

**MODEL APPLICATION
NOTES ON COMPLETING THE APPLICATION FORM**

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INTRODUCTION

It has become evident over the past 6 months that a number of Community Bodies are encountering difficulty in completing the Application Form to the satisfaction of Scottish Ministers, are making basic errors, or are providing incomplete information. This has resulted in delays in submitting competent Applications (resulting in land being sold in some cases) and refusals by Scottish Ministers to register the interest.

To help overcome these problems, we have prepared a **Model Application Form** together with these **Notes** to assist in this process. If you follow these Notes and ensure that the Application Form is completed in accordance with the Model Application, we hope that the instances of failures will be eliminated.

Please be aware that neither these Notes nor the Model Application Form or other documents constitute legal advice and we cannot be held liable for any consequences following their use. Their purpose is advisory only.

Please do bear in mind that officials in the Scottish Executive and Scottish Ministers take decisions on whether your Application is competent and should be registered. There is no guarantee that where one Application is approved on the basis of how one question has been answered, that another Application using a similar formulation of words will automatically be accepted.

To properly understand the Application Form and these Notes, please make sure you have a copy of the Guidance Pack (available from the Scottish Executive tel 0131 244 6003) and the Act (link available at the INFORMATION page of www.landreformact.com).

BEFORE COMPLETING THE FORM

Before completing the Application Form, you need to undertake FOUR important tasks.

1. Incorporate your Community Body in line with the requirements in Section 34 of the Act and submit the Memorandum and Articles of Association for the approval of Ministers in accordance with Section 34(4). This will involve the identification of Postcodes to define your community. These are then needed in order to complete the Application Form. You cannot submit an Application until your Memorandum and Articles of Association have been approved by Scottish Ministers.
2. Determine the ownership of the land you wish to register an interest in. This may involve searches in the Registers of Scotland.

3. Source appropriate mapping to prepare the maps you will need to submit with your Application.
4. Secure the support of the relevant number of members of your community for the proposed Application.

A TIP ON COMPLETING THE APPLICATION FORM

You can complete the printed version of the Application Form by hand. Please ensure you use **BLACK INK AND CAPITAL LETTERS**. Alternatively, you can download an Adobe Acrobat pdf version from: -

<http://www.scotland.gov.uk/Topics/Rural/Land/17063/FillableCRtBform>.

If you decide to complete the pdf version, do be aware that you **CANNOT** save a partially or wholly completed form and that you must print out the form and mail a hard copy. Thus you should only complete the pdf version **IF** you have already got all the answers ready since it will have to be completed at one go (unless you have the full Adobe Acrobat programme which allows you to save as you go along).

Thus you may wish to draft answers to the various questions in a word processing programme to allow to you save, edit and amend your answers before completing the final good copy.

NOTES ON COMPLETING THE FORM - PART A

Question 1

This is straightforward.

Question 2

This is straightforward.

Question 3

Here you need to enter the Postcodes used to define your community. These should already have been decided since they form a part of your Memorandum and Articles of Association.

The Form only allows for the entry of 8 postcodes. If you have more then you should list them on a separate sheet of paper and **CLEARLY** identify this as an attached part of your Application in the box. In this box you should also **CLEARLY** state the **NAME** of your community and **CLEARLY** identify your attached map showing the boundaries of the community and how these relate to the land to be registered.

Question 4

A typical Application will have 2 maps - one showing the boundaries of the Community in the form of defined Postcodes and the other showing the extent of the land to be registered.

The County field is NOT to be completed with the name of the current Local Authority (Highland, Scottish Borders etc.) but should contain the pre-1975 County (Inverness, Selkirk etc.) which remains the basis for recording landownership in the Register of Sasines and Land Register.

The Postcode details are the postcodes which cover the land to be registered. State here all the postcodes that cover the land and continue on a separate sheet if necessary.

The OS Grid Reference numbers should include ALL of the 4-figure 1 km sq. Ordnance Survey Grid squares that include the land to be registered. Small parcels of land of a few hectares will normally be entirely contained within one such square but larger parcels of several tens of hectares will probably cover more than one square and farms and estates of over 100ha certainly will.

In the written description it is important to include the following: -

- a Grid reference location (usually the centre point of the land parcel)
- the extent in hectares
- a brief description of the boundaries
- a brief description of the character of the land
- AND IMPORTANTLY, an unambiguous reference to the accompanying map and how the land is delineated on it. Failure to make this clear has led to the refusal of one Application.

Ensure that any map included in your application conforms to the requirements in the regulations referred to at the foot of page 3 of the Application Form. These Regulations can be downloaded from the INFORMATION page of the landreformact.com website.

A **Guide to Mapping** and how to prepare maps is also available from Highlands and Islands Enterprise Community Land Unit. Contact Sandra Holmes on 01520 722988.

Question 5

Here you need to identify the owner of the land you wish to register. A number of points are important to note.

- You must make separate applications for land held by different landowners. Even minor differences (e.g a husband and wife own 2 fields but the 3rd is in the name of husband and wife and son) will require separate applications.
- This must be the exact legal owner. It is no good saying the Duke of Anyshire if in fact the land is held by a family trust (e.g. The 1967 Trust for the Grandchildren of the 8th Duke of Anyshire). Equally your application may be declined if you state Anytown Developments Company Ltd. instead of Anytown Developments Ltd. Bear in mind also that most Forestry Commission land is not owned by the Forestry Commission but by Scottish Ministers.
- You need to check this information in the Registers of Scotland. You can contact them directly (see www.ros.gov.uk/citizen/contacts.html for details) or you can

commission a Search Company to find this information. The author, Andy Wightman, also provides this service.

- Bear in mind that the Registers will only record the last recorded owner as they existed at the time they acquired the land. Their name may have changed if it is a limited company (you can check at <http://wck2.companieshouse.gov.uk/>) or the address of the landowner may have changed. For example an individual from, for example, Newcastle may purchase a farm in Anyshire. At the time of recording the transaction, their address will be given as their Newcastle address. Subsequently they may have moved to the property they have bought or moved to another address in the country. Sometimes a quick check with Directory Enquiries (online at www.bt.com) can establish this.

Whilst you are checking details of the ownership, you should also check whether the salmon fishings are included (Question 5 PART B), whether the minerals are also owned (see Question 6 PART B), AND whether there are any persons who have other legal rights including an person with a lease or standard security or other form of credit security over the land (see Question 11 PART B). In some cases this will be impossible to determine from the public records (many forms of lease for example are not in the public domain) although for the purposes of the Act it is only creditors that it is important to identify (see Section 37(3) etc.). Failure to identify other third parties does not appear to be critical.

This is all important because your application will be sent to the landowner (and any creditor) for their comment and if it goes to the wrong person or to the wrong address, your application may be compromised - similarly with persons who have leases or securities.

If the owner of the land or any creditor is unknown or cannot be found, you need to comply with the requirements of Section 37(4) of the Act. See Notes relating to PART B Question 11 below.

Question 6

This is straightforward.

PART B

Question 1

If the land has already been put up for sale or negotiations have begun with a view to selling it, your application will be deemed to be 'late'. If it is, you will need to satisfy further criteria in Question 11 PART B. Note, that at the time of making the Application, you may not be aware that it will be deemed 'late'. this is why you are asked merely to state whether as far as *you are aware*, your application is timeous.

Question 2

This is straightforward.

Question 3

Here you should list the names and addresses of all the members of your Community Body. If you have just constituted the organisation recently you may not have many more

than the minimum 20 members required by the Act. If you have been established for longer you may have several hundred members. In that case it would be advisable to print out a list from your membership database and indicate in this box that this list is attached.

The list of members should indicate which members are members of the community. It will probably be simpler in most cases to indicate which members are NOT members of the community. (Your Community Body can include members who do not live within the area defined as your community in Question 3 so long as they do not form a majority of the membership). In normal circumstances all the members of the Community Body will be members of the Community.

Question 4

This should list clearly all those who have signed a Petition in support of the application. All those signing should be on the Full Voter's Roll and eligible to vote at an address within the defined postcodes of the community. A **Model Petition Form** is available with these **Notes**. As the model answer shows it may be very difficult to determine the total number of eligible members of the community.

Question 5

It may be that the salmon fishings are owned separately. In which case, provide details.

Question 6

It may be that the minerals are owned separately. In which case, provide details.

Question 7

If you answer YES to the first question then you are finished. If you answer NO to the first question you need to answer the second question. If you then answer YES to the second question you are finished.

If you answer NO to both questions then you will probably be refused registration as the criteria in Section 38(1)(b) will not have been satisfied. The land to be registered *either* needs to be land with which a significant number of members of the community have a substantial connection *or* be sufficiently *near* to such land.

It is preferable to be able to answer YES to the first question and not have to elaborate further. This saves, for example, having to satisfy the sustainable development test in Section 38(1)(b)(ii) (although note that Scottish Ministers in assessing an Application for registration, appear to be taking a view on the sustainability test that has to be met at the right to buy stage at Section 51(3)(c)). It is not clear that they are entitled to but it appears that they are and thus close attention should be paid to Questions 14 and 15 of PART B.

Question 8

If you have answered NO to Q.1 of Part B it will usually be because you are submitting the Application *after* the land has been advertised for sale or any other action defined in Section 40(5) has been undertaken by the landowner or a creditor.

Please read Section 39(3) carefully at this point and be absolutely clear what tests you need to satisfy. There are 3 tests (which paraphrased are) : -

- (a) that there are good reasons why the community body did not secure a timeous application,
- (b) that there is a significantly greater level of support (around 20% appears to satisfy) and,
- (c) that the public interest is even stronger than it would be in a timeous registration

Satisfying these additional tests has proved difficult and the Scottish Ministers appear to be interpreting reasons given by Applicants in a very narrow and limited way. The appeal by Holmehill Ltd. against the Scottish Ministers' refusal to grant them a late application turns on the interpretation of (a) and (c). As at 24 March 2006 the Sheriff's ruling is not available but experience suggests that you need to be careful how you argue your case.

Unfortunately, the reasons given by successful late applications to date have not been too compelling in many cases and Holmehill Ltd., who did supply perhaps the most compelling, were refused so it is hard to detect a consistent pattern in Scottish Ministers' thinking.

With respect to test (b) first of all, it appears that a level for support of around 20% satisfies Scottish Ministers and thus this is a relatively straightforward question.

The *good reasons* test in (a) is a potential minefield. What we suggest that you do is as follows.

Begin with any compelling reasons for lateness. For example,

- If your community body was incorporated AFTER the land came on the market then you should have a good case under (a) since it would be impossible for it to have secured a timeous registration since it did not exist prior to the land being put up for sale. If this applies, it may be your strongest argument.
- If your community (either prior to the community body being incorporated OR after incorporation) was actively thinking about using the Community Right to Buy, and/or had held meetings, obtained information and begun the process of applying to register an interest, or had actually applied but been rejected for technical reasons, then you can argue that the process was *interrupted* by the unexpected exposure of the land to the market.

These represent strong grounds for not having secured a timeous registration. You may then go on to cite any other valid reasons such as

- a lack of capacity in the community;
- an attempt to secure a registration foundered due to some unforeseen event;
- the community had chosen not to apply for registration because of the fear of dividing the community or because it might alienate the landowner whose cooperation was vital to other community projects.

With regard to the test in Section 39(3)(c), you will need to argue why it is in the public interest that your interest should be registered and this argument will have to be even

more persuasive than required for a normal or timeous registration. We cannot give any guidance on this since it depends very much on individual circumstances.

In conclusion, this is all rather tricky territory since it is always difficult to explain why you *did not* do something. On the face of it it may simply never have occurred to you for example. The best guidance we can give at the moment is to provide whatever reasons appear to you to be honest and relevant and if either of the two compelling reasons cited above apply then play them for all they are worth.

Question 9

Supply as much information as you can here about the checks you made on ownership and creditors. If ownership is straightforward and unambiguous then a simple statement of who did what, when and what they found will be sufficient. If, however, there is some doubt about the identity of the owner, then you will need to demonstrate what further measures you took to ascertain their identity.

You might, for example, contact any tenants on the property, neighbouring landowners, the local authority or local land agents and solicitors.

Question 10

If you have answered *unknown* at Question 5 PART A, then you need to provide details of what you did to try and find out. Although it does not say so, it would be advisable here to also provide details of the checks you made on creditors if you have to answer *unknown* at Question 11 PART B.

In addition to the checks with neighbouring landowners etc. mentioned above, you will also need to have taken the actions specified in Section 37(4). Having done that you need to state exactly what you did in terms of Section 37(4). Which newspaper did you advertise in and when? What notice did you place and where? It would be helpful to provide documentary proof in the form of copies of the advert and notice and photographs of the notice in situ and in relation to the land. Indicate here what you did and refer clearly to any documentary evidence attached to the Application.

Question 11

This may potentially trip you up as it has for one applicant who entered *None Known* in response. Their Application was registered but the landowner appealed on the grounds that a creditor existed and that the Applicant had failed to follow the procedures in Section 37(4). The Scottish Ministers declined to defend the action and the Sheriff had no option but to order Scottish Ministers that the registered interest be struck from the Register.

The question asks you to name any persons "known to you". If you know of no-one then answer this question by saying "We know of no such person(s)" This should be satisfactory where you have made reasonable checks and failed to find anything in the public record.

However, if you fail to find any creditors either because you do not know who the owner is or because the information on potential creditors is ambiguous then be careful.

There is a difference here between answering Question 11 by naming any person(s) known to you, and satisfying Sections 37(3) and (4) of the Act. Read Sections 37(3) and (4) carefully. They require you to advertise for such persons where their existence is “unknown” or “cannot be found”. It is difficult to know in what circumstances the apparent absence (none known) of a creditor counts as them being *unknown* or *cannot be found*. It may be assumed that *unknown* or *cannot be found* apply in circumstances where you know (or suspect) *there is* a creditor but their identity is unknown or they cannot be found (i.e. you cannot locate their physical whereabouts). In this latter case you will need to undertake the actions specified in 37(4).

However, if you say there are *none known to you* and it subsequently transpires that such persons do in fact exist and you failed to advertise in the manner specified in 37(4), then this *may still* provide grounds for an appeal by the landowner against a successful application. If you think that the landowner may be hostile to your application and you wish to make it as robust as possible, then you are advised to follow Section 37(4).

You may wish to go further and protect yourself against claims that you should have known the unknown by stating something similar to the final sentence in the **Model Application Form**.

Question 12

This is straightforward. It will involve consulting your Local Plan which should be available from your local library or Council Office. Ensure that it is the Plan currently in force.

Question 13

Again this is straightforward. You are simply required to state whether any part of the land is known to be the subject of a Compulsory Purchase Order. You will not be able to acquire land that is the subject of such an Order.

Question 14.

Questions 14 and 15 are necessary only to satisfy the requirements of the Right to Buy stage - Section 51(3)(c) - or at the registration stage if the land you are seeking to acquire is covered by Section 38(1)(b)(ii) (i.e it is land that your community do not have a substantial connection to but which is near such land).

Nevertheless, Scottish Ministers place some importance on these questions and it is important that you provide quality answers.

Question 15

See Question 14 above. It is also worth noting that you should not be expected to provide detailed plans for the land you are seeking to register since it may not be for sale for many years to come. What you are seeking to achieve is to register an interest so that the community in the future has the option of acquiring the land. If you anticipate the opportunity arising in the near future and are actively seeking land for a specific purpose then your plans can be laid out in some detail. However, if you are seeking to register an interest in a parcel of land that may not come up for sale for many years but which, if it did, would provide significant opportunities, then you can describe your plans in more aspirational terms.

Question 16

Salmon fishings will not normally be of any relevance and minerals will normally be part of the land. Your answer follows on from your answer to Question 6 earlier in PART B.

Question 17

It is unclear why this question is being asked but it is probably to obtain evidence relating to whether the registration would be in the public interest (Section 38(1)(e)) test and see Question 18 which follows). It is probably best to be brief and to allude to positive impacts on the wider community.

Question 18

This is an opportunity to provide an upbeat assessment of why your application to register an interest is a fine idea which deserves to be so registered.

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