



Agricultural Holdings (Scotland) Act 2003

2003 asp 11

[^{F1}PART 2A

SALE WHERE LANDLORD IN BREACH

[^{F1}Post-sale obligations

Textual Amendments

- F1** Pt. 2A inserted (23.12.2016 for specified purposes) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), ss. [100\(2\)](#), [130\(1\)](#) (with s. 128); S.S.I. 2016/365, reg. 2, sch.

38N Restriction on notice to quit etc. where sale to third party

- (1) This section applies where a third party buys the land comprised in the lease of a 1991 Act tenancy by virtue of an order for sale varied under section 38L.
 - (2) During the period of 10 years beginning with the date the third party acquired title to the land, sections 22 to 24, 26 and 43 of the 1991 Act have effect in relation to the tenancy subject to the following modifications.
 - (3) Section 22(2) has effect as if—
 - (a) paragraphs (a) and (b) were omitted,
 - (b) for paragraph (c) there were substituted—
 - “(c) the Land Court, on an application made—
 - (i) by a landlord who bought the land constituting the tenancy by virtue of an order for sale varied under section 38L of the Agricultural Holdings (Scotland) Act 2003 Act,
 - (ii) not more than 9 months before the giving of the notice to quit,
- granted a certificate under section 26(1) that the tenant was not fulfilling the tenant's responsibilities to farm the holding in accordance with the rules of good husbandry,” and

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- (c) for “any of paragraphs (a) to (f)” there were substituted “ any of paragraphs (c) to (f) ”.
- (4) Section 24(1)(e) has effect as if, for “not falling within section 22(2)(b) of this Act”, there were substituted “ and, in a case where the use requires permission under the enactments relating to town and country planning, such permission has been obtained ”.
- (5) Section 26 has effect as if, after subsection (1), there were inserted—
 - “(1A) The Land Court must not grant a certificate under subsection (1) where subsection (1B) applies.
 - (1B) This subsection applies where—
 - (a) the application under subsection (1) is made by a landlord who bought the land constituting the tenancy by virtue of an order for sale varied under section 38L of the Agricultural Holdings (Scotland) Act 2003 Act (the “2003 Act”), and
 - (b) the tenant's failure to farm in accordance with the rules of good husbandry is attributable to a material breach of the former landlord's obligations in relation to the tenant on the basis of which the Land Court made the order under section 84(1)(b) of the 2003 Act referred to in section 38A(1)(a) of that Act.”.
- (6) Section 43 has effect as if, for subsection (2), there were substituted—
 - “(2) Compensation is not payable under this section where—
 - (a) the notice to quit relates to land being permanent pasture which the landlord has been in the habit of letting annually for seasonal grazing or of keeping in the landlord's own occupation and which has been let to the tenant for a definite and limited period for cultivation as arable land on condition that the tenant must, along with the last or waygoing crop, sow permanent grass seeds, or
 - (b) the application of section 22(1) to the notice to quit is excluded by any of paragraphs (c) to (f) of subsection (2) of that section.”.

38O Payment to former landlord where early resale

- (1) This section applies where—
 - (a) a tenant or, as the case may be, a third party (the “original buyer”) buys land under an order for sale made in respect of the land, and
 - (b) the land is subsequently sold—
 - (i) before the end of the period of 10 years beginning with the date on which the original buyer acquired title to the land (the “original date”),
 - (ii) at a price higher than the price paid by the original buyer to the person from whom the land was bought (the “original seller”).
- (2) The original buyer must pay to the original seller a proportion of the difference between the price at which the land is subsequently sold and the price paid by the original buyer to the original seller.
- (3) The proportion of the difference which must be paid to the original seller is to be—
 - (a) 100 per cent where the subsequent sale occurs before the end of the period of 5 years beginning with the original date,

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- (b) 66 per cent where it occurs after the end of that period but before the end of the period of 8 years beginning with that date,
 - (c) 33 per cent where it occurs after the end of the period of 8 years beginning with that date.
- (4) The Scottish Ministers may by regulations make further provision about the payment that the original buyer must make to the original seller.
- (5) Regulations under subsection (4) may in particular include provision about—
- (a) the exclusion, for the purposes of subsection (2), of so much of the price at which the land is subsequently sold as is attributable to an increase in the value of the land resulting from such causes as may be specified in the regulations (which may include improvements of the kind mentioned in schedule 5 of the 1991 Act),
 - (b) payment where part only of the land bought under the order for sale is subsequently sold within the period of 10 years mentioned in subsection (1)(b),
 - (c) the granting of standard securities over the land in relation to the liability to make a payment under this section (including the priority of such securities in relation to any other securities over the land),
 - (d) circumstances in which no liability to make a payment under this section arises.

38P Compensation

- (1) Any person, including an owner or former owner of land comprised in the lease of a 1991 Act tenancy, who has incurred loss or expense—
- (a) in complying with the requirements of this Part following the making of an application by a tenant under section 38A(2) or 38L(2), or
 - (b) where the tenant gave notice under section 38E(3) of the tenant's intention to buy the land, as a result of the failure of the tenant or the seller to complete the purchase,
- is entitled to recover the amount of that loss or expense from the Scottish Ministers.
- (2) The Scottish Ministers may by regulations make provision about—
- (a) the losses and expenses which may and may not be compensated,
 - (b) the procedure for claiming compensation (including who determines whether compensation is payable),
 - (c) the amount of compensation payable (including the manner in which such compensation is calculated).
- (3) Where, at the expiry of such period of time as may be fixed for the purposes of this subsection by regulations under subsection (2)(b), any question as to whether compensation is payable or as to the amount of any compensation payable has not been settled as between the parties, either of them may refer the question to the Lands Tribunal for Scotland.]

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 7C inserted by [2016 asp 18 s. 93\(2\)](#)
- s. 7D inserted by [2016 asp 18 s. 106\(2\)](#)
- s. 8F8G inserted by [2016 asp 18 s. 94\(2\)](#)
- s. 16B inserted by [2016 asp 18 s. 95\(2\)](#)
- s. 17A inserted by [2016 asp 18 s. 96\(2\)](#)
- s. 18B inserted by [2016 asp 18 s. 97\(2\)](#)
- s. 26(1)(1A) substituted for s. 26(1) by [2016 asp 18 s. 99\(4\)\(a\)](#)
- s. 26(3) inserted by [2016 asp 18 s. 99\(4\)\(c\)](#)