

AGRICULTURAL HOLDINGS (SCOTLAND) ACT 2003

EXPLANATORY NOTES

INTRODUCTION

Part 2: Tenant's Right to Buy Land

Section 27: Transfers not requiring notice

85. This section lists types of transfer that do not require notice to be given to the tenant under section 26. The right to buy is activated under section 28 by either the giving of notice under section 26, or the taking of action with a view to transfer of the land where such notice should have been, but was not, given. Accordingly, the types of transfer listed in this section, being transfers that do not require notice to be given, are transfers of land that will not activate the right to buy. The list is similar to that contained in section 40(4) of the Land Reform Act which lists types of transfer that are not prohibited where a community interest is registered and which, therefore, may proceed notwithstanding a registered community interest in the land being registered. Such a transfer would not activate a right to buy under Part 2 of the Land Reform Act.
86. Subsection (2) aims to prevent the triggering of the right to buy being avoided by the simple device of introducing an intermediate transfer that does not require notice (e.g. by transferring the land to a person otherwise than for value) before then making a transfer that does require notice (e.g. a transfer for value). Subsection (2) provides that any transfer of a type mentioned in subparagraph (2)(a), (e) or (h) of subsection (1) (which, by themselves are transfers not requiring notice) is deemed to be a transfer requiring notice where it is, or is part of, a scheme, arrangement or series of transfers, a main purpose or effect of which is to avoid the requirements of Part 2 of the 2003 Act.
87. Subsection (5) allows Ministers to modify subsections (1) to (4) by order.