

AGRICULTURAL HOLDINGS (SCOTLAND) ACT 2003

EXPLANATORY NOTES

INTRODUCTION

Part 2: Tenant's Right to Buy Land

Section 34: Valuation of the land

105. This section makes provision in respect of the valuation of the land by the valuer appointed under section 33. Subsection (1) provides that the valuer 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 of the seller's proposal to sell the land under section 26.
106. Subsection (2) requires the valuer, in assessing the value of the land, to have regard to the value that would likely be agreed between a reasonable seller and buyer of such land on the assumption that the seller and buyer are willing parties to the transaction and where the buyer is a sitting tenant. It also specifies certain matters that the valuer is to take into account, and certain matters that the valuer is to take no account of, in assessing the value of the land. Unless subsection (4) applies, the price payable to the seller by the tenant is to be the value assessed under subsection (2) (see subsection (8)).
107. In some circumstances, the land in respect of which the right to buy is being exercised, and the value of which is to be assessed by the valuer, will form part of a larger area of land, an estate, being offered for sale by the seller (see subsection (7)). In such a situation subsection (4) requires the valuer not only to assess the value of the land under subsection (2), but to assess the value representing the difference between the value of the whole estate were it being sold by the seller to a person other than the tenant, and the value of the estate were it being sold by the seller to that person, but minus the land in respect of which the tenant is exercising the right to buy.
108. Where more than one tenant is exercising the right to buy in respect of an estate, the valuation process is complicated by the fact that the overall value of the estate if sold as one lot is not necessarily equal to the sum of the values of the individual parts within it if sold individually. In particular, the values of the individual farms being sold to sitting tenants through the statutory right to buy might not fully compensate the selling owner for the reduction in the overall value of the estate being sold, if sold as one lot, that arises from the estate being sold in parts due to different tenants exercising the right to buy. As a result, subsection (5) allows the valuer to apportion (or to re-apportion if sale of a part does not proceed for any reason) equitably among each of those parts in respect of which the right to buy is being exercised the reduction in the value of the estate as a result of it being sold in parts. Where the land subject to the right to buy forms part of an estate, the price payable to the seller by the tenant is to be the greater of the values assessed under subsection (2) and subsection (4). This valuation mechanism ensures that the selling owner receives the full market value for the land being sold notwithstanding the exercise of the statutory right to buy. It also ensures that, where a

*These notes relate to the Agricultural Holdings (Scotland) Act
2003 (asp 11) which received Royal Assent on 17 April 2003*

valuer does apportion the reduction in value to a landlord's estate in this way, that the valuer can fairly apportion this reduction among each purchasing tenant.

109. Subsection (6) enables Scottish Ministers to issue guidance, both general and in respect of a particular class of case, for the purposes of valuation under this section.