



# Land Registration (Scotland) Act 1979

## 1979 CHAPTER 33

### PART IV

#### MISCELLANEOUS AND GENERAL

#### 20 Tenants-at-will

- (1) A tenant-at-will shall be entitled, in accordance with this section, to acquire his landlord's interest as such in the land which is subject to the tenancy-at-will (hereinafter referred to as the "tenancy land").
- (2) Subject to section 21(2) of this Act, a tenant-at-will who wishes to acquire his landlord's interest under this section shall serve notice on him in, or as nearly as may be in, the form set out in Schedule 1 to this Act.
- (3) There shall be payable by the tenant-at-will to his landlord by way of compensation in respect of an acquisition of tenancy land such amount as may be agreed between them or, failing agreement, an amount equal to—
  - (a) the value of the tenancy land, not including any buildings thereon, but assuming that planning permission for residential purposes has been granted in respect of it; or
  - (b) one twenty-fifth of the value of the tenancy land, including any buildings thereon,whichever is the lesser, together with—
  - (i) subject to subsection (4) below, such further amount as may be required to discharge any heritable security over the tenancy land or, where the heritable security is granted over land including the tenancy land, such further amount (being such proportion of the sum secured over the land which includes the tenancy land as may reasonably be regarded as attributable to the tenancy land) as is required to restrict the heritable security so as to disburden the tenancy land; and
  - (ii) such further amount as may be required to redeem any feuduty, ground annual or other periodic payment falling to be redeemed under section 5 of the Land Tenure Reform (Scotland) Act 1974.

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- (4) In respect of any acquisition under this section, the amount mentioned in paragraph (i) of subsection (3) above shall not exceed ninety per cent, of the amount fixed by virtue of paragraph (a) or (b) of that subsection.
- (5) The tenant-at-will shall reimburse the expenses reasonably and properly incurred by the landlord in conveying his interest in the tenancy land to the tenant-at-will, including the expenses of any discharge, restriction or redemption under subsection (3) above.
- (6) The landlord shall, on there being tendered to him the compensation and expenses specified in this section, convey his interest in the tenancy land to his tenant-at-will on such terms and conditions (additional to those relating to compensation and expenses under subsections (3), (4) and (5) above) as may be agreed between them or, failing agreement, as may be appropriate to the circumstances of the case and free of all heritable securities, and all such feuduties, ground annuals or other periodical payments as are mentioned in subsection (3)(ii) above.
- (7) A heritable creditor whose security is over the tenancy land or land which includes the tenancy land, on there being tendered to him the amount mentioned in paragraph (i) of subsection (3) above (as read with subsection (4) above) and his reasonable expenses, shall discharge or, as the case may be, restrict the security so as to disburden the tenancy land.
- (8) In this section and in sections 21 and 22 of this Act, "tenant-at-will" means a person—
- (a) who, not being—
    - (i) a tenant under a lease ;
    - (ii) a kindly tenant; or
    - (iii) a tenant or occupier by virtue of any enactment,
 is by custom and usage the occupier (actual or constructive) of land on which there is a building or buildings erected or acquired for value by him or any predecessor of his;
  - (b) who is under an obligation to pay a ground rent to the owner of the land in respect of the said land but not in respect of the building or buildings on it, or would have been under such an obligation if the ground rent had not been redeemed ; and
  - (c) whose right of occupancy of the land is without ish.
- (9) In subsections (5) and (6) above, references to the conveying of the landlord's interest in tenancy land shall be construed in accordance with section 21 (10) of this Act.

## **21 Provisions supplementary to section 20**

- (1) Any question arising under section 20 of this Act as to—
- (a) whether a person is a tenant-at-will;
  - (b) the extent or boundaries of any tenancy land ;
  - (c) the value of any tenancy land or as to what proportion of any sum secured over any land may reasonably be regarded as attributable to any tenancy land included in that land;
  - (d) whether any expenses are reasonably and properly incurred;
  - (e) what are appropriate terms and conditions,

shall be determined, on the application of the tenant-at-will, a person claiming to be the tenant-at-will or the landlord, by the Lands Tribunal for Scotland.

- (2) The Lands Tribunal for Scotland may, on the application of a tenant-at-will who wishes to acquire his landlord's interest in the tenancy land under section 20 of this Act, if they are satisfied that such landlord is unknown or cannot be found, make an order—
- (a) dispensing with notice under section 20(2) above ;
  - (b) fixing an amount by way of compensation in accordance with section 20(3) of this Act;
  - (c) determining appropriate terms and conditions on which the landlord's interest in the tenancy land should be conveyed,

for the purposes of the acquisition by the tenant-at-will of his landlord's said interest.

- (3) If the landlord—
- (a) fails to convey his interest in accordance with section 20(6) of this Act, or
  - (b) is unknown or cannot be found,
- the tenant-at-will may apply to the sheriff for an order dispensing with the execution by the landlord of the conveyance in favour of the tenant-at-will and directing the sheriff clerk to execute the conveyance instead of the landlord, and on making such an order the sheriff may require the tenant-at-will to consign in court any sums payable by the tenant-at-will under section 20(3) and (5) of this Act or, as the case may be, any sums specified in an order under subsection (2) above.
- (4) Where, in pursuance of an order made by the sheriff under this section, a conveyance is executed by the sheriff clerk on behalf of the landlord, such conveyance shall have the like force and effect as if it had been executed by such landlord.
- (5) The sheriff may, on the application of any party, order the investment, payment or distribution of any sums consigned in court under subsection (3) above, and in so doing the sheriff shall have regard to the respective interests of any parties appearing to have a claim on such sums.
- (6) Nothing in section 5 of the Sheriff Courts (Scotland) Act 1907 shall entitle any party to an application to the sheriff under this section to require it to be remitted to the Court of Session on the grounds that it relates to a question of heritable right or title.
- (7) A landlord shall have power to execute a valid conveyance in pursuance of this section notwithstanding that he may be under any such disability as is mentioned in section 7 of the Lands Clauses Consolidation (Scotland) Act 1845.
- (8) Where a person other than the landlord is infert in the subjects to be conveyed, references in section 20 of this Act and in this section to the landlord shall be construed as references to the landlord and such other person for their respective rights.
- (9) Any condition or provision to the effect that—
- (a) the superior of any feu shall be entitled to a right of pre-emption in the event of a sale thereof or any part thereof by the proprietor of the feu, or
  - (b) any other person with an interest in land shall be entitled to a right of pre-emption in the event of a sale thereof or of any part thereof by the proprietor for the time being,

shall not be capable of being enforced where the sale is by a landlord to his tenant-at-will under section 20 of this Act.

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- (10) In this section and in section 20(5) and (6) of this Act, references to the conveying of the landlord's interest in the tenancy land shall be construed as references to a grant by him of a feu of that land or, where the landlord is a lessee under a lease, an assignation of the lease but only as regards the tenancy land and, in this section, "conveyance" shall be construed accordingly.

## **22 Provisions supplementary to section 20: heritable creditors**

- (1) The provisions of this section shall have effect where a heritable security over tenancy land or over land which includes tenancy land falls to be discharged or restricted under section 20(7) of this Act.
- (2) The heritable creditor shall be entitled for his interest to apply, and to be a party to an application, under section 21(1) of this Act.
- (3) The Lands Tribunal for Scotland, if they are satisfied that the heritable creditor is unknown or cannot be found, may, on the application of the tenant-at-will or his landlord or both, make an order fixing the amount required to discharge or restrict the heritable security so as to disburden the tenancy land.
- (4) If the heritable creditor—
- (a) fails to disburden the tenancy land in accordance with section 20(7) of this Act, or
  - (b) is unknown or cannot be found,
- the tenant-at-will or the landlord or both may apply to the sheriff for an order dispensing with the execution by the heritable creditor of the deed of discharge or restriction in favour of the landlord and directing the sheriff clerk to execute the deed instead of the heritable creditor and on making such an order the sheriff may require the landlord to consign in court any amount or expenses which the landlord requires to pay for the purposes of section 20(3)(i), (4) and (5) of this Act to the heritable creditor or, as the case may be, any amount specified in an order under subsection (3) above.
- (5) Where, in pursuance of an order made by the sheriff under this section, a deed of discharge or restriction is executed by the sheriff clerk on behalf of the heritable creditor, such deed shall have the like force and effect as if it had been executed by such heritable creditor.
- (6) The sheriff may, on the application of any party, order the investment, payment or distribution of any amount consigned in court under subsection (4) above, and in so doing the sheriff shall have regard to the respective interests of any parties appearing to have a claim on such amount.
- (7) Nothing in section 5 of the Sheriff Courts (Scotland) Act 1907 shall entitle any party to an application to the sheriff under this section to require it to be remitted to the Court of Session on the grounds that it relates to a question of heritable right or title.
- (8) A heritable creditor shall have power to execute a valid deed of discharge or restriction in pursuance of this section notwithstanding that he may be under any such disability as is mentioned in section 7 of the Lands Clauses Consolidation (Scotland) Act 1845.

## **23 Fees**

For section 25 of the Land Registers (Scotland) Act 1868 (power of Treasury to prepare amended tables of fees for registration), there shall be substituted the following section—

### **“25 Fees.**

The Secretary of State, with the consent of the Treasury, may from time to time by order made by statutory instrument fix fees payable in respect of registration or recording in any register under the management and control of the Keeper of the Registers of Scotland and in respect of the provision by the Keeper of searches, reports, certificates or other documents or copies of any document or of information from any such register; and the amount of the fees so fixed shall not be greater than is reasonably sufficient for defraying the expenses of the department of the Keeper, including the expenses of the improvement of the systems of such registration and recording.”.

## **24 Financial provisions**

There shall be defrayed out of money provided by Parliament all expenses incurred by the Keeper in consequence of the provisions of this Act

## **25 Appeals**

- (1) Subject to subsections (3) and (4) below, an appeal shall lie, on any question of fact or law arising from anything done or omitted to be done by the Keeper under this Act, to the Lands Tribunal for Scotland.
- (2) Subject to subsections (3) and (4) below subsection (1) above is without prejudice to any right of recourse under any enactment other than this Act or under any rule of law.
- (3) Nothing in subsection (1) above shall enable the taking of an appeal if it is, under the law relating to res judicata, excluded as a result of the exercise of any right of recourse by virtue of subsection (2) above; and nothing in subsection (2) above shall enable the exercise of any right of recourse if it is so excluded as a result of the taking of an appeal under subsection (1) above.
- (4) No appeal shall lie under this section, nor shall there be any right of recourse by virtue of this section in respect of a decision of the Keeper under section 2(1)(b) or 11(1) of this Act.

## **26 Application to Crown**

This Act shall apply to land held of the Crown and of the Prince and Steward of Scotland, and to land in which there is any other interest belonging to Her Majesty in right of the Crown or to a Government department, or held on behalf of Her Majesty for the purposes of a Government department, in like manner as it applies to other land.

## **27 Rules**

- (1) The Secretary of State may, after consultation with the Lord President of the Court of Session, make rules—

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- (a) regulating the making up and keeping of the register ;
  - (b) prescribing the form of any search, report or other document to be issued or used under or in connection with this Act and regulating the issue of any such document;
  - (c) regulating the procedure on application for any registration;
  - (d) prescribing the form of deeds relating to registered interests in land;
  - (e) concerning such other matters as seem to the Secretary of State to be necessary or proper in order to give full effect to the purposes of this Act.
- (2) The power to make rules under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

## 28 Interpretation, etc.

- (1) In this Act, except where the context otherwise requires—

" deed " has the meaning assigned to it by section 3 of the Titles to Land Consolidation (Scotland) Act 1868, section 3 of the Conveyancing (Scotland) Act 1874 and section 2 of the Conveyancing (Scotland) Act 1924;

" feu " includes blench holding and cognate expressions shall be construed accordingly ;

" heritable security " has the same meaning as in section 9(8) of the Conveyancing and Feudal Reform (Scotland) Act 1970;

" incorporeal heritable right " does not include a right to salmon fishings;

" interest in land " means any estate, interest, servitude or other heritable right in or over land, including a heritable security but excluding a lease which is not a long lease;

" the Keeper " has the meaning assigned by section 1(2) of this Act;

" land " includes buildings and other structures and land covered with water;

" long lease " means a probative lease—

- (a) exceeding 20 years ; or
- (b) which is subject to any provision whereby any person holding the interest of the grantor is under a future obligation, if so requested by the grantee, to renew the lease so that the total duration could (in terms of the lease, as renewed, and without any subsequent agreement, express or implied, between the persons holding the interests of the grantor and the grantee) extend for more than 20 years;

" overriding interest " means, subject to sections 6(4) and 9(4) of this Act, in relation to any interest in land, the right or interest over it of—

- (a) the lessee under a lease which is not a long lease;
- (b) the lessee under a long lease who, prior to the commencement of this Act, has acquired a real right to the subjects of the lease by virtue of possession of them ;
- (c) a crofter or cottar within the meaning of section 3 or 28(4) respectively of the Crofters (Scotland) Act 1955, or a landholder or statutory small tenant within the meaning of section 2(2) or 32(1) respectively of the Small Landholders (Scotland) Act 1911 ;
- (d) the proprietor of the dominant tenement in a servitude;

- (e) the Crown or any Government or other public department, or any public or local authority, under any enactment or rule of law, other than an enactment or rule of law authorising or requiring the recording of a deed in the Register of Sasines or registration in order to complete the right or interest;
- (f) the holder of a floating charge whether or not the charge has attached to the interest;
- (g) a member of the public in respect of any public right of way or in respect of any right held inalienably by the Crown in trust for the public;
- (h) any person, being a right which has been made real, otherwise than by the recording of a deed in the Register of Sasines or by registration; or
- (i) any other person under any rule of law relating to common interest or joint or common property, not being a right or interest constituting a real right, burden or condition entered in the title sheet of the interest in land under section 6(1)(e) of this Act or having effect by virtue of a deed recorded in the Register of Sasines, but does not include any subsisting burden or condition enforceable against the interest in land and entered in its title sheet under section 6(1) of this Act;

" the register " and " registered " have the meanings assigned to them respectively by subsections (1) and (3) of section 1 of this Act;

" Register of Sasines " has the same meaning as in section 2 of the Conveyancing (Scotland) Act 1924;

" transfer " includes transfer by operation of law.

- (2) This Act shall be deemed, for the purposes of the Scotland Act 1978, to have been passed before that Act.

## **29 Amendment and repeal of enactments**

- (1) The enactments specified in Schedule 2 to this Act shall have effect subject to the amendments set out in that Schedule.
- (2) Subject to subsection (3) below, any reference, however expressed, in any enactment passed before, or during the same Session as, this Act or in any instrument made before the passing of this Act under any enactment to the Register of Sasines or to the recording of a deed therein shall be construed as a reference to the register or, as the case may be, to registration.
- (3) Subsection (2) above does not apply—
  - (a) to the enactments specified in Schedule 3 to this Act;
  - (b) for the purposes of the recording of a deed in the Register of Sasines under section 8 of this Act.
- (4) The enactments specified in Schedule 4 to this Act are hereby repealed to the extent specified in the third column of that Schedule.

## **30 Short title, extent and commencement**

- (1) This Act may be cited as the Land Registration (Scotland) Act 1979 and extends to Scotland only.

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- (2) Sections 1, 16 to 23 of this Act, this section and so much of the remainder of this Part of this Act as relates to the aforesaid provisions of this Act shall come into operation on the passing of this Act, and the other provisions of this Act shall come into operation on the appointed day, being such day as the Secretary of State may by order made by statutory instrument appoint; and different days may be appointed, under this subsection for different areas, or for different provisions of this Act.
- (3) Any reference in any provision of this Act to the commencement of this Act shall be construed as a reference to the date on which that provision comes into operation.