

Status: Point in time view as at 23/12/2016.

Changes to legislation: Agricultural Holdings (Scotland) Act 2003, Cross Heading: Application to Land Court for order for sale is up to date with all changes known to be in force on or before 25 April 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)



Agricultural Holdings (Scotland) Act 2003

2003 asp 11

[^{F1}PART 2A

SALE WHERE LANDLORD IN BREACH

[^{F1}Application to Land Court for order for sale

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.

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

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

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- (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—
- (a) the period of 12 months beginning with the day on which notice under section 38E(3) is given, or

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- (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.
- (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,

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- (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.]

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