



# Agricultural Holdings (Scotland) Act 2003

## 2003 asp 11

### [<sup>F1</sup>PART 2A

#### SALE WHERE LANDLORD IN BREACH

#### *[<sup>F1</sup>Procedure for buying and valuation*

#### 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.

#### **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

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- (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.

### **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).”

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- (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
  - (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

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- (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.

### **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.

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### **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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