



# Agricultural Holdings (Scotland) Act 2003

## 2003 asp 11

### PART 2

#### TENANT'S RIGHT TO BUY LAND

##### *Registration of interest and the right to buy*

#### **24 The Keeper and the Register**

- (1) For the purposes of this Part, “the Keeper” is the person who keeps the Register of Community Interests in Land (in this Part referred to as “the Register”) under section 36 (Register of Community Interests in Land) of the Land Reform (Scotland) Act 2003 ([asp 2](#)).
- (2) The Keeper is to keep the Register so that there is contained in it a part for registering tenants' interests in acquiring land in accordance with section 25.
- (3) There is to be included in that part of the Register—
  - (a) a record of any notice or notification sent to the Keeper under any provision of this Part; and
  - (b) where a registration of a tenant’s interest in acquiring land is removed under section 25(15), an entry specifying the date on which that is effected.

#### **25 Registration of tenant’s interest**

- (1) A tenant of a 1991 Act tenancy may apply to have registered an interest in acquiring the land comprised in the lease by sending a notice (in this section referred to as a “notice of interest”) to the Keeper.
- (2) For the purposes of this Part, “tenant”—
  - (a) where there are two or more tenants under the lease, means those tenants; and
  - (b) does not include a sub-tenant.
- (3) The notice of interest must be in such form as the Scottish Ministers may prescribe by regulations and must specify—
  - (a) the particulars of the tenant and the owner of the land;

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- (b) where there are two or more tenants under the lease, the fact that each of them consents to the making of the application to register their interest in acquiring the land;
  - (c) the location and boundaries of the land (by reference, where appropriate, to the lease or any map or drawing);
  - (d) any interest or rights comprised in the land (including any sporting or mineral rights); and
  - (e) such other information as the Scottish Ministers may so prescribe.
- (4) The tenant must send a copy of the notice of interest to the owner of the land and notify the Keeper that the copy has been so sent.
- (5) On receipt of the notice of interest, the Keeper must—
- (a) register—
    - (i) the tenant's interest in acquiring the land;
    - (ii) the details specified in the notice of interest; and
    - (iii) the date of registration; and
  - (b) send an extract of the registration to the tenant and the owner of the land.
- (6) Where the registration relates to land over which there is a standard security, the owner, on receipt of the extract, must—
- (a) intimate that fact to the tenant; and
  - (b) send a copy of the extract to the creditor in the standard security.
- (7) The Keeper may charge such reasonable fee for—
- (a) registering tenants' interests in acquiring land; and
  - (b) providing extracts, and copy extracts, of registration,
- as the Scottish Ministers may by order specify.
- (8) If the owner of the land disputes any matter contained in the extract of registration, the owner may, by notice in writing to the Keeper, challenge the registration of the tenant's interest in acquiring the land on the grounds that any matter contained in the extract is inaccurate.
- (9) On receipt of notice under subsection (8), the Keeper is to make such enquiry in connection with the tenant's interest in acquiring the land as the Keeper considers appropriate; and following such an enquiry, if the Keeper considers that the notice of interest is inaccurate, the Keeper—
- (a) must, if the inaccuracy is material, rescind the registration of the tenant's interest; and
  - (b) may, if the inaccuracy is not material, amend that registration.
- (10) Where, under subsection (9)—
- (a) the registration of the tenant's interest in acquiring the land is rescinded, the Keeper must intimate that fact to the tenant and the owner of the land; and
  - (b) that registration is amended, the Keeper must send an extract of the registration to the tenant and the owner of the land.
- (11) The tenant or the owner of the land may appeal to the Land Court against any decision made, following notice under subsection (8), by the Keeper in respect of the registration of the tenant's interest in acquiring the land; and in an appeal under this subsection the Court may make such order as it considers appropriate.

- (12) A registration of a tenant's interest in acquiring land—
- (a) continues to have effect only in relation to such land as remains comprised in the tenancy; and
  - (b) ceases to have effect—
    - (i) if the registration is rescinded;
    - (ii) if the tenancy is terminated; or
    - (iii) where neither of those things has occurred, at the expiry of the period of five years from the date of registration.
- (13) Where—
- (a) the tenancy is terminated during that period; or,
  - (b) there is a reduction in the land comprised in the tenancy,
- the landlord must give notice in writing of that fact to the Keeper.
- (14) Where a tenant's interest in acquiring land is, or has been, registered, the tenant may at any time apply to have the interest registered again (with or without modification to the matters specified in the notice of interest).
- (15) The Keeper must remove from the Register any registration of a tenant's interest in acquiring land which no longer has effect.

## **26 Notice of proposal to transfer land**

- (1) Where the owner of land in respect of which a tenant's interest in acquiring land is registered under section 25 or a creditor in a standard security with a right to sell the land proposes to transfer the land or any part of it to another person, the owner or, as the case may be, the creditor must, subject to section 27—
- (a) give notice in writing of that fact to the tenant; and
  - (b) send a copy of the notice to the Keeper.
- (2) Notice under subsection (1) must be given in accordance with such provisions (including provisions as to the form of the notice) as the Scottish Ministers may prescribe by regulations.

## **27 Transfers not requiring notice**

- (1) Notice is not required under section 26 where the transfer is or, as the case may be, would be—
- (a) otherwise than for value;
  - (b) in implement or pursuance of an order of a court (other than an order under section 24 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (c. 35) or a decree in an action for the division and sale of land);
  - (c) between spouses in pursuance of an arrangement between them entered into at any time after they have ceased living together;
  - (d) of croft land to the crofter tenancing it;
  - (e) between companies in the same group;
  - (f) to a statutory undertaker for the purpose of carrying on the undertaking;
  - (g) a transfer—
    - (i) implementing the compulsory acquisition of land under any enactment;

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- (ii) by agreement, of land which could have been acquired compulsorily under any enactment;
  - (iii) implementing any right conferred by Part 2 (which provides for the community right to buy) of the Land Reform (Scotland) Act 2003 (asp 2) to buy land;
  - (iv) implementing any right conferred by Part 3 (which provides for the crofting community right to buy) of that Act to buy eligible land within the meaning of that Part of that Act;
  - (v) implementing missives for the sale and purchase of land concluded, or an option to acquire land which existed on a date on which no notice of interest in acquiring the land was registered under section 25;
  - (vi) conveying a house to a person who has purchased it in pursuance of the tenant’s right to buy it under Part III of the Housing (Scotland) Act 1987 (c. 26);
  - (vii) which requires, or which but for the provisions of section 14 of that Act would require, the consent of the Scottish Ministers under subsection (5) or (7) of section 12 of that Act;
  - (viii) under section 65 of the Housing (Scotland) Act 2001 (asp 10); or
  - (ix) vesting the land in a person for the purposes of any enactment relating to sequestration, bankruptcy, winding up or incapacity or to the purposes for which judicial factors may be appointed; or
- (h) a transfer of land in consequence of—
- (i) the assumption or resignation or death of one or more of the partners in a partnership; or
  - (ii) the assumption or resignation or death of one or more of the trustees of a trust.
- (2) In the case of a transfer mentioned in any of paragraphs (a), (e) and (h) of subsection (1), if the transfer—
- (a) is or forms part of a scheme or arrangement or is one of a series of transfers; and
  - (b) 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 requirements or consequences of this Part,
- the transfer is, for the purposes of section 28, deemed to be a transfer in respect of which notice is required under section 26.
- (3) For the purposes of subsection (1)(e), 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 (c. 12), together form a group for the purposes of sections 171 to 181 of that Act.
- (4) In subsection (1)(f), “statutory undertaker” is to be construed in accordance with section 214 of the Town and Country Planning (Scotland) Act 1997 (c. 8).
- (5) The Scottish Ministers may by order modify (any or all) subsections (1) to (4).

## **28 Right to buy**

- (1) Where a tenant’s interest in acquiring land is for the time being registered under section 25 and—

- (a) the owner of the land or a creditor in a standard security with a right to sell the land, gives notice to the tenant under section 26 of a proposal to transfer the land or any part of it; or
  - (b) the owner or the creditor takes any action with a view to the transfer of the land or any part of it and—
    - (i) the transfer is a transfer in respect of which notice to the tenant is required under section 26; and
    - (ii) such notice has not been given,the tenant has the right to buy the land to which the transfer relates (including any interest or rights comprised in the land) from the owner or, as the case may be, the creditor.
- (2) Where—
- (a) a tenant has a right to buy land under subsection (1); and
  - (b) despite the existence of that right, the owner, or as the case may be, the creditor transfers the land to a person other than the tenant,
- the tenant has the right to buy the land (including any interests or rights comprised in the land) from the person to whom the land is transferred or is subsequently transferred.
- (3) For the purposes of subsection (1)(b), action is taken with a view to a transfer of land when—
- (a) the land is, by or with the authority of the owner of the land or a creditor in a standard security with a right to sell the land, advertised or otherwise exposed for sale;
  - (b) the owner or the creditor, or a person acting on behalf of the owner or the creditor, enters into negotiations with another person with a view to the transfer of the land; or
  - (c) the owner or the creditor, or a person acting on behalf of the owner or the creditor, proceeds further with any proposed transfer of the land which was initiated prior to the date on which the notice of interest was registered.
- (4) References in subsection (3) to the owner of land include references to the person in whom it has vested for the purposes of any such enactment as is mentioned in section 27(1)(g)(ix).
- (5) The Scottish Ministers may by order modify (either or both) subsections (3) and (4).

## **29 Exercise of right to buy**

- (1) Where a tenant has a right to buy land under section 28(1), the tenant may proceed in accordance with section 32 to buy the land from the owner or, as the case may be, the creditor provided that notice is given under subsection (2).
- (2) Notice is given under this subsection if the tenant, within 28 days of receipt of the notice under section 26, gives notice to the owner or, as the case may be, the creditor that the tenant intends to buy the land.
- (3) Where a tenant has a right to buy under section 28(2), the tenant may proceed in accordance with section 32 to buy the land from the person to whom the land has been transferred or subsequently transferred provided that notice is given under subsection (4).

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- (4) Notice is given under this subsection if—
- (a) the tenant gives notice to that person that the tenant intends to buy the land; and
  - (b) the notice is given within three years from the transfer to that person, and the tenancy is in force on the date on which the notice is given.
- (5) If, at any time, the tenant does not intend to proceed, in accordance with section 32, to buy the land, the tenant is to give notice of that fact to the person from whom the land would otherwise have been bought.
- (6) Where the tenant—
- (a) does not give notice in accordance with subsection (2) or, as the case may be, (4); or
  - (b) gives notice under subsection (5),
- the right to buy is extinguished.
- (7) A tenant giving any notice under this section must send a copy of the notice to the Keeper.

### **30 Meaning of “creditor in a standard security with a right to sell land”**

Any reference in this Part to a creditor in a standard security with a right to sell land is a reference to a creditor who has such a right under—

- (a) section 20(2) or 23(2) of the Conveyancing and Feudal Reform (Scotland) Act 1970 (c. 35); or
- (b) a warrant granted under section 24(1) of that Act.

### **31 Effect of extinguishing of right to buy**

Where a right to buy land is extinguished under section 29(6) or 32(8), the tenant may acquire a subsequent right to buy the same land or any part of it under section 28(1), but only if—

- (a) the period of 12 months from the extinguishing of the right to buy has expired; or
- (b) before that period has expired—
  - (i) the land is transferred to another person; and
  - (ii) that person requires to give notice under section 26 in relation to a subsequent transfer.

#### *Procedure for buying and valuation*

### **32 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 28.
- (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—

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- (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,and must specify the date of entry and of payment of the price in accordance with subsection (3).
- (3) 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 29(2) or (4) 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, within the period of 4 months after the date when the tenant gave such notice, been—
    - (i) determined; or
    - (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.
- (4) The offer may include such other reasonable conditions as are necessary or expedient to secure the efficient progress and completion of the transfer.
- (5) If the tenant has not, within the period fixed by or agreed under subsection (3), done any of the things mentioned in subsection (6), the seller may apply to the Land Court for an order under subsection (7).
- (6) The things are—
  - (a) concluding missives with the seller for the sale of the land to the tenant; or
  - (b) if the tenant has not so concluded missives, taking all steps which the tenant could reasonably have taken in the time available towards so concluding missives.
- (7) An order under this subsection may—
  - (a) direct the tenant—
    - (i) to conclude missives with the seller within such period; and
    - (ii) to take such remedial action for the purpose of so concluding missives; 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.
- (8) If—
  - (a) the tenant fails to comply with an order under subsection (7); or
  - (b) where the seller has not applied for an order under that subsection, the tenant has not (having regard to the period fixed by or agreed under subsection (3)) within a reasonable period from the acquiring by the tenant of the right to buy otherwise concluded missives with the seller for the sale of the land to the tenant,the right to buy is extinguished.

### **33 Appointment of valuer**

- (1) Where the price is not agreed between the seller and the tenant, the land is, except where subsection (2) applies, to be valued by a valuer appointed by agreement between the seller and the tenant or by a person nominated by them.
- (2) This subsection applies where the land in respect of which the tenant is exercising a right to buy forms part of an estate comprising other land in respect of which any other tenant has given notice under section 29(2) or (4) of the tenant's intention to buy.
- (3) Where subsection (2) applies, the land mentioned in that subsection is to be valued by a valuer appointed by agreement between—
  - (a) the seller; and
  - (b) at least half of the tenants mentioned in that subsection,or by a person nominated by them.
- (4) Where there is no agreement as to the appointment of a valuer under subsection (1) or (3), the valuer is to be appointed by the Land Court or by a person nominated by the Court.
- (5) In this Part, “valuer” includes two valuers with an oversman.

### **34 Valuation of the land**

- (1) The valuer appointed under section 33 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 under section 26 of the seller's proposal to transfer the land.
- (2) The valuer is to assess the value of the land—
  - (a) having regard to the value that would be likely to be agreed between a reasonable seller and buyer of such land—
    - (i) assuming that the seller and buyer are, as respects the transaction, willing; and
    - (ii) where the buyer is a sitting tenant;
  - (b) taking account, in so far as a seller and a buyer of the land (assuming that they are, as respects the transaction, willing) would do so, of any factor attributable to the known existence of a person who (not being the tenant who is exercising a right to buy the land) would be willing to buy the land at a price higher than other persons because of a characteristic of the land which relates peculiarly to that person's interest in buying it;
  - (c) taking account of when the seller would in the normal course of events have been likely to recover vacant possession of the land from the tenant;
  - (d) taking account of the terms and conditions of any lease of sporting interests affecting the land;
  - (e) taking account of any moveable property belonging to the owner of the land which is, by agreement between the tenant and the owner, to be—
    - (i) sold with; and
    - (ii) valued along with,the land;
  - (f) taking no account of—
    - (i) the absence of the period of time during which the land would, on the open market, be likely to be advertised and exposed for sale; or



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- (ii) any factor attributable to any use of the land which is or would be unlawful;
  - (g) taking no account of any increase in the value of the land resulting from improvements carried out at the expense of the tenant;
  - (h) taking no account of any increase in the value of the land resulting from the use of any of the land, or changes to the land, for a purpose that is not an agricultural purpose or the carrying out of conservation activities on the land;
  - (i) taking no account of—
    - (i) any reduction in the value of the land as a result of any dilapidation or deterioration of, or damage to, fixed equipment or land caused or permitted by the tenant; or
    - (ii) any such reduction resulting from the use of any of the land, or changes to the land, for a purpose that is not an agricultural purpose or the carrying out of conservation activities on the land; and
  - (j) taking no account of any fixed equipment owned by the tenant.
- (3) For the purposes of subsection (2)(g)—
  - (a) subject to paragraph (b), “improvements” is to be construed by reference to Schedule 5 to the 1991 Act; and
  - (b) the continuous adoption by the tenant of a standard of farming or a system of farming more beneficial to the land than the standard or system required by the lease or, in so far as no system of farming is so required, than the system of farming normally practised on comparable agricultural land in the district, is to be treated as an improvement executed at the tenant’s expense.
- (4) Where land in respect of which the right to buy is being exercised forms part of an estate, the valuer is, in addition to assessing the value of the land under subsection (2), to assess the value representing the difference between—
  - (a) the value of the estate were the estate being sold by the seller to a person other than the tenant; and
  - (b) the value of the remainder of the estate (that is to say, the estate less the land in respect of which the right to buy is being exercised) were the remainder being sold by the seller to such a person.
- (5) For the purpose of valuation under subsection (4), where two or more parts of an estate are being bought in exercise of a right to buy under this Part, the valuer may apportion to each such part of the estate (or re-apportion if for any reason the sale of any such part does not proceed) such amount representing the reduction in the value of the estate as the valuer considers equitable.
- (6) The Scottish Ministers may issue guidance (either generally or in respect of a particular class of case) for the purposes of valuation under this section.
- (7) An estate is to be treated, for the purposes of subsections (4) and (5), as comprising—
  - (a) any land forming part of the estate and which is being bought in exercise of a right to buy under this Part; and
  - (b) any other land forming part of the estate offered for sale by the seller at the same time as the land mentioned in paragraph (a).
- (8) For the purposes of section 32(2)(b)(i), the price payable by a tenant is—
  - (a) the value assessed under subsection (2); or

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- (b) where the land forms part of an estate, the greater of the values assessed under—
  - (i) that subsection; and
  - (ii) subsection (4).

### **35 Special provision where buyer is general partner in limited partnership**

Where the person exercising a right to buy under section 28 is doing so by virtue of section 72(2)—

- (a) the valuer, in assessing the value of the land under subsection (2) of section 34, is to have regard to—
  - (i) the fact that the buyer is a general partner of a limited partnership; and
  - (ii) any provision of the partnership agreement entitling a limited partner to dissolve the partnership; and
- (b) paragraph (a)(ii) of that subsection is of no effect.

### **36 Valuation etc.: further provision**

- (1) The valuer is—
  - (a) to invite—
    - (i) the seller and the tenant; and
    - (ii) where the land forms part of an estate, any other person the valuer considers to have an interest in the estate,
 to make written representations about the matters mentioned in subsection (2); and
  - (b) to have regard to any such representations.
- (2) The matters are—
  - (a) the valuation of the land; and
  - (b) where the land forms part of an estate, any valuation of the estate (and any apportionment of a reduction in the value of the estate),
 under section 34.
- (3) The valuer may—
  - (a) enter onto land; and
  - (b) make any reasonable request of the seller and tenant,
 for the purposes of any assessment under section 34.
- (4) The valuer must, within 6 weeks of being appointed, send to the seller and the tenant a notice in writing specifying the price payable by the tenant under section 34(8) and setting out how the price was calculated.
- (5) The expenses of the valuer accrued in carrying out the valuer's functions under section 34 and this section are to be—
  - (a) met by the tenant; or
  - (b) where subsection (2) of section 33 applies, shared equally between the tenants mentioned in that subsection.
- (6) Where—
  - (a) the Land Court has made an order under section 32(7);

(b) the tenant to whom the order applies has complied with the order; and  
(c) the seller does not proceed with the sale of the land to the tenant,  
the seller is liable to the tenant for any expenses met by the tenant by virtue of  
subsection (5).

(7) The Scottish Ministers may by regulations make further provision for or in connection  
with the matters provided for in this section and sections 33 and 34.

### **37 Appeal to Lands Tribunal against valuation**

(1) The seller or the tenant may appeal to the Lands Tribunal against the valuation carried  
out under section 34.

(2) An appeal under this section must state the grounds on which it is being made and  
must be lodged within 21 days of the date of the notice under section 36(4).

(3) In an appeal under this section, the Lands Tribunal may—

- (a) reassess any value of the land (and any factor affecting the value) or of an  
estate (and how any reduction in the value of an estate is to be apportioned);  
and
- (b) for the purposes of section 32(2)(b)(ii), determine the price.

(4) The valuer whose valuation is appealed against may be a witness in the appeal  
proceedings.

(5) In the appeal proceedings, in addition to the seller and the tenant, the following persons  
are entitled to be heard—

- (a) where the seller is—
  - (i) a creditor in a standard security, the owner of the land; and
  - (ii) the owner of the land, any creditor in a standard security over the land  
or any part of it; and
- (b) where the land forms part of an estate—
  - (i) any creditor in a standard security over; and
  - (ii) any tenant of,  
any other land forming part of the estate.

(6) The Lands Tribunal is to give reasons for its decision on an appeal under this section  
and is to issue a written statement of these reasons.

(7) The decision of the Lands Tribunal in an appeal under this section is final.

(8) In this section and section 38, “the Lands Tribunal” means the Lands Tribunal for  
Scotland.

### **38 Referral of certain matters by Lands Tribunal to Land Court**

Where, in an appeal before the Lands Tribunal under section 37, an issue of law arises  
which may competently be determined by the Land Court by virtue of the 1991 Act or  
this Act, the Tribunal is to refer the issue to the Land Court for determination unless  
the Tribunal considers that it is not appropriate to do so.