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 to legitim out of their deceased parents' estates; to amend the law of Scotland with respect to the construction of certain 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 maters aforesaid. 25th October 1968.

Editorial Information

X1 The text of ss. 1–4, 7, 8, 19, 22, Sch. 1, Sch. 2 Pt. I paras. 22–29, Pt. II (in part) and Sch. 3 was taken from SIF Group 116:2 (Succession: Confirmation, Scotland); ss. 5, 6, 22(1)(2)(4)(5) from SIF Group 49:8 (Family Law: Legitimacy and Age of Majority, Scotland); ss. 9–17, 22(1)(2)(4)(5) from SIF Group 47 (Evidence) and ss. 1–3, 16, 18–21, 22(1)(2)(4)(5), Sch. 1, Sch. 2 Pt. I, Sch. 3 from SIF Group 128 (Trusts and Liferents, Scotland); Provisions ommitted from SIF have been dealt with as referred to in other commentary.

Modifications etc. (not altering text)

C1 Words of enactment omitted under authority of Statute Law Revision Act 1948 (c. 62), **s. 3**

Commencement Information

I1 Act partly in force at 25.11.1968 see s. 22(5), Act wholly in force at 1.1.1969

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 is up to date with all changes known to be in force on or before 03 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

PART I

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

1—6. . . . . . [F1]

Textual Amendments

F1 Ss. 1–6 repealed by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), s. 10(2), **Sch. 2**

Protection of trustees and executors

[F2]**7** **Protection of trustees and executors.**

. . . . . .

Textual Amendments

F2 S. 7 repealed (1.11.2016) by Succession (Scotland) Act 2016 (asp 7), s. 31(2), **sch. para. 2**; S.S.I. 2016/210, reg. 2(1)(b) (with reg. 3(5))

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 [M1]Succession (Scotland) Act 1964 shall—

(a) apply to the tenancy of any croft within the meaning of section 3(1) of the [M2]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 [M3]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.

Marginal Citations

M1 1964 c. 41.

M2 1955 c. 21.

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 is up to date with all changes known to be in force on or before 03 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

M3 1961 c. 58.

PART III

AMENDMENT OF THE LAW OF EVIDENCE IN CIVIL PROCEEDINGS

9 . . . . . [F3]

Textual Amendments

F3 S. 9 repealed by Civil Evidence (Scotland) Act 1988 (c. 32, SIF 47), s. 10(1)(3), **Sch.**

Convictions, etc., as evidence in civil proceedings

10 Convictions as evidence in civil proceedings.

(1) If any civil proceedings the fact that a person has been convicted of an offence by or before any court in the United Kingdom or **[**[F4]of a service offence (anywhere)**]** shall (subject to subsection (3) of this section) be admissable 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 admissable 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 **[**[F5]of a service offence**]**—

(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 admissable evidence for the purposes of identifying the facts which constituted that offence, the contents of any document which is admissable 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 admissable 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 admissable 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 admissable 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—

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 is up to date with all changes known to be in force on or before 03 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) **[**[F6]section 82 of the Sentencing Code**]** (under which a conviction leading to probation or discharge is to be disregarded except as therein mentioned) ;

[[F7](aa) section 187 of the Armed Forces Act 2006 (which makes similar provision in respect of service convictions);**]**

(b) **[**[F8]section 191 of the [M4]Criminal Procedure (Scotland) Act 1975**]** (which makes similar provision in respect of convictions on indictment in Scotland) ;

(c) section 8 of the [M5]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 **[**[F8]section 383 of the said Act of 1975**]** shall be treated as a conviction.

[[F9](6) In this section—

"service offence" has the same meaning as in the Armed Forces Act 2006;

"conviction" includes anything that under section 376(1) and (2) of that Act is to be treated as a conviction, and "convicted" is to be read accordingly.**]**

Textual Amendments

F4 Words in s. 10(1) substituted (31.10.2009) by The Armed Forces Act 2006 (Consequential Amendments) Order 2009 (S.I. 2009/2054), art. 2, **Sch. 1 para. 6(2)**

F5 Words in s. 10(2) substituted (31.10.2009) by The Armed Forces Act 2006 (Consequential Amendments) Order 2009 (S.I. 2009/2054), art. 2, **Sch. 1 para. 6(3)**

F6 Words in s. 10(5)(a) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 22** (with Sch. 27); S.I. 2020/1236, reg. 2

F7 S. 10(5)(aa) inserted (31.10.2009) by The Armed Forces Act 2006 (Consequential Amendments) Order 2009 (S.I. 2009/2054), art. 2, **Sch. 1 para. 6(4)**

F8 Words substituted by virtue of Interpretation Act 1889 (c. 63), **s. 38(1)**

F9 S. 10(6) substituted (31.10.2009) by The Armed Forces Act 2006 (Consequential Amendments) Order 2009 (S.I. 2009/2054), art. 2, **Sch. 1 para. 6(5)** (with Sch. 2 para. 2)

Modifications etc. (not altering text)

C2 S. 10 extended by Fair Trading Act 1973 (c. 41), **s. 36(1)**

C3 S. 10 extended by S.R. 1983/153, **art. 18** and S.I. 1983/887, **art. 18**

C4 S. 10 explained (1.4.1996) by 1995 c. 43, **s. 46(13)**

C5 S. 10 extended (31.3.1996) by 1995 c. 20, **s. 112(13)** (which s. 112 was repealed (1.4.1996) by 1995 c. 40, ss. 4, 6(1), Sch. 3 Pt. II para. 16(3), **Sch. 5**)
S. 10 extended (20.6.2003) by 2002 c. 40, ss. 228(1)(b), 279; S.I. 2003/1397, **art. 2**, Sch.

Marginal Citations

M4 1975 c. 21.

M5 1950 c. 7 (N.I.).

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, . . . [F10]

(b) . . . . . [F10]

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 is up to date with all changes known to be in force on or before 03 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

shall (subject to subsection (3) of this section) be admissable 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 . . . [F11], whether or not he offered any defence to the allegation of adultery . . . [F11] and whether or not he is a party to the civil proceedings ; but no finding other than a subsisting one shall be admissable in evidence by virtue of this section.

(2) If 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 . . . [F11]—

(a) he shall be taken to have committed the adultery to which the finding relates . . . [F11], unless the contrary is proved ; and

(b) without prejudice to the reception of any other admissable 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 . . . [F11] proceedings in question shall be admissable 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 . . . [F11] 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 **[**[F12]receiving evidence from the pursuer**]**.

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

(b) . . . . . [F13]

Textual Amendments

F10 S. 11(1)(*b*) and word "and" immediately preceding it repealed by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), ss. 9, 10(2), **Sch. 2**

F11 Words repealed by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), ss. 9, 10(2), **Sch. 2**

F12 Words substituted by Divorce (Scotland) Act 1976 (c. 39), **Sch. 1 para. 4**

F13 S. 11(6)(*b*) repealed by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), ss. 9, 10(2), **Sch. 2**

12 Conclusiveness of convictions for purposes of defamation actions.

(1) In an action for defamation in which the question whether **[**[F14]the pursuer**]** 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, **[**[F14]he**]** stands convicted of that offence shall be conclusive evidence that he committed that offence ; and his conviction thereof shall be admissible in evidence accordingly.

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 is up to date with all changes known to be in force on or before 03 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) In any such action as aforesaid in which by virtue of this section **[**[F14]the pursuer**]** is proved to have been convicted of an offence, the contents of any document which is admissable as evidence of the conviction, and the contents of the complaint, information, indictment or charge-sheet on which **[**[F14]he**]** was convicted, shall, without prejudice to the reception of any other admissable evidence for the purpose of identifying the facts which constituted that offence, be admissable in evidence for the purpose of identifying those facts.

[[F15](2A) In the case of an action for defamation in which there is more than one pursuer—

(a) the references in subsections (1) and (2) above to the pursuer shall be construed as references to any of the pursuers, and

(b) proof that any of the pursuers stands convicted of an offence shall be conclusive evidence that he committed that offence so far as that fact is relevant to any issue arising in relation to his cause of action or that of any other pursuer.**]**

(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 **[**[F16](in the case of a service offence) a conviction (anywhere) of that service offence**]**.

(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 section (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.

Textual Amendments

F14 Words in S. 12(1)(2) substituted (4.9.1996) by 1996 c. 31, **ss. 12(2)**, 19 (with s. 20(2))

F15 S. 12(2A) inserted (4.9.1996) by 1996 c. 31, **ss. 12(2)**, 19 (with s. 20(2))

F16 Words in s. 12(3) substituted (31.10.2009) by The Armed Forces Act 2006 (Consequential Amendments) Order 2009 (S.I. 2009/2054), art. 2, **Sch. 1 para. 6(6)**

13—16. . . . . . [F17]

Textual Amendments

F17 Ss. 13–16 repealed by Civil Evidence (Scotland) Act 1988 (c. 32, SIF 47), s. 10(1)(3), **Sch.**

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,—

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 is up to date with all changes known to be in force on or before 03 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(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 ailment 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—

. . . [F18]

"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 ;

"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.

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 is up to date with all changes known to be in force on or before 03 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(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 admissable (whether generally or for any particular purpose) in those proceedings.

Textual Amendments

F18 Definition repealed by Civil Evidence (Scotland) Act 1988 (c. 32, SIF 47), s. 10(1)(3), **Sch.**

Modifications etc. (not altering text)

C6 S. 17(4) applied by 1988 c. 52, s. 46B(4) (as inserted (11.4.2003) by 1999 c. 12, ss. 4, 9(2); S.I. 2003/1095, **art. 2**)

C7 S. 17(4) applied by Finance Act 1988 (c. 39, SIF 63:1), **s. 127(5)**(*a*)

C8 S. 17(4) applied (1.9.1994) by 1994 c. 22, **s. 52(4)(b)(5)** (with s. 57(4))

C9 S. 17(4) applied by 1969 c. 27, **s. 27(4)(b)** (as substituted (31.1.1997) by 1995 c. 38, s. 15(1), **Sch. 1 para. 5(3)** (with ss. 1(3), 6(4)(5), 14); S.I. 1996/3217, **art. 2**)

C10 S. 17(4) applied by 1994 c. 22, **s. 52(4)** (as substituted (31.1.1997) by 1995 c. 38, s. 15(1), **Sch. 1 para. 19** (with ss. 1(3), 6(4)(5), 14); S.I. 1996/3217, **art. 2**)

PART IV

MISCELLANEOUS AMENDMENTS OF 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 interst, 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.

(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) [F19] . . . . . .

(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 [M6]Entail Amendment Act 1848 and section 9 of the [M7]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—

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 is up to date with all changes known to be in force on or before 03 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(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.

Textual Amendments

F19 S. 18(2)(c) repealed (28.11.2004) by 2000 asp 5, ss. 76(2), 77(2), Sch. 13 Pt. 1 (with ss. 58, 62, 75); S.S.I. 2003/456, **art. 2**

Marginal Citations

M6 1848 c. 36.

M7 1921 c. 58.

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

Section 15(1) of the [M8]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)) ".

Modifications etc. (not altering text)

C11 The text of ss. 19–21 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

M8 1964 c. 41.

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

Section 4 of the [M9]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

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 is up to date with all changes known to be in force on or before 03 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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.”.

Modifications etc. (not altering text)

C12 The text of ss. 19–21 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

M9 1940 c. 42.

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

Section 7 of the [M10]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.

Modifications etc. (not altering text)

C13 The text of ss. 19–21 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

M10 1871 c. 31.

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 [M11]Crofters (Scotland) Act 1955 or the [M12]Succession (Scotland) Act 1964 shall have

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 is up to date with all changes known to be in force on or before 03 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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.

Modifications etc. (not altering text)

C14 Power of appointment conferred by s. 22(5) fully exercised: S.I. 1968/1958, 1969/1609

Marginal Citations

M11 1955 c. 21.

M12 1964 c. 41.

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 is up to date with all changes known to be in force on or before 03 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

SCHEDULES

SCHEDULE 1

. . . [F20]

Textual Amendments

F20 Sch. 1 repealed by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), s. 10(2), **Sch. 2**

SCHEDULE 2

Section 8.

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

PART I

MODIFICATION OF ENACTMENTS

Modifications etc. (not altering text)

C15 The text of Sch. 2 Pt. I and Pt II (except the entry relating to s. 16 of the Succession (Scotland) Act 1964)) and Sch. 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.

THE CROFTERS (SCOTLAND) ACT 1955(3 &4 ELIZ. 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 [M13]Succession (Scotland) Act 1964.".

Marginal Citations

M13 1964 c. 41

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.".

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 is up to date with all changes known to be in force on or before 03 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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: —

"(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

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 is up to date with all changes known to be in force on or before 03 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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 nominatig 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:—

"(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.".

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,

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 is up to date with all changes known to be in force on or before 03 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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)—

(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 seccion 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,".

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 is up to date with all changes known to be in force on or before 03 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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,

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:—

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 is up to date with all changes known to be in force on or before 03 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

"(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".

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 is up to date with all changes known to be in force on or before 03 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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

Modifications etc. (not altering text)

C16 The text of Sch. 2 Pt. I and Pt II (except the entry relating to s. 16 of the Succession (Scotland) Act 1964)) and Sch. 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.

THE CROFTERS (SCOTLAND) ACT 1955 (3 & 4 ELIZ. 2. C. 21)

Section 11

Succession to croft.

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 [M14]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—

(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,

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 is up to date with all changes known to be in force on or before 03 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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.

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 is up to date with all changes known to be in force on or before 03 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) If at the expiry of one month from the end of the period referred to in section 16(3)(b) of the [M15]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 [M16]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—

(a) whose tenancy of the croft in question began before the commencement of the [M17]Crofters (Scotland) Act 1961, or

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 is up to date with all changes known to be in force on or before 03 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(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.

Marginal Citations

M14 1964 c. 41
M15 1964 c. 41
M16 1961 c. 58
M17 1961 c. 58

Section 14

Compensation for improvements and compensation for deterioration or damage.

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 [M18]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 aid 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.

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 is up to date with all changes known to be in force on or before 03 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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—

(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 [M19]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 in pursuance of section 16(3) of the [M20]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 [M21]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,

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 is up to date with all changes known to be in force on or before 03 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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.

Marginal Citations

M18 1964 c. 41
M19 1964 c. 41
M20 1964 c. 41
M21 1949 c. 75

THE CROFTERS (SCOTLAND) ACT 1961(9 & 10 ELIZ. 2. C. 58)

Section 6

Assessment of compensation for improvements.

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 [M22]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

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 is up to date with all changes known to be in force on or before 03 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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.

(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.

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 is up to date with all changes known to be in force on or before 03 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Marginal Citations
M22 1964 c. 41

THE SUCCESSION (SCOTLAND) ACT 1964(1964 C. 41)

Section 16

Provisions relating to leases.

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 entiitled 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.

(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,

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 is up to date with all changes known to be in force on or before 03 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(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,

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

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 is up to date with all changes known to be in force on or before 03 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(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 [M23]Crofters Holdings (Scotland) Act 1886;

"the Act of 1931" means the [M24]Small Landholders and Agricultural Holdings (Scotland) Act 1931;

"the Act of 1949" means the [M25]Agricultural Holdings (Scotland) Act 1949;

"the Act of 1955" means the [M26]Crofters (Scotland) Act 1955;

"lease" includes tenancy.

Marginal Citations

M23 1886 c. 29
M24 1931 c. 44
M25 1949 c. 75
M26 1955 c. 21

SCHEDULE 3

Section 22.

ENACTMENTS REPEALED

Modifications etc. (not altering text)

C17 The text of Sch. 2 Pt. I and Pt II (except the entry relating to s. 16 of the Succession (Scotland) Act 1964)) and Sch. 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.

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

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 is up to date with all changes known to be in force on or before 03 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

		the meaning of section 3 of the Crofters (Scotland) Act 1955) ”.

Status:
Point in time view as at 01/12/2020.

Changes to legislation:
Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 is up to date with all changes known to be in force on or before 03 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.