

# Surrender or Joint Sale of Secure Farm Tenancies Process

## Introduction

This document sets out the process for tenants who wish to relinquish (give up) their secure tenancy and to either surrender their tenancy for a payment or alternatively to pursue a joint open market sale with Crown Estate Scotland, sharing the proceeds of the sale according to the process set out below.

The process for tenants wishing to purchase their secure tenancy is set out in the document titled 'Farm Sales to Tenants Process.'

## Principles

The operating principles for this process are as follows:

1. The proposed 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 final terms are agreed.
2. Crown Estate Scotland reserves the right to withdraw from negotiations at any point and particularly if negotiations become drawn out / agreement cannot be reached within reasonable timescales.
3. 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.
4. Crown Estate Scotland is bound by the processes set out in the Scottish Public Finance Manual and The Scottish Crown Estate Act 2019.
5. Where Agricultural Holdings Act 1991 (AHA) leases are the subject of negotiation, Crown Estate Scotland will only consider offers (involving surrender and/or joint 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.
6. The decision as to which land will be sold as part of any joint sale 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. For example, sub-let cottages may be lotted separately or retained by Crown Estate Scotland.
7. An 'expression of interest' or 'declaration of intent' from the tenant and a willingness to proceed with a surrender/joint sale is not binding on either party until terms are agreed and a binding contract signed.
8. Both parties meet their own costs associated with valuation, legal fees, agent fees and any other relevant costs.
9. A clear timetable and explanation of the steps will be set out to ensure consistency and transparency for tenants.
10. Voluntary renunciation and joint sale transactions may need to be staggered over the period to 2023 or later, if required to fit with Crown Estate Scotland capital budgets.
11. Tenants are advised to discuss matters with their accountant/bank and an agricultural or legal advisor before making any decisions.

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### **Additional operating principles associated with a Surrender:**

12. Crown Estate Scotland will consider a negotiated renunciation of a tenancy in line with the provisions set out in the Land Reform (Scotland) Act 2016 wherein the tenant would receive (subject to negotiation) 50% of the difference between the market value (MV) of the holding with their lease in place and the vacant possession value (VP) of the holding (excluding in both cases the value attributed to tenant's improvements) adjusted thereafter as required to compensate for improvements and dilapidations.
13. The process for landlord notification and consequent response should follow that set out in the legislation and the relevant guidance published by the Scottish Land Commission.
14. The surrender value will be agreed between Crown Estate Scotland and the tenant prior to any decision by the tenant or Crown Estate Scotland to consider the alternative option of pursuing a joint sale.
15. Crown Estate Scotland reserves the right to opt to make a surrender payment rather than pursue a joint sale if it wishes to retain the holding for wider strategic and business reasons (as per operating principle 6 above).
16. The completion of an expression of interest and / or declaration of intent form does not constitute a 'Notice of Intention to Relinquish'. This step merely begins and continues the informal discussion with Crown Estate Scotland to establish whether the surrender option is acceptable to both parties. The formal 'Notice of Intention to Relinquish' can be issued at any point in this process or at any other time in line with statutory provisions.

### **Additional operating principles associated with a Joint Sale**

17. Crown Estate Scotland and the tenant agree that the Holding will go to the open market with the tenant sharing in a percentage of the sale price.
18. The share of the sale price payable to the tenant will be negotiated (in Step 6 below) as a % of the open market value of the holding in its current condition based on accepted valuation methodologies. The respective valuations will be agreed between the parties and will take full account of both the landlord's and the tenant's interests in the Holding.
19. The % share will be agreed prior to any final decision to proceed with a joint sale by either the tenant or Crown Estate Scotland.
20. Once the % share for the joint sale has been agreed, Crown Estate Scotland and the tenant will enter into a binding contract setting out the agreed terms, including monetary terms, for the sale and an agreed surrender value should the joint sale not progress.
21. The tenant then renounces their secure tenancy (and any other short-term tenancies that will form part of the agreed joint sale) prior to the marketing of the Holding and is granted a rent-free licence until the point of sale.
22. Crown Estate Scotland is not bound to accept any offer for the Holding that it does not consider represents a fair market value.
23. The decision to sell based on offers received is for Crown Estate Scotland to make in consultation with the tenant.
24. Assets not part of the AHA holding will be lotted as part of the sale so that the tenant share of sale proceeds relates to the AHA holding and not any other subjects included in the sale unless otherwise agreed (as per operating principle 18 above) in relation to sublet cottages or other shorter-term tenancies which form part of the assets offered for sale.

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25. Crown Estate Scotland reserves the right to separately lot or exclude sub-let cottages from any joint sale (the latter being subject to a separately negotiated surrender payment).
26. Marketing costs will be shared between the tenant and Crown Estate Scotland subject to an agreed apportionment depending on what is included in the sale (i.e. if land not within the secure lease is included). Marketing will be undertaken jointly with the tenant (if they so wish) with close collaboration between the tenant's agent and the Crown Estate Scotland selling agent.
27. Where there may be a dispute relating to shared costs (where these have been paid by Crown Estate Scotland), Crown Estate Scotland reserves the right to deduct these costs from the tenant share of the proceeds of the sale when this is paid over to the tenant.

### Eligibility / What is to be offered for Surrender/Joint 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 as part of a joint sale on a case-by-case basis depending on the location of the additional land and its strategic proximity to other holdings/assets.

The statutory process for relinquishment (surrender) or assignation only applies to secure agricultural tenancies (AHA tenancies). If a tenant chooses to pursue a joint sale any associated LTD's or SLDT's which are part of the farm business will also be subject to negotiation for inclusion in the joint sale depending on circumstances and CES requirements.

### Process

#### Step 1. Notification / Initial Offer

This is as set out in the 'Farm Sales to Tenants Process' document.

Indicative values of the farm which is occupied under the secure lease (as of 31<sup>st</sup> March 2021) including Market value (with tenant in place) and open market Vacant Possession Value (without tenant in place) will be provided at this stage along with information that is held regarding tenant improvements.

These are indicative values only to assist tenants in making a decision. Further detailed valuation will be required at a later stage.

***NB: The valuations provided at this stage (particularly the Market Value -MV) of the Holding should not be taken as being a true or accurate value. The ultimate MV following detailed valuation may differ significantly depending on a range of factors and this may have a significant impact on surrender values and the tenant's share of any joint sale proceeds.***

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

The tenant indicates their wish to pursue either a surrender or a joint sale option. If both are selected, tenants should indicate an order of preference.

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The EOI does not tie either party into proceeding nor does it constitute a formal Notice of Intention to Relinquish.

Crown Estate Scotland will acknowledge all responses received from tenants.

Depending on the level of interest, Crown Estate Scotland will then consider whether to take the EOI forward and will 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, depending on the level of interest in the respective options and how Crown Estate Scotland decides to progress.

The next steps cover the process for following up with tenants who have expressed an interest in surrender or a joint sale. A separate document details the process for tenants wishing to buy their secure tenancy.

### Step 3: Preparation of a joint sales/surrender report

If the joint sale option has been selected as an option by the tenant, 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 which could be offered for sale on the open market. This will be used to prepare a Sales Report.

To assist the tenant's decision either to proceed with a surrender or joint sale this report will also include a more detailed **provisional** valuation for the AHA holding (undertaken by Crown Estate Scotland's agents) which includes:

1. the market value (MV) (with the tenant in place)
2. the vacant possession value (VP) (without a tenant in place)
3. an indicative surrender value based on 50% of the difference between the above figures and accounting for tenant's improvements.

**These provisional valuations will provide a more informed basis for decision making but will not constitute final valuations which will be subject to further discussion and agreement between Crown Estate Scotland and the tenant as per the valuation process set out in Step 6 below.**

If at this stage, there is a need for further negotiation to agree/discuss the subjects to be offered for sale on the open market (should the joint sale option be pursued) or to resolve any queries regarding the indicative value attributed to tenant's improvements or any dilapidations this will be undertaken between Crown Estate Scotland's managing agents and the tenant with the Sales Report modified as agreed.

The Sales Report will also set out the timetable for submission of a 'declaration of intent' (see below).

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

This report will be provided to the tenant.

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

The tenant will then be asked to submit a **'declaration of intent'** indicating that they wish to proceed with either (i) a surrender of the tenancy or (ii) a negotiation with the intention for the Holding to be sold on the open market i.e. the joint sale option.

If the tenant wishes to pursue the surrender option and not a joint sale at this stage, a formal Notice of Intention to Relinquish can be issued as an alternative to the 'Declaration of Intent'. This will start the statutory process.

### 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', 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 joint sale or voluntary surrender payment. If more than one option (voluntary surrender or joint sale) has been selected by the tenant, Crown Estate Scotland will indicate its preferred option at this stage.

If at this stage a formal 'Notice of Intention to Relinquish' has been issued Crown Estate Scotland will respond in line with the statutory process for the relinquishment and assignation of secure tenancies.

### Step 6: Formal Full Valuation

The AHA lease which is part of the sale will then require an up-to-date full valuation to be undertaken to allow negotiations to proceed and to determine the exact surrender value and /or the tenant's % share of the proceeds of the sale.

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Crown Estate Scotland will instruct agents to undertake a full formal detailed valuation of the AHA in line with the statutory guidance. As part of the valuation and to ensure transparency the valuation report will be disclosed including details of the comparable evidence used.

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.

Crown Estate Scotland's agents will consult and negotiate with the tenant / tenant's agent to agree these valuations and a final surrender value and the % share of proceeds from a joint sale will then be agreed between the parties.

The tenant then notifies Crown Estate Scotland if it wishes to accept the surrender payment or prefers to pursue a joint sale on the open market.

If the tenant opts to pursue a joint sale the following steps will then be taken.

### **Step 7: Parties negotiate and enter into a binding contract (Minute of Agreement) which would cover the following points:**

- (i) Agreed payment terms: The percentage of sale proceeds relating to the AHA tenancy to be given to tenant and timescale for making payment and setting out how improvements and dilapidations are to be dealt with as agreed in Step 6 above.
- (iii) Right to buy provisions: confirmation that the tenant will not exercise any rights that they may have under the right to buy legislation.
- (iv) Vacant Possession: Tenancy to be surrendered prior to the Holding being marketed.
- (v) Process if sale does not progress: longstop date with provision for surrender payment to be made.

NB The agreement may include a partial surrender payment and % of sale proceeds if it is agreed that only part of the Holding will be marketed for sale.

### **Step 8: Tenancy is renounced and rent-free licence granted**

Tenancy(s) to be renounced after the Minute of Agreement is signed to allow the Holding to be marketed with vacant possession.

A rent-free licence will be granted to the tenant of the Holding to terminate just prior to the completion of the open market sale of the Holding.

### **Step 9: Holding marketed for sale**

With a view to achieving a sale.

Crown Estate Scotland is not bound to accept any offers. The decision to sell based on offers received is for Crown Estate Scotland to make in consultation with the tenant.

### **Step 10(a): Holding sold**

In the event that the Holding is sold on the open market then the tenant will receive their agreed share of the sale proceeds within 7 days of completion.

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### **Step 10(b): Holding not sold**

A longstop date is set, at which point if the Holding has not sold then the tenant will be entitled to receive the agreed surrender payment for the Holding.

### **Step 10(c) Offers below valuation**

If offers received on the open market are below the assessed VP value for the Holding, Crown Estate Scotland reserves the right not to pursue a sale. Under these circumstances, where the Holding is not sold, the highest offer received will be deemed the true open market value and any surrender value previously agreed will then be adjusted accordingly. The tenant will then be given the choice to accept the revised surrender payment as an alternative to a share of the joint sale. If the tenant chooses not to accept the revised surrender value Crown Estate Scotland will agree to offer to re-let the tenancy to the tenant under the same terms as had been previously renounced.

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