



Agricultural Holdings (Scotland) Act 2003

2003 asp 11

[^{F1}PART 2A

SALE WHERE LANDLORD IN BREACH

Annotations:

Amendments (Textual)

- 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.

Application to Land Court for order for sale

38A Application to Land Court for order for sale

- (1) This section applies where—
 - (a) the Land Court has made an order (but not an interim order) under section 84(1)(b) requiring the landlord of a 1991 Act tenancy to remedy a material breach of the landlord's obligations in relation to the tenant, or
 - (b) an arbiter appointed under section 61A(3) of the 1991 Act has by virtue of section 61A(5) made an award having the same effect as such an order.
- (2) Subject to subsection (5), the tenant may apply to the Land Court for an order for sale if the landlord fails to comply with the order or award mentioned in subsection (1)—
 - (a) in a material regard, and
 - (b) by the date specified in the order or award by virtue of section 84(2) or, as the case may be, section 61A(5) of the 1991 Act.
- (3) An “order for sale” is an order that the tenant has the right to buy the land comprised in the lease.
- (4) The tenant must give notice of the application—
 - (a) to the landlord,
 - (b) where there is a heritable security over an interest in the land comprised in the lease, to the creditor who holds the security,

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(c) to such other persons as the Scottish Ministers may prescribe by regulations.

(5) Where—

(a) the tenant acquired a right to buy the land comprised in the lease under section 28, and

(b) the right to buy was extinguished under section 29(6) or 32(8),

the tenant may apply for an order for sale only if the period of 12 months, beginning with the date on which the right to buy was extinguished, has expired.

38B Order for sale

(1) The Land Court may make an order for sale if satisfied that—

(a) the landlord has failed to comply with the order or award mentioned in section 38A(1)—

(i) in a material regard, and

(ii) by the date specified in the order or, as the case may be, the award,

(b) the failure substantially and adversely affects the tenant's ability to fulfil the tenant's responsibilities to farm the holding in accordance with the rules of good husbandry,

(c) greater hardship would be caused by not making the order than by making it, and

(d) in all the circumstances it is appropriate.

(2) The Land Court may make an order for sale despite the fact that the owner is subject to a legal incapacity or disability which would affect the owner's ability to transfer or otherwise deal with the land in respect of which the order is made.

(3) Where the owner is subject to an enforceable personal obligation to transfer the land to a person other than the tenant, the Land Court may not make an order for sale unless—

(a) the transfer is a transfer mentioned in subsection (4), and

(b) the transfer—

(i) is or forms part of a scheme or arrangement or is one of a series of transfers, and

(ii) the main purpose or effect, or one of the main purposes or effects, of the scheme, arrangement or, as the case may be, series is the avoidance of the making of an order for sale.

(4) The transfer referred to in subsection (3) is a transfer—

(a) otherwise than for value,

(b) between spouses in pursuance of an arrangement between them entered into at any time after they have ceased living together,

(c) between companies in the same group, or

(d) in consequence of—

(i) the assumption, resignation or death of one or more of the partners in a partnership, or

(ii) the assumption, resignation or death of one or more of the trustees of a trust.

(5) For the purposes of subsection (4)(c), companies are in the same group if they are, or are included in a number of, companies which, by virtue of section 170 of the Taxation

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of Chargeable Gains Act 1992, together form a group for the purposes of sections 171 to 181 of that Act.

- (6) The Land Court must give notice of the making of the order to—
 - (a) the landlord,
 - (b) the owner (where the owner is not the landlord),
 - (c) where there is a heritable security over an interest in the land comprised in the lease, the creditor who holds the security,
 - (d) the Keeper of the Registers of Scotland,
 - (e) such other persons as the Scottish Ministers may prescribe by regulations.
- (7) In subsection (1)(b), what is good husbandry is to be construed by reference to schedule 6 of the Agriculture (Scotland) Act 1948.
- (8) In this Part, “owner” includes a person in whom the land is vested for the purposes of any enactment relating to—
 - (a) sequestration, bankruptcy, winding-up or incapacity, or
 - (b) the purposes for which judicial factors may be appointed.

38C Effect of order for sale: prohibition of transfer etc.

- (1) The Scottish Ministers may by regulations make provision prohibiting persons from transferring or otherwise dealing with land in respect of which an order for sale has been made under section 38B.
- (2) Regulations under subsection (1) may in particular include provision—
 - (a) specifying the persons to whom the prohibition is to apply,
 - (b) specifying the period during which the prohibition is to apply,
 - (c) specifying transfers or dealings which are and are not prohibited by the regulations,
 - (d) requiring information to be incorporated in deeds relating to the land (including specifying the information that is to be incorporated, the circumstances in which it is to be incorporated and the deeds in which it is to be incorporated),
 - (e) requiring such information to be removed and the circumstances in which it is to be so removed.

38D Effect of order for sale: suspension of rights

- (1) Where an order for sale is made under section 38B, the rights mentioned in subsection (3) are—
 - (a) suspended as from the date when the Land Court makes the order, and
 - (b) revived—
 - (i) when a transfer by virtue of the order is completed, or
 - (ii) if such a transfer is not completed before the end of the period mentioned in subsection (2), or if the order for sale ceases to have effect, on the end of that period or on the order ceasing to have effect, whichever occurs first.
- (2) The period referred to in subsection (1)(b)(ii) is whichever of the following periods ends later—

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- (a) the period of 12 months beginning with the day on which notice under section 38E(3) is given, or
 - (b) such longer period fixed by or agreed under section 38F(4) or, as the case may be, specified in an order under section 38I(4)(b)(ii).
- (3) The rights referred to in subsection (1) are any rights—
- (a) of pre-emption, redemption or reversion, or
 - (b) deriving from any other option to purchase, exercisable over the land in respect of which the order for sale has been made.
- (4) The Scottish Ministers may by regulations make provision about the suspension and revival of other rights in or over land in respect of which an order for sale has been made.
- (5) Regulations under subsection (4) may in particular include provision specifying—
- (a) the rights to which the regulations do and do not apply,
 - (b) the period during which such rights are suspended,
 - (c) the circumstances in which the rights are revived (which may include the ending of a period as specified in the regulations).
- (6) Nothing in this section—
- (a) affects the operation of an inhibition on the sale of the land,
 - (b) prevents an action of adjudication from proceeding, or
 - (c) affects the commencement, execution or operation of any other diligence.

38E Tenant's right to buy

- (1) Where—
- (a) an order for sale is made under section 38B, and
 - (b) the period within which an appeal against the making of the order may be brought has expired without an appeal being brought or, where such an appeal has been brought, it has been abandoned or dismissed,
- the tenant has the right to buy the land in respect of which the order has been made from the owner.
- (2) Where a tenant has a right to buy under subsection (1), the tenant may proceed in accordance with section 38F to buy the land from the owner provided that notice is given under subsection (3).
- (3) Notice is given under this subsection if, before the period mentioned in subsection (4) has expired, the tenant gives notice that the tenant intends to buy the land to—
- (a) the owner,
 - (b) the Keeper of the Registers of Scotland, and
 - (c) the Land Court.
- (4) That period is the period of 28 days beginning with—
- (a) the day after the last day on which an appeal may be brought (no appeal having been brought), or
 - (b) an appeal having been brought, the day after the day on which the appeal was abandoned or dismissed.

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- (5) If at any time the tenant does not intend to proceed in accordance with section 38F to buy the land, the tenant must give notice of that fact to—
- (a) the owner,
 - (b) the Keeper of the Registers of Scotland, and
 - (c) the Land Court.
- (6) Where the tenant—
- (a) does not give notice under subsection (3), or
 - (b) gives notice under subsection (5),
- the tenant's right to buy is extinguished.

Procedure for buying and valuation

38F Procedure for buying

- (1) It is for the tenant to make the offer to buy in exercise of the tenant's right to buy under section 38E.
- (2) The offer is to be at a price—
- (a) agreed between the tenant and the person from whom the land is to be bought (“the seller”), or
 - (b) where there is no such agreement—
 - (i) payable by the tenant in accordance with section 34(8), or
 - (ii) if the price is determined in an appeal under section 37, as is so determined.
- (3) The offer must specify the date of entry and of payment of the price in accordance with subsection (4).
- (4) The date of entry and of payment of the price are to be—
- (a) a date not later than 6 months from the date when the tenant gave notice under section 38E(3) of the tenant's intention to buy,
 - (b) where the price payable by the tenant is the subject of an appeal under section 37 which has not, before the expiry of the period of 4 months beginning with the date when the tenant gave such notice, been—
 - (i) determined, or
 - (ii) abandoned following agreement between the tenant and the seller, a date not later than 2 months after the appeal is so determined or, as the case may be, abandoned, or
 - (c) such later date as may be agreed between the tenant and the seller.
- (5) The offer may include such other reasonable conditions as are necessary or expedient to secure the efficient progress and completion of the transfer.
- (6) The seller must—
- (a) make available to the tenant such deeds and other documents as are sufficient to enable the tenant to proceed to complete title to the land,
 - (b) transfer title accordingly.

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38G Appointment of valuer and valuation of the land

- (1) The provisions mentioned in subsection (2) apply to a sale implementing a tenant's right to buy by virtue of an order for sale as they apply to a sale implementing a tenant's right to buy under section 28, subject to the modifications mentioned in that subsection.
- (2) Those provisions are—
- (a) section 33 (appointment of valuer), subject to the modifications that—
 - (i) in subsection (2), the reference to section 29(2) or (4) is to be read as a reference to section 38E(3),
 - (ii) subsection (5) does not apply,
 - (b) section 34 (valuation of land), subject to the modifications that—
 - (i) in subsection (1), the reference to the date of notice under section 26 of the seller's proposal to transfer the land is to be read as a reference to the date of notice under section 38E(3),
 - (ii) in subsection (8), the reference to section 32(2)(b)(i) is to be read as a reference to section 38F(2)(b)(i),
 - (c) section 35 (special provision where buyer is general partner in limited partnership), subject to the modification that the reference to section 28 is to be read as a reference to section 38E,
 - (d) section 36 (further provision on valuation), subject to the modifications that—
 - (i) in subsection (6)(a), the reference to section 32(7) is to be read as a reference to section 38I(3),
 - (ii) the following subsection is to be inserted after subsection (6)—
 - “(6A) Where—
 - (a) the Land Court has made an order under section 38H(3),
 - (b) the seller to whom the order applies has complied with the order, and
 - (c) the tenant does not proceed with the purchase of the land from the seller,
 the tenant is liable to the seller for any expenses met by the seller by virtue of subsection (5).”
 - (e) section 37 (appeal to the Lands Tribunal against valuation), subject to the modification that, in subsection (3)(b), the reference to section 32(2)(b)(ii) is to be read as a reference to section 38F(2)(b)(ii), and
 - (f) section 38 (referral of certain matters by the Lands Tribunal to the Land Court).

38H Failure of seller to complete transaction

- (1) If the seller has not, within the period fixed by or agreed under section 38F(4)—
- (a) complied with section 38F(6)(a), or
 - (b) done any of the things mentioned in subsection (2),
- the tenant may apply to the Land Court for an order under subsection (3).
- (2) The things are—
- (a) concluding missives for the sale of the land, or

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- (b) taking all steps which the seller could reasonably have taken in the time available towards so concluding missives.
- (3) An order under this subsection may—
 - (a) direct the seller to comply with section 38F(6)(a) within such period as the order may specify,
 - (b) direct the seller—
 - (i) to conclude missives, and
 - (ii) to take such remedial action for the purpose of so concluding missives,within such period as the order may specify, and
 - (c) direct the tenant and seller to incorporate into the missives any term or condition in respect of the sale of the land as the order may specify.
- (4) If the seller fails to comply—
 - (a) with an order under subsection (3), or
 - (b) with section 38F(6)(b),the Land Court may, on the application of the tenant, authorise its principal clerk to adjust, execute and deliver such deeds or other documents as will complete the transfer of ownership of the land to the tenant to the same force and effect as if done by the seller.

38I Failure of tenant to complete transaction

- (1) If the tenant has not, within the period fixed by or agreed under section 38F(4), done any of the things mentioned in subsection (2), the seller may apply to the Land Court for an order under subsection (3).
- (2) The things are—
 - (a) concluding missives for the sale of the land, or
 - (b) taking all steps which the tenant could reasonably have taken in the time available towards so concluding missives.
- (3) An order under this subsection may—
 - (a) direct the tenant—
 - (i) to conclude missives, and
 - (ii) to take such remedial action for the purpose of so concluding missives,within such period as the order may specify, and
 - (b) direct the tenant and seller to incorporate into the missives any term or condition in respect of the sale of the land as the order may specify.
- (4) The right to buy is extinguished if—
 - (a) the tenant fails to comply with an order under subsection (3), or
 - (b) no order having been applied for under section 38H(3) or under subsection (3), missives have not been concluded before the end of—
 - (i) the period of 12 months beginning with the date when the tenant gave notice under section 38E(3) of the tenant's intention to buy, or
 - (ii) such longer period as the Land Court may, on the application of the tenant, order.

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38J Completion of sale to tenant

- (1) The price paid for the transfer of ownership of the land to the tenant is to be paid not later than the final settlement date.
- (2) The “final settlement date” is the date on which the period, fixed or agreed under section 38F(4) or, as the case may be, specified in an order under section 38I(4)(b)(ii), expires.
- (3) Where, on the final settlement date, the seller is not able to effect the grant of a good and marketable title to the tenant—
 - (a) the price, or
 - (b) if, for any reason, the price has not been ascertained, such sum as may be fixed by the valuer appointed under section 33,
 is to be consigned into the Land Court until that title is granted, the tenant gives notice under section 38E(5) to the court of the tenant's decision not to proceed to complete the transaction or, as the case may be, the Land Court orders its release.
- (4) Except where subsection (3) applies, where the price remains unpaid after the date not later than which it is to be paid, the tenant's right to buy is extinguished.
- (5) Any heritable security which burdened the land immediately before title is granted to the tenant in pursuance of this section ceases to do so on the registration of that title in the Land Register of Scotland.
- (6) Where such a security also burdens land other than the land in respect of which title is granted to the tenant, the security does not, by virtue of subsection (5), cease to burden that other land.
- (7) Unless the creditors holding any such security otherwise agree, the tenant must pay to them according to their respective rights and preferences any sum which would, but for this subsection, be paid to the seller by the tenant as the price for the land.
- (8) Any sum paid by a tenant under subsection (7) is to be deducted from the sum which the tenant is to pay to the seller as the price for the land.
- (9) Any legal incapacity or disability of an owner has no effect on the title passed to a tenant to which land has been sold in accordance with this Part.

38K Effect of extinguishing of right to buy

- (1) Where a right to buy is extinguished under section 38E(6), 38I(4) or 38J(4), the tenant may acquire a subsequent right to buy the same land or any part of it under section 28(1) but only if the conditions mentioned in subsection (2) are met.
- (2) Those conditions are that—
 - (a) the period of 12 months from the extinguishing of the right to buy under section 38E(6), 38I(4) or 38J(4) has expired, or
 - (b) before that period has expired—
 - (i) the land is transferred to another person whether under an order for sale or otherwise, and
 - (ii) that person requires to give notice under section 26 in relation to a subsequent transfer.

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Sale to third party

38L Sale to third party

- (1) This section applies where a tenant's right to buy land in respect of which an order for sale has been made is extinguished under section 38E(6), 38I(4) or 38J(4).
- (2) The tenant may, before the expiry of the period mentioned in subsection (3), apply to the Land Court for the order for sale to be varied to allow the land in respect of which the order has been made to be offered for sale on the open market.
- (3) That period is the period of 28 days beginning with the date on which the right to buy was extinguished.
- (4) The tenant must give notice of the application—
 - (a) to the owner,
 - (b) where there is a heritable security over an interest in the land to which the application relates, to the creditor who holds the security,
 - (c) to such other persons as the Scottish Ministers may prescribe by regulations.
- (5) The Land Court may, if it considers it appropriate in all the circumstances, grant the application and vary the order for sale to require the land to be offered for sale on the open market.
- (6) Where—
 - (a) no application is made under subsection (2), or
 - (b) the Land Court refuses such an application,the order for sale ceases to have effect.

38M Procedure for sale to third party

- (1) The Scottish Ministers may by regulations make further provision about the sale of land in relation to which the Land Court has, under section 38L, varied an order for sale to allow the land to be offered for sale on the open market.
- (2) Regulations under subsection (1) may in particular include provision about—
 - (a) the appointment of a person to sell the land,
 - (b) the valuation of the land (including the appointment of a valuer, who need not be a different person to the person appointed to sell the land),
 - (c) the procedure for the sale of the land (including sale by private bargain or by public roup),
 - (d) the period within which the land is to be sold (including provision for applications to the Land Court to extend such a period),
 - (e) the persons to whom the land cannot be sold,
 - (f) the powers of the person appointed to sell the land, including powers to adjust, execute or deliver any deeds or other documents necessary to complete the transfer of ownership of the land,
 - (g) the duties of the person appointed to sell the land, which must include—
 - (i) a duty to ensure that the price at which the land is sold is the best that can reasonably be obtained, and
 - (ii) a duty to compensate any person who incurs a loss caused as a result of the appointed person's negligence in the sale of the land,

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- (h) the distribution of the proceeds of sale,
 - (i) liability for any expenses incurred by the person appointed to sell or value the land,
 - (j) reports by the person appointed to sell the land to the Land Court,
 - (k) the effect on any rights such as are mentioned in section 38D(3),
 - (l) the effect on any heritable securities which burden the land in respect of which the order for sale has been made,
 - (m) what happens if the land is not sold within a period specified in the regulations.
- (3) Regulations under subsection (1) may apply the provisions of this Act, that apply to the sale of land comprised in a lease to a tenant by virtue of an order for sale, to the sale of such land on the open market, with or without modifications.
- (4) Regulations under subsection (1) may modify any enactment (including this Act).

Post-sale obligations

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
 - (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—

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- (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.”

380 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,
 - (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

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(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)