

SCHEDULES

SCHEDULE 2

Section 11.

GROUND FOR POSSESSION OF DWELLING-HOUSES LET ON OR SUBJECT TO PROTECTED OR STATUTORY TENANCIES

PART I

CASES IN WHICH COURT MAY ORDER POSSESSION

Case 1

Where any rent lawfully due from the tenant has not been paid, or any obligation of the protected or statutory tenancy which arises under this Act, or—

- (a) in the case of a protected tenancy, any other obligation of the tenancy, in so far as it is consistent with the provisions of Part II of this Act, or
- (b) in the case of a statutory tenancy, any other obligation of the previous protected tenancy which is applicable to the statutory tenancy,

has been broken or not performed.

In determining whether any rent lawfully due from a tenant has been paid in any case where the rent is payable in advance, any sums paid by the tenant in satisfaction of a decree or decrees for rent and expenses shall, if the action in which any such decree was obtained was raised before the expiry of the period in respect of which the rent sued for was due, be imputed wholly to rent and not to expenses.

Case 2

Where the tenant or any person residing or lodging with him or any sub-tenant of his has been guilty of conduct which is a nuisance or annoyance to adjoining occupiers, or has been convicted of using the dwelling-house or allowing the dwelling-house to be used for immoral or illegal purposes.

Case 3

Where the condition of the dwelling-house has, in the opinion of the court, deteriorated owing to acts of waste by, or the neglect or default of, the tenant or any person residing or lodging with him or any sub-tenant of his and, in the case of any act of waste by, or the neglect or default of, a person lodging with title tenant or a sub-tenant of his, where the court is satisfied that the tenant has not, before the making of the order in question, taken such steps as he ought reasonably to have taken for the removal of the lodger or sub-tenant, as the case may be.

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Case 4

Where the condition of any furniture provided for use under the tenancy has, in the opinion of the court, deteriorated owing to ill-treatment by the tenant or any person residing or lodging with him or any sub-tenant of his and, in the case of any ill-treatment by a person lodging with the tenant or a sub-tenant of his, where the court is satisfied that the tenant has not, before the making of the order in question, taken such steps as he ought reasonably to have taken for the removal of the lodger or sub-tenant, as the case may be.

Case 5

Where the tenant has given notice to quit and, in consequence of that notice, the landlord has contracted to sell or let the dwelling-house or has taken any other steps as the result of which he would, in the opinion of the court, be seriously prejudiced if he could not obtain possession.

Case 6

Where, without the consent of the landlord, the tenant has, at any time after 8th December 1965 or, in the case of a regulated furnished tenancy, after 14th August 1974 or, in the case of a tenancy which became a regulated tenancy by virtue of section 4(3) above, after 30th November 1980, assigned or sub-let the whole of the dwelling-house or sub-let part of the dwelling-house the remainder already being sub-let.

Case 7

Where the dwelling-house is reasonably required by the landlord for occupation as a residence for some person engaged in his whole-time employment, or in the whole-time employment of some tenant from him or with whom, conditional on housing accommodation being provided, a contract for such employment has been entered into, and either

- (a) the tenant was in the employment of the landlord or a former landlord, and the dwelling-house was let to him in consequence of that employment and he has ceased to be in that employment; or
- (b) the court is satisfied by a certificate of the Secretary of State that the person for whose occupation the dwelling-house is required by the landlord is, or is to be, employed on work necessary for the proper working of an agricultural holding or as an estate workman on the maintenance and repair of the buildings, plant or equipment of agricultural holdings comprised in the estate.

Case 8

Where the dwelling-house is reasonably required by the landlord for occupation as a residence for—

- (a) himself, or
- (b) any son or daughter of his over 18 years of age, or
- (c) his father or mother, or
- (d) if the dwelling-house is let on or subject to a regulated tenancy, the father or mother of his wife or husband,

and the landlord did not become landlord by purchasing the dwelling-house or any interest therein after 23rd March 1965 or, in the case of a dwelling-house subject to a regulated furnished tenancy, after 24th May 1974 or, if the dwelling-house was on 7th November 1956 let on or subject to a controlled tenancy, after 7th November 1956.

Case 9

Where the court is satisfied that the rent charged by the tenant—

- (a) for any sub-let part of the dwelling-house which is a dwelling-house let on a protected tenancy or subject to a statutory tenancy is or was in excess of the maximum rent for the time being recoverable for that part, having regard to the provisions of Part IV of this Act, or
- (b) for any sub-let part of the dwelling-house which is subject to a contract to which Part VII of this Act applies is or was in excess of the maximum (if any) which it is lawful for the lessor, within the meaning of that Part, to require or receive having regard to the provisions of that Part.

Case 10

Where the dwelling-house is so overcrowded as to be dangerous or injurious to the health of the inmates, and the court is satisfied that the overcrowding could have been abated by the removal of any lodger or sub-tenant (not being a parent or child of the tenant) whom it would, having regard to all the circumstances of the case, including the question whether other accommodation is available for him, have been reasonable to remove, and that the tenant has not taken such steps as he ought reasonably to have taken for his removal.

PART II

CASES IN WHICH COURT MUST ORDER POSSESSION WHERE DWELLING-HOUSE SUBJECT TO REGULATED TENANCY

Case 11

Where a person who occupied the dwelling-house as his residence (in this Case referred to as "the owner-occupier") let it on a regulated tenancy and—

- (a) not later than the relevant date the landlord gave notice in writing to the tenant that possession might be recovered under this Case (notwithstanding, in the case of a notice given under this paragraph before 1st December 1980, that the notice may not have referred to any of sub-paragraphs (ii) to (vi) of paragraph (c)); and
- (b) the dwelling-house has not, since 8th December 1965 or, in the case of a dwelling-house subject to a regulated furnished tenancy, 14th August 1974, been let by the owner-occupier on a regulated tenancy with respect to which the condition mentioned in paragraph (a) above was not satisfied ; and
- (c) the court is satisfied that—
 - (i) the dwelling-house is required as a residence for the owner-occupier or any member of his family who resided with the owner-occupier when he last occupied the dwelling-house as a residence ; or
 - (ii) the owner-occupier has died, and the dwelling-house is required as a residence for a member of his family who was residing with him at the time of his death ; or
 - (iii) the owner-occupier has died, and the dwelling-house is required as a residence by a person inheriting the dwelling-house under the will of the owner-occupier or on his intestacy ; or
 - (iv) the owner-occupier has died and his personal representatives wish to dispose of the dwelling-house with vacant possession ; or

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- (v) the dwelling-house is not reasonably suitable to the needs of the owner-occupier, having regard to his place of work, and he requires it for the purpose of disposing of it with vacant possession and of using the proceeds of that disposal in acquiring as his residence a dwelling-house which is more suitable to those needs; or
- (vi) the dwelling-house is subject to a heritable security, granted before the creation of the tenancy, and as the result of a default by the debtor the creditor is entitled to sell the dwelling-house and requires it for the purpose of disposing of it with vacant possession in exercise of that entitlement:

Provided that if the court is of the opinion that, notwithstanding that the condition in paragraph (a) or paragraph (b) above is not complied with, it is just and equitable to make an order for possession of the dwelling-house, the court may dispense with the requirements of either or both of those paragraphs, as the case may require.

For the purposes of this Case, the giving of a notice before 14th August 1974 under section 73 above shall be treated in the case of a regulated furnished tenancy as compliance with paragraph (a) above.

Case 12

Where a person (in this Case referred to as " the owner ") who acquired the dwelling-house or any interest therein with a view to occupying it as his residence at such time as he might retire from regular employment let it on a regulated tenancy before he has so retired and—

- (a) not later than the relevant date the landlord gave notice in writing to the tenant that possession might be recovered under this Case (notwithstanding, in the case of a notice given under this paragraph before 1st December 1980, that the notice may not have referred to any of sub-paragraphs (iii) to (v) of paragraph (c)); and
- (b) the dwelling-house has not since 14th August 1974 been let by the owner on a protected tenancy with respect to which the condition mentioned in paragraph (a) above was not satisfied; and
- (c) the court is satisfied—
 - (i) that the owner has retired from regular employment and requires the dwelling-house as a residence ; or
 - (ii) that the owner has died and the dwelling-house is required as a residence for a member of his family who was residing with him at the time of his death or for a person inheriting the dwelling-house under the will of the owner or on his intestacy ; or
 - (iii) that the owner has died and his personal representatives wish to dispose of the dwelling-house with vacant possession; or
 - (iv) that the dwelling-house is subject to a heritable security, granted before the creation of the tenancy, and as the result of a default by the debtor the creditor is entitled to sell the dwelling-house and requires it for the purpose of disposing of it with vacant possession in exercise of that entitlement; or
 - (v) that the dwelling-house is no longer reasonably suitable to the needs of the owner on his retirement, and he requires it for the purpose of disposing of it with vacant possession and of using the proceeds of that disposal in acquiring for his retirement a dwelling-house which is more suitable to those needs:

Provided that if the court is of the opinion that, notwithstanding that the condition in paragraph (a) or paragraph (b) above is not complied with, it is just and equitable to make an

order for possession of the dwelling-house, the court may dispense with the requirements of either or both of those paragraphs, as the case may require.

Case 13

Where the dwelling-house is let under a tenancy for a specified period not exceeding eight months and—

- (a) not later than the relevant date the landlord gave notice in writing to the tenant that possession might be recovered under this Case; and
- (b) the dwelling-house was, at some time within the period of 12 months ending on the relevant date, occupied under a right to occupy it for a holiday ;

and for the purposes of this Case a tenancy shall be treated as being for a specified period—

- (i) of less than eight months, if it is determinable at the option of the landlord (other than in the event of an irritancy being incurred) before the expiration of eight months from the commencement of the period of the tenancy, and
- (ii) of eight months or more, if it confers on the tenant an option for renewal of the tenancy for a period which, together with the original period, amounts to eight months or more, and it is not determinable as mentioned in paragraph (i) above.

Case 14

Where the dwelling-house is let under a tenancy for a specified period not exceeding 12 months and—

- (a) not later than the relevant date the landlord gave notice in writing to the tenant that possession might be recovered under this Case ; and
- (b) at some time within the period of 12 months ending on the relevant date the dwelling-house was subject to such a tenancy as is referred to in section 2(1)(c) above ;

and for the purposes of this Case a tenancy shall be treated as being for a specified period—

- (i) of less than 12 months, if it is determinable at the option of the landlord (other than in the event of an irritancy being incurred) before the expiration of 12 months from the commencement of the period of the tenancy, and
- (ii) of 12 months or more, if it confers on the tenant an option for renewal of the tenancy for a period which, together with the original period, amounts to 12 months or more, and it is not determinable as mentioned in paragraph (i) above.

Case 15

Where—

- (a) the dwelling-house was let on a short tenancy within the meaning of section 9 above ; or
- (b) in the opinion of the Court it is just and equitable that the tenancy should be treated as a short tenancy within the meaning of the said section 9, notwithstanding that a requirement of subsection (1)(d) or (e) of that section has not been complied with,

and the short tenancy has terminated:

Provided that, where a further tenancy has been created by agreement between the landlord and the tenant no application for an order for possession under this Case shall be made before the end of the period of that tenancy.

Case 16

Where the dwelling-house is held for the purpose of being available for occupation by a minister or a full-time lay missionary of any religious denomination as a residence from which to perform the duties of his office and the dwelling-house has been let on a regulated tenancy, and—

- (a) not later than the relevant date, the tenant was given notice in writing that possession might be recovered under this Case, and
- (b) the court is satisfied that the dwelling-house is required for occupation by such a minister or missionary as such a residence.

Case 17

Where the dwelling-house was at any time occupied by a person under the terms of his employment as a person employed in agriculture and the dwelling-house has been let on a regulated tenancy, and—

- (a) the tenant neither is nor at any time was so employed by the landlord and is not the widow of a person who was so employed, and
- (b) not later than the relevant date, the tenant was given notice in writing that possession might be recovered under this Case, and
- (c) the court is satisfied that the dwelling-house is required for occupation by a person employed or to be employed by the landlord in agriculture;

and for the purposes of this Case "employed", "employment" and "agriculture" have the same meanings as in the Agricultural Wages (Scotland) Act 1949.

Case 18

Where proposals for amalgamation, approved for the purposes of a scheme under section 26 of the Agriculture Act 1967, have been carried out and, at the time when the proposals were submitted, the dwelling-house was occupied by a person responsible (whether as owner, tenant, or servant or agent of another) for the control of the farming of any part of the land comprised in the amalgamation, and

- (a) after the carrying out of the proposals, the dwelling-house was let on a regulated tenancy otherwise than to, or to the widow of, either a person ceasing to be so responsible as part of the amalgamation or a person who is, or at any time was, employed by the landlord in agriculture, and
- (b) not later than the relevant date, the tenant was given notice in writing that possession might be recovered under this Case, and
- (c) the court is satisfied that the dwelling-house is required for occupation by a person employed or to be employed by the landlord in agriculture, and
- (d) the proceedings for possession are commenced by the landlord at any time during the period of five years beginning with the date on which the proposals for the amalgamation were approved or, if occupation of the dwelling-house after the amalgamation continued in, or was first taken by, a person ceasing to be responsible as mentioned in paragraph (a) above or his widow, during a period expiring three years after the date on which the dwelling-house next became unoccupied;

and for purposes of this Case "employed" and "agriculture" have the same meanings as in the Agricultural Wages (Scotland) Act 1949 and "amalgamation" has the same meaning as in Part II of the Agriculture Act 1967.

Case 19

Where a dwelling-house has been let on a regulated tenancy and—

- (a) the last occupier of the dwelling-house before the relevant date was a person, or the widow of a person, who was at some time during his occupation responsible (whether as owner, tenant, or servant or agent of another) for the control of the farming of land which formed, together with the dwelling-house, an agricultural unit within the meaning of the Agriculture (Scotland) Act 1948, and
- (b) the tenant is neither—
 - (i) a person, or the widow of a person, who is or has at any time been responsible for the control of the farming of any part of the said land, nor
 - (ii) a person, or the widow of a person, who is or at any time was employed by the landlord in agriculture, and
- (c) the creation of the tenancy was not preceded by the carrying out in connection with any of the said land of an amalgamation approved for the purposes of a scheme under section 26 of the Agriculture Act 1967, and
- (d) not later than the relevant date, the tenant was given notice in writing that possession might be recovered under this Case, and
- (e) the court is satisfied that the dwelling-house is required for occupation either by a person responsible or to be responsible (whether as owner, tenant, or servant or agent of another) for the control of the farming of any part of the said land or by a person employed or to be employed by the landlord in agriculture;

and for the purposes of this Case "employed" and "agriculture" have the same meanings as in the Agricultural Wages (Scotland) Act 1949 and "amalgamation" has the same meaning as in Part II of the Agriculture Act 1967.

Case 20

Where a dwelling-house has been designed or adapted for occupation by a person whose special needs require accommodation of the kind provided by the dwelling-house and—

- (a) there is no longer a person with such special needs occupying the dwelling-house; and
- (b) the court is satisfied that the landlord requires it for occupation (whether alone or with other members of his family) by a person who has such special needs.

Case 21

Where the dwelling-house is let by a person (in this Case referred to as "the owner") at any time after 30th November 1980 and—

- (a) at the time when the owner acquired the dwelling-house he was a member of the regular armed forces of the Crown;
- (b) at the relevant date the owner was a member of the regular armed forces of the Crown;
- (c) not later than the relevant date the owner gave notice in writing to the tenant that possession might be recovered under this Case;
- (d) the dwelling-house has not, since 1st December 1980, been let by the owner on a protected tenancy with respect to which the condition mentioned in paragraph (c) above was not satisfied; and
- (e) the court is of the opinion that—
 - (i) the dwelling-house is required as a residence for the owner; or

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- (ii) of the conditions set out in paragraph (c) of Case 11 of this Schedule one of those in sub-paragraphs (ii) to (vi) would be satisfied if the owner of the dwelling-house concerned was the owner occupier:

Provided that if the court is of the opinion that, notwithstanding that the condition in paragraph (c) or paragraph (d) above is not complied with, it is just and equitable to make an order for possession of the dwelling-house, the court may dispense with the requirements of either or both of these paragraphs, as the case may require. In this Case " regular armed forces of the Crown " has the same meaning as in section 1 of the House of Commons Disqualification Act 1975.

PART III

PROVISIONS APPLICABLE TO CASE 8 AND PART II ABOVE

- 1 A court shall not make an order for possession of a dwelling-house by reason only that the circumstances of the case fall within Case 8 in Part I of this Schedule if the court is satisfied that, having regard to all the circumstances of the case, including the question whether other accommodation is available for the landlord or the tenant, greater hardship would be caused by granting the order than by refusing to grant it
- 2 Any reference in Part II of this Schedule to the relevant date shall be construed as follows:—
- (a) except in the case of a regulated furnished tenancy, if the protected tenancy, or in the case of a statutory tenancy the previous contractual tenancy, was created before 8th December 1965, the relevant date means 7th June 1966 ;
 - (b) in the case of a regulated furnished tenancy, if the tenancy or, in the case of a statutory furnished tenancy, the previous contractual tenancy was created before 14th August 1974, the relevant date means 14th February 1975 ;
 - (c) in the case of a tenancy which became a regulated tenancy by virtue of section 4(3) above, the relevant date means 8th February 1981 ; and
 - (d) in any other case, the relevant date means the date of the commencement of the regulated tenancy in question.

PART IV

SUITABLE ALTERNATIVE ACCOMMODATION

- 1 For the purposes of section 11(1)(a) above, a certificate of the housing authority for the district in which the dwelling-house in question is situated, certifying that the authority will provide suitable alternative accommodation for the tenant by a date specified in the certificate, shall be conclusive evidence that suitable alternative accommodation will be available for him by that date.
- 2 Where no such certificate as is mentioned in paragraph 1 above is produced to the court, accommodation shall be deemed to be suitable for the purposes of section 11(1)(a) above if it consists of either—
- (a) premises which are to be let as a separate dwelling such that they will then be let on a protected tenancy, or

- (b) premises to be let as a separate dwelling on terms which will, in the opinion of the court, afford to the tenant security of tenure reasonably equivalent to the security afforded by Part II of this Act in the case of a protected tenancy, and, in the opinion of the court, the accommodation fulfils the relevant conditions as defined in paragraph 3 below.
- 3 (1) For the purposes of paragraph 2 above, the relevant conditions are that the accommodation is reasonably suitable to the needs of the tenant and his family as regards proximity to place of work, and either—
- (a) similar as regards rental and extent to the accommodation afforded by dwelling-houses provided in the neighbourhood by any housing authority for persons whose needs as regards extent are, in the opinion of the court, similar to those of the tenant and his family; or
- (b) reasonably suitable to the means of the tenant and to the needs of the tenant and his family as regards extent and character;
- and that if any furniture was provided for use under the protected or statutory tenancy in question, furniture is provided for use in the accommodation which is either similar to that so provided or is reasonably suitable to the needs of the tenant and his family.
- (2) For the purposes of sub-paragraph (1)(a) above, a certificate of a housing authority stating—
- (a) the extent of the accommodation afforded by dwelling-houses provided by the authority to meet the needs of tenants with families of such number as may be specified in the certificate, and
- (b) the amount of the rent charged by the authority for dwelling-houses affording accommodation of that extent,
- shall be conclusive evidence of the facts so stated.
- 4 Accommodation shall not be deemed to be suitable to the needs of the tenant and his family if the result of their occupation of the accommodation would be that it would be an overcrowded dwelling-house for the purposes of section 89 of the Housing (Scotland) Act 1966.
- 5 Any document purporting to be a certificate of a housing authority named therein issued for the purposes of this Schedule and to be signed by the clerk to that authority shall be received in evidence and, unless the contrary is shown, shall be deemed to be such a certificate without further proof.
- 6 In this Schedule " housing authority " means a local authority for the purposes of Part VII of the Housing (Scotland) Act 1966, and " district", in relation to such an authority, means the district for supplying the needs of which the authority has power under that Part of that Act