



Succession (Scotland) Act 1964

1964 CHAPTER 41

PART III

ADMINISTRATION AND WINDING UP OF ESTATES

[^{F1}16 Provisions relating to leases.

- (1) This section applies to any interest, being the interest of a tenant under a lease, which is comprised in the estate of a deceased person and has accordingly vested in the deceased's executor by virtue of section 14 of this Act; and in the following provisions of this section "interest" means an interest to which this section applies.
- (2) 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 [^{F2}section 11 of the 1991 Act]^{F3} 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

- [in the case of an interest under an agricultural lease, being a lease of a ^{F4}(i) 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—

Status: Point in time view as at 25/09/1991. This version of this provision has been superseded.

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

- (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 [^{F2}section 11 of the 1991 Act], from the date of the determination or withdrawal of the petition or, as the case may be, the application,
 - [in the case of an interest under an agricultural lease which is the
 - ^{F5}(ia) 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 [^{F6}or section 13 of the Act of 1955] to the Land Court for an order for removal, or
 - (b) a reference is made under [^{F7}section 23(2) and (3) of the 1991 Act] to an arbiter to determine any question which has arisen under [^{F7}section 22(2)(e)] 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.

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- (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, [F8 section 11(2) to (8) of the 1991 Act], [F9 or, as the case may be, subsection (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 [F10 the 1991 Act], [F11 or a lease of a croft within the meaning of section 3(1) of the Act of 1955];

“the Act of 1886” means the M1 Crofters Holdings (Scotland) Act 1886;

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

[F12 “the 1991 Act” means the Agricultural Holdings (Scotland) Act 1991;]

[F13 “the Act of 1955” means the M3 Crofters (Scotland) Act 1955;]

“lease” includes tenancy.]

Textual Amendments

- F1** S. 16 is set out as it has effect in accordance with [Law Reform \(Miscellaneous Provisions\) Act 1968 \(c. 70\), s. 8](#), and as subsequently amended
- F2** Words in s. 16(2)(c) and s. 16(3)(b)(i) substituted (25.9.1991) by [Agricultural Holdings \(Scotland\) Act 1991 \(c. 55, SIF 2:3\)](#), ss. 88(1), 89(2), [Sch. 11 para. 24\(a\)](#) (with s. 45(3), Sch. 12 para. 3)
- F3** Words added by [Law Reform \(Miscellaneous Provisions\)\(Scotland\) Act 1968 \(c. 70\)](#), s. 8, Sch. 2 Pt. I para. 22(a)
- F4** Words substituted by [Law Reform \(Miscellaneous Provisions\)\(Scotland\) Act 1968 \(c. 70\)](#), s. 8, Sch. 2 Pt. I para. 22(b)
- F5** S. 16(3)(b)(ia)(ib) added by [Law Reform \(Miscellaneous Provisions\)\(Scotland\) Act 1968 \(c. 70\)](#), s. 8, Sch. 2 Pt. I para. 23
- F6** Words inserted by [Law Reform \(Miscellaneous Provisions\)\(Scotland\) Act 1968 \(c. 70\)](#), s. 8 Sch. 2 Pt. I para. 24
- F7** Words in s. 16(6)(b) substituted (25.9.1991) by [Agricultural Holdings \(Scotland\) Act 1991 \(c. 55, SIF 2:3\)](#), ss. 88(1), 89(2), [Sch. 11 para. 24\(b\)](#) (with s. 45(3), Sch. 12 para. 3)
- F8** Words in s. 16(8) substituted (25.9.1991) by [Agricultural Holdings \(Scotland\) Act 1991 \(c. 55, SIF 2:3\)](#), ss. 88(1), 89(2), [Sch. 11 para. 24\(c\)](#) (with s. 45(3), Sch. 12 para. 3)
- F9** Words added by [Law Reform \(Miscellaneous Provisions\)\(Scotland\) Act 1968 \(c. 70\)](#), s. 8, Sch. 2 Pt. I para. 25
- F10** Words in definition in s. 16(9) substituted (25.9.1991) by [Agricultural Holdings \(Scotland\) Act 1991 \(c. 55, SIF 2:3\)](#), ss. 88(1), 89(2), [Sch. 11 para. 24\(d\)\(i\)](#) (with s. 45(3), Sch. 12 para. 3)
- F11** Words added by [Law Reform \(Miscellaneous Provisions\)\(Scotland\) Act 1968 \(c. 70\)](#), s. 8, Sch. 2 Pt. I para. 26(a)
- F12** S. 16(9): definition of "the 1991 Act" substituted (25.9.1991) for definition of "the Act of 1949" by [Agricultural Holdings \(Scotland\) Act 1991 \(c. 55, SIF 2:3\)](#), ss. 88(1), 89(2), [Sch. 11 para. 24\(d\)\(ii\)](#) (with s. 45(3), Sch. 12 para. 3)

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

F13 S. 16(9): definition of "the Act of 1955" added by Law Reform (Miscellaneous Provisions)(Scotland) Act 1968 (c. 70), s. 8, Sch. 2 Pt. I para. 26(b)

Marginal Citations

M1 1886 c. 29.

M2 1931 c. 44.

M3 1955 c. 21.

Status:

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Changes to legislation:

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