

## SCHEDULES

### SCHEDULE 2

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

#### PART II

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

##### *Case II*

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
  - (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

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*Status: This is the original version (as it was originally enacted).*

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- (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
  - (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.