



# Law Reform (Miscellaneous Provisions) (Scotland) Act 1968

## 1968 CHAPTER 70

An Act to amend the law of Scotland relating to succession to the property of deceased persons in cases of illegitimacy; to confer on illegitimate persons in Scotland the right to legitim out of their deceased parents' estates; to amend the law of Scotland with respect to the construction of certain provisions made by deed or otherwise; to extend the provisions of the Succession (Scotland) Act 1964 to tenancies of crofts; to amend the law of evidence in civil proceedings in Scotland; to re-enact, with amendments, the provisions of certain enactments relating to the duration of liferents in Scotland; to amend section 15(1) of the Succession (Scotland) Act 1964; further to amend the law of Scotland relating to prorogation of the jurisdiction of the sheriff court; to remove a restriction on the extent of land in Scotland which a trade union may purchase or take upon lease and otherwise deal with; and for purposes connected with the matters aforesaid. [25th October 1968]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART I

#### SUCCESSION, CONSTRUCTION OF DEEDS, ETC., IN CASES OF ILLEGITIMACY

##### *Rights in estates of deceased persons in cases of illegitimacy*

#### **1 Intestate succession in cases of illegitimacy**

For section 4 (succession in cases of illegitimacy) of the Succession (Scotland) Act 1964 (hereafter in this Part of this Act referred to as " the Act of 1964 ") there shall,

in relation to the estate of any person dying after the commencement of this Act, be substituted the following section:—

**“4 Succession in cases of illegitimacy.**

- (1) Notwithstanding anything in section 2 of this Act, where a person dies intestate and is survived by illegitimate children, those illegitimate children and the legitimate children (if any) of the intestate shall together have right to the whole of the intestate estate.
- (2) Notwithstanding anything in the said section 2, where an illegitimate person dies intestate and is not survived by any issue within the meaning of this Act or by any person entitled to succeed to the intestate estate by virtue of subsection (1) of this section or of that subsection as read with section 5 of this Act, but is survived by either of, or both, his parents, the surviving parent or parents shall have right to the whole of the intestate estate.
- (3) For the purposes of subsection (2) of this section an illegitimate person shall be presumed not to be survived by his father unless the contrary is shown.
- (4) Except so far as otherwise provided in this section, or in this section as read with section 5 of this Act, nothing in this Part of this Act shall be construed as importing any rule of succession through illegitimate relationship.”.

**2 Right of illegitimate children to legitim**

The following section shall be inserted in the Act of 1964 after section 10 thereof and shall have effect in relation to the estate of any person dying after the commencement of this Act:—

**“10A Right of illegitimate children to legitim.**

The illegitimate children of any person who dies shall have the like right to legitim out of that person's estate as they would have had, according to the law in force immediately before the commencement of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968, if they had been born legitimate, and any enactment (including any enactment contained in this Act), and any rule of law, in force immediately before such commencement which has effect in relation to legitim shall apply accordingly.”.

**3 Consequential modification of Succession (Scotland) Act 1964**

In relation to the estate of any person dying after the commencement of this Act, the Act of 1964 shall have effect subject to the modifications specified in Schedule 1 to this Act, being modifications consequential on the provisions of sections 1 and 2 of this Act.

**4 Amendment of law with respect to right of illegitimate child to aliment after parent's death**

- (1) Where a person dying after the commencement of this Act (hereafter in this section referred to as " the deceased ") is survived by an illegitimate child, there shall be available to or in respect of that child the like right to aliment—

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- (a) out of the deceased's estate,
  - (b) from any person who has received property which was comprised in that estate, to the extent that that person was enriched by receiving that property,
- in respect of any period after the death of the deceased as would have been available if the child had been born legitimate ; and in respect of any such period neither the deceased's estate nor any person (other than the child's other parent) who has received property as aforesaid shall be liable for the payment of any sum in respect of the aliment of the child (whether under a decree of a court or otherwise) except by virtue of this subsection or (subject to subsection (2) of this section) of an agreement which provides for the payment of such a sum.
- (2) Where at the date of the deceased's death there is subsisting an agreement entered into before the commencement of this Act in which provision is made for the payment of any sum in respect of the aliment of an illegitimate child of the deceased, and in terms of that agreement any such sum falls to be paid in respect of a period after the death of the deceased, the court, on the application of any person appearing to them to be interested, and after giving to other persons appearing to them to be interested an opportunity of being heard, may if they think fit make such order—
- (a) varying the terms of the said agreement, so far as it provides for the payment of such a sum in respect of any such period, or
  - (b) directing that the agreement, so far as it so provides, shall cease to have effect, as may appear to them, having regard to the foregoing provisions of this Act and to all the other circumstances of the case, to be just and equitable; and the court may make such order either unconditionally or subject to such conditions as they may think just.
- (3) In this section " court" means either the Court of Session or the sheriff.

*Construction of deeds, etc.*

## **5 Construction of references to relationship in certain circumstances**

- (1) In deducing any relationship for the purpose of ascertaining the person or persons entitled to benefit under a provision contained in any deed, persons shall, unless the contrary intention appears, be taken to be or, as the case may be, to have been, related to each other notwithstanding that the relationship existing between them is or was an illegitimate one only; and any rule of law to the contrary shall cease to have effect.
- (2) In this section—
- (a) " deed " includes any disposition, contract, instrument or writing whether inter vivos or mortis causa,
  - (b) " relationship " includes relationship of the whole and of the half blood, and relationship by affinity, and " related " shall be construed accordingly.
- (3) This section shall apply only in relation to deeds executed after the commencement of this Act, and in the case of a deed made in the exercise of a special power of appointment shall apply only where the deed creating the power is executed after such commencement.
- (4) This section shall apply in relation to a provision made after the commencement of this Act otherwise than by deed as it applies in relation to a provision made in a deed.
- (5) Nothing in this section shall—

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- (a) affect the construction of any enactment, or
- (b) apply in relation to the succession to or devolution of any title, coat of arms, honour or dignity, and where the terms of any deed provide that any property or interest in property shall devolve along with a title, honour or dignity, nothing in this section shall prevent that property or interest from so devolving.

## 6 Application of certain presumptions in cases of illegitimacy

- (1) Where in the construction of any deed either—
- (a) the principle known as *conditio si institutus sine liberis decesserit* (in accordance with which the issue of a deceased person may in certain circumstances become entitled to the rights under a deed to which the deceased person would have become entitled if he had not died), or
  - (b) the principle of accretion (in accordance with which, if provision is made in any deed in favour of a number of persons jointly, the share in that provision of any one of those persons may in certain circumstances accrete on his death to the other person or persons in whose favour the provision was made),
- would apply for the benefit of any person if it were not for the fact that that or any other person is or was illegitimate, then, unless the contrary intention appears, that principle shall nevertheless apply for the construction of the deed as if the illegitimate person were or had been born legitimate.
- (2) The application in relation to any testamentary writing of the principle known as *conditio si testator sine liberis decesserit* (in accordance with which a testamentary writing may in certain circumstances be held to be revoked by the birth of a child to the testator after the execution of the testamentary writing) shall not be excluded by reason only of the fact that any child born to the testator after the execution of the testamentary writing is or was illegitimate.
- (3) Subsection (2)(a) and subsections (3) to (5) of section 5 of this Act shall apply for the purposes of this section as they apply for the purposes of that section.

### *Protection of trustees and executors*

## 7 Protection of trustees and executors

Notwithstanding anything in the foregoing provisions of this Act, a trustee or an executor may distribute any property vested in him as such trustee or executor, or may make any payment out of any such property, without having ascertained—

- (a) that no illegitimate person exists who is or may be entitled to an interest in that property or payment in consequence of any of the said provisions, and
- (b) that no illegitimate person exists or has existed, the fact of whose existence is, in consequence of any of the said provisions, relevant to the ascertainment of the persons entitled to an interest in that property or payment,

and such trustee or executor shall not be personally liable to any person so entitled of whose claim he has not had notice at the time of the distribution or payment; but (without prejudice to section 17 of the Act of 1964) nothing in this section shall affect any right of any person so entitled to recover the property, or any property representing it, or the payment, from any person who may have received that property or payment.

## PART II

### APPLICATION OF SUCCESSION (SCOTLAND) ACT 1964 TO TENANCIES OF CROFTS

#### 8 Application of Succession (Scotland) Act 1964 to tenancies of crofts

The provisions of the Succession (Scotland) Act 1964 shall—

- (a) apply to the tenancy of any croft within the meaning of section 3(1) of the Crofters (Scotland) Act 1955, and
- (b) have effect in relation to the succession to, and devolution of, any such tenancy, as if the said Act of 1964 had come into operation at the commencement of this Act; and accordingly, in relation to the estate of any person dying after such commencement—
  - (i) the enactments mentioned in Part I of Schedule 2 to this Act shall have effect subject to the modifications specified in relation thereto in the said Part I, and
  - (ii) sections 11 and 14 of the said Act of 1955, section 6 of the Crofters (Scotland) Act 1961 and section 16 of the said Act of 1964, as so modified, shall have effect as set out in Part II of the said Schedule.

## PART III

### AMENDMENT OF THE LAW OF EVIDENCE IN CIVIL PROCEEDINGS

#### *Restriction of rule of law requiring corroboration*

#### 9 Rule requiring corroboration not to apply in certain actions of damages

- (1) This section applies to any action of damages where the damages claimed consist of, or include, damages or solatium in respect of personal injuries (including any disease, and any impairment of physical or mental condition) sustained by the pursuer or any other person.
- (2) Subject to subsection (4) of this section, any rule of law whereby in any proceedings evidence tending to establish any fact, unless it is corroborated by other evidence, is not to be taken as sufficient proof of that fact shall cease to have effect in relation to any action to which this section applies, and accordingly, subject as aforesaid, in any such action the court shall be entitled, if they are satisfied that any fact has been established by evidence which has been given in that action, to find that fact proved by that evidence, notwithstanding that the evidence is not corroborated.
- (3) In relation to an action tried by jury, the reference in subsection (2) of this section to the court shall be construed as a reference to the jury.
- (4) This section shall not—
  - (a) affect the operation of any enactment passed or made before the commencement of this Act, or
  - (b) apply for the purposes of any appeal or other proceedings arising out of any proceedings in which the proof or trial has taken place, or the evidence has otherwise been given, before such commencement.

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- (5) The references in this section to the giving of evidence are references to the giving of evidence in any manner, whether orally or by the production of documents or otherwise.

*Convictions, etc., as evidence in civil proceedings*

## **10 Convictions as evidence in civil proceedings**

- (1) In any civil proceedings the fact that a person has been convicted of an offence by or before any court in the United Kingdom or by a court-martial there or elsewhere shall (subject to subsection (3) of this section) be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in those proceedings, that he committed that offence, whether he was so convicted upon a plea of guilty or otherwise and whether or not he is a party to the civil proceedings ; but no conviction other than a subsisting one shall be admissible in evidence by virtue of this section.
- (2) In any civil proceedings in which by virtue of this section a person is proved to have been convicted of an offence by or before any court in the United Kingdom or by a court-martial there or elsewhere—
- (a) he shall be taken to have committed that offence unless the contrary is proved, and
  - (b) without prejudice to the reception of any other admissible evidence for the purpose of identifying the facts which constituted that offence, the contents of any document which is admissible as evidence of the conviction, and the contents of the complaint, information, indictment or charge-sheet on which the person in question was convicted, shall be admissible in evidence for that purpose.
- (3) Nothing in this section shall affect the operation of section 12 of this Act or any other enactment whereby a conviction or a finding of fact in any criminal proceedings is for the purposes of any other proceedings made conclusive evidence of any fact.
- (4) Where in any civil proceedings the contents of any document are admissible in evidence by virtue of subsection (2) of this section, a copy of that document, or of the material part thereof, purporting to be certified or otherwise authenticated by or on behalf of the court or authority having custody of that document, shall be admissible in evidence and shall be taken to be a true copy of that document or part unless the contrary is shown.
- (5) Nothing in any of the following enactments, that is to say—
- (a) section 12 of the Criminal Justice Act 1948 (under which a conviction leading to probation or discharge is to be disregarded except as therein mentioned);
  - (b) section 9 of the Criminal Justice (Scotland) Act 1949 (which makes similar provision in respect of convictions on indictment in Scotland);
  - (c) section 8 of the Probation Act (Northern Ireland) 1950 (which corresponds to the said section 12) or any corresponding enactment of the Parliament of Northern Ireland for the time being in force,

shall affect the operation of this section; and for the purposes of this section any order made by a court of summary jurisdiction under section 1 or section 2 of the said Act of 1949 shall be treated as a conviction.

- (6) In this section " court-martial" means a court-martial constituted under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 or a disciplinary court constituted under section 50 of the said Act of 1957, and in relation to a court-martial "conviction", as regards a court-martial constituted under either of the said Acts of 1955, means a finding of guilty which is, or falls to be treated as, a finding of the court duly confirmed and, as regards a court-martial or disciplinary court constituted under the said Act of 1957, means a finding of guilty which is, or falls to be treated as, the finding of the court, and " convicted " shall be construed accordingly.

## **11 Findings of adultery and paternity as evidence in civil proceedings**

- (1) In any civil proceedings—
- (a) the fact that a person has been found guilty of adultery in any matrimonial proceedings, and
  - (b) the fact that a person has been found to be the father of a child in affiliation proceedings in any court in the United Kingdom,
- shall (subject to subsection (3) of this section) be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in those civil proceedings, that he committed the adultery to which the finding relates or, as the case may be, is (or was) the father of that child, whether or not he offered any defence to the allegation of adultery or paternity and whether or not he is a party to the civil proceedings; but no finding other than a subsisting one shall be admissible in evidence by virtue of this section.
- (2) In any civil proceedings in which by virtue of this section a person is proved to have been found guilty of adultery as mentioned in subsection (1)(a) of this section or to have been found to be the father of a child as mentioned in subsection (1)(b) of this section—
- (a) he shall be taken to have committed the adultery to which the finding relates or, as the case may be, to be (or have been) the father of that child, unless the contrary is proved ; and
  - (b) without prejudice to the reception of any other admissible evidence for the purpose of identifying the facts on which the finding was based, the contents of any document which was before the court, or which contains any pronouncement of the court, in the matrimonial or affiliation proceedings in question shall be admissible in evidence for that purpose.
- (3) Nothing in this section shall affect the operation of any enactment whereby a finding of fact in any matrimonial or affiliation proceedings is for the purposes of any other proceedings made conclusive evidence of any fact.
- (4) Nothing in this section shall entitle the Court of Session to pronounce a decree of divorce without administering the oath of calumny to the pursuer and receiving evidence from him; and in section 4(2) of the Divorce (Scotland) Act 1938, after the words " the decree of separation " there shall be inserted the words " (if granted on the ground of cruelty) ", and the words " adultery or " shall be omitted.
- (5) Subsection (4) of section 10 of this Act shall apply for the purposes of this section as if the reference therein to subsection (2) were a reference to subsection (2) of this section.
- (6) In this section—
- (a) " matrimonial proceedings" means any consistorial action, any matrimonial cause in the High Court or a county court in England and Wales or in the

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High Court in Northern Ireland, or any appeal arising out of any such action or cause, and

- (b) "affiliation proceedings" means, in relation to Scotland, any action of affiliation and aliment.

## **12 Conclusiveness of convictions for purposes of defamation actions**

- (1) In an action for defamation in which the question whether a person did or did not commit a criminal offence is relevant to an issue arising in the action, proof that, at the time when that issue falls to be determined, that person stands convicted of that offence shall be conclusive evidence that he committed that offence; and his conviction thereof shall be admissible in evidence accordingly.
- (2) In any such action as aforesaid in which by virtue of this section a person is proved to have been convicted of an offence, the contents of any document which is admissible as evidence of the conviction, and the contents of the complaint, information, indictment or charge-sheet on which that person was convicted, shall, without prejudice to the reception of any other admissible evidence for the purpose of identifying the facts which constituted that offence, be admissible in evidence for the purpose of identifying those facts.
- (3) For the purposes of this section a person shall be taken to stand convicted of an offence if but only if there subsists against him a conviction of that offence by or before a court in the United Kingdom or by a court-martial there or elsewhere.
- (4) Subsections (4) to (6) of section 10 of this Act shall apply for the purposes of this section as they apply for the purposes of that section, but as if in the said subsection (4) the reference to subsection (2) were a reference to subsection (2) of this section.
- (5) The foregoing provisions of this section shall apply for the purposes of any action begun after the coming into operation of this section, whenever the cause of action arose, but shall not apply for the purposes of any action begun before such commencement or any appeal or other proceedings arising out of any such action.

*Statements produced by computers as evidence in civil proceedings*

## **13 Admissibility of statements produced by computers**

- (1) In any civil proceedings a statement contained in a document produced by a computer shall, subject to the provisions of section 15 of this Act, be admissible as evidence of any fact stated therein of which direct oral evidence would be admissible, if it is shown that the conditions mentioned in subsection (2) of this section are satisfied in relation to the statement and computer in question.
- (2) The said conditions are—
  - (a) that the document containing the statement was produced by the computer during a period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by any person ;
  - (b) that over that period there was regularly supplied to the computer in the ordinary course of those activities information of the kind contained in the statement or of the kind from which the information so contained is derived;



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- (c) that throughout the material part of that period, the computer was operating properly or, if not, that any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of its contents ; and
  - (d) that the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of those activities.
- (3) Where over a period the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in subsection (2) (a) of this section was regularly performed by computers, whether—
  - (a) by a combination of computers operating over that period; or
  - (b) by different computers operating in succession over that period; or
  - (c) by different combinations of computers operating in succession over that period ; or
  - (d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,all the computers used for that purpose during that period shall be treated for the purposes of this Part of this Act as constituting a single computer; and references in this Part of this Act to a computer shall be construed accordingly.
- (4) In any civil proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say—
  - (a) identifying the document containing the statement and describing the manner in which it was produced ;
  - (b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer;
  - (c) dealing with any of the matters to which the conditions mentioned in subsection (2) of this section relate,and purporting to be signed by a person occupying a responsible position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall, subject to the provisions of section 15 of this Act, be sufficient evidence of any matter stated in the certificate; and—
  - (i) for the purposes of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it;
  - (ii) any such certificate as aforesaid shall be lodged within such time as may be prescribed, not being later than the expiry of the time prescribed for the furnishing of information under section 15(3) of this Act;
  - (iii) any person lodging such a certificate as aforesaid shall, within the time prescribed under paragraph (ii) of this subsection, send a copy thereof to every other party to the proceedings.
- (5) For the purposes of this Part of this Act—
  - (a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;
  - (b) where, in the course of any activities carried on by any person, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those

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activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities ;

- (c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

- (6) Subject to subsection (3) of this section, in this Part of this Act " computer " means any device for storing and processing information, and any reference to information being derived from other information is a reference to its being derived therefrom by calculation, comparison or any other process.

#### **14 Provisions supplementary to s. 13**

- (1) Where in any civil proceedings a statement contained in a document is proposed to be given in evidence by virtue of section 13 of this Act it may be proved by the production of that document or (whether or not that document is still in existence) by the production of a copy of that document, or of the material part thereof, purporting to be certified or otherwise authenticated by a person responsible for the making of the copy or in such other manner as the court may approve; and any such copy shall be taken to be a true copy unless the contrary is shown.
- (2) In estimating the weight, if any, to be attached to a statement admissible in evidence by virtue of section 13 of this Act regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement and, in particular—
  - (a) to the question whether or not the information which the information contained in the statement reproduces or is derived from was supplied to the relevant computer, or recorded for the purpose of being supplied thereto, contemporaneously with the occurrence or existence of the facts dealt with in that information, and
  - (b) to the question whether or not any person concerned with—
    - (i) the supply of information to that computer, or
    - (ii) the operation of that computer, or
    - (iii) the operation of any equipment by means of which the document containing the statement was produced by that computer,had any incentive to conceal or misrepresent the facts.

#### **15 Procedure for purposes of s. 13**

- (1) Subject to subsections (6) to (8) of this section, a statement shall not be admissible in evidence in civil proceedings by virtue of section 13 of this Act unless the procedure laid down by or under this section has been complied with.
- (2) A party to any civil proceedings who wishes to rely on any such statement as is mentioned in the said section 13 shall, within such time as may be prescribed, send to every other party to the proceedings a copy of the statement together with a notice in writing—
  - (a) intimating that the party intends to rely on the statement ;
  - (b) stating that the statement is contained in a document produced by a computer ;
  - (c) directing the attention of the other party to the provisions of subsection (3) of this section enabling a counter-notice to be given.

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- (3) Any party who receives such a notice as is mentioned in subsection (2) of this section may, within such time as may be prescribed, by counter-notice in writing addressed to the party who served the notice, require him, within such further time as may be prescribed, to furnish him in writing with all or any of the following information—
- (a) any such information as might be the subject of a certificate under the said section 13(4), except in so far as such information is the subject of a certificate lodged under that subsection;
  - (b) particulars of a person occupying at the material time a responsible position in relation to any of the matters mentioned or referred to in sections 13(4) and 14(2)(b) of this Act, and, if he is not included among such persons, of any person who signed any certificate lodged as aforesaid.
- (4) Any party to whom information is furnished under subsection (3) of this section may, within such time as may be prescribed, require that the party wishing to rely on the statement should call as a witness any person of whom particulars were furnished under paragraph (b) of the said subsection (3), unless that person is dead, or beyond the seas, or unfit by reason of his bodily or mental condition to attend as a witness, or cannot with reasonable diligence be identified or found, or cannot reasonably be expected (having regard to the passage of time and to all the circumstances) to have any recollection of matters relevant to the accuracy or otherwise of the statement in the document.
- (5) In deciding for the purposes of this section whether or not a person is fit to attend as a witness, a court may act on a certificate purporting to be a certificate of a fully registered medical practitioner.
- (6) Without prejudice to the generality of the powers conferred on the Court of Session by sections 15 and 34 of the Administration of Justice (Scotland) Act 1933 to regulate by act of sederunt its own procedure and that of the sheriff court respectively, the said powers shall include power—
- (a) to prescribe the form of any notice or other document authorised or required to be used under section 13 of this Act or this section ;
  - (b) to prescribe the manner in which, the time within which, and the conditions on which any thing authorised or required to be done under section 13 of this Act or this section shall or may be done ;
  - (c) to prescribe exceptions to any of the requirements laid down by or under this section; and
  - (d) to modify, amend or repeal any of the provisions of this section;
- and in section 13 of this Act and this section " prescribed " shall be construed accordingly.
- (7) Any act of sederunt made for any of the purposes mentioned in subsection (6) of this section, in so far as it relates to civil proceedings in the Court of Session, shall (except in so far as its operation is excluded by agreement) apply, subject to such modifications as may be appropriate, in relation to any other civil proceedings (other than proceedings in the sheriff court) in like manner as it applies in relation to civil proceedings in the Court of Session, and if any question arises as to what are, for the purposes of any such civil proceedings, the appropriate modifications of any such act of sederunt, that question shall, in default of agreement, be determined by the court before whom the proceedings take place.
- (8) The court in any civil proceedings shall have a discretion, where it appears to them that the interests of justice so require, and subject to such conditions (if any) as to

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expenses or otherwise as the court may think fit, to allow a statement falling within section 13(1) of this Act to be given in evidence notwithstanding that any requirement laid down by or under this section has not been complied with.

*Amendment of section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1966*

**16 Amendment of s. 7 of Law Reform (Miscellaneous Provisions) (Scotland) Act 1966**

Section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1966 shall be amended as follows—

- (a) in subsection (1) the words " on the production of the document" shall be deleted ;
- (b) after subsection (3) there shall be inserted the following subsection—

“(3A) Where a statement contained in a document is proposed to be given in evidence by virtue of this section it may be proved by the production of that document or (whether or not the document is still in existence) by the production of a copy of that document, or of the material part thereof, purporting to be certified or otherwise authenticated by a person responsible for the making of the copy or in such other manner as the court may approve; and any such copy shall be taken to be a true copy unless the contrary is shown.”.

*General*

**17 Interpretation of Part III, saving, etc.**

- (1) In this Part of this Act " civil proceedings " includes, in addition to civil proceedings in any of the ordinary courts of law.—
  - (a) civil proceedings before any other tribunal, except proceedings in relation to which the strict rules of evidence do not apply, and
  - (b) an arbitration, whether under an enactment or not,
 and " court" shall be construed accordingly.
- (2) In this Part of this Act " consistorial action" does not include an action of aliment only between husband and wife raised in the Court of Session or an action of interim aliment raised in the sheriff court.
- (3) In this Part of this Act—
  - " computer " has the meaning assigned by section 13 of this Act;
  - " document " includes, in addition to a document in writing—
    - (a) any map, plan, graph or drawing ;
    - (b) any photograph;
    - (c) any disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and
    - (d) any film, negative, tape or other device in which one or more visual images are embodied so as to be capable (as aforesaid) of being reproduced therefrom ;

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" film " includes a microfilm ;

" statement " includes any representation of fact, whether made in words or otherwise.

- (4) In this Part of this Act any reference to a copy of a document includes—
- (a) in the case of a document falling within paragraph (c) but not (d) of the definition of " document" in subsection (3) of this section, a transcript of the sounds or other data embodied therein ;
  - (b) in the case of a document falling within paragraph (d) but not (c) of that definition, a reproduction or still reproduction of the image or images embodied therein, whether enlarged or not;
  - (c) in the case of a document falling within both those paragraphs, such a transcript together with such a still reproduction; and
  - (d) in the case of a document not falling within the said paragraph (d) of which a visual image is embodied in a document falling within that paragraph, a reproduction of that image, whether enlarged or not;
- and any reference to a copy of the material part of a document shall be construed accordingly.
- (5) The clerk of any court having custody of any document shall, on the application of any person who wishes to rely, by virtue of section 10(2), section 11(2) or section 12(2) of this Act or any corresponding provision for the time being in force in any part of the United Kingdom outside Scotland, on the contents of that document in proceedings which he proposes to raise, or which are pending, in any court in the United Kingdom, and on payment by that person of such fee as may be prescribed by act of adjournal or act of sederunt, as the case may be, made with the approval of the Treasury, issue to that person a copy of that document, or of the material part thereof, certified or otherwise authenticated by or on behalf of the court.
- (6) Nothing in this Part of this Act shall prejudice the operation of any agreement (whenever made) between the parties to any proceedings as to the evidence which is to be admissible (whether generally or for any particular purpose) in those proceedings.

## PART IV

### MISCELLANEOUS AMENDMENTS OF THE LAW

#### 18 Restriction on duration of liferents

- (1) Where by any deed executed after the commencement of this Act there is created a liferent interest in any property and a person who was not living or in utero at the date of the coming into operation of the said deed becomes entitled to that interest, then—
- (a) if that person is of full age at the date on which he becomes entitled to the liferent interest, as from that date, or
  - (b) if that person is not of full age at that date, as from the date on which, being still entitled to the liferent interest, he becomes of full age,
- the said property shall, subject to subsection (2) of this section, belong absolutely to that person, and, if the property is vested in trustees, those trustees shall, subject as aforesaid, be bound to convey, deliver or make over the property to that person.

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*Status: This is the original version (as it was originally enacted).*

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- (2) The fact that, by virtue of subsection (1) of this section, any property has come to belong absolutely to any person shall not affect—
- (a) the rights in the property of any person holding a security over the property;
  - (b) any rights in the property created independently of the deed by which the liferent interest in question was created;
  - (c) in the case of heritable property, the rights therein of the superior of the property.
- (3) The expenses of the conveyance, delivery or making over of any property to any person in pursuance of subsection (1) of this section shall be borne by that person.
- (4) Section 48 of the Entail Amendment Act 1848 and section 9 of the Trusts (Scotland) Act 1921 shall not have effect in relation to any deed executed after the commencement of this Act.
- (5) For the purposes of this section—
- (a) the date of the coming into operation of any testamentary or other mortis causa deed shall, subject to paragraph (c) below, be taken to be the date of the death of the granter thereof;
  - (b) the date of the coming into operation of any marriage contract shall, subject as aforesaid, be taken to be the date of the dissolution of the marriage;
  - (c) the date of the execution, or of the coming into operation, of any deed made in the exercise of a special power of appointment shall be taken to be the date of the execution, or as the case may be of the coming into operation, of the deed creating that power.

## **19 Amendment of s. 15(1) of Succession (Scotland) Act 1964**

Section 15(1) of the Succession (Scotland) Act 1964 (which makes provision for the use of a confirmation of an executor as a link in title to heritable property) shall have effect, and be deemed always to have had effect, as if after the words ' Provided that a confirmation' there were inserted the words (other than an implied confirmation within the meaning of the said section 5(2))'.

## **20 Agreement to prorogate jurisdiction of particular sheriff court in certain moneylenders' contracts to be void**

Section 4 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940 (which makes void any provision or agreement in or in relation to a contract to which that section applies, whereby any party to such contract prorogates the jurisdiction of a particular sheriff court) shall have effect as if at the end of subsection (2) thereof (wherein are specified the contracts to which the section applies) there were added the following words:—

“and

- (c) any contract entered into by a moneylender within the meaning of the Moneylenders Acts 1900 to 1927 in the course of his business as a moneylender, being a contract which contains an agreement with respect to the advance or repayment of money, or in respect of money lent, or as to the taking or release of any security in respect of money lent.”.

## **21 Removal of restriction on purchase, etc., of land by trade unions**

Section 7 of the Trade Union Act 1871 (which empowers trade unions to purchase or take upon lease, and to deal otherwise with, land not exceeding one acre in extent) shall have effect as if the words " not exceeding one acre " were omitted.

## **PART V**

### **SUPPLEMENTARY**

## **22 Short title, interpretation, repeals, extent and commencement**

(1) This Act may be cited as the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968.

(2) In this Act—

- (a) " enactment" includes any instrument having effect by virtue of an Act;
- (b) any reference to any enactment shall be construed as a reference to that enactment as amended, and as including a reference thereto as extended or applied, by or under any other enactment including, unless the context otherwise requires, this Act.

(3) The enactments mentioned in Schedule 3 to this Act are hereby repealed to the extent specified in relation thereto in column 3 of that Schedule:

Provided that no repeal effected by this subsection in any of the provisions of the Crofters (Scotland) Act 1955 or the Succession (Scotland) Act 1964 shall have effect in relation to the estate of any person dying before the commencement of this Act.

(4) This Act shall extend to Scotland only.

(5) This Act (except sections 10 to 15 thereof) shall come into operation on the expiry of a period of one month beginning with the date on which it is passed; and sections 10 to 15 of this Act shall come into operation on such date as the Secretary of State may appoint by an order made by statutory instrument, and different days may be appointed under this section for different purposes.

Any reference in this Act or in any other enactment to the commencement of this Act shall be construed as a reference to the date on which this Act (except sections 10 to 15 thereof) comes into operation.

## SCHEDULES

### SCHEDULE 1

Section 3.

#### MODIFICATION OF SUCCESSION (SCOTLAND) ACT 1964 CONSEQUENTIAL ON SECTIONS 1 AND 2 OF THIS ACT

- 1 In section 6, at the end there shall be inserted the following paragraph:—
- “For the purposes of this section an illegitimate person shall be deemed to be in the same degree of relationship to the intestate as that person would have been in if he had been born legitimate ; and where the intestate was an illegitimate person, each of his parents shall be deemed to be in the same degree of relationship to him as the other.”
- 2 In section 9(1), after the word " issue ", in both places where it occurs, there shall be inserted the words " or by any illegitimate children or by the issue of any illegitimate child who has predeceased the intestate ".
- 3 In section 11(1)—
- (a) for the words " under any rule of law " there shall be substituted the words " by virtue of section 10A of this Act or of any other enactment or of any rule of law "; and
- (b) at the end there shall be inserted the following paragraph:—
- “In this subsection the expression ' child ' shall include an illegitimate child.”.
- 4 In section 11(2), at the end there shall be inserted the following paragraph:—
- “For the purposes of this subsection an illegitimate person shall be deemed to be in the same degree of relationship to the deceased as that person would have been in if he had been born legitimate.”.
- 5 In section 11(4), after the words "by virtue of" there shall be inserted the words " section 10A of this Act or of ".
- 6 In section 13, at the end there shall be inserted the following paragraph:—
- “In this section references to the issue of the testator shall include references to any illegitimate children of the testator and to the issue of any such children.”.
- 7 In section 33(1)—
- (a) after the words " Part II of this Act" there shall be inserted the words " (other than section 10A thereof), and any reference in any deed taking effect after the commencement of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 to legitim shall be construed as a reference to the right to legitim as modified by the said section 10A ; " ; and
- (b) for the words " such deed" there shall be substituted the words " deed taking effect after the commencement of this Act ".



## SCHEDULE 2

Section 8.

### MODIFICATION OF ENACTMENTS CONSEQUENTIAL ON APPLICATION OF SUCCESSION (SCOTLAND) ACT 1964 TO TENANCIES OF CROFTS

#### PART I

##### MODIFICATION OF ENACTMENTS

###### *THE CROFTERS (SCOTLAND) ACT 1955 (3 & 4 Eliz. 2. c. 21)*

- 1 In section 8(6), for the word " heir " there shall be substituted the word " executor ".
- 2 In section 10(5), for the words from " thereupon devolve " to the end there shall be substituted the words " be treated as intestate estate of the deceased crofter in accordance with Part I of the Succession (Scotland) Act 1964. ".
- 3 In section 10(7), for the words from " or any person " to the end there shall be substituted the words " or any one of the persons who would be, or would in any circumstances have been, entitled to succeed to the estate on intestacy by virtue of the Succession (Scotland) Act 1964. ".
- 4 In section 11, for subsection (1) there shall be substituted the following subsection:  
—  
“(1) Where, owing to the failure of a crofter to bequeath the tenancy of his croft or of such a bequest to receive effect, the right to the tenancy of the croft falls to be treated as intestate estate of the deceased crofter in accordance with Part I of the Succession (Scotland) Act 1964, and the tenancy is transferred in pursuance of section 16(2) of that Act, the executor of the deceased crofter shall as soon as may be furnish particulars of the transferee to the landlord, who shall accept the transferee as tenant; and the landlord shall notify the Commission accordingly.”
- 5 In section 11, subsection (2) shall cease to have effect.
- 6 In section 11, for subsection (3) there shall be substituted the following subsection:  
—  
“(3) If at the expiry of three months from the relevant date, that is to say—
  - (a) where the deceased crofter has exercised his power to bequeath the tenancy of the croft in favour of a person not being a member of the deceased crofter's family and the Commission, on application made to them by the legatee, have refused to determine that the bequest shall not be null and void, from the date of the Commission's refusal;
  - (b) where the deceased crofter has otherwise failed to bequeath the tenancy, from the date of death of the deceased crofter;
  - (c) where the deceased crofter has bequeathed the tenancy and the bequest has become null and void under section 10(2) of this Act, from the date on which the bequest became null and void as aforesaid;
  - (d) where the deceased crofter has bequeathed the tenancy and the Commission have declared the bequest to be null and void under

section 10(4) of this Act, from the date on which the Commission notified the landlord and the legatee to that effect,

the executor has not furnished to the landlord particulars of any transferee in accordance with subsection (1) of this section, the landlord shall forthwith notify the Commission to that effect.”.

7 In section 11, for subsection (4) there shall be substituted the following subsections:

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“(4) If at the expiry of the three months aforesaid it appears to the Commission, whether from a notification under subsection (3) of this section or otherwise, that the executor has not furnished to the landlord particulars of any transferee in accordance with subsection (1) of this section, the Commission may give notice in such manner as they may think proper, whether by advertisement or otherwise, to persons who may claim to be entitled—

- (a) to succeed to the intestate estate of the deceased crofter, or
- (b) to claim legal rights or the prior rights of a surviving spouse out of that estate,

requiring them if they desire to have the tenancy of the croft transferred to them in or towards satisfaction of their entitlement or claim to give intimation accordingly to the Commission before such date as may be specified in the notice, being a date not earlier than six months after the relevant date within the meaning of subsection (3) of this section; and the Commission may, subject to the provisions of subsection (4a) of this section, nominate as successor to the tenancy any one of the persons who have so given intimation.

(4A) The Commission shall, before nominating any person as successor to the tenancy of the croft in pursuance of subsection (4) of this section, consult with the executor (if any) of the deceased crofter, and the Commission shall not nominate any person as successor unless it appears to them—

- (a) that that person is a person entitled to succeed to the intestate estate of the deceased crofter, or to claim legal rights or the prior rights of a surviving spouse out of that estate, and
- (b) that adequate provision is being, or will be, made for the settlement of the entitlement or claim in the said intestate estate of any other person who is known to them to be entitled to succeed to, or to claim any such rights out of, that estate.

(4B) The Commission shall give notice to the landlord of any person nominated by them in pursuance of subsection (4) of this section, and the landlord shall accept that person as successor to the tenancy of the croft.

(4C) The nomination by the Commission, in pursuance of subsection (4) of this section, of any person as successor to the tenancy of the croft shall transfer the interest of the tenant under that tenancy to that person, and such transfer shall be in or towards satisfaction of that person's entitlement or claim in the intestate estate of the deceased crofter.”.

8 In section 11, for subsection (5) there shall be substituted the following subsection:

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“(5) If at the expiry of one month from the end of the period referred to in section 16(3)(b) of the Succession (Scotland) Act 1964 the executor has

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*Status: This is the original version (as it was originally enacted).*

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not furnished to the landlord particulars of any transferee in accordance with subsection (1) of this section and the Commission have not nominated any person as successor under subsection (4) thereof, the Commission may declare the croft to be vacant and, if they do so, shall notify the landlord accordingly.”.

9 In section 11(6), for the words from "the rights " to " succeed to " there shall be substituted the words " any right of any person (other than the person so nominated) in, or in relation to, ".

10 In section 11, subsections (8) and (9) shall cease to have effect.

11 In section 14(1)—

(a) for the words from the beginning to " he shall" there shall be substituted the words—

“Where—

(i) a crofter renounces his tenancy or is removed from his croft, or

(ii) the tenancy of a croft, being a tenancy the interest of the tenant under which is comprised in the estate of a deceased crofter, is terminated in pursuance of section 16(3) of the Succession (Scotland) Act 1964,

the crofter or, as the case may be, the executor of the deceased crofter shall,”;

(b) in paragraph (b), for the words " or any of his predecessors " there shall be substituted the words " or, as the case may be, the deceased crofter, or any of the predecessors of the crofter or of the deceased crofter ";

(c) in paragraph (c), after the word " crofter", where first occurring, there shall be inserted the words " or, as the case may be, the deceased crofter ", and after the word " received " there shall be inserted the words " or, as the case may be, the deceased crofter did not receive and his executor has not received, ".

12 In section 14(6)—

(a) for the words from the beginning to " from him " there shall be substituted the words—

“Where—

(a) a crofter renounces his tenancy or is removed from his croft, or

(b) the tenancy of a croft, being a tenancy the interest of the tenant under which is comprised in the estate of a deceased crofter, is terminated in pursuance of section 16(3) of the Succession (Scotland) Act 1964,

the landlord shall be entitled to recover from the crofter or, as the case may be, from the executor of the deceased crofter”;

(b) after the words " by the crofter " there shall be inserted the words " or, as the case may be, by the deceased crofter or his executor. ".

13 In section 14(7), after the words " the croft" there shall be inserted the words " or, as the case may be, of the termination of the tenancy, ".

14 In section 14(9)—

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*Status: This is the original version (as it was originally enacted).*

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- (a) for the words from the beginning to " his tenancy " there shall be substituted the words—
- “Where—
- (a) a crofter has given notice of renunciation of his tenancy, or
- (b) the landlord of the croft either gives to the executor of a deceased crofter, or receives from such an executor, notice terminating the tenancy of the croft in pursuance of section 16(3) of the Succession (Scotland) Act 1964,”;
- (b) after the words " of the crofter " there shall be inserted the words " or, as the case may be, the executor of the deceased crofter ";
- (c) after the words " the renunciation " there shall be inserted the words " or, as the case may be, the termination ";
- (d) after the words " will on renunciation" there shall be inserted the words " or termination ";
- (e) after the words " by the crofter " there shall be inserted the words " or executor ";
- (f) after the words " shall, on renunciation" there shall be inserted the words " or, as the case may be, termination, " .
- 15 In section 14(10), in proviso (a)—
- (a) after the words " to a crofter " there shall be inserted the words " or to the executor of a deceased crofter, ";
- (b) after the words " the crofter" there shall be inserted the words " or executor " .
- 16 In section 14(11), for the words from the beginning to "shall not be entitled" there shall be substituted the words—
- “Notwithstanding anything in this section—
- (a) a crofter who immediately before the commencement of this Act was a statutory small tenant, or
- (b) the statutory successor of such a crofter, or
- (c) the executor of such a crofter or of such a statutory successor, shall not be entitled,”.
- 17 In section 16(1)—
- (a) after paragraph (a) there shall be inserted the following paragraph:—
- “(aa) the landlord of the croft either gives to the executor of a deceased crofter, or receives from such an executor, notice terminating the tenancy of the croft in pursuance of section 16(3) of the Succession (Scotland) Act 1964 ; or”;
- (b) for the words from " from the receipt" to " as the case may be " there shall be substituted the words—
- “from—
- (i) the receipt of the notice of renunciation of the tenancy, or
- (ii) the date on which the Land Court made the order, or
- (iii) the date on which the landlord gave or received notice terminating the tenancy, or
- (iv) the date on which the vacancy came to the landlord's knowledge,

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*Status: This is the original version (as it was originally enacted).*

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as the case may be.”.

- 18 In section 37(1), in the definition of " statutory successor", after the words " whether as " there shall be inserted the words " a person to whom the tenancy of the croft has been transferred in pursuance of section 16(2) of the Succession (Scotland) Act 1964 or as the executor, ".

*THE CROFTERS (SCOTLAND) ACT 1961 (9 & 10 Eliz. 2. c. 58)*

- 19 In section 6(1)—
- (a) after the words " this Act" there shall be inserted the words " , or to the executor of a deceased crofter, ";
  - (b) for the words " on his croft" there shall be substituted the words " on the croft ";
  - (c) for the words from " (a) the value " to " as the case may be " there shall be substituted the following words:—
    - “(a) the value of that improvement as at the date when—
      - (i) the crofter renounced his tenancy, or
      - (ii) the crofter was removed from the croft, or
      - (iii) the tenancy of the croft was terminated in pursuance of section 16(3) of the Succession (Scotland) Act 1964,
- as the case may be,”.

- 20 In section 6(3)—
- (a) after the words " if the crofter " there shall be inserted the words " or, as the case may be, the executor of the deceased crofter ";
  - (b) after the words "to the crofter", in both places where they occur, there shall be inserted the words " or executor ";
  - (c) after the words " by the crofter" there shall be inserted the words " or, as the case may be, the executor of the deceased crofter ".

- 21 In section 6(4), at the end there shall be inserted the following words—
- “and for the purposes of the said subsection the executor of a deceased crofter shall be deemed to be qualified if the deceased crofter would have been qualified as mentioned in the foregoing provisions of this subsection.”.

*THE SUCCESSION (SCOTLAND) ACT 1964 (1964 c. 41)*

- 22 In section 16(2)—
- (a) in paragraph (c), at the end there shall be inserted the words " or becomes null and void under section 10 of the Act of 1955, ";
  - (b) for the words " of the landlord " there shall be substituted the following words:—
    - “(i) in the case of an interest under an agricultural lease, being a lease of a croft within the meaning of section 3(1) of the Act of 1955, of the Crofters Commission ;
    - (ii) in any other case, of the landlord.”.

- 23 In section 16(3), in paragraph (b), after head (i) there shall be inserted the following heads:—
- “(ia) in the case of an interest under an agricultural lease which is the subject of an application by the legatee to the Crofters Commission under section 10(1) of the Act of 1955, from the date of any refusal by the Commission to determine that the bequest shall not be null and void,
- (ib) in the case of an interest under an agricultural lease which is the subject of an intimation of objection by the landlord to the legatee and the Crofters Commission under section 10(3) of the Act of 1955, from the date of any decision of the Commission upholding the objection.”.
- 24 In section 16(6), in paragraph (a), after the words "Act of 1931" there shall be inserted the words " or section 13 of the Act of 1955 ".
- 25 In section 16(8), at the end there shall be inserted the words " , or, as the case may be, subsections (2) to (7) of section 10 of the Act of 1955. ".
- 26 In section 16(9)—
- (a) in the definition of " agricultural lease ", at the end there shall be inserted the words " , or a lease of a croft within the meaning of section 3(1) of the Act of 1955 ; ";
- (b) after the definition of " the Act of 1949 " there shall be inserted the following definition:—
- “ the Act of 1955 ' means the Crofters (Scotland) Act 1955 ;”.
- 27 In section 29(2), at the end there shall be inserted the words " or of section 10 of the Crofters (Scotland) Act 1955 (which makes similar provision in relation to crofts). ".
- 28 In section 37(1), paragraph (b) shall cease to have effect.
- 29 In Schedule 2, in paragraph 1, the words " (other than the tenancy of any croft within the meaning of section 3 of the Crofters (Scotland) Act 1955) " shall cease to have effect.

## PART II

### CERTAIN ENACTMENTS SET OUT AS MODIFIED BY PART I OF THIS SCHEDULE

#### *THE CROFTERS (SCOTLAND) ACT 1955 (3 & 4 Eliz. 2. c. 21)*

#### Section 11

- 11 (1) Where, owing to the failure of a crofter to bequeath the tenancy of his croft or of such a bequest to receive effect, the right to the tenancy of the croft falls to be treated as intestate estate of the deceased crofter in accordance with Part I of the Succession (Scotland) Act 1964, and the tenancy is transferred in pursuance of section 16(2) of that Act, the executor of the deceased crofter shall as soon as may be furnish particulars of the transferee to the landlord, who shall accept the transferee as tenant; and the landlord shall notify the Commission accordingly.
- (3) If at the expiry of three months from the relevant date, that is to say—

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*Status: This is the original version (as it was originally enacted).*

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- (a) where the deceased crofter has exercised his power to bequeath the tenancy of the croft in favour of a person not being a member of the deceased crofter's family and the Commission, on application made to them by the legatee, have refused to determine that the bequest shall not be null and void, from the date of the Commission's refusal;
- (b) where the deceased crofter has otherwise failed to bequeath the tenancy, from the date of death of the deceased crofter ;
- (c) where the deceased crofter has bequeathed, the tenancy and the bequest has become null and void under section 10(2) of this Act, from the date on which the bequest became null and void as aforesaid ;
- (d) where the deceased crofter has bequeathed the tenancy and the Commission have declared the bequest to be null and void under section 10(4) of this Act, from the date on which the Commission notified the landlord and the legatee to that effect,

the executor has not furnished to the landlord particulars of any transferee in accordance with subsection (1) of this section, the landlord shall forthwith notify the Commission to that effect.

- (4) If at the expiry of the three months aforesaid it appears to the Commission, whether from a notification under subsection (3) of this section or otherwise, that the executor has not furnished to the landlord particulars of any transferee in accordance with subsection (1) of this section, the Commission may give notice in such manner as they may think proper, whether by advertisement or otherwise, to persons who may claim to be entitled—
  - (a) to succeed to the intestate estate of the deceased crofter, or
  - (b) to claim legal rights or the prior rights of a surviving spouse out of that estate,requiring them if they desire to have the tenancy of the croft transferred to them in or towards satisfaction of their entitlement or claim to give intimation accordingly to the Commission before such date as may be specified in the notice, being a date not earlier than six months after the relevant date within the meaning of subsection (3) of this section ; and the Commission may, subject to the provisions of subsection (4A) of this section, nominate as successor to the tenancy any one of the persons who have so given intimation.
- (4A) The Commission shall, before nominating any person as successor to the tenancy of the croft in pursuance of subsection (4) of this section, consult with the executor (if any) of the deceased crofter, and the Commission shall not nominate any person as successor unless it appears to them—
  - (a) that that person is a person entitled to succeed to the intestate estate of the deceased crofter, or to claim legal rights or the prior rights of a surviving spouse out of that estate, and
  - (b) that adequate provision is being, or will be, made for the settlement of the entitlement or claim in the said intestate estate of any other person who is known to them to be entitled to succeed to, or to claim any such rights out of, that estate.
- (4B) The Commission shall give notice to the landlord of any person nominated by them in pursuance of subsection (4) of this section, and the landlord shall accept that person as successor to the tenancy of the croft.
- (4C) The nomination by the Commission, in pursuance of subsection (4) of this section, of any person as successor to the tenancy of the croft shall transfer the interest of

the tenant under that tenancy to that person, and such transfer shall be in or towards satisfaction of that person's entitlement or claim in the intestate estate of the deceased crofter.

- (5) If at the expiry of one month from the end of the period referred to in section 16(3)(b) of the Succession (Scotland) Act 1964 the executor has not furnished to the landlord particulars of any transferee in accordance with subsection (1) of this section and the Commission have not nominated any person as successor under subsection (4) thereof, the Commission may declare the croft to be vacant and, if they do so, shall notify the landlord accordingly.
- (6) Where the Commission have under the foregoing provisions of this section nominated a person as successor to the tenancy or, as the case may be, have declared the croft to be vacant, any right of any person (other than the person so nominated) in, or in relation to, the tenancy shall be extinguished.
- (7) Where a croft has been declared under subsection (5) of this section to be vacant, the landlord shall be liable—
- (a) if the deceased crofter was at the date of his death under any liability to the Secretary of State in respect of any loan, to pay to the Secretary of State the whole or so much of the value of the improvements on the croft as will discharge the liability of the deceased crofter, and to pay to the executor of the deceased crofter, if a claim is made in that behalf not later than twelve months after the date on which the croft was declared to be vacant, any balance of the value aforesaid ;
  - (b) if at the date of his death the deceased crofter was not under any such liability to the Secretary of State and a claim is made in that behalf as aforesaid, to pay to the executor of the deceased crofter the value of the improvements on the croft.

In this subsection the expression " the value of the improvements on the croft" means such sum as may be agreed, or as, failing agreement, may be determined by the Land Court, to be the sum which would have been due by the landlord by way of compensation for permanent improvements if the deceased crofter had immediately before his death renounced his tenancy.

- (7A) Where a croft has been declared under subsection (5) of this section to be vacant consequent on the death after the commencement of the Crofters (Scotland) Act 1961 of a crofter who immediately before his death was qualified as mentioned in the next following subsection, and the value of the improvements on the croft is determined by the Land Court under the last foregoing subsection, the executor of the crofter may request the Land Court to determine what would have been the value of the improvements on the croft if the said Act had not been passed, and if the value last mentioned is greater than the value determined by the Land Court under the last foregoing subsection, the difference between the two said values shall be payable to the executor by the Secretary of State:

Provided that the Secretary of State shall be entitled to set off any amount due to him by the crofter at the date of his death in respect of a loan made under subsection (2) or (3) of section twenty-two of this Act or subsection (7) of section seven or section nine of the Act of 1911 against any sum payable to the executor by the Secretary of State under this subsection.

- (7B) The reference in the last foregoing subsection to a crofter who immediately before his death was qualified is a reference to a crofter—



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*Status: This is the original version (as it was originally enacted).*

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- (a) whose tenancy of the croft in question began before the commencement of the Crofters (Scotland) Act 1961, or
- (b) who held the tenancy of such croft as statutory successor to his immediate predecessor in the tenancy and each of whose predecessors (being in each case a person whose tenancy of the croft began after the commencement of the said Act) held such tenancy as statutory successor to his immediate predecessor.

#### Section 14

##### 14 (1) Where—

- (i) a crofter renounces his tenancy or is removed from his croft, or
- (ii) the tenancy of a croft, being a tenancy the interest of the tenant under which is comprised in the estate of a deceased crofter, is terminated in pursuance of section 16(3) of the Succession (Scotland) Act 1964,

the crofter or, as the case may be, the executor of the deceased crofter shall, subject to the provisions of this Act, be entitled to compensation for any permanent improvement made on the croft if—

- (a) the improvement is suitable to the croft; and
- (b) the improvement was executed or paid for by the crofter or, as the case may be, the deceased crofter, or any of the predecessors of the crofter or of the deceased crofter in the tenancy; and
- (c) either the improvement was executed otherwise than in pursuance of a specific agreement in writing under which the crofter or, as the case may be, the deceased crofter was bound to execute the improvement or, if the improvement was executed in pursuance of such an agreement, the crofter has not received or, as the case may be, the deceased crofter did not receive and his executor has not received, by way of reduction of rent or otherwise, fair consideration for the improvement

##### (2) Where—

- (a) a person on becoming the tenant of a croft has with the consent of the landlord paid to the outgoing tenant any compensation due to him in respect of any permanent improvement and has agreed with the Secretary of State to assume any outstanding liability to the Secretary of State of the outgoing tenant in respect of any loan made to him; or
- (b) on a person becoming the tenant of a croft the Secretary of State on his behalf has paid to the landlord a sum representing the value to such person of an existing improvement on the croft;

such person shall for the purposes of the foregoing subsection be deemed to have executed or paid for the improvement.

For the purposes of paragraph (a) of this subsection a landlord who has not paid the compensation due either to the outgoing tenant or to the Secretary of State and has not applied to the Secretary of State to determine under subsection (4) of section twenty-three of this Act that any amount due by him to the Secretary of State by virtue of subsection (3) of that section shall be deemed to be a loan by the Secretary of State to him shall be deemed to have given his consent.

- (3) The provisions of subsection (1) of this section shall not apply to any buildings erected by a crofter in contravention of any interdict or other judicial order.
- (6) Where—

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*Status: This is the original version (as it was originally enacted).*

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- (a) a crofter renounces his tenancy or is removed from his croft, OR
- (b) the tenancy of a croft, being a tenancy the interest of the tenant under which is comprised in the estate of a deceased crofter, is terminated in pursuance of section 16(3) of the Succession (Scotland) Act 1964,

the landlord shall be entitled to recover from the crofter or, as the case may be, from the executor of the deceased crofter compensation for any deterioration of, or damage to, any fixed equipment provided by the landlord committed or permitted by the crofter or, as the case may be, by the deceased crofter or his executor.

- (7) The amount of the compensation payable under the last foregoing subsection shall be the cost, as at the date of the crofter's quitting the croft, or as the case may be, of the termination of the tenancy, of making good the deterioration or damage ; and the landlord shall be entitled to set off the amount so payable against any compensation payable by him in respect of permanent improvements.

- (8) The amount of the compensation payable under subsection (1) or subsection (6) of this section shall, failing agreement, be fixed by the Land Court.

- (9) Where—

- (a) a crofter has given notice of renunciation of his tenancy, or
- (b) the landlord of the croft either gives to the executor of a deceased crofter, or receives from such an executor, notice terminating the tenancy of the croft hi pursuance of section 16(3) of the Succession (Scotland) Act 1964,

the Land Court may, on the joint application of the crofter or, as the case may be, the executor of the deceased crofter and the landlord or, where the crofter's rights to compensation for permanent improvements have been transferred in whole or in part under section twenty-three of this Act to the Secretary of State, on the joint application of the Secretary of State and the landlord, assess prior to the renunciation or, as the case may be, the termination the amounts which will on renunciation or termination become due under this section by the landlord by way of compensation for permanent improvements and by the crofter or executor by way of compensation for deterioration or damage ; and the amounts so assessed shall, on renunciation or, as the case may be, termination, become due accordingly.

- (10) Nothing in this Act shall affect the provisions of the Agricultural Holdings (Scotland) Act 1949 with respect to the payment to outgoing tenants of compensation for improvements :

Provided that—

- (a) where any improvements are valued under that Act with a view to the payment of compensation to a crofter or to the executor of a deceased crofter, the valuation shall, unless the landlord and the crofter or executor otherwise agree in writing, be made by the Land Court; and
- (b) compensation shall not be payable under that Act for an improvement for which compensation is payable under this Act.

- (11) Notwithstanding anything in this section—

- (a) a crofter who immediately before the commencement of this Act was a statutory small tenant, or
- (b) the statutory successor of such a crofter, or
- (c) the executor of such a crofter or of such a statutory successor,

shall not be entitled, in respect of any permanent improvement made or begun before the commencement of this Act, to any compensation to which he would not have

been entitled if his tenancy had expired immediately before the commencement of this Act.

*THE CROFTERS (SCOTLAND) ACT 1961 (9 & 10 Eliz. 2. c.58)*

Section 6

- 6 (1) The amount of any compensation payable under subsection (1) of section fourteen of the Act of 1955 to a crofter who renounces his tenancy or is removed from his croft after the commencement of this Act, or to the executor of a deceased crofter, in respect of a permanent improvement on the croft shall be a sum equal to—
- (a) the value of that improvement as at the date when—
    - (i) the crofter renounced his tenancy, or
    - (ii) the crofter was removed from the croft, or
    - (iii) the tenancy of the croft was terminated in pursuance of section 16(3) of the Succession (Scotland) Act 1964,as the case may be, calculated in accordance with the provisions of the next following subsection, less
  - (b) the value of any assistance or consideration which may be proved to have been given by the landlord of the croft or any of his predecessors in title in respect of the improvement.
- (2) For the purposes of the foregoing subsection, the value of an improvement on any croft shall be taken to be the amount, if any, which, having regard to the location of the croft and any other circumstances which might affect the demand for the tenancy thereof, the landlord might reasonably be expected to receive in respect of the improvement from a person who might reasonably be expected to obtain the tenancy of the croft if the croft were offered on the open market for letting as a separate croft with entry on the date referred to in paragraph (a) of the foregoing subsection.
- (3) Where compensation falls to be assessed under the two foregoing subsections in respect of any permanent improvement on a croft and the amount of such compensation is fixed or assessed by the Land Court under subsection (8) of section fourteen of the Act of 1955 or paragraph (a) of subsection (9) of section nineteen of that Act or paragraph (a) of subsection (3) of section nine of this Act, then if the crofter or, as the case may be, the executor of the deceased crofter is qualified as mentioned in the next following subsection he may request the Land Court to determine the amount which would have been payable by way of compensation in respect of that improvement if this Act "had not been passed, and if the amount last mentioned is greater than the amount fixed or assessed by the Land Court as aforesaid, the difference between the two said amounts shall be payable to the crofter or executor by the Secretary of State:

Provided that—

- (a) the Secretary of State shall be entitled to set off any amount due to him by the crofter or, as the case may be, the executor of the deceased crofter in respect of a loan made under subsection (2) or (3) of section twenty-two of the Act of 1955 or subsection (7) of section seven or section nine of the Act of 1911 against any sum payable to the crofter or executor by the Secretary of State under this subsection; and
- (b) this subsection shall not apply where compensation in respect of the improvement in question has on a previous occasion fallen to be assessed under the two foregoing subsections.

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*Status: This is the original version (as it was originally enacted).*

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- (4) The reference in the last foregoing subsection to a crofter who is qualified is a reference to a crofter—
- (a) whose tenancy of the croft in question began before the commencement of this Act, or
  - (b) who holds the tenancy of such croft as statutory successor to his immediate predecessor in the tenancy and each of whose predecessors (being in each case a person whose tenancy of the croft began after the commencement of this Act) held such tenancy as Statutory successor to his immediate predecessor,
- and for the purposes of the said subsection the executor of a deceased crofter shall be deemed to be qualified if the deceased crofter would have been qualified as mentioned in the foregoing provisions of this subsection.
- (5) The Act of 1955 shall have effect subject to the amendments specified in Part I of the First Schedule to this Act, being amendments consequential on the foregoing provisions of this section.
- (6) Subsections (4) and (5) of section fourteen of the Act of 1955 (which relate to the assessment of compensation for improvements) shall cease to have effect, except in relation to the assessment of compensation in respect of permanent improvements which has become payable by reason of the termination of the tenancy of a croft occurring before the commencement of this Act, or the renunciation of his tenancy by a cottar, or the removal of a cottar from his subject, before such commencement.

#### *THE SUCCESSION (SCOTLAND) ACT 1964 (1964 c. 41)*

#### Section 16

- 16 (1) This section applies to, any interest, being the interest of a tenant under a lease, which is comprised in the estate of a deceased person and has accordingly vested in the deceased's executor by virtue of section 14 of this Act; and in the following provisions of this section "interest" means an interest to which this section applies.
- (2) Where an interest—
- (a) is not the subject of a valid bequest by the deceased, or
  - (b) is the subject of such a bequest, but the bequest is not accepted by the legatee, or
  - (c) being an interest under an agricultural lease, is the subject of such a bequest, but the bequest is declared null and void in pursuance of section 16 of the Act of 1886 or section 20 of the Act of 1949 or becomes null and void under section 10 of the Act of 1955,
- and there is among the conditions of the lease (whether expressly or by implication) a condition prohibiting assignation of the interest, the executor shall be entitled, notwithstanding that condition, to transfer the interest to any one of the persons entitled to succeed to the deceased's intestate estate, or to claim legal rights or the prior rights of a surviving spouse out of the estate, in or towards satisfaction of that person's entitlement or claim ; but shall not be entitled to transfer the interest to any other person without the consent—
- (i) in the case of an interest under an agricultural lease, being a lease of a croft within the meaning of section 3(1) of the Act of 1955, of the Crofters Commission ;
  - (ii) in any other case, of the landlord.

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*Status: This is the original version (as it was originally enacted).*

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- (3) If in the case of any interest—
- (a) at any time the executor is satisfied that the interest cannot be disposed of according to law and so informs the landlord, or
  - (b) the interest is not so disposed of within a period of one year or such longer period as may be fixed by agreement between the landlord and the executor or, failing agreement, by the sheriff on summary application by the executor—
    - (i) in the case of an interest under an agricultural lease which is the subject of a petition to the Land Court under section 16 of the Act of 1886 or an application to that court under section 20 of the Act of 1949, from the date of the determination or withdrawal of the petition or, as the case may be, the application,
    - (ia) in the case of an interest under an agricultural lease which is the subject of an application by the legatee to the Crofters Commission under section 10(1) of the Act of 1955, from the date of any refusal by the Commission to determine that the bequest shall not be null and void,
    - (ib) in the case of an interest under an agricultural lease which is the subject of an intimation of objection by the landlord to the legatee and the Crofters Commission under section 10(3) of the Act of 1955, from the date of any decision of the Commission upholding the objection,
    - (ii) in any other case from the date of death of the deceased,  
either the landlord or the executor may, on giving notice in accordance with the next following subsection to the other, terminate the lease (in so far as it relates to the interest) notwithstanding any provision therein, or any enactment or rule of law, to the contrary effect.
- (4) The period of notice given under the last foregoing subsection shall be—
- (a) in the case of an agricultural lease, such period as may be agreed, or, failing agreement, a period of not less than one year and not more than two years ending with such term of Whitsunday or Martinmas as may be specified in the notice ; and
  - (b) in the case of any other lease, a period of six months :
- Provided that paragraph (b) of this subsection shall be without prejudice to any enactment prescribing a shorter period of notice in relation to the lease in question.
- (5) Subsection (3) of this section shall not prejudice any claim by any party to the lease for compensation or damages in respect of the termination of the lease (or any rights under it) in pursuance of that subsection ; but any award of compensation or damages in respect of such termination at the instance of the executor shall be enforceable only against the estate of the deceased and not against the executor personally.
- (6) Where an interest is an interest under an agricultural lease, and—
- (a) an application is made under section 3 of the Act of 1931 or section 13 of the Act of 1955 to the Land Court for an order for removal, or
  - (b) a reference is made under section 27(2) of the Act of 1949 to an arbiter to determine any question which has arisen under section 25(2)(f) of that Act in connection with a notice to quit,

*Status: This is the original version (as it was originally enacted).*

the Land Court shall not make the order, or, as the case may be, the arbiter shall not make an award in favour of the landlord, unless the court or the arbiter is satisfied that it is reasonable, having regard to the fact that the interest is vested in the executor in his capacity as executor, that it should be made.

- (7) Where an interest is not an interest under an agricultural lease, and the landlord brings an action of removing against the executor in respect of a breach of a condition of the lease, the court shall not grant decree in the action unless it is satisfied that the condition alleged to have been breached is one which it is reasonable to expect the executor to have observed, having regard to the fact that the interest is vested in him in his capacity as an executor.
- (8) Where an interest is an interest under an agricultural lease and is the subject of a valid bequest by the deceased, the fact that the interest is vested in the executor under the said section 14 shall not prevent the operation, in relation to the legatee, of paragraphs (a) to (h) of section 16 of the Act of 1886, or, as the case may be, subsections (2) to (7) of section 20 of the Act of 1949, or as the case may be, subsections (2) to (7) of section 10 of the Act of 1955.
- (9) In this section—
- " agricultural lease " means a lease of a holding within the meaning of the Small Landholders (Scotland) Acts 1886 to 1931 or of the Act of 1949, or a lease of a croft within the meaning of section 3(1) of the Act of 1955 ;
- " the Act of 1886 " means the Crofters Holdings (Scotland) Act 1886 ;
- " the Act of 1931 " means the Small Landholders and Agricultural Holdings (Scotland) Act 1931 ;
- " the Act of 1949 " means the Agricultural Holdings (Scotland) Act 1949 ;
- " the Act of 1955 " means the Crofters (Scotland) Act 1955 ;
- " lease " includes tenancy.

## SCHEDULE 3

Section 22.

## ENACTMENTS REPEALED

Chapter	Short Title	Extent of Repeal
34 & 35 Vict. c. 31.	The Trade Union Act 1871.	In section 7, the words "not exceeding one acre ".
1 & 2 Geo. 6. c. 50.	The Divorce (Scotland) Act 1938.	In section 4(2), the words " adultery or ".
3 & 4 Eliz. 2. c. 21.	The Crofters (Scotland) Act 1955.	In section 11, subsections (2), (8) and (9).
1964 c. 41.	The Succession (Scotland) Act 1964.	In section 37(1), paragraph (b).  In Schedule 2, in paragraph 1, the words " (other than the tenancy of any croft within the meaning of section 3 of

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*Status: This is the original version (as it was originally enacted).*

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Chapter	Short Title	Extent of Repeal
		the Crofters (Scotland) Act 1955)".