



# Succession (Scotland) Act 1964

## 1964 CHAPTER 41

### PART III

#### ADMINISTRATION AND WINDING UP OF ESTATES

#### **[<sup>F1</sup>16 Provisions relating to leases.**

(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) [<sup>F2</sup>Subject to subsection (4A),] 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 [<sup>F3</sup>section 11 of the 1991 Act][<sup>F4</sup>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, [<sup>F5</sup>subject to subsection (2A) of this section, to transfer the interest.]

[ Transfer by an executor pursuant to subsection (2) of this section—

- <sup>F6</sup>(2A) (a) of an interest under an agricultural lease which is a lease of a croft within the meaning of section 3(1) of the Crofters (Scotland) Act 1993 (c. 44) shall require the consent of the Crofters Commission; and  
(b) of an interest under any other lease (including any agricultural lease which does not fall within paragraph (a) of this subsection) and which is not a transfer to 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 or civil partner out of the estate, in satisfaction of that person's entitlement or claim, shall require the consent of the landlord.]

*Status: Point in time view as at 28/01/2008. This version of this provision has been superseded.*

*Changes to legislation: There are currently no known outstanding effects for the Succession (Scotland) Act 1964, Section 16. (See end of Document for details)*

- (3) [<sup>F7</sup>Subject to subsection (4C),] 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 [<sup>F8</sup>relevant court on the application of] 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 [<sup>F3</sup>section 11 of the 1991 Act], from the date of the determination or withdrawal of the petition or, as the case may be, the application,
    - [<sup>F10</sup>.....
    - <sup>F9</sup>(ia) (i) in the case of an interest under an agricultural lease which is the subject of an intimation of objection [<sup>F11</sup>... 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.

[ Where an interest, being an interest under a lease constituting a short limited duration <sup>F12</sup>(4A) tenancy or a limited duration tenancy—

- (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) is the subject of such a bequest, but the bequest is declared null and void by virtue of section 21 of the 2003 Act,

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 a person to whom subsection (4B) below applies; and the executor shall be entitled so to transfer the interest without the consent of the landlord.

(4B) This subsection applies to—

- (a) 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; or

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- (b) any other person.
- (4C) In the case of any interest under a lease constituting a short limited duration tenancy or a limited duration tenancy—
- (a) if at any time the executor is satisfied that the interest cannot be disposed of according to law and so informs the landlord, the executor may terminate the tenancy (in so far as it relates to the interest); and
  - (b) if the interest is not so disposed of within the period referred to in subsection (4D) below, the lease shall (in so far as it relates to the interest) terminate at the expiry of the period,
- notwithstanding any provision in the lease, or any enactment or rule of law, to the contrary effect.
- (4D) The period is one year or such longer period as may be fixed by agreement or, failing agreement, by the Land Court on the application of the executor—
- (a) in the case of an interest which is the subject of an application to that court by virtue of section 21 of the 2003 Act, from the date of the determination or withdrawal of the application; and
  - (b) in any other case, from the date of death of the deceased.
- (4E) The—
- (a) interest may be transferred under subsections (4A) and (4B) above; or
  - (b) tenancy may be terminated under subsection (4C)(a) above,
- only if the transfer, or as the case may be, termination is in the best interests of the deceased's estate.]
- (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 <sup>[F13]</sup> or section 13 of the Act of 1955] to the Land Court for an order for removal, or
  - (b) a reference is made under <sup>[F14]</sup>section 23(2) and (3) of the 1991 Act<sup>[F15]</sup> for the determination of] any question which has arisen under <sup>[F14]</sup>section 22(2)(e)] of that Act in connection with a notice to quit,
- the <sup>[F16]</sup>order or determination shall not be] in favour of the landlord, unless <sup>F17</sup>. . . 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, <sup>[F18]</sup>section 11(2)

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to (8) of the 1991 Act]<sup>F19</sup> or, as the case may be, section 21(2) and (3) of the 2003 Act,]<sup>F20</sup> or, as the case may be, subsection (2) to (7) of section 10 of the Act of 1955].

[ For the purposes of subsection (3)(b) above, the “relevant court” is—

- <sup>F21</sup>(8A) (a) in the case of an interest under a lease constituting a 1991 Act tenancy, the Land Court; and
- (b) in any other case, the sheriff,
- and an application to the sheriff in any such other case shall be by summary application.]

(9) In this section—

“agricultural lease” means a lease of a holding within the meaning of the Small Landholders (Scotland) Acts 1886 to 1931 <sup>F22</sup>, or a lease of a croft within the meaning of section 3(1) of the <sup>F23</sup>Crofters (Scotland) Act 1993 (or of any part of a croft if it is a part consisting of a right mentioned in section 3(4)(a) of that Act)], or a lease constituting a 1991 Act tenancy, or a lease constituting a short limited duration tenancy or a limited duration tenancy];

“the Act of 1886” means the <sup>M1</sup>Crofters Holdings (Scotland) Act 1886;

“the Act of 1931” means the <sup>M2</sup>Small Landholders and Agricultural Holdings (Scotland) Act 1931;

<sup>F24</sup> “the 1991 Act” means the Agricultural Holdings (Scotland) Act 1991;]

<sup>F25</sup> “the 2003 Act” means the Agricultural Holdings (Scotland) Act 2003 (asp 11);

<sup>F26</sup> “the Act of 1955” means the <sup>M3</sup>Crofters (Scotland) Act 1955;]

“lease” includes tenancy;

<sup>F27</sup> “1991 Act tenancy”, “short limited duration tenancy” and “limited duration tenancy” shall be construed in accordance with the 2003 Act.]]]

### Textual Amendments

- F1** S. 16 is set out as it has effect in accordance with [Law Reform \(Miscellaneous Provisions\) Act 1968 \(c. 70\)](#), [s. 8](#), and as subsequently amended
- F2** Words in s. 16(2) inserted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), [ss. 94, 95\(3\)\(4\)](#), [Sch. para. 2\(1\)\(a\)](#) (with s. 95(2)); S.S.I. 2003/548, [art. 2\(i\)](#) (with art. 3, Sch.)
- F3** Words in s. 16(2)(c) and s. 16(3)(b)(i) substituted (25.9.1991) by [Agricultural Holdings \(Scotland\) Act 1991 \(c. 55, SIF 2:3\)](#), [ss. 88\(1\), 89\(2\)](#), [Sch. 11 para. 24\(a\)](#) (with s. 45(3), Sch. 12 para. 3)
- F4** Words added by [Law Reform \(Miscellaneous Provisions\)\(Scotland\) Act 1968 \(c. 70\)](#), [s. 8](#), Sch. 2 Pt. I para. 22(a)
- F5** Words in s. 16(2) substituted (28.1.2008) by [Crofting Reform etc. Act 2007 \(asp 7\)](#), [ss. 15\(2\)](#), 43 (with [ss. 40,43\(2\)](#)); S.S.I. 2007/568, [art. 2](#)
- F6** S. 16(2A) inserted (28.1.2008) by [Crofting Reform etc. Act 2007 \(asp 7\)](#), [ss. 15\(3\)](#), 43 (with [ss. 40,43\(2\)](#)); S.S.I. 2007/568, [art. 2](#)
- F7** Words in s. 16(3) inserted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), [ss. 94, 95\(3\)\(4\)](#), [Sch. para. 2\(1\)\(b\)\(i\)](#) (with s. 95(2)); S.S.I. 2003/548, [art. 2\(i\)](#) (with art. 3, Sch.)
- F8** Words in s. 16(3)(b) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), [ss. 94, 95\(3\)\(4\)](#), [Sch. para. 2\(1\)\(b\)\(ii\)](#) (with s. 95(2)); S.S.I. 2003/548, [art. 2\(i\)](#) (with art. 3, Sch.)
- F9** S. 16(3)(b)(ia)(ib) added by [Law Reform \(Miscellaneous Provisions\)\(Scotland\) Act 1968 \(c. 70\)](#), [s. 8](#), Sch. 2 Pt. I para. 23
- F10** S. 16(3)(b)(ia) repealed (28.1.2008) by [Crofting Reform etc. Act 2007 \(asp 7\)](#), [ss. 42, 43\(3\)](#), [Sch. 2](#) (with [ss. 40,43\(2\)](#)); S.S.I. 2007/568, [art. 2](#)

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- F11** Words in s. 16(3)(b)(ib) repealed (28.1.2008) by Crofting Reform etc. Act 2007 (asp 7), ss. 42, 43, **Sch. 2** (with ss. 40,43(2)); S.S.I. 2007/568, **art. 2**
- F12** S. 16(4A)-(4E) inserted (27.11.2003) by Agricultural Holdings (Scotland) Act 2003 (asp 11), **ss. 20, 95(3)(4)** (with s. 95(2)); S.S.I. 2003/548, **art. 2(a)** (with art. 3, Sch.)
- F13** Words inserted by Law Reform (Miscellaneous Provisions)(Scotland) Act 1968 (c. 70), s. 8 Sch. 2 Pt. I para. 24
- F14** Words in s. 16(6)(b) substituted (25.9.1991) by Agricultural Holdings (Scotland) Act 1991 (c. 55, SIF 2:3), ss. 88(1), 89(2), **Sch. 11 para. 24(b)** (with s. 45(3), Sch. 12 para. 3)
- F15** Words in s. 16(6) substituted (27.11.2003) by Agricultural Holdings (Scotland) Act 2003 (asp 11), ss. 94, 95(3)(4), **Sch. para. 2(1)(c)(i)** (with s. 95(2)); S.S.I. 2003/548, **art. 2(i)** (with art. 3, Sch.)
- F16** Words in s. 16(6) substituted (27.11.2003) by Agricultural Holdings (Scotland) Act 2003 (asp 11), ss. 94, 95(3)(4), **Sch. para. 2(1)(c)(ii)** (with s. 95(2)); S.S.I. 2003/548, **art. 2(i)** (with art. 3, Sch.)
- F17** Words in s. 16(6) repealed (27.11.2003) by Agricultural Holdings (Scotland) Act 2003 (asp 11), ss. 94, 95(3)(4), **Sch. para. 2(1)(c)(iii)** (with s. 95(2)); S.S.I. 2003/548, **art. 2(i)** (with art. 3, Sch.)
- F18** Words in s. 16(8) substituted (25.9.1991) by Agricultural Holdings (Scotland) Act 1991 (c. 55, SIF 2:3), ss. 88(1), 89(2), **Sch. 11 para. 24(c)** (with s. 45(3), Sch. 12 para. 3)
- F19** Words in s. 16(8) inserted (27.11.2003) by Agricultural Holdings (Scotland) Act 2003 (asp 11), ss. 94, 95(3)(4), **Sch. para. 2(1)(d)** (with s. 95(2)); S.S.I. 2003/548, **art. 2(i)** (with art. 3, Sch.)
- F20** Words added by Law Reform (Miscellaneous Provisions)(Scotland) Act 1968 (c. 70), s. 8, Sch. 2 Pt. I para. 25
- F21** Words in s. 16(8A) inserted (27.11.2003) by Agricultural Holdings (Scotland) Act 2003 (asp 11), ss. 94, 95(3)(4), **Sch. para. 2(1)(e)** (with s. 95(2)); S.S.I. 2003/548, **art. 2(i)** (with art. 3, Sch.)
- F22** S. 19(9): words in definition of "agricultural lease" substituted (27.11.2003) by Agricultural Holdings (Scotland) Act 2003 (asp 11), ss. 94, 95(3)(4), **Sch. para. 2(1)(f)(i)** (with s. 95(2)); S.S.I. 2003/548, **art. 2(i)** (with art. 3, Sch.)
- F23** Words in s. 16(9) substituted (28.1.2008) by Crofting Reform etc. Act 2007 (asp 7), **ss. 15(4)**, 43 (with ss. 40,43(2)); S.S.I. 2007/568, **art. 2**
- F24** S. 16(9): definition of "the 1991 Act" substituted (25.9.1991) for definition of "the Act of 1949" by Agricultural Holdings (Scotland) Act 1991 (c. 55, SIF 2:3), ss. 88(1), 89(2), **Sch. 11 para. 24(d)(ii)** (with s. 45(3), Sch. 12 para. 3)
- F25** S. 16(9): definition of "the 2003 Act" inserted (27.11.2003) by Agricultural Holdings (Scotland) Act 2003 (asp 11), ss. 94, 95(3)(4), **Sch. para. 2(1)(f)(ii)** (with s. 95(2)); S.S.I. 2003/548, **art. 2(i)** (with art. 3, Sch.)
- F26** S. 16(9): definition of "the Act of 1955" added by Law Reform (Miscellaneous Provisions)(Scotland) Act 1968 (c. 70), s. 8, Sch. 2 Pt. I para. 26(b)
- F27** S. 16(9): definition of "1991 Act tenancy" inserted (27.11.2003) by Agricultural Holdings (Scotland) Act 2003 (asp 11), ss. 94, 95(3)(4), **Sch. para. 2(1)(f)(iii)** (with s. 95(2)); S.S.I. 2003/548, **art. 2(i)** (with art. 3, Sch.)

#### Marginal Citations

- M1** 1886 c. 29.  
**M2** 1931 c. 44.  
**M3** 1955 c. 21.

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