
Changes to legislation: There are currently no known outstanding effects for the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968, Paragraph 16. (See end of Document for details)

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

Modifications etc. (not altering text)

- C1** 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(except the entry relating to s. 16 of the Succession (Scotland) Act 1964)) and Sch. 3 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.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 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 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—

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- (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, 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

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- (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;
“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;
“the Act of 1949” means the ^{M3}Agricultural Holdings (Scotland) Act 1949;
“the Act of 1955” means the ^{M4}Crofters (Scotland) Act 1955;
“lease” includes tenancy.

Marginal Citations

M1	1886 c. 29
M2	1931 c. 44
M3	1949 c. 75
M4	1955 c. 21

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