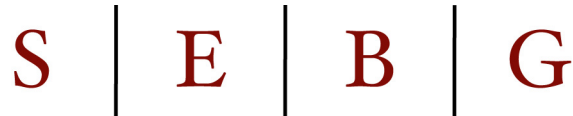


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**SEERAD CONSULTATION ON  
AGRICULTURAL HOLDINGS (SCOTLAND) ACT  
2003  
Draft Orders, Regulations & Guidance**

**SUBMISSION BY  
SCOTTISH ESTATES BUSINESS GROUP**

**25<sup>th</sup> October 2004**



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**1. Background**

SEBG represents a group of progressive land-based estates with significant agricultural and rural business interests. It aims to promote a modern business approach in the management of Scotland's land resource in ways which deliver social, economic and environmental benefits. The Group seeks to secure a sustainable and prosperous future for rural areas.

Estates are proven business models that assist the development of smaller rural businesses, and landowners and estates have a vital role to play in the ongoing and future development and prosperity of Scotland. Our members are large providers of agricultural land for letting.

SEBG is committed to rural economies and its members work hard across Scotland to stimulate enterprise and economic development, whether through small localised initiatives, or through larger schemes such as the Group's recent conference with Scottish Enterprise and Highlands and Islands Enterprise on providing broadband to rural areas.

**2. SEBG Overview**

SEBG recognises that it is in the tenant's interest to register, thus protecting their pre-emptive right to buy. However SEBG considers it important to note that in practice, most landowners would, in the first instance, approach a tenant to try and negotiate a sale if they were minded to sell the subjects of the let.

It is helpful for landowners who choose to sell to be aware of any interest that their tenant(s) may have in buying. The value of land with a sitting tenant will generally be lower than it would be were the land to be sold with vacant possession. It is therefore in the interests of both landlord and tenant to be aware of the other's intentions.

There has been much debate in recent weeks about what methods of valuation should be adopted, particularly for cases where more than one tenant may opt to exercise his right to buy on notification by the landlord of an intention to sell. SEBG welcomes the Scottish Executive's firm commitment to the principle underlying the pre-emptive right-to-buy that the value of the land is that which would be likely to be agreed between a willing buyer and willing seller.

Landlords should not be disadvantaged by the sale to a sitting tenant and, in cases where the value of other interests in addition to the agricultural interest increases the overall value of the land to be sold, this must be reflected in the price payable by the tenant. SEBG is encouraged that the Executive recognise that issues of injurious affection and the value of other interests such as sporting rights require to be taken into account in the valuation of the land to be acquired. However, SEBG is convinced that the most appropriate method by which a sale is concluded is through private negotiation rather than through the complex process set down in the legislation, particularly in cases where multiple sales are involved. More flexibility and the ability to take local circumstances fully into account should facilitate more expeditious sale agreements and therefore would be in the best interests of both parties.

To underpin these two key aspects of the practical implications of the pre-emptive Right to Buy, SEBG urges the Scottish Executive to ensure that its valuations provisions are made clear **before** any Orders or Regulations are introduced under the statute. Clarity and simplicity are essential if the best interests of both tenant and landlord are to be protected. However, SEBG also believes that the provisions relating to registration and to the valuation process need to be introduced as soon as practically possible.

### **3. Responses to questions - Registration issues**

*The Executive would welcome views on whether any further measures can be take to make completion of the Notice of Interest form as simple as possible. Alternatively, should focus be on making clear to tenants that they require professional advice to complete the form?*

SEBG agrees that to be effective, the registration process needs to be as straightforward as possible. Nevertheless, for the protection of the tenant's interest, as well as to help ensure consistency of approach in completion of registration notices, we would recommend that tenants be guided to seek professional advice. It is possible that a tenant could be exposed to significant liability as a consequence of unwittingly registering an interest in land incorrectly, for example over development land which he did not occupy on a 1991 Act tenancy. The purchase process in any case will require professional input and action, so it would be sensible to draw on professional expertise at the outset. We would also welcome the production by SEERAD of guidance notes for applicants, reinforcing the importance of taking professional advice in advance of submitting an application for registration.

*Q. We believe we have identified the information that will be required to make the Register of Tenants' Interests meaningful to parties searching it. Do you agree?*

It will be important to the effective operation of the pre-emptive Right to Buy process that registration of interest in land is accurate. SEBG is concerned that third parties may rely on information contained in the Register on the assumption that the information is accurate. For this reason we believe that it would be preferable to introduce a system of provisional registration initially which would allow a landlord a period of 28 days to comment on the proposed entry or to agree an entry before final registration takes place. Provided the provisional registration acts to preserve the pre-emptive right-to-buy during that period we do not consider that this would in any way disadvantage a tenant and in fact could reduce the likelihood of disputes occurring. In the event that such a system is not introduced it is essential however that some method is introduced to allow any disputes over the land being registered to be recorded. Whilst it will be for third parties to verify the information contained in the registration, some form of flagging to highlight possible discrepancies would help to ensure that the registration process works in the way it is intended.

*Q. Do you have views on how land to be registered should be described (i.e. by a relatively detailed description, by a summarised description with supporting plan, or either at the choice of the applicant)?*

For the avoidance of any doubt, SEBG strongly recommends that a map should be supplied with any application to register an interest. The Registers of Scotland operates a map-based system with land sale records and we believe that a similar system should apply for registration. This would help to ensure the accuracy of the register, as well as facilitate the purchase process. Our preference would be for an Ordnance Survey map rather than an IACS map, to ensure that all the land including tracks, ditches, and buildings is registered.

*Q. Do you agree on how we propose that the landlord's notification form should appear?*

SEBG has no issues with the landlord's notification form as proposed.

*Q. Do you have views about the likely numbers of secure tenants and eligible general partners who might wish to register interest in acquiring the landlord's interest in the farm they rent?*

Whilst there is no quantifiable information on the likely level of interest in registration, SEBG would expect tenants to register in most cases to ensure they were kept informed of landlord's intention. However registration itself should not be seen as an accurate indicator of the proportion of tenants likely to exercise the pre-emptive right to buy.

#### **4. Responses to questions - Pre-emptive Right To Buy for general partners**

*The Executive would welcome views on whether there may be other devices that might be used to deprive a general partner of his or her right to buy, against which they might need protection.*

- Q. Do you agree with the proposed regulations?*
- Q. Have we dealt with all the issues that need to be addressed by legislation before the right to buy for general partners can come into force?*
- Q. Are there any other steps we need to take to protect the interests of general partners in relation to their pre-emptive right to buy?*

The tone of the questions suggests that the Executive believe that devices may be used to deprive a general partner of the right-to-buy. SEBG believes that the existing measures are adequate and does not consider that further measures are required to safeguard the general partner's interest. It is worth pointing out that Limited Partnerships were entered into freely for the purpose of operating a farming business and in the expectation that the Partnership would be terminated at a given date. They were widely used and, from research conducted by RICS and others, the average length of the period amounted to seven years. The action which was imposed retrospectively on landlords who may have chosen to let land by way of a Limited Partnership tenancy has affected confidence generally among landlords to let and raised concern that retrospective action could be taken in the future against landlords who let land by other means including SLDT's and LDT's. In the circumstances SEBG would urge the Executive to look to restore confidence in the sector and avoid the imposition of further restrictions which might have negative consequences on the supply of land to let.

## **5. Responses to questions - Valuation process**

- Q. Do you agree that we should not formalise a procedure for managing the right to buy process when more than one farm is subject to the pre-emptive right to buy?*

The process of determining the value of the tenants' interests in the case of a multiple sale is particularly complex as it will be affected by the value of the other interests aside from the agricultural interests and by the number of tenants choosing to exercise the right-to-buy, which may change at any time. In order to avoid the tenant facing numerous revaluations occasioned by a change in the circumstances, it is important that a range of valuations are obtained taking account of alternative scenarios which might occur. This will be difficult to assess other than on a case by case basis and accordingly SEBG recommends that the procedure is not unduly formalised. Flexibility of approach, with negotiation rather than statutory procedures, is also more likely to lead to agreement, as well as being less costly to both sides and achievable with the minimum of delay with its associated costs.

## **6. Responses to questions - Valuation method**

- Q. Do you agree that the methodology for valuing farms in such cases should be developed using guidance, rather than binding regulation?*

As made clear above, regulation can restrict, as well as slow down the sale process. The provisions of S. 34 set out the basis of valuation as between willing seller and willing buyer and we would suggest that professional valuers will be able to undertake valuations on this basis satisfactorily. However there will be occasions when revaluations are required following changes in the circumstances affecting multiple sales as explained in Item 5 above, and accordingly it may be advisable for a tenant to obtain his own range of valuations. This could best be covered in guidance notes rather than binding regulation.

*Q. What do you think would be the most appropriate valuation method?*

Given the range of circumstances which may apply, it does not appear realistic to impose a “one size fits all” solution to the question of valuation. The underlying principle of the Act that the landlord receives full value for the land lotted for sale as between a willing seller and willing buyer is sufficient to enable a valuer to carry out a valuation. Accordingly SEBG would recommend strongly against the Executive prescribing the valuation method.

It is inevitable that the valuation of a particular tenant’s interest in the case of a multiple sale will be affected by the number of other tenants who do likewise. It would be unreasonable and impractical to expect tenants to reach a decision on whether to exercise their right to buy at the same time. Accordingly, as outlined previously, our preference would be for the valuer to provide a range of values to each tenant, according to the different circumstances which might apply in each case.

Since it is not possible to prescribe every circumstance and how it should be handled, SEBG suggests that the professionals should be left to draw on their experience in operating the valuation method. In the event that particular difficulties arise in practice it is suggested that these are considered by the Tenant Farming Forum (TFF) and information and advice offered to the Scottish Executive as to how these difficulties might be resolved.

**Polly McPherson**  
**Scottish Estates Business Group**  
**25<sup>th</sup> October 2004**