



# Land Tenure Reform (Scotland) Act 1974

## 1974 CHAPTER 38

### PART III

#### MISCELLANEOUS

#### **11 Right to redeem heritable security after 20 years where security subjects used as private dwelling-house.**

- (1) The provisions of this section shall apply in relation to a heritable security executed after the commencement of this Act, including a heritable security in relation to a debenture described in [<sup>F1</sup> section 739 of the Companies Act 2006 (perpetual debentures) ].
- (2) The debtor in a heritable security to which this section applies, or, where the debtor is not the proprietor, the proprietor of the security subjects shall, subject to the provisions of this section, be entitled, on giving two months, notice of his intention so to do, to redeem the security at any time not less than 20 years after the execution thereof, if, at the time when he gives such notice, the security subjects or any part thereof are used as or as part of a private dwelling-house.

In determining for the purposes of this section whether such use has occurred, subsection (2) of section 8 of this Act shall apply as it applies for the purposes of that section, and the ancillary use described in subsection (3) of that section shall not render the security subjects subject to the provisions of this section.

- (3) The right to redeem a heritable security conferred by this section shall not apply where the use of the security subjects which is purported to constitute the ground of the right, in terms of subsection (2) above, was, at the time of the notice aforesaid, in contravention of a conventional condition of or relating to the security, unless the person in right of the creditor at any time had approved that use expressly or by his actings, and the said use had not subsequently been discontinued.

[<sup>F2</sup>(3A) The right to redeem a heritable security conferred by this section does not apply to a heritable security where—

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- (a) the debtor (or where the debtor is not the proprietor, the proprietor of the security subjects) has in writing renounced the right to redeem conferred by this section; and
- (b) at the time of doing so that body is—
  - (i) a social landlord (within the meaning of section 165 of the Housing (Scotland) Act 2010);
  - (ii) a body connected to a social landlord (within the meaning of section 164 of the Housing (Scotland) Act 2010)<sup>F3</sup> ...
  - (iii) a rural housing body (within the meaning of section 122(1) of the Title Conditions (Scotland) Act 2003)<sup>F4</sup>; or
  - (iv) a body prescribed, or of a type prescribed, by the Scottish Ministers by order made by statutory instrument.]

[<sup>F5</sup>(3B) An order under subsection (3A)(b)(iv) may—

- (a) prescribe a body or type of body subject to conditions or restrictions,
- (b) prescribe conditions which a body or type of body must meet for the purposes of subsection (3A),
- (c) restrict the application of subsection (3A) to specified heritable securities, or heritable securities of specified descriptions,
- (d) prescribe circumstances in which subsection (3A) is to apply or cease to apply in relation to a body or type of body or any heritable security.

(3C) A statutory instrument containing an order under subsection (3A)(b)(iv) is subject to annulment in pursuance of a resolution of the Scottish Parliament.]

[<sup>F6</sup>(3D) The right to redeem a heritable security conferred by this section does not apply to a heritable security which is in security of a debt of a description specified in an order made by the Scottish Ministers.

(3E) An order under subsection (3D) may—

- (a) disapply the right to redeem conferred by this section subject to conditions or restrictions,
- (b) restrict the disapplication of the right to redeem conferred by this section to—
  - (i) specified descriptions of debt,
  - (ii) specified creditors, or creditors of specified descriptions,
  - (ii) specified heritable securities, or heritable securities of specified descriptions,
- (c) prescribe circumstances in which the disapplication of the right to redeem conferred by this section is to apply or cease to apply.

(3F) An order under subsection (3D) is subject to the negative procedure.]

(4) Subject to the provisions of subsection (5) below, the whole amount due to the creditor in a heritable security on redemption under this section, including any sums due thereunder by way of interest or otherwise, shall not exceed the amount remaining unredeemed of—

- (a) where the security constituted to any extent (whether expressly or otherwise) the consideration for the acquisition of the security subjects by the debtor or proprietor or his predecessor in title, any excess of the value of the security subjects at the date of the execution of the security over the amount of money paid for the subjects, and

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- (b) any money advanced under the security to the debtor or proprietor and his predecessors in title, and
- (c) any expense or charge reasonably incurred by the creditor in the exercise of a right to perform any obligation imposed on the debtor, which the debtor has failed to perform, and which was reasonably necessary for the protection of the security,

together with interest outstanding at the date of the said notice of redemption and interest due for the period between the date of that notice and the date of redemption, at the rate applicable in terms of the security immediately before that date.

- (5) In the application of paragraph (a) of subsection (4) above to security subjects which are burdened with two or more heritable securities to which this section applies, the maximum amount determined in accordance with that paragraph shall be apportioned among the securities according to the rights and preferences of the creditors in the securities; and the amount so apportioned in respect of each of the securities shall, on the redemption of any of the securities, be the maximum amount due in terms of that paragraph on the redemption at any time of all such securities.
- (6) In section 18 of the Conveyancing and Feudal Reform (Scotland) Act 1970 <sup>M1</sup> (as amended by the Redemption of Standard Securities (Scotland) Act 1971 <sup>M2</sup>), in subsection (1A), at the beginning there shall be inserted the words “ Without prejudice to section 11 of the Land Tenure Reform (Scotland) Act 1974 ”.

#### Textual Amendments

- F1** Words in s. 11(1) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), **Sch. 1 para. 44** (with arts. 6, 11, 12)
- F2** S. 11(3A) inserted (1.3.2011) by [Housing \(Scotland\) Act 2010 \(asp 17\)](#), **ss. 139**, 166(2); S.S.I. 2011/96, art. 2, Sch.
- F3** Word in s. 11(3A)(b)(ii) repealed (31.8.2011) by [Private Rented Housing \(Scotland\) Act 2011 \(asp 14\)](#), **ss. 37(2)(a)**, 41(3); S.S.I. 2011/270, art. 2, Sch.
- F4** S. 11(3A)(iv) and preceding word inserted (31.8.2011) by [Private Rented Housing \(Scotland\) Act 2011 \(asp 14\)](#), **ss. 37(2)(b)**, 41(3); S.S.I. 2011/270, art. 2, Sch.
- F5** S. 11(3B)(3C) inserted (31.8.2011) by [Private Rented Housing \(Scotland\) Act 2011 \(asp 14\)](#), **ss. 37(3)**, 41(3); S.S.I. 2011/270, art. 2, Sch.
- F6** S. 11(3D) - (3F) inserted (1.10.2014) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), **ss. 93(1)**, 104(2)

#### Modifications etc. (not altering text)

- C1** The text of ss. 11(6), 13, 14, 19, 23(3) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

#### Marginal Citations

- M1** [1970 c.35](#)
- M2** [1971 c.45](#)

## 12 Restriction to 20 years of period within which certain rights of redemption and reversion are exercisable.

A right of redemption or reversion of land (other than the right of a lessor to the reversion of a lease), created in a deed executed after the commencement of this Act, which purports to be exercisable on the happening of an event which is bound to occur,

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or the occurrence of which is within the control of the person for the time being entitled to exercise the right or of a third party, shall be exercisable only within 20 years of the date of its creation.

### 13 Restriction on rights of preemption to apply in every case.

In section 9 of the Conveyancing Amendment (Scotland) Act 1938 <sup>M3</sup> (limitation of effect of conditions as to pre-emption) there shall be added the following subsection—

“(3) the provisions of this section shall apply in the case of any right of pre-emption, created in a deed or other writing executed after 1st September 1974, in favour of any person, of an interest in land in the event of a sale thereof or of any part thereof by the proprietor for the time being, as they apply in the case of such a right vested in the superior of a feu : and in the application of this section in such a case,

- (a) “superior”, “proprietor”, “feu” and “charter” shall be construed accordingly ;
- (b) in subsection (1) of this section, for the words “person in right of the superiority (whether or not his title thereto is complete)” there shall be substituted the words “ person in whom the right is vested ” ;
- (c) in subsection (2) of this section, the words “in use to receive and discharge the feuduty in respect of the feu” shall not apply.”

#### Modifications etc. (not altering text)

- C2** The text of ss. 11(6), 13, 14, 19, 23(3) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

#### Marginal Citations

- M3** [1938 c.24](#)

### <sup>F7</sup>14 Amendment of s.17 of Crofters (Scotland) Act 1955.

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#### Textual Amendments

- F7** S. 14 repealed (28.11.2004) by [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000 \(asp 5\)](#), ss. 71, 77(2), [Sch. 13 Pt. 1](#) (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

#### Modifications etc. (not altering text)

- C3** The text of ss. 11(6), 13, 14, 19, 23(3) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

### <sup>F8</sup>15 Limitation of right of irritancy for non-payment of feuduty. 1597 c. 240(S.).

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#### Textual Amendments

- F8** S. 15 repealed (28.11.2004) by [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000 \(asp 5\)](#), ss. 71, 77(2), [Sch. 13 Pt. 1](#) (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

### 16 No casualties in future leases.

In leases executed after the commencement of this Act, it shall not be lawful to stipulate for the payment of any casualty, but this provision shall be without prejudice to the right to stipulate for review of rent or for a permanent or periodical variation of rent in accordance with any condition of or relating to the lease.

### 17 Interposed leases.

- (1) It shall be competent, and shall be deemed always to have been competent, for the person in right of the lessor of a lease to grant, during the subsistence of that lease, a lease of or including his interest in the whole or part of the land subject to the lease first mentioned, and whether longer or shorter than or of the same duration as that lease, and the said grant shall be effectual (or, as the case may be, shall be deemed to have been effectual) for all purposes as a lease of land; and the grantee or person in his right shall be deemed (whether before or after the commencement of this Act) to have entered into the possession of the land leased under the grant at the date of that grant: Provided that, in the case of a lease which is registrable under the <sup>M4</sup>Registration of Leases (Scotland) Act 1857, or which (being a lease granted before the commencement of this Act) would have been so registrable if this Act had been in force, the rights of parties shall be determined by reference to that Act, as amended by any other enactment, including this Act.
- (2) Subject to any agreement to the contrary, as from the date of the grant of a lease in terms of subsection (1) above, the lessee under the lease so granted shall become (or, as the case may be, shall be deemed to have become) the lessor of the lessee in the subsisting lease, on the same terms and conditions as if the subsisting lease had, in respect of the property subject to the lease granted as aforesaid, been assigned to the grantee of the lease so granted; and, on the determination, for any reason, of the lease so granted, any remaining rights and obligations of the person in right of the said grantee, in relation to the said subsisting lease, shall vest (or as the case may be, shall be deemed to have vested) in the person in right of the grantor of the lease granted as aforesaid, on the same terms and conditions as if that lease had not been granted.

#### Marginal Citations

- M4** 1857 c. 26.

### 18 Amendment of law relating to registration of leases.

The Registration of Leases (Scotland) Act 1857 and the <sup>M5</sup>Long Leases (Scotland) Act 1954 shall have effect subject to the provisions of Schedule 6 to this Act.

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#### Marginal Citations

**M5** [1954 c. 49.](#)

## 19 Recording of extract orders of Land Tribunal.

Section 3(1)(d) of the Lands Tribunal Act 1949 <sup>M6</sup> (as inserted by section 50(2) of the Conveyancing and Feudal Reform (Scotland) Act 1970 <sup>M7</sup>) <sup>F9</sup> ... shall have effect, and shall be deemed always to have had effect, with the substitution, <sup>F9</sup>... for the word “order”, of the words “extract of an order”.

#### Textual Amendments

**F9** Words in s. 19 repealed (28.11.2004) by [Title Conditions \(Scotland\) Act 2003 \(asp 9\), ss. 122\(1\), 129\(2\), Sch. 15](#) (with [ss. 119, 121](#)) (see [S.S.I. 2003/456](#), art. 2)

#### Modifications etc. (not altering text)

**C4** The text of ss. 11(6), 13, 14, 19, 23(3) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

#### Marginal Citations

**M6** [1949 c.42](#)

**M7** [1970 c.35](#)

## 20 Abolition of registration and recording, etc., of documents in Office of Chancery.

It shall cease to be competent to register or record in the books kept in the Office of Chancery in Scotland any of the documents directed to be so registered or recorded by section 7 of the <sup>M8</sup>Crown Lands (Scotland) Act 1833, or to enter in the minute book of that Office a minute or memorandum of any such document directed to be so entered by section 7 of the <sup>M9</sup>Commissioners of Works Act 1852; and accordingly the said sections shall cease to have effect, and, in paragraph 2(b) of Schedule 2 to the <sup>M10</sup>Crown Estate Act 1961 (continuation in force of sections 7 and 8 of the said Act of 1833), for the words from “sections” onwards there shall be substituted the words “ section eight (which relates to the effect in Scotland of certain documents) ”.

#### Marginal Citations

**M8** [1833 c. 69.](#)

**M9** [1852 c. 28.](#)

**M10** [1961 c. 55.](#)

**Changes to legislation:**

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