Land Tenure Reform (Scotland) Act 1974

1974 CHAPTER 38

PART III

MISCELLANEOUS

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

(1) The provisions of this section shall apply in relation to a heritable security executed after the commencement of this Act, including a heritable security in relation to a debenture described in section 739 of the Companies Act 2006 (perpetual debentures).

(2) The debtor in a heritable security to which this section applies, or, where the debtor is not the proprietor, the proprietor of the security subjects shall, subject to the provisions of this section, be entitled, on giving two months, notice of his intention so to do, to redeem the security at any time not less than 20 years after the execution thereof, if, at the time when he gives such notice, the security subjects or any part thereof are used as or as part of a private dwelling-house.

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

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

(3A) The right to redeem a heritable security conferred by this section does not apply to a heritable security where—
(a) the debtor (or where the debtor is not the proprietor, the proprietor of the security subjects) has in writing renounced the right to redeem conferred by this section; and

(b) at the time of doing so that body is—
   (i) a social landlord (within the meaning of section 165 of the Housing (Scotland) Act 2010);
   (ii) a body connected to a social landlord (within the meaning of section 164 of the Housing (Scotland) Act 2010); or
   (iii) a rural housing body (within the meaning of section 122(1) of the Title Conditions (Scotland) Act 2003);
   (iv) a body prescribed, or of a type prescribed, by the Scottish Ministers by order made by statutory instrument.[F5]

F6(3B) An order under subsection (3A)(b)(iv) may—
   (a) prescribe a body or type of body subject to conditions or restrictions,
   (b) prescribe conditions which a body or type of body must meet for the purposes of subsection (3A),
   (c) restrict the application of subsection (3A) to specified heritable securities, or heritable securities of specified descriptions,
   (d) prescribe circumstances in which subsection (3A) is to apply or cease to apply in relation to a body or type of body or any heritable security.

(3C) A statutory instrument containing an order under subsection (3A)(b)(iv) is subject to annulment in pursuance of a resolution of the Scottish Parliament.[F6]

F7(3D) The right to redeem a heritable security conferred by this section does not apply to a heritable security which is in security of a debt of a description specified in an order made by the Scottish Ministers.

(3E) An order under subsection (3D) may—
   (a) disapply the right to redeem conferred by this section subject to conditions or restrictions,
   (b) restrict the disapplication of the right to redeem conferred by this section to—
      (i) specified descriptions of debt,
      (ii) specified creditors, or creditors of specified descriptions,
      (ii) specified heritable securities, or heritable securities of specified descriptions,
   (c) prescribe circumstances in which the disapplication of the right to redeem conferred by this section is to apply or cease to apply.

(3F) An order under subsection (3D) is subject to the negative procedure.[F7]

(4) Subject to the provisions of subsection (5) below, the whole amount due to the creditor in a heritable security on redemption under this section, including any sums due thereunder by way of interest or otherwise, shall not exceed the amount remaining unredeemed of—
   (a) where the security constituted to any extent (whether expressly or otherwise) the consideration for the acquisition of the security subjects by the debtor or proprietor or his predecessor in title, any excess of the value of the security subjects at the date of the execution of the security over the amount of money paid for the subjects, and
(b) any money advanced under the security to the debtor or proprietor and his predecessors in title, and
(c) any expense or charge reasonably incurred by the creditor in the exercise of a right to perform any obligation imposed on the debtor, which the debtor has failed to perform, and which was reasonably necessary for the protection of the security,

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

(5) In the application of paragraph (a) of subsection (4) above to security subjects which are burdened with two or more heritable securities to which this section applies, the maximum amount determined in accordance with that paragraph shall be apportioned among the securities according to the rights and preferences of the creditors in the securities; and the amount so apportioned in respect of each of the securities shall, on the redemption of any of the securities, be the maximum amount due in terms of that paragraph on the redemption at any time of all such securities.

(6) In section 18 of the Conveyancing and Feudal Reform (Scotland) Act 1970 M1 (as amended by the Redemption of Standard Securities (Scotland) Act 1971 M2), in subsection (1A), at the beginning there shall be inserted the words “Without prejudice to section 11 of the Land Tenure Reform (Scotland) Act 1974 ”.

Annotations:

**Amendments (Textual)**

**F1** Words in s. 11(1) substituted (6.4.2008) by
The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948)
, art. 2(2)
, Sch. 1 para. 44
(with arts. 6
, 11
, 12
)

**F2** S. 11(3A) inserted (1.3.2011) by
Housing (Scotland) Act 2010 (asp 17)
, ss. 139
, 166(2)
; S.S.I. 2011/96
, art. 2
, Sch.

**F3** Word in s. 11(3A)(b)(ii) repealed (31.8.2011) by
Private Rented Housing (Scotland) Act 2011 (asp 14)
Changes to legislation: There are currently no known outstanding effects for the Land Tenure Reform (Scotland) Act 1974, Section 11. (See end of Document for details)

- ss. 37(2)(a)
- 41(3)
- S.S.I. 2011/270
- art. 2
- Sch.

F4 S. 11(3A)(iv) and preceding word inserted (31.8.2011) by Private Rented Housing (Scotland) Act 2011 (asp 14)
- ss. 37(2)(b)
- 41(3)
- S.S.I. 2011/270
- art. 2
- Sch.

F5 S. 11(3B)(3C) inserted (31.8.2011) by Private Rented Housing (Scotland) Act 2011 (asp 14)
- ss. 37(3)
- 41(3)
- S.S.I. 2011/270
- art. 2
- Sch.

F6 S. 11(3D) - (3F) inserted (1.10.2014) by Housing (Scotland) Act 2014 (asp 14)
- ss. 93(1)
- 104(2)

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

Marginal Citations
M1 1970 c.35
M2 1971 c.45
Changes to legislation:
There are currently no known outstanding effects for the Land Tenure Reform (Scotland) Act 1974, Section 11.