicinity of the community—

- (a) the number of persons eligible to vote in the ballot;
- (b) the number of persons eligible to vote who voted; and
- (c) the number of votes cast for and against the proposition that the community body buy the land.

(2) A notification that is required to be made under section 52(3)(5) of the Act must be in the form of return specified in Schedule 11.

### **Retention and provision of information by the ballotter**

**18.—**(1) The ballotter must retain—

- (a) all information provided to the ballotter by the community body in accordance with section 51A(6)(6) of the Act and regulation 14;
- (b) all completed ballot papers from any ballot conducted in accordance with regulations 15 to 17;
- (c) evidence of sending the ballot papers from any ballot conducted in accordance with regulations 15 to 17 to those persons eligible to vote;
- (d) all requests for a proxy vote made under regulation 16(1) in relation to any ballot conducted in accordance with regulations 15 to 17; and
- (e) a record of all proxy votes permitted in accordance with regulation 16(3) in relation to any ballot conducted in accordance with regulations 15 to 17,

for a period of 2 years after the date by which the ballot papers must be returned in accordance with regulation 15(3)(c).

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(5) Section 52(3) is amended by paragraph 8(4)(a) of schedule 4 to the 2015 Act.

(6) Section 51A is inserted by section 49 of the 2015 Act.

(2) Within 28 days of receipt of a request, the ballotter must make available any information, ballot papers, evidence, requests or records mentioned in paragraph (1) for inspection by—

- (a) Ministers (for the purposes of conducting a review under regulation 19 or otherwise); or
- (b) any person with a right of appeal under section 61(7) of the Act.

### **Ballot not conducted as prescribed**

**19.**—(1) Ministers may review whether a ballot was conducted in accordance with regulations 15 to 17—

- (a) at the request of—
  - (i) the community body;
  - (ii) the owner of the land; or
  - (iii) a creditor in a standard security with a right to sell the land; or
- (b) where they have reason to believe that the ballot may not have been conducted in accordance with regulations 15 to 17.

(2) A request to Ministers under paragraph (1)(a) must—

- (a) be in writing;
- (b) be received by Ministers not later than 21 days after the date on which the ballotter made the notification required under section 52(3)(8) of the Act; and
- (c) set out the reasons why the person making the request has reason to believe that the ballot may not have been conducted in accordance with regulations 15 to 17.

(3) Where Ministers decide to review whether a ballot was conducted in accordance with regulations 15 to 17, they must—

- (a) send—
  - (i) where the review is pursuant to a request under paragraph (1)(a), a copy of the request to the persons mentioned in paragraph (1)(a) (other than whichever of those persons made the request under paragraph (1)(a)) and to the ballotter; or
  - (ii) where Ministers are acting pursuant to paragraph (1)(b), a notice setting out their reasons to the persons mentioned in paragraph (1)(a) and to the ballotter; and
- (b) invite those persons to provide them, so as to be received not later than 21 days after the sending of the invitation, views in writing on the request or, as the case may be, the notice.

(4) Ministers must, within 7 days of receiving views sent in accordance with paragraph (3)(b)—

- (a) send to the persons mentioned in paragraph (1)(a) and to the ballotter a copy of any views given in response to an invitation under paragraph (3)(b); and
- (b) invite those persons to send Ministers, so as to be received not later than 14 days after the sending of the invitation, any further views.

(5) Ministers must, within the period specified in paragraph (6),—

- (a) consider—
  - (i) any written views sent in accordance with paragraphs (3) and (4); and
  - (ii) any information made available to Ministers by the ballotter in accordance with regulation 18(2);
- (b) decide whether the ballot was conducted in accordance with regulations 15 to 17; and

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(7) Section 61 is amended by section 58 of, and schedule 5 to, the 2015 Act.

(8) Section 52(3) is amended by paragraph 8(4)(a) of schedule 4 to the 2015 Act.

- (c) send notification to the persons mentioned in paragraph (1)(a) and the ballotter of their decision and the reasons for their decision.
- (6) The period specified in this paragraph is the period of 28 days beginning with the day after the day on which further views must be received by Ministers in accordance with paragraph (4)(b).
- (7) Where two or more requests are made under paragraph (1) in relation to the same ballot, Ministers may consider and decide upon those requests together.
- (8) If Ministers decide that a ballot has not been conducted in accordance with regulations 15 to 17, a further ballot must be conducted in accordance with regulation 20.

### **Conduct of further ballot**

**20.**—(1) Subject to paragraphs (2) and (3), if, by virtue of regulation 19(8), a further ballot must be conducted, that further ballot must be conducted by a ballotter in accordance with the requirements of regulations 15, 16 and 17(1).

(2) In any case where Ministers have given their consent in writing under section 35(1)(9) of the Act, Ministers must provide a copy of the community body's modified memorandum, articles of association, constitution or registered rules not later than 14 days after the date on which Ministers sent notification in accordance with regulation 19(5)(c).

(3) Within 14 days from the date on which Ministers sent notification in accordance with regulation 19(5)(c), the community body must provide to the ballotter the following information—

- (a) the name of the community body;
- (b) the company number, registration number or charity number of the community body as the case may be;
- (c) the contact details for the community body;
- (d) a description of the land and any salmon fishings or mineral rights in relation to which the community body is exercising its right to buy;
- (e) details of the community body's proposals for use of the land in relation to which it is exercising its right to buy;
- (f) details of where copies of the community body's proposals can be obtained by members of the community; and
- (g) the assessed value of the land and any moveable property which has been valued as notified to the community body by the valuer in accordance with section 60(2) of the Act.

(4) The ballotter must, within the period specified in paragraph (5), notify Ministers, the community body, the owner of the land to which the ballot relates and any creditor in a standard security with a right to sell the land of—

- (a) the name of the community body;
- (b) the date of the further ballot;
- (c) the result of the further ballot, including how many votes were spoilt;
- (d) the number of persons eligible to vote;
- (e) the number of persons eligible to vote who voted, including details of the number of proxy votes cast;
- (f) the number of persons eligible to vote who voted in favour of the proposition that the community body buy the land;
- (g) the wording of that proposition; and

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(9) Section 35(1) is amended by section 38(3) of the 2015 Act.

(h) details of any information provided by the ballotter to persons eligible to vote in the further ballot.

(5) The period specified in this paragraph is 35 days from the date on which Ministers sent notification in accordance with regulation 19(5)(c).

(6) The expenses of any further ballot conducted in accordance with this regulation are to be met by Ministers.

(7) In relation to a further ballot conducted in accordance with this regulation, the ballotter must retain—

- (a) all information provided to the ballotter by the community body in accordance with paragraph (3);
- (b) all completed ballot papers from the further ballot conducted in accordance with this regulation;
- (c) evidence of sending the ballot papers from the further ballot conducted in accordance with this regulation to those persons eligible to vote;
- (d) all requests for a proxy vote made under regulation 16(1) in relation to the further ballot conducted in accordance with this regulation; and
- (e) a record of all proxy votes permitted in accordance with regulation 16(3) in relation to the further ballot conducted in accordance with this regulation;

for a period of 2 years after the date by which the ballot papers must be returned in accordance with regulation 15(3)(c) in any further ballot conducted in accordance with this regulation.

(8) Within 28 days of receipt of a request, the ballotter must make available any information, ballot papers, evidence, requests or records mentioned in paragraph (7) for inspection by—

- (a) Ministers; or
- (b) any person with a right of appeal under section 61(10) of the Act.