



# Agricultural Holdings (Scotland) Act 2003

## 2003 asp 11

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

#### SALE WHERE LANDLORD IN BREACH

##### *Application to Land Court for order for sale*

#### [<sup>F1</sup>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—

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*Changes to legislation: Agricultural Holdings (Scotland) Act 2003, Section 38B is up to date with all changes known to be in force on or before 25 May 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) View outstanding changes*

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- (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.
- (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.]

#### **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.

**Changes to legislation:**

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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\(4\)\(c\)](#)