



# Agricultural Holdings (Scotland) Act 2003

## 2003 asp 11

### PART 2

#### TENANT'S RIGHT TO BUY LAND

##### *Procedure for buying and valuation*

### 32 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 28.
- (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,and must specify the date of entry and of payment of the price in accordance with subsection (3).
- (3) 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 29(2) or (4) 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, within the period of 4 months after 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.

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- (4) The offer may include such other reasonable conditions as are necessary or expedient to secure the efficient progress and completion of the transfer.
- (5) If the tenant has not, within the period fixed by or agreed under subsection (3), done any of the things mentioned in subsection (6), the seller may apply to the Land Court for an order under subsection (7).
- (6) The things are—
  - (a) concluding missives with the seller for the sale of the land to the tenant; or
  - (b) if the tenant has not so concluded missives, taking all steps which the tenant could reasonably have taken in the time available towards so concluding missives.
- (7) An order under this subsection may—
  - (a) direct the tenant—
    - (i) to conclude missives with the seller within such period; and
    - (ii) to take such remedial action for the purpose of so concluding missives; 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.
- (8) If—
  - (a) the tenant fails to comply with an order under subsection (7); or
  - (b) where the seller has not applied for an order under that subsection, the tenant has not (having regard to the period fixed by or agreed under subsection (3)) within a reasonable period from the acquiring by the tenant of the right to buy otherwise concluded missives with the seller for the sale of the land to the tenant,  
 the right to buy is extinguished.

### **33 Appointment of valuer**

- (1) Where the price is not agreed between the seller and the tenant, the land is, except where subsection (2) applies, to be valued by a valuer appointed by agreement between the seller and the tenant or by a person nominated by them.
- (2) This subsection applies where the land in respect of which the tenant is exercising a right to buy forms part of an estate comprising other land in respect of which any other tenant has given notice under section 29(2) or (4) of the tenant's intention to buy.
- (3) Where subsection (2) applies, the land mentioned in that subsection is to be valued by a valuer appointed by agreement between—
  - (a) the seller; and
  - (b) at least half of the tenants mentioned in that subsection,
 or by a person nominated by them.
- (4) Where there is no agreement as to the appointment of a valuer under subsection (1) or (3), the valuer is to be appointed by the Land Court or by a person nominated by the Court.
- (5) In this Part, “valuer” includes two valuers with an oversman.

### **34 Valuation of the land**

- (1) The valuer appointed under section 33 is to assess the value of the land in respect of which the right to buy is being exercised as at the date of notice under section 26 of the seller's proposal to transfer the land.
- (2) The valuer is to assess the value of the land—
  - (a) having regard to the value that would be likely to be agreed between a reasonable seller and buyer of such land—
    - (i) assuming that the seller and buyer are, as respects the transaction, willing; and
    - (ii) where the buyer is a sitting tenant;
  - (b) taking account, in so far as a seller and a buyer of the land (assuming that they are, as respects the transaction, willing) would do so, of any factor attributable to the known existence of a person who (not being the tenant who is exercising a right to buy the land) would be willing to buy the land at a price higher than other persons because of a characteristic of the land which relates peculiarly to that person's interest in buying it;
  - (c) taking account of when the seller would in the normal course of events have been likely to recover vacant possession of the land from the tenant;
  - (d) taking account of the terms and conditions of any lease of sporting interests affecting the land;
  - (e) taking account of any moveable property belonging to the owner of the land which is, by agreement between the tenant and the owner, to be—
    - (i) sold with; and
    - (ii) valued along with,the land;
  - (f) taking no account of—
    - (i) the absence of the period of time during which the land would, on the open market, be likely to be advertised and exposed for sale; or
    - (ii) any factor attributable to any use of the land which is or would be unlawful;
  - (g) taking no account of any increase in the value of the land resulting from improvements carried out at the expense of the tenant;
  - (h) taking no account of any increase in the value of the land resulting from the use of any of the land, or changes to the land, for a purpose that is not an agricultural purpose or the carrying out of conservation activities on the land;
  - (i) taking no account of—
    - (i) any reduction in the value of the land as a result of any dilapidation or deterioration of, or damage to, fixed equipment or land caused or permitted by the tenant; or
    - (ii) any such reduction resulting from the use of any of the land, or changes to the land, for a purpose that is not an agricultural purpose or the carrying out of conservation activities on the land; and
  - (j) taking no account of any fixed equipment owned by the tenant.
- (3) For the purposes of subsection (2)(g)—
  - (a) subject to paragraph (b), “improvements” is to be construed by reference to Schedule 5 to the 1991 Act; and

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- (b) the continuous adoption by the tenant of a standard of farming or a system of farming more beneficial to the land than the standard or system required by the lease or, in so far as no system of farming is so required, than the system of farming normally practised on comparable agricultural land in the district, is to be treated as an improvement executed at the tenant's expense.
- (4) Where land in respect of which the right to buy is being exercised forms part of an estate, the valuer is, in addition to assessing the value of the land under subsection (2), to assess the value representing the difference between—
- (a) the value of the estate were the estate being sold by the seller to a person other than the tenant; and
  - (b) the value of the remainder of the estate (that is to say, the estate less the land in respect of which the right to buy is being exercised) were the remainder being sold by the seller to such a person.
- (5) For the purpose of valuation under subsection (4), where two or more parts of an estate are being bought in exercise of a right to buy under this Part, the valuer may apportion to each such part of the estate (or re-apportion if for any reason the sale of any such part does not proceed) such amount representing the reduction in the value of the estate as the valuer considers equitable.
- (6) The Scottish Ministers may issue guidance (either generally or in respect of a particular class of case) for the purposes of valuation under this section.
- (7) An estate is to be treated, for the purposes of subsections (4) and (5), as comprising—
- (a) any land forming part of the estate and which is being bought in exercise of a right to buy under this Part; and
  - (b) any other land forming part of the estate offered for sale by the seller at the same time as the land mentioned in paragraph (a).
- (8) For the purposes of section 32(2)(b)(i), the price payable by a tenant is—
- (a) the value assessed under subsection (2); or
  - (b) where the land forms part of an estate, the greater of the values assessed under—
    - (i) that subsection; and
    - (ii) subsection (4).

### **35 Special provision where buyer is general partner in limited partnership**

Where the person exercising a right to buy under section 28 is doing so by virtue of section 72(2)—

- (a) the valuer, in assessing the value of the land under subsection (2) of section 34, is to have regard to—
  - (i) the fact that the buyer is a general partner of a limited partnership; and
  - (ii) any provision of the partnership agreement entitling a limited partner to dissolve the partnership; and
- (b) paragraph (a)(ii) of that subsection is of no effect.

### **36 Valuation etc.: further provision**

- (1) The valuer is—
- (a) to invite—

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- (i) the seller and the tenant; and
    - (ii) where the land forms part of an estate, any other person the valuer considers to have an interest in the estate,to make written representations about the matters mentioned in subsection (2); and
  - (b) to have regard to any such representations.
- (2) The matters are—
- (a) the valuation of the land; and
  - (b) where the land forms part of an estate, any valuation of the estate (and any apportionment of a reduction in the value of the estate),
- under section 34.
- (3) The valuer may—
- (a) enter onto land; and
  - (b) make any reasonable request of the seller and tenant,
- for the purposes of any assessment under section 34.
- (4) The valuer must, within 6 weeks of being appointed, send to the seller and the tenant a notice in writing specifying the price payable by the tenant under section 34(8) and setting out how the price was calculated.
- (5) The expenses of the valuer accrued in carrying out the valuer's functions under section 34 and this section are to be—
- (a) met by the tenant; or
  - (b) where subsection (2) of section 33 applies, shared equally between the tenants mentioned in that subsection.
- (6) Where—
- (a) the Land Court has made an order under section 32(7);
  - (b) the tenant to whom the order applies has complied with the order; and
  - (c) the seller does not proceed with the sale of the land to the tenant,
- the seller is liable to the tenant for any expenses met by the tenant by virtue of subsection (5).
- (7) The Scottish Ministers may by regulations make further provision for or in connection with the matters provided for in this section and sections 33 and 34.

### **37 Appeal to Lands Tribunal against valuation**

- (1) The seller or the tenant may appeal to the Lands Tribunal against the valuation carried out under section 34.
- (2) An appeal under this section must state the grounds on which it is being made and must be lodged within 21 days of the date of the notice under section 36(4).
- (3) In an appeal under this section, the Lands Tribunal may—
- (a) reassess any value of the land (and any factor affecting the value) or of an estate (and how any reduction in the value of an estate is to be apportioned); and
  - (b) for the purposes of section 32(2)(b)(ii), determine the price.

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- (4) The valuer whose valuation is appealed against may be a witness in the appeal proceedings.
- (5) In the appeal proceedings, in addition to the seller and the tenant, the following persons are entitled to be heard—
  - (a) where the seller is—
    - (i) a creditor in a standard security, the owner of the land; and
    - (ii) the owner of the land, any creditor in a standard security over the land or any part of it; and
  - (b) where the land forms part of an estate—
    - (i) any creditor in a standard security over; and
    - (ii) any tenant of,  
any other land forming part of the estate.
- (6) The Lands Tribunal is to give reasons for its decision on an appeal under this section and is to issue a written statement of these reasons.
- (7) The decision of the Lands Tribunal in an appeal under this section is final.
- (8) In this section and section 38, “the Lands Tribunal” means the Lands Tribunal for Scotland.

### **38 Referral of certain matters by Lands Tribunal to Land Court**

Where, in an appeal before the Lands Tribunal under section 37, an issue of law arises which may competently be determined by the Land Court by virtue of the 1991 Act or this Act, the Tribunal is to refer the issue to the Land Court for determination unless the Tribunal considers that it is not appropriate to do so.