

SCHEDULES

SCHEDULE 2

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

PART II

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

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

Section 11

- 11 (1) Where, owing to the failure of a crofter to bequeath the tenancy of his croft or of such a bequest to receive effect, the right to the tenancy of the croft falls to be treated as intestate estate of the deceased crofter in accordance with Part I of the Succession (Scotland) Act 1964, and the tenancy is transferred in pursuance of section 16(2) of that Act, the executor of the deceased crofter shall as soon as may be furnish particulars of the transferee to the landlord, who shall accept the transferee as tenant; and the landlord shall notify the Commission accordingly.
- (3) If at the expiry of three months from the relevant date, that is to say—
- (a) where the deceased crofter has exercised his power to bequeath the tenancy of the croft in favour of a person not being a member of the deceased crofter's family and the Commission, on application made to them by the legatee, have refused to determine that the bequest shall not be null and void, from the date of the Commission's refusal;
 - (b) where the deceased crofter has otherwise failed to bequeath the tenancy, from the date of death of the deceased crofter ;
 - (c) where the deceased crofter has bequeathed, the tenancy and the bequest has become null and void under section 10(2) of this Act, from the date on which the bequest became null and void as aforesaid ;
 - (d) where the deceased crofter has bequeathed the tenancy and the Commission have declared the bequest to be null and void under section 10(4) of this Act, from the date on which the Commission notified the landlord and the legatee to that effect,
- the executor has not furnished to the landlord particulars of any transferee in accordance with subsection (1) of this section, the landlord shall forthwith notify the Commission to that effect.
- (4) If at the expiry of the three months aforesaid it appears to the Commission, whether from a notification under subsection (3) of this section or otherwise, that the executor has not furnished to the landlord particulars of any transferee in accordance with subsection (1) of this section, the Commission may give notice in such manner as they may think proper, whether by advertisement or otherwise, to persons who may claim to be entitled—

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- (a) to succeed to the intestate estate of the deceased crofter, or
 - (b) to claim legal rights or the prior rights of a surviving spouse out of that estate,
- requiring them if they desire to have the tenancy of the croft transferred to them in or towards satisfaction of their entitlement or claim to give intimation accordingly to the Commission before such date as may be specified in the notice, being a date not earlier than six months after the relevant date within the meaning of subsection (3) of this section ; and the Commission may, subject to the provisions of subsection (4A) of this section, nominate as successor to the tenancy any one of the persons who have so given intimation.
- (4A) The Commission shall, before nominating any person as successor to the tenancy of the croft in pursuance of subsection (4) of this section, consult with the executor (if any) of the deceased crofter, and the Commission shall not nominate any person as successor unless it appears to them—
- (a) that that person is a person entitled to succeed to the intestate estate of the deceased crofter, or to claim legal rights or the prior rights of a surviving spouse out of that estate, and
 - (b) that adequate provision is being, or will be, made for the settlement of the entitlement or claim in the said intestate estate of any other person who is known to them to be entitled to succeed to, or to claim any such rights out of, that estate.
- (4B) The Commission shall give notice to the landlord of any person nominated by them in pursuance of subsection (4) of this section, and the landlord shall accept that person as successor to the tenancy of the croft.
- (4C) The nomination by the Commission, in pursuance of subsection (4) of this section, of any person as successor to the tenancy of the croft shall transfer the interest of the tenant under that tenancy to that person, and such transfer shall be in or towards satisfaction of that person's entitlement or claim in the intestate estate of the deceased crofter.
- (5) If at the expiry of one month from the end of the period referred to in section 16(3)(b) of the Succession (Scotland) Act 1964 the executor has not furnished to the landlord particulars of any transferee in accordance with subsection (1) of this section and the Commission have not nominated any person as successor under subsection (4) thereof, the Commission may declare the croft to be vacant and, if they do so, shall notify the landlord accordingly.
- (6) Where the Commission have under the foregoing provisions of this section nominated a person as successor to the tenancy or, as the case may be, have declared the croft to be vacant, any right of any person (other than the person so nominated) in, or in relation to, the tenancy shall be extinguished.
- (7) Where a croft has been declared under subsection (5) of this section to be vacant, the landlord shall be liable—
- (a) if the deceased crofter was at the date of his death under any liability to the Secretary of State in respect of any loan, to pay to the Secretary of State the whole or so much of the value of the improvements on the croft as will discharge the liability of the deceased crofter, and to pay to the executor of the deceased crofter, if a claim is made in that behalf not later than twelve months after the date on which the croft was declared to be vacant, any balance of the value aforesaid ;

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- (b) if at the date of his death the deceased crofter was not under any such liability to the Secretary of State and a claim is made in that behalf as aforesaid, to pay to the executor of the deceased crofter the value of the improvements on the croft.

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

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

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

- (7B) The reference in the last foregoing subsection to a crofter who immediately before his death was qualified is a reference to a crofter—
 - (a) whose tenancy of the croft in question began before the commencement of the Crofters (Scotland) Act 1961, or
 - (b) who held the tenancy of such croft as statutory successor to his immediate predecessor in the tenancy and each of whose predecessors (being in each case a person whose tenancy of the croft began after the commencement of the said Act) held such tenancy as statutory successor to his immediate predecessor.

Section 14

- 14 (1) Where—
- (i) a crofter renounces his tenancy or is removed from his croft, or
 - (ii) the tenancy of a croft, being a tenancy the interest of the tenant under which is comprised in the estate of a deceased crofter, is terminated in pursuance of section 16(3) of the Succession (Scotland) Act 1964,
- the crofter or, as the case may be, the executor of the deceased crofter shall, subject to the provisions of this Act, be entitled to compensation for any permanent improvement made on the croft if—
- (a) the improvement is suitable to the croft; and
 - (b) the improvement was executed or paid for by the crofter or, as the case may be, the deceased crofter, or any of the predecessors of the crofter or of the deceased crofter in the tenancy; and
 - (c) either the improvement was executed otherwise than in pursuance of a specific agreement in writing under which the crofter or, as the case may

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be, the deceased crofter was bound to execute the improvement or, if the improvement was executed in pursuance of such an agreement, the crofter has not received or, as the case may be, the deceased crofter did not receive and his executor has not received, by way of reduction of rent or otherwise, fair consideration for the improvement

(2) Where—

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

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

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

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

(6) Where—

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

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

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

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

(9) Where—

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

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

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

Provided that—

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

- (11) Notwithstanding anything in this section—

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

shall not be entitled, in respect of any permanent improvement made or begun before the commencement of this Act, to any compensation to which he would not have been entitled if his tenancy had expired immediately before the commencement of this Act.

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

Section 6

- 6 (1) The amount of any compensation payable under subsection (1) of section fourteen of the Act of 1955 to a crofter who renounces his tenancy or is removed from his croft after the commencement of this Act, or to the executor of a deceased crofter, in respect of a permanent improvement on the croft shall be a sum equal to—
- (a) the value of that improvement as at the date when—
 - (i) the crofter renounced his tenancy, or
 - (ii) the crofter was removed from the croft, or
 - (iii) the tenancy of the croft was terminated in pursuance of section 16(3) of the Succession (Scotland) Act 1964,as the case may be, calculated in accordance with the provisions of the next following subsection, less
 - (b) the value of any assistance or consideration which may be proved to have been given by the landlord of the croft or any of his predecessors in title in respect of the improvement.

- (2) For the purposes of the foregoing subsection, the value of an improvement on any croft shall be taken to be the amount, if any, which, having regard to the location of the croft and any other circumstances which might affect the demand for the tenancy thereof, the landlord might reasonably be expected to receive in respect of the improvement from a person who might reasonably be expected to obtain the tenancy of the croft if the croft were offered on the open market for letting as a separate croft with entry on the date referred to in paragraph (a) of the foregoing subsection.
- (3) Where compensation falls to be assessed under the two foregoing subsections in respect of any permanent improvement on a croft and the amount of such compensation is fixed or assessed by the Land Court under subsection (8) of section fourteen of the Act of 1955 or paragraph (a) of subsection (9) of section nineteen of that Act or paragraph (a) of subsection (3) of section nine of this Act, then if the crofter or, as the case may be, the executor of the deceased crofter is qualified as mentioned in the next following subsection he may request the Land Court to determine the amount which would have been payable by way of compensation in respect of that improvement if this Act "had not been passed, and if the amount last mentioned is greater than the amount fixed or assessed by the Land Court as aforesaid, the difference between the two said amounts shall be payable to the crofter or executor by the Secretary of State:

Provided that—

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

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occurring before the commencement of this Act, or the renunciation of his tenancy by a cottar, or the removal of a cottar from his subject, before such commencement.

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

Section 16

16 (1) This section applies to, any interest, being the interest of a tenant under a lease, which is comprised in the estate of a deceased person and has accordingly vested in the deceased's executor by virtue of section 14 of this Act; and in the following provisions of this section "interest" means an interest to which this section applies.

(2) Where an interest—

- (a) is not the subject of a valid bequest by the deceased, or
- (b) is the subject of such a bequest, but the bequest is not accepted by the legatee, or
- (c) being an interest under an agricultural lease, is the subject of such a bequest, but the bequest is declared null and void in pursuance of section 16 of the Act of 1886 or section 20 of the Act of 1949 or becomes null and void under section 10 of the Act of 1955,

and there is among the conditions of the lease (whether expressly or by implication) a condition prohibiting assignation of the interest, the executor shall be entitled, notwithstanding that condition, to transfer the interest to any one of the persons entitled to succeed to the deceased's intestate estate, or to claim legal rights or the prior rights of a surviving spouse out of the estate, in or towards satisfaction of that person's entitlement or claim ; but shall not be entitled to transfer the interest to any other person without the consent—

- (i) in the case of an interest under an agricultural lease, being a lease of a croft within the meaning of section 3(1) of the Act of 1955, of the Crofters Commission ;
- (ii) in any other case, of the landlord.

(3) If in the case of any interest—

- (a) at any time the executor is satisfied that the interest cannot be disposed of according to law and so informs the landlord, or
- (b) the interest is not so disposed of within a period of one year or such longer period as may be fixed by agreement between the landlord and the executor or, failing agreement, by the sheriff on summary application by the executor—
 - (i) in the case of an interest under an agricultural lease which is the subject of a petition to the Land Court under section 16 of the Act of 1886 or an application to that court under section 20 of the Act of 1949, from the date of the determination or withdrawal of the petition or, as the case may be, the application,
 - (ia) in the case of an interest under an agricultural lease which is the subject of an application by the legatee to the Crofters Commission under section 10(1) of the Act of 1955, from the date of any refusal by the Commission to determine that the bequest shall not be null and void,
 - (ib) in the case of an interest under an agricultural lease which is the subject of an intimation of objection by the landlord to the legatee and the Crofters Commission under section 10(3) of the Act of 1955,

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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 (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 ;

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- " the Act of 1886 " means the Crofters Holdings (Scotland) Act 1886 ;
- " the Act of 1931 " means the Small Landholders and Agricultural Holdings (Scotland) Act 1931 ;
- " the Act of 1949 " means the Agricultural Holdings (Scotland) Act 1949 ;
- " the Act of 1955 " means the Crofters (Scotland) Act 1955 ;
- " lease " includes tenancy.