

SCHEDULES

SCHEDULE 2

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

PART I

MODIFICATION OF ENACTMENTS

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

- 1 In section 8(6), for the word " heir " there shall be substituted the word " executor ".
- 2 In section 10(5), for the words from " thereupon devolve " to the end there shall be substituted the words " be treated as intestate estate of the deceased crofter in accordance with Part I of the Succession (Scotland) Act 1964. ".
- 3 In section 10(7), for the words from " or any person " to the end there shall be substituted the words " or any one of the persons who would be, or would in any circumstances have been, entitled to succeed to the estate on intestacy by virtue of the Succession (Scotland) Act 1964. ".
- 4 In section 11, for subsection (1) there shall be substituted the following subsection:
—
- “(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.”.
- 5 In section 11, subsection (2) shall cease to have effect.
- 6 In section 11, for subsection (3) there shall be substituted the following subsection:
—
- “(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;

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- (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 die Commission to that effect.”.

7

In section 11, for subsection (4) there shall be substituted the following subsections:

“(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—

- (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

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shall be in or towards satisfaction of that person's entitlement or claim hi the
intestate estate of the deceased crofter.”.

8 In section 11, for subsection (5) there shall be substituted the following subsection:

“(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.”.

9 In section 11(6), for the words from "the rights " to " succeed to " there shall be
substituted the words " any right of any person (other than the person so nominated)
in, or in relation to, ".

10 In section 11, subsections (8) and (9) shall cease to have effect.

11 In section 14(1)—

(a) for the words from the beginning to " he shall" there shall be substituted
the words—

“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,”;

(b) in paragraph (b), for the words " or any of his predecessors " there shall be
substituted the words " or, as the case may be, the deceased crofter, or any
of the predecessors of the crofter or of the deceased crofter ";

(c) in paragraph (c), after the word " crofter", where first occurring, there shall
be inserted the words " or, as the case may be, the deceased crofter ", and
after the word " received " there shall be inserted the words " or, as the
case may be, the deceased crofter did not receive and his executor has not
received, ".

12 In section 14(6)—

(a) for the words from the beginning to " from him " there shall be substituted
the words—

“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,

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- the landlord shall be entitled to recover from the crofter or, as the case may be, from the executor of the deceased crofter”;
- (b) after the words " by the crofter " there shall be inserted the words " or, as the case may be, by the deceased crofter or his executor. " .
- 13 In section 14(7), after the words " the croft" there shall be inserted the words " or, as the case may be, of the termination of the tenancy, " .
- 14 In section 14(9)—
- (a) for the words from the beginning to " his tenancy " there shall be substituted the words—
- “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 in pursuance of section 16(3) of the Succession (Scotland) Act 1964,”;
- (b) after the words " of the crofter " there shall be inserted the words " or, as the case may be, the executor of the deceased crofter ";
- (c) after the words " the renunciation " there shall be inserted the words " or, as the case may be, the termination ";
- (d) after the words " will on renunciation" there shall be inserted the words " or termination ";
- (e) after the words " by the crofter " there shall be inserted the words " or executor ";
- (f) after the words " shall, on renunciation" there shall be inserted the words " or, as the case may be, termination, " .
- 15 In section 14(10), in proviso (a)—
- (a) after the words " to a crofter " there shall be inserted the words " or to the executor of a deceased crofter, ";
- (b) after the words " the crofter" there shall be inserted the words " or executor " .
- 16 In section 14(11), for the words from the beginning to "shall not be entitled" there shall be substituted the words—
- “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,”.
- 17 In section 16(1)—
- (a) after paragraph (a) there shall be inserted the following paragraph:—
- “(aa) 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 in pursuance of section 16(3) of the Succession (Scotland) Act 1964 ; or”;
- (b) for the words from " from the receipt" to " as the case may be " there shall be substituted the words—

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“from—

- (i) the receipt of the notice of renunciation of the tenancy, or
- (ii) the date on which the Land Court made the order, or
- (iii) the date on which the landlord gave or received notice terminating the tenancy, or
- (iv) the date on which the vacancy came to the landlord's knowledge,

as the case may be.”.

- 18 In section 37(1), in the definition of " statutory successor", after the words " whether as " there shall be inserted the words " a person to whom the tenancy of the croft has been transferred in pursuance of section 16(2) of the Succession (Scotland) Act 1964 or as the executor, ".

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

- 19 In section 6(1)—

- (a) after the words " this Act" there shall be inserted the words " , or to the executor of a deceased crofter, ";
- (b) for the words " on his croft" there shall be substituted the words " on the croft ";
- (c) for the words from " (a) the value " to " as the case may be " there shall be substituted the following words:—

“(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.”.

- 20 In section 6(3)—

- (a) after the words " if the crofter " there shall be inserted the words " or, as the case may be, the executor of the deceased crofter ";
- (b) after the words "to the crofter", in both places where they occur, there shall be inserted the words " or executor ";
- (c) after the words " by the crofter" there shall be inserted the words " or, as the case may be, the executor of the deceased crofter ".

- 21 In section 6(4), at the end there shall be inserted the following words—

“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.”.

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

- 22 In section 16(2)—

- (a) in paragraph (c), at the end there shall be inserted the words " or becomes null and void under section 10 of the Act of 1955, ";

- (b) for the words " of the landlord " there shall be substituted the following words:—
- “(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.”.
- 23 In section 16(3), in paragraph (b), after head (i) there shall be inserted the following heads:—
- “(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,”.
- 24 In section 16(6), in paragraph (a), after the words "Act of 1931" there shall be inserted the words " or section 13 of the Act of 1955 ".
- 25 In section 16(8), at the end there shall be inserted the words " , or, as the case may be, subsections (2) to (7) of section 10 of the Act of 1955. ".
- 26 In section 16(9)—
- (a) in the definition of " agricultural lease ", at the end there shall be inserted the words " , or a lease of a croft within the meaning of section 3(1) of the Act of 1955 ; ";
- (b) after the definition of " the Act of 1949 " there shall be inserted the following definition:—
- “ the Act of 1955 ' means the Crofters (Scotland) Act 1955 ;”.
- 27 In section 29(2), at the end there shall be inserted the words " or of section 10 of the Crofters (Scotland) Act 1955 (which makes similar provision in relation to crofts). ".
- 28 In section 37(1), paragraph (b) shall cease to have effect.
- 29 In Schedule 2, in paragraph 1, the words " (other than the tenancy of any croft within the meaning of section 3 of the Crofters (Scotland) Act 1955) " shall cease to have effect.