

## Farm Sales to Tenants Process

### Introduction

This document sets out the process for secure agricultural tenants (Agricultural Holdings Act 1991 leases) who wish to pursue the **option purchasing their holding** under the Pilot Initiative. The process for negotiating a surrender of a secure lease or pursuing a joint sale of a tenancy is set out in a separate document titled 'Surrender or Joint Sale of Secure Farm Tenancies Process.'

### Principles

The operating principles for this process are as follows:

1. In approaching any sale, the farm tenant is assumed to be a willing buyer and Crown Estate Scotland is assumed to be a willing seller for valuation purposes.<sup>1</sup>
2. The proposed sale process progresses through a series of stages including an initial 'expression of interest' and thereafter a more certain 'declaration of intent' from the tenant. Neither party is bound until terms final terms are agreed and missives exchanged.
1. Crown Estate Scotland reserves the right to withdraw from negotiations / withdraw the offer of sale at any point and particularly if negotiations become drawn out / agreement cannot be reached within reasonable timescales.
2. If both parties cannot agree an acceptable price, there is no obligation on either party to proceed and one or other can walk away.
3. Both parties meet their own costs associated with valuation, legal fees, agent fees and any other relevant costs.
4. Crown Estate Scotland will provide maps of holdings/leases including details of options of land /assets to be included in the sale following expressions of interest from tenants (see Step 3 below).
5. Although the basis for sales is by private treaty, both parties should act as if the sale transaction was taking place in an open market situation with an offer being made by the tenant based on the valuation and Crown Estate Scotland making a decision to sell on the basis of the offer compared with the market value.
6. Crown Estate Scotland must follow certain internal governance processes when making decisions based on the value and nature of a transaction which may involve seeking Board or Ministerial consent. Crown Estate Scotland is therefore not bound to accept or progress any transaction subject to this process.
7. All sales will be subject to a 'clawback agreement' including in relation to potential development gain and resale (including forestry, renewables and development) across all parts of the holding. Selling on for agricultural value will not be subject to clawback. Clawback In relation to forestry planting, will crystallise on sale of land, not the tenant planting trees themselves. The detail of the clawback provisions will be set out in advance of the valuation work and therefore will form part of the valuation and final negotiations.
8. Crown Estate Scotland is bound by the processes set out in the Scottish Public Finance Manual and The Scottish Crown Estate Act 2019 which imposes an obligation to sell at market value.
9. Where Agricultural Holdings Act 1991 (AHA) leases are the subject of negotiation, Crown Estate Scotland will only consider offers (involving surrender and/or sale) from tenants that involve the whole area under the lease (so as not to retain parcels of land held under AHA tenancies but linked to an owner-occupied unit), unless there are wider, strategic considerations to retain parts of the estate to meet other business objectives.

1. *Willing buyer: Someone who is motivated but not compelled to buy. The buyer is neither over-eager nor determined to buy at any price. Willing seller: Neither an over-eager nor a forced seller prepared to sell at any price, nor one prepared to hold out for a price not considered reasonable in the current market.*

10. The decision as to which land will be sold will be for Crown Estate Scotland to make based on its location and any wider business or strategic considerations relating to wider estate management for the retained estate. These options are non-statutory with no obligation on either party to take matters forward.
11. A clear timetable and explanation of the steps will be set out to ensure consistency and transparency for tenants.
12. Transactions may need to be staggered over the period to 2023 or later, if required to fit with Crown Estate Scotland capital budgets.
13. Tenants are advised to discuss matters with their accountant/bank and an agricultural or legal advisor before making any decisions.

### **Eligibility / What is to be offered for sale?**

As part of the pilot, the offer will only be made to tenants occupying holdings under Agricultural Holdings Act 1991 (AHA) tenancies. Limited Duration Tenancies (LDT's), Short Limited Duration Tenancies (SLDT's) and Modern Limited Duration Tenancies (MLDT's) are not included in the pilot process unless these are linked to the AHA tenancy (see below).

Where farm tenants with AHA leases also occupy land under LDTs and SLDTs and this land is managed as an integral part of the business and considered important for the viability of the unit, Crown Estate Scotland will consider including these on a case-by-case basis depending on the location of the additional land and its strategic proximity to other holdings/assets.

Depending on circumstances, sportings, brown trout fishings and forestry strips, **within** a holding will be considered for inclusion even though these are not part of the AHA/LDT/SLDT lease. What is being offered for sale to each individual and on what basis, will be clearly defined. This avoids Crown Estate Scotland retaining stranded assets. Where an area/block of adjoining in-hand forest land (which is not considered of significant strategic value for the retained estate) is present, this may also be requested as part of the sale.

Where approaches are received from adjoining tenants that share a common boundary with an adjoining plantation/woodland block and where both tenants express an interest in acquiring the block this will be subject to them making separate bids/offers with the highest offer accepted (subject to the principles above).

Minerals and salmon fishing rights will be retained and excluded from the sale by default and only considered on a case-by-case basis if the tenant requests to include them in the sale. This will be subject to consideration given to other agreements in place and appropriate related value being obtained. Where Crown Estate Scotland may seek to retain land within the farm for wider strategic considerations this will also be identified.

### **Process**

#### **Step 1: Notification / Initial Offer**

Crown Estate Scotland will write to all eligible AHA 1991 Act tenants within the Pilot areas (hereafter referred to as AHA tenancies) with details of the offer.

The letter will formally make an offer to eligible tenants to ask if they are interested in either:

1. Purchasing their holding

2. Negotiating a surrender of their lease, or
3. Pursuing a joint sale of their tenancy

Under option (1), purchase - the parties will follow the process set out in this paper which, if pursued, will result in the tenant making a formal offer to purchase the holding at a price which takes into account the market value (MV) of the holding with the lease in place, plus an agreed proportion of the difference between this value and the vacant possession value (VPV).

Details regarding the current valuation of the AHA holding that Crown Estate Scotland has in its accounts, along with information providing details of the subjects included in the valuation, will be provided to give the tenant an understanding of the potential cost of purchasing the farm. This will include an indicative market value (MV- with the tenancy in place) and a vacant possession value (VP value - without a tenancy in place). It will be made clear that this is not a detailed valuation and is not to be taken as being accurate. A detailed valuation will need to be done later in the process. Summary information that Crown Estate Scotland holds regarding tenant improvements will also be provided at this stage.

*NB: The indicative valuation is based on the valuation information held by Crown Estate Scotland as at 31<sup>st</sup> March 2021 and is not to be taken as the market value of the holding / subjects in the particulars. The indicative valuation is provided to help the tenant to determine whether they wish to proceed to the next steps in the process. The ultimate valuation/sales price will be determined by the detailed valuation process and subsequent negotiation set out below.*

**The tenant is not under any obligation to respond or pursue any of the sale or surrender options and is free to leave things as they are, and nothing will change regarding the current landlord – tenant relationship.**

The letter will include an expression of interest (EOI) form which the tenant can return indicating which option, if any, they wish to take forward, including a timescale for responding.

The next steps set out the process for an expression of interest (EOI) to purchase the holding. Separate guidance is set out for tenants seeking to surrender their tenancy or pursue a joint sale.

## **Step 2: Tenant submits an expression of interest (EOI).**

The tenant returns the form indicating which of the options they wish to investigate.

If the tenant does not wish to do anything no response is required.

The EOI does not tie either party into any of the options.

Depending on the level of interest, Crown Estate Scotland will then consider which options to take forward and notify the relevant tenant in each case of the next steps.

If a tenant expresses interest in more than one option in an order of preference, this will be discussed with the tenant as part of subsequent discussions depending on the level of interest in the respective options and how Crown Estate Scotland decides to progress.

Crown Estate Scotland will acknowledge all responses received from tenants.

The next steps cover the process for following up with tenants who have expressed an interest in purchasing their AHA holding and any additional associated assets. A separate document details the process for tenants wishing to surrender their tenancy or pursue a joint sale.

### **Step 3: Subjects of Sale/ Preparation of a Sale Report**

Working with its managing agents, Crown Estate Scotland will prepare a Sale Report (sale particulars) which will include the **indicative** valuations as set out in the original letter to the tenant in Step 1 above and any additional indicative valuations for assets that may be included that are not part of the secure tenancy.

Crown Estate Scotland will undertake a GIS (Geographical Information Systems) analysis to check the geographical extent of the tenancy including any corresponding SLDTs/LDT's linked to 1991 Act tenancy, any other agreements that might be in place across the tenancy, any internal or adjoining woodland blocks, sporting rights etc. to determine the subjects to be offered for sale.

This will be discussed with the tenant as required including a draft timetable for completion of the transaction.

### **Step 4: Tenant submits a Declaration of Intent**

This Sale Report will be provided to the tenants who have submitted the initial EOI. These tenants will then be asked to submit a **'Declaration of Intent'** stating that, having taken into account the indicative valuation, they wish to proceed with a negotiation with the intention of purchasing the subjects set out in the Sale Report or alternatively they wish to withdraw their EOI.

Tenants will be asked to identify if they wish to purchase all of the subjects in the Sale Report or just some of them and, if the latter, which elements. If the tenant wishes to purchase a smaller area linked to the farmhouse and out-buildings, the 'declaration of intent' must also confirm intention to surrender the remainder of the holding. Crown Estate Scotland reserves the right not to pursue proposals which might result in unacceptable fragmentation of a holding or creation of illogical boundaries. This will be considered on a case-by-case basis.

The 'Declaration of Intent' will also seek confirmation that the tenant has considered in detail how they will finance the purchase and is able to outline this to Crown Estate Scotland based on the indicative valuation but subject to final negotiation/valuation. The form will also seek a response from the tenant indicating their preferred timescale for concluding the purchase.

If at this stage, there is a need for negotiation to agree/discuss the subjects to be offered for sale, this will be undertaken between Crown Estate Scotland managing agent and the tenant with the Sales Report and the 'Declaration of Intent' modified as agreed.

The declaration of intent will be submitted to Crown Estate Scotland according to the timescale set out in the Sales Report.

### **Step 5: Crown Estate Scotland consideration of the proposal**

Crown Estate Scotland will review the 'Declaration of Intent' and decide whether it will proceed to the next step.

This will involve an internal governance decision process based on delegated authority limits associated with the indicative value of the assets involved.

Evaluation of proposals will be based on a Business Case involving a scoring matrix derived from the established five-case model:

- the Strategic Case – robust rationale consistent with Crown Estate Scotland corporate objectives.
- the Value (economic) Case – will deliver or sustain wider value.
- the Commercial Case - commercially appropriate.
- the Financial Case – consistent with Crown Estate Scotland financial criteria and value for money considerations.
- the Management Case – not detrimental to management of other assets.

This may involve recourse to the Crown Estate Scotland Board or Scottish Ministers depending on the value involved.

Where there may be competing proposals, these will be considered on the comparative strength of the respective business cases and how the proposals deliver against corporate objectives.

Crown Estate Scotland will then notify the tenant if it agrees with the 'Declaration of Intent' and is therefore a willing seller, so the process can move to the next stage. If it is not in agreement Crown Estate Scotland will explain why and re-open the negotiation to seek agreement or to withdraw from any further consideration of a sale.

### **Step 6: Valuation**

The subjects which are part of the Sale Report and/or for which the Declaration of Intent has been submitted and agreed, will then require an up-to-date full valuation to be undertaken to allow negotiations on price to proceed.

Crown Estate Scotland will instruct valuation agents to undertake a full formal detailed valuation of the subjects in the Sale Report. As part of the valuation and to ensure transparency the valuation report will be disclosed including details of the comparable evidence used.

The formal valuation will be only an open market valuation of the holding with no tenant in place to determine 'vacant possession' value (VPV). The VP valuations will be undertaken by "black patching" tenant's improvements and excluding "hope value" for future development.

The valuation will be extended to cover all the subjects agreed at stage 4 (above) and included in the Sales Report including land held under LTD /SLDT leases, any sporting rights and forest/other land included but not part of the AHA farm lease. If any assets which are not part of the AHA tenancy are included in the sale report these will be valued at full open market VP value.

The tenant can instruct a separate valuation if they choose to do so and as part of the transparent process the valuation report and comparable evidence will be disclosed to Crown Estate Scotland.

Both parties will meet their own costs.

### **Step 7: Negotiations on price and any other terms of sale**

Following the valuation work, Crown Estate Scotland's agent and the tenant's agent should then discuss and agree the Open Market value using the respective valuations.

The respective valuers should determine the valuation of the subjects with the sitting tenant in place informed by the valuation work undertaken. It is understood that respective tenant's situations will be different and account to be taken of the circumstances. Thereafter the parties will move to agree the final sale price.

The negotiation will include discussion regarding any assets not within the AHA lease, standard sale terms and all other terms of the sale. Crown Estate Scotland will include clawback provisions for any future change of use including resale of the unit (or part of the unit) within a 20-year period for built/other development, renewables, and forestry development.

Where there may be assets that are not part of the lease (such as forestry assets adjoining the holding) and where there are competing expressions of interest in these assets, or alternative options for disposal/management, this will form part of the negotiation. Subject to the outcome of the negotiations and an agreement on value, a decision will then be taken by Crown Estate Scotland whether to include or exclude these from the transaction.

The negotiation should take account of all other factors including the share of the reversionary value (the difference between MV and VPV) to be paid.

If the valuation / terms of sale cannot be agreed within timescale set out at commencement of negotiations, both parties can walk away with no implications.

Each party will meet their own expenses for this stage.

#### **Step 8: Offer to purchase /offer of sale**

Once the final value is agreed Crown Estate Scotland will seek confirmation from its valuation agent that the price agreed represents 'market value' as per requirements of The Scottish Crown Estate Act 2019 and the Scottish Public Finance Manual. Subject to recommendation from its agent, Crown Estate Scotland will then confirm its willingness to sell based on an offer of sale at that price, 'the agreed price.'

The tenant should at this point discuss with their funder the requirement to grant Crown Estate Scotland a security for any clawback provisions and whether a ranking agreement is necessary.

The tenant will then be asked to submit a letter of intent from their solicitor based on the agreed price.

Once the letter of intent has been received Crown Estate Scotland will then issue an offer to sell based on the agreed price. This will be issued by our legal advisers on standard terms, title pack prepared, pre-registration reports exhibited, draft disposition, clawback and security issued as required.

Once accepted, both the offer to sell and the offer to buy will be considered binding, subject to completion of missives.

#### **Step 9. Finalising the transaction**

Both parties aim to complete sale within 3 months (funding dependant) of being passed to legal advisors, giving time for any offer of loan to be issued by the tenant's funder.

Any external communication / announcement of the sale is to be managed collaboratively by Crown Estate Scotland and the tenant.

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