



# Land Tenure Reform (Scotland) Act 1974

## 1974 CHAPTER 38

### PART I

#### PROHIBITION OF FUTURE FEUDUTIES, AND REDEMPTION OF FEUDUTIES, ETC.

##### **1 Prohibition of new feuduties.**

- (1) No deed executed after the commencement of this Act shall impose feuduty; but a deed executed after that date which contains a grant of land in feu shall have effect otherwise as if the grant were subject to a feuduty.
- (2) A provision in a deed executed after such commencement which purports to impose feuduty shall not render the deed void or unenforceable, but the deed, if it contains a grant of land in feu, shall be subject to the provisions of subsection (1) above.

##### **2 Prohibition of new ground annuals and other periodical payments from land.**

- (1) No deed executed after the commencement of this Act shall impose ground annual, skat or any other periodical payment (other than feuduty) in respect of the tenure or use of land or under a land obligation, not being a payment in respect of a lease, liferent or other right of occupancy, a payment of teind, stipend or standard charge, a payment in defrayal of or contribution towards some continuing cost related to the land, or a payment under a heritable security.
- (2) A provision in a deed executed after such commencement which purports to impose any payment to which subsection (1) above applies shall not render the deed void or unenforceable, but the deed shall have effect only to the extent (if any) that it would have had effect under the law in force before such commencement if it had not imposed any such payment.

##### **3 Charters of novodamus, etc.**

- (1) The feuduty under a charter of novodamus or other deed having equivalent effect executed after the commencement of this Act may be of any amount which does not

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have the effect of increasing the total amount of feuduty exigible in respect of any land; and any provision in any such deed which produces that effect shall to that extent be void and unenforceable: Provided that, where any provisions relating to two or more feuduties, contained in such a deed or in two or more such deeds executed on the same day, have the effect cumulatively of increasing the total amount of feuduty exigible in respect of any land, they shall, to the extent that they have the effect of altering the amount or incidence of that feuduty, be void and unenforceable.

- (2) This section shall apply, subject to any necessary modifications, to payments to which section 2 of this Act applies, as it applies to feuduties.

#### **4 Right to redeem feuduty, ground annual, etc. on a term day.**

- (1) Subject to the provisions of this section and of any agreement in relation to the redemption of feuduty made before the commencement of this Act, and without prejudice to any existing method of redemption, any proprietor of a feu may, at any term of Whitsunday or Martinmas, redeem the feuduty which, as at the date of the notice aftermentioned, is exigible in respect thereof.
- (2) A proprietor who wishes to redeem a feuduty in terms of this section shall, not later than the term of redemption,
- (a) give to the superior or his agent a notice of redemption in or as nearly as may be in the form contained in Form 1 of Schedule 1 to this Act, and
  - (b) pay to or for behoof of the superior such a sum of money as would, if invested in 2½ per cent. Consolidated Stock at the middle market price at the close of business last preceding the date occurring one month before the said term, produce an annual sum equal to the feuduty (hereinafter in this section referred to as “the redemption money”), and also any amount of feuduty unpaid in respect of the feu, liability for which has accrued up to and including that term, and any interest or other payment exigible in respect of the feuduty last mentioned.
- (3) After due notice and payment in accordance with the foregoing provisions of this section, the feuduty shall, at the said term, be redeemed, and no payment shall be exigible in respect of the feuduty so redeemed for any period after such redemption; but the feu shall continue in force otherwise as if the feuduty were not redeemed.
- (4) On redemption of feuduty in terms of this section, the superior or his agent shall, at the expense of the superior, grant a receipt in or as nearly as may be in the form contained in Form 2 of Schedule 1 to this Act.
- (5) The redemption of feuduty in terms of this section shall be binding on all persons having interest: Provided that such redemption shall not prejudice the rights of existing heritable creditors who are not parties thereto, but the superior shall be liable to indemnify any proprietor of the feu against liability arising after such redemption from such rights.
- (6) Where the interest of the superior in a feuduty which is redeemed in terms of this section is subject to any trust, liferent or entail, the redemption money shall be treated for all purposes as capital money.
- (7) For the purposes of this section “feuduty” includes *anycumulofeuduty* which is unallocated and any part of *acumulofeuduty* which has been allocated, and includes any payment (whether unallocated or allocated as aforesaid) of ground annual, skat or any other perpetual periodical payment in respect of the tenure, occupancy or use

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of land or under a land obligation, not being a payment of teind, stipend or standard charge, or in defrayal of or contribution towards some continuing cost related to the land, or under a heritable security; and this section, in its application to any payment to which it is extended under this subsection, shall have effect subject to any necessary modifications.

## **5 Redemption by law of feuduty, ground annual, etc. on transfer of land for valuable consideration.**

- (1) Subject to any agreement made before the commencement of this Act in relation to the redemption of the feuduty exigible in respect of a feu and to subsection (2) below, on the date when entry is taken under an obligation to grant a conveyance of the feu for valuable consideration or under the deed containing such a conveyance (the said date being hereinafter in this section, subject to subsection (2) below, referred to as “the date of redemption”), the feuduty exigible as at the date of redemption shall be deemed to have been redeemed: Provided that this section shall not apply in any case where the date of the obligation to grant a conveyance or of the execution of the deed occurred before the commencement of this Act.
- (2) Where the date (whether before or after the commencement of this Act) when entry is taken, as specified in subsection (1) above, is earlier than the date of the obligation there specified or (where there was no such obligation) the execution of the deed there specified, the date of redemption shall be the date of the said obligation or execution as the case may be.
- (3) No payment shall be exigible in respect of a feuduty for any period after the date of redemption thereof; but the feu shall continue in force otherwise as if the feuduty were not redeemed.
- (4) On the date of redemption, there shall be payable to the superior by the person who was the proprietor of the feu immediately before the date of the obligation specified in subsection (1) above or (where there was no such obligation) the execution of the deed there specified, or by his representatives, such a sum of money (hereinafter in this section referred to as “the redemption money”) as would, if invested in 2½ per cent. Consolidated Stock at the middle market price at the close of business last preceding the date occurring one month before the date of redemption, produce an annual sum equal to the feuduty.
- (5) Subject to the provisions of subsections (6) to (8) below, at and after the date of redemption, the redemption money, if it has not been paid to the superior, shall, together with interest thereon from the date of redemption until payment at such rate or rates as may be determined, be secured in favour of the superior, as a real burden on the land subject to the feu, binding on the proprietor of the feu for the time being, in the same manner and subject to the same remedies as the feuduty redeemed.
- (6) At any time after the date of the obligation specified in subsection (1) above or (where there was no such obligation) after the date of execution of the deed there specified, the proprietor of the feu for the time being or his agent may give to the superior or his agent a notice of redemption in or as nearly as may be in the form contained in Schedule 2 to this Act; and, subject to subsections (7) and (8) below, at the expiry of the period of two months after the giving of such notice or after the date of redemption, whichever is later, the land subject to the feu shall cease to be burdened by the unpaid redemption money and interest referred to in subsection (5) above, and by any feuduty unpaid in respect of the feu, liability for which has accrued up to and including the date

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of redemption, and any interest or other payment exigible in respect of that feuduty, and thereafter (subject to the said subsections (7) and (8)) no action shall lie against any person in respect of any sum specified in this subsection, other than—

- (a) in the case of the redemption money or interest thereon, against the person who was the proprietor of the feu immediately before the date of the said obligation or of the execution of the said deed, as the case may be, or against his representatives;
  - (b) in the case of the said unpaid feuduty or interest or other payment relative thereto, against any person who was liable therefor immediately before the date of redemption, or against his representatives.
- (7) If, before the end of the relevant period of two months specified in subsection (6) above, the superior has obtained warrant to cite the defender in an action against any person mentioned in paragraph (a) or (b) thereof or his representatives for the recovery of any sum for which that person remains liable in terms of those paragraphs, the court may at any time within the said period (whether or not the defender has been cited in the action) order that the land subject to the feu shall, in respect of that sum, continue to be burdened, and that the sum shall continue to be exigible, as specified in subsection (5) above, for such additional period (which the court may by further order extend from time to time if necessary) as is reasonable to enable the superior to recover the said sum; but the superior shall not be entitled to recover any such sum from or at the expense of any person whose liability therefor arose at or after the date specified in relation to such sum in the said paragraph (a) or (b), unless the court is satisfied that it is not reasonably practicable to recover such sum from any person who remains liable therefor in terms of that paragraph.
- (8) No order under subsection (7) above shall have effect unless an extract thereof has been recorded in the Register of Sasines before the expiry of the relevant period of two months referred to in that subsection or before the expiry of any such existing order.
- (9) On receipt of a notice of redemption in terms of subsection (6) above in duplicate, the superior or his agent shall, at the expense of the superior, if so requested return one copy with an acknowledgement thereon subscribed by him.
- (10) The deemed redemption of feuduty in accordance with this section shall be binding on all persons having interest: Provided that such redemption shall not prejudice the rights of existing heritable creditors, but the superior shall be liable to indemnify any proprietor of the feu against liability arising after the date of redemption from such rights.
- (11) For the avoidance of doubt, it is hereby declared that this section shall have effect whether or not the obligation to grant a conveyance as aforesaid has been implemented.
- (12) Subsections (6) and (7) of section 4 of this Act shall apply in relation to this section as they apply in relation to that section, with the addition in subsection (7), after the words “ground annual”, of the words “standard charge”, and the substitution, for the words “stipend or standard charge”, of the words “or stipend”; but in this section “feu” does not include any part of a feu which is subject to *acumulofeuduty*, no portion of which has been allocated on that part.
- (13) This section shall not apply in any case specified in subsection (1) of section 6 of this Act except to the extent (and subject to the modifications) specified in that section.

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**Modifications etc. (not altering text)**

C1 S. 5(8) amended by [Land Registration \(Scotland\) Act 1979 \(c. 33, SIF 31:3\)](#), s. 29(2)(3)

**6 Redemption by law of feuduty, ground annual, etc. on acquisition of land by authority possessing compulsory purchase powers.**

- (1) Subject to subsection (4) below, and notwithstanding the provisions of section 107 of the <sup>M1</sup>Lands Clauses Consolidation (Scotland) Act 1845, this section shall have effect in relation to the case of the redemption of the feuduty exigible in respect of a feu to which entry is taken (whether or not there is an obligation to pay valuable consideration therefor) by an authority possessing compulsory purchase powers (hereinafter in this section referred to as “the acquiring authority”); and the enactments relating to the acquisition of land by such an authority shall for the purposes of this section apply accordingly as they apply in relation to acquisition by purchase.
- (2) The following provisions of section 5 of this Act shall apply for the purposes of this section as they apply for the purposes of that section:
  - (a) section 5(1) and (2) shall apply, with the omission in the said subsection (1) of the reference to valuable consideration; and for the purposes of such application the references in the said subsections to an obligation to grant a conveyance shall include references to a notice to treat or deemed notice to treat under section 17 of the said Act of 1845 or under any other enactment having similar effect;
  - (b) section 5(3) shall apply, subject to any of the provisions of the Lands Clauses Acts or of the <sup>M2</sup>Railway Clauses Consolidation (Scotland) Act 1845 which apply to the case;
  - (c) notwithstanding the provisions of section 20 of the <sup>M3</sup>Land Compensation (Scotland) Act 1963, section 5(4) shall apply, with the substitution, for the reference to the person who was the proprietor of the feu immediately before the date of the obligation or (as the case may be) the execution of the deed there referred to and to his representatives, of a reference to the acquiring authority;
  - (d) section 5(10) and (11) shall apply.
- (3) Sections 109 and 111 of the Lands Clauses Consolidation (Scotland) Act 1845 (which relate to the discharge of land from feuduty, etc., and the apportionment and continuance of the charge for such payments on land not taken) shall apply in relation to the redemption of feuduty under this section (whether the land subject to the feuduty is acquired compulsorily or by agreement) as they apply in relation to the discharge of charges under that Act.
- (4) The foregoing provisions of this section shall not apply in relation to the acquisition of land by means of a general vesting declaration within the meaning of Schedule 24 to the <sup>M4</sup>Town and Country Planning (Scotland) Act 1972; but section 5(4) of this Act shall, notwithstanding the provisions of section 20 of the Land Compensation (Scotland) Act 1963, apply in relation to such acquisition as it applies in relation to the acquisition of land to which the said section 5 applies, with the substitution, for the reference to the person who was the proprietor of the feu immediately before the date of the obligation or (as the case may be) the execution of the deed there referred to and to his representatives, of a reference to the acquiring authority; and in such a case

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the date of redemption means the date of vesting of the land in the acquiring authority under paragraph 7 of the said Schedule.

- (5) In every case to which, by virtue of subsection (1) or (4) above, this section applies, the acquiring authority shall—
- (a) not later than the date of redemption, give to the superior or his agent a notice of redemption in or as nearly as may be in the form contained in Schedule 3 to this Act; and
  - (b) be liable to pay to the superior interest on the redemption money from the date of redemption until payment at such rate or rates as may be determined.
- (6) Where the interest of the superior in a feuduty which is redeemed in terms of this section is subject to any trust, liferent or entail, the redemption money shall be treated for all purposes as capital money.
- (7) In this section,

“authority possessing compulsory purchase powers” has the same meaning as is conferred by section 275(1) of the <sup>M5</sup>Town and Country Planning (Scotland) Act 1972; “feuduty”, in any case where part only of a feu subject to *acumulofeuduty* is acquired, means such portion of the feuduty (if any) as may be settled thereon under section 109 of the <sup>M6</sup>Lands Clauses Consolidation (Scotland) Act 1845 as applied by this section or, in the case specified in subsection (4) above, by paragraph 32 of the said Schedule 24; and includes any payment (or any such portion thereof, as the case may be) of ground annual, standard charge, skat or any other perpetual periodical payment in respect of the tenure, occupancy or use of land or under a land obligation, not being a payment of teind or stipend, or in defrayal of or contribution towards some continuing cost related to the land, or under a heritable security; and this section, in its application to any payment to which it is extended under this subsection, shall have effect subject to any necessary modifications.

#### **Marginal Citations**

- M1** 1845 c. 19.  
**M2** 1845 c. 33.  
**M3** 1963 c. 51.  
**M4** 1972 c. 52.  
**M5** 1972 c. 52.  
**M6** 1845 c. 19.

## **7 Transitional and supplementary provisions relative to Part I.**

- (1) A deed executed after the commencement of this Act and before 8th November 1975 shall not be subject to the provisions of section 1, 2 or 3 of this Act if—
- (a) the deed is granted in implement of an obligation entered into before 8th November 1973 by the person who, when the obligation was entered into, was the proprietor of the land subject to the deed; and
  - (b) there is included in the deed or in a memorandum endorsed thereon a statement to that effect by or on behalf of the grantor of the deed, in or as nearly as may be in the form contained in Schedule 4 to this Act.
- (2) Where a deed, containing a provision which to any extent is void or unenforceable by virtue of section 1, 2 or 3 of this Act, has been recorded in the Register of Sasines, the

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person who granted the deed or his successor may be required, by any person having an interest, to grant any appropriate corrective deed capable of being recorded in the Register.

- (3) In this Part of this Act, unless the context otherwise requires—
- “feu” includes blench holding and “feuduty” includes blench duty;
  - “land obligation” has the meaning assigned to it in section 1(2) of the <sup>M7</sup>Conveyancing and Feudal Reform (Scotland) Act 1970;
  - “proprietor”, in relation to land, includes a person having right to that land but whose title thereto is not complete, and, in the case of land subject to a heritable security constituted by *ex facie* absolute disposition, means the debtor in the security, except where the creditor is in possession of the land.

**Modifications etc. (not altering text)**

**C2** S. 7(2) amended by Land Registration (Scotland) Act 1979 (c. 33, SIF 31:3), s. 29(2)(3)

**Marginal Citations**

**M7** 1970 c. 35.

## PART II

### LIMITATIONS ON RESIDENTIAL USE OF PROPERTY LET UNDER FUTURE LONG LEASES

#### **8 Property let under future long lease, etc. not to be used as private dwelling-house.**

- (1) It shall be a condition of every long lease executed after the commencement of this Act that, subject to the provisions of this Part of this Act, no part of the property which is subject to the lease shall be used as or as part of a private dwelling-house.
- (2) For the purposes of this Part of this Act, any garden, yard, garage, outhouse or pertinent used along with any dwelling-house shall be deemed to form part of a dwelling-house, and use as a dwelling-house shall not include use as the site of a caravan.
- (3) The use as or as part of a private dwelling-house of part of a property which is subject to a long lease shall not constitute a breach of the condition contained in subsection (1) above if such use is ancillary to the use of the remainder of the property otherwise than as or as part of a private dwelling-house and it would be detrimental to the efficient exercise of the use last-mentioned if the said ancillary use did not occur on that property.
- (4) For the purposes of this Part of this Act—
  - “lessor” and “lessee” mean any person holding for the time being the interest of lessor or lessee (as the case may be); and
  - “long lease” means any grant of—
    - (a) a lease, or
    - (b) a liferent or other right of occupancy granted for payment (other than payment in defrayal of or contribution towards some continuing cost related to such liferent use or such occupancy, as the case may be),which is either—

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- (i) subject to a duration, whether definite or indefinite, which could (in terms of the grant and without any subsequent agreement, express or implied, between the persons holding the interests of the grantor and the grantee) extend for more than 20 years, or
  - (ii) subject to any provision whereby any person holding the interest of the grantor or the grantee is under a future obligation, if so requested by the other, to renew the grant so that the total duration could so extend for more than 20 years, or whereby, if he does not so renew it, he will be liable to make some payment or to perform some other obligation [<sup>F1</sup>but, in relation to a lease granted before 1st September 1974, does not include its renewal (whether before or after the commencement of section 1 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985) in implement of an obligation in or under it.]
- (5) This Part of this Act shall not apply in relation to the use of property for the time being forming part or deemed to form part of—
- (a) an agricultural holding, within the meaning of the [<sup>F2</sup>Agricultural Holdings (Scotland) Act 1991];
  - (b) a holding, within the meaning of the Small Landholders (Scotland) Acts 1886 to 1931;
  - (c) a croft, within the meaning of the <sup>M8</sup> Crofters (Scotland) Acts 1955 and 1961.
- (6) Nothing in this Part of this Act shall affect the right of the lessor to terminate the lease and recover possession of the property subject thereto on the ground of breach of a conventional condition of the lease which has the effect of prohibiting such use of the property as constitutes a breach of the condition contained in subsection (1) above.
- (7) Nothing in this Part of this Act shall prevent a tenancy from being or becoming a protected or statutory tenancy within the meaning of the Rent (Scotland) Act [<sup>F3</sup>1984 or a secure tenancy within the meaning of the [<sup>F4</sup>Housing (Scotland) Act 1987]], but nothing in [<sup>F5</sup>either of those Acts] restricting the power of a court to make an order for possession of a dwelling-house shall prevent the granting of a decree of removing under section 9(1) of this Act.

#### Textual Amendments

- F1** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 75:2\)](#), **s. 1**
- F2** Words in s. 8(5)(a) substituted (25.9.1991) by [Agricultural Holdings \(Scotland\) Act 1991 \(c. 55\)](#), ss. 88(1), 89(2), **Sch. 11 para.38** (with s. 45(3), Sch. 12 para. 3)
- F3** Words substituted by [Housing \(Scotland\) Act 1986 \(c. 65, SIF 61\)](#), s. 25(1), **Sch. 2 para. 3(a)**
- F4** Words substituted by [Housing \(Scotland\) Act 1987 \(c. 26, SIF 61\)](#), s. 339, **Sch. 23 para. 22**
- F5** Words substituted by [Housing \(Scotland\) Act 1986 \(c. 65, SIF 61\)](#), s. 25(1), **Sch. 2 para. 3(b)**

#### Marginal Citations

- M8** 1961 c. 58.

## 9 Consequences of use as dwelling-house of property subject to long lease.

- (1) A breach of the condition of a long lease executed after the commencement of this Act, contained in section 8(1) of this Act, shall not render the lease void or unenforceable, but, subject to the provisions of this section and of section 10 of this Act, where such a breach occurs, the lessor shall be entitled to give to the lessee notice to terminate the use constituting the breach within 28 days from the date of the notice; and, if the



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lessee shall fail to terminate that use within that period, the lessor shall be entitled to raise an action of removing against the lessee concluding for his removal from such part of the property as is subject to the use at the expiry of 28 days after the decree of removing is extracted, and the court may decern for the termination of the lease in respect of such part and the removal of the lessee therefrom and, failing such removal, for his ejection therefrom on expiry of the 28 days last mentioned.

- (2) A notice under subsection (1) above shall be in or as nearly as may be in the form contained in Schedule 5 to this Act.
- (3) It shall be a defence to an action under subsection (1) above that the breach of condition constituting the ground of action has ceased.
- (4) Subject to section 10(3) of this Act, in an action under subsection (1) above, if it is proved that the use of the property constituting the ground of action has at any time been approved by the person holding at that time the interest of the lessor in the lease, either expressly or by his actings, and the said use has not subsequently been discontinued, the court shall not decern in terms of that subsection, but—
  - (a) where the lease is subject to a duration expiring in a year more than 20 years after the year in which the notice under subsection (1) above relative to the breach was given, the court shall decern that the lease shall, in respect of such part of the property as is subject to the use, have effect as if for the year of expiry there were substituted the year 20 years after the year in which the said notice was given;
  - (b) where the lease is subject to a duration expiring in a year less than 20 years after that year, the lease shall continue in force according to its terms;and the said part of the property subject to the lease (and, during the remaining period of the lease as determined by reference to this subsection, any over-lease, insofar as it relates to that part) shall cease to be subject to the condition contained in section 8(1) of this Act.
- (5) Where the breach of condition constituting the ground of action under subsection (1) above relates to part only of the property subject to the lease, any decree granted to the pursuer in the action under subsection (1) or (4)(a) above shall contain a particular description or a description by reference (in accordance with the provisions of the <sup>M9</sup>Conveyancing (Scotland) Act 1874 and the <sup>M10</sup>Conveyancing (Scotland) Act 1924) of such part; and in such a case the court shall decern for such adjustment (if any) as it thinks fit (to take effect on the termination of the lease of such part in terms of the decree) in the rent of the remaining part of the property and in the conditions of the lease, including the addition of new conditions, but not including any provision for the payment of money.
- (6) Subject to the provisions of this Part of this Act and of section 37(1) of the <sup>M11</sup>Sheriff Courts (Scotland) Act 1971, and notwithstanding section 35(1)(c) of that Act, the procedure in an action of removing under this section shall be that in an ordinary cause; and on the granting of a decree to the pursuer in such an action, or at any time before the decree is extracted, the court may sist extract of the decree for such period or periods as it thinks fit to enable any facts to be established which (if the action were still pending) would constitute a defence thereto, and if the court is satisfied that any such facts are established it may vary or rescind the decree, subject to such conditions (if any) with regard to payment of arrears of rent and otherwise as the court thinks fit.
- (7) Notwithstanding <sup>M12</sup>the provisions of section 24 of the Court of Session Act 1868, Rule 63(b) of the Rules of Court 1965 or Rule 25 of Schedule 1 to the Sheriff Courts

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(Scotland) Act 1907, a decree granted in an action under this section shall, as in a question with third parties who have acted onerously and in good faith in reliance on the records, be final and not subject to challenge when an extract thereof shall have been recorded in the Register of Sasines.

- (8) The provisions of this section and of section 10 of this Act shall apply in relation to a grant (not being a lease) mentioned in section 8(4) of this Act as they apply in relation to a lease, and any reference to a lease, over-lease or sub-lease, to the parties thereto, or to rent, shall be construed accordingly.

**Modifications etc. (not altering text)**

**C3** S. 9(7) amended by [Land Registration \(Scotland\) Act 1979 \(c. 33, SIF 31:3\)](#), s. 29(2)(3)

**Marginal Citations**

**M9** 1874 c. 94.  
**M10** 1924 c. 27.  
**M11** 1971 c. 58.  
**M12** 1868 c. 100. S.I. 1965 No. 321. 1907 c. 51.

**10 Modification of s. 9 where lease subject to sub-lease or heritable security.**

- (1) For the avoidance of doubt, it is hereby declared that (subject to the provisions of this section) sections 8 and 9 of this Act shall apply, as between the parties to any over-lease or sub-lease executed after the commencement of this Act, as they apply as between the parties to any other lease so executed.
- (2) The pursuer in an action under section 9 of this Act shall give such intimation thereof as the court may direct—
- (a) to every person appearing, from a search in the Register of Sasines for a period of 20 years immediately prior to the raising of the action, to hold for the time being the interest of creditor in a heritable security over the lease which is the subject of the action; and
  - (b) where the said lease is, in relation to any part of the property which is subject to the use constituting the ground of action, subject to any sub-lease, to every person appearing from such a search and from examination of the valuation roll or otherwise to be the lessee in any such sub-lease (of whatever duration) or the creditor in a heritable security over any such sub-lease;
- and any such creditor or lessee as aforesaid shall, subject to the provisions of this section, be entitled to plead in the action any defence which could be pleaded by the defender in the action.
- (3) The defence provided under section 9(4) of this Act shall not be available to the lessee in a lease in respect of the use of property subject to a sub-lease derived from that lease.
- (4) A sub-lessee, provided that he could have pleaded the defence provided by section 9(4) of this Act in an action by the lessor in the sub-lease, may, on being sisted to an action under the said section 9 by the lessor in any over-lease, plead that defence in relation to the approval by the lessor in that over-lease or in any sub-lease under that over-lease of property which is subject to the use constituting the ground of action; and the court, on being satisfied that the defence is established to that effect, shall be entitled

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to decern in terms of the said section 9(4) as if the action had been brought by the lessor in the sub-lease first mentioned.

- (5) The right provided by subsection (4) above shall be available to a sub-lessee whose lease is not a long lease to the same extent as if it had been a long lease.

**Modifications etc. (not altering text)**

C4 S. 9(7) amended by Land Registration (Scotland) Act 1979 (c. 33, SIF 31:3), s. 29(2)(3)

### PART III

#### MISCELLANEOUS

#### **11 Right to redeem heritable security after 20 years where security subjects used as private dwelling-house.**

- (1) The provisions of this section shall apply in relation to a heritable security executed after the commencement of this Act, including a heritable security in relation to a debenture described in section 89 of the <sup>M13</sup>Companies Act 1948 (perpetual debentures, etc.).
- (2) The debtor in a heritable security to which this section applies, or, where the debtor is not the proprietor, the proprietor of the security subjects shall, subject to the provisions of this section, be entitled, on giving two months, notice of his intention so to do, to redeem the security at any time not less than 20 years after the execution thereof, if, at the time when he gives such notice, the security subjects or any part thereof are used as or as part of a private dwelling-house.

In determining for the purposes of this section whether such use has occurred, subsection (2) of section 8 of this Act shall apply as it applies for the purposes of that section, and the ancillary use described in subsection (3) of that section shall not render the security subjects subject to the provisions of this section.

- (3) The right to redeem a heritable security conferred by this section shall not apply where the use of the security subjects which is purported to constitute the ground of the right, in terms of subsection (2) above, was, at the time of the notice aforesaid, in contravention of a conventional condition of or relating to the security, unless the person in right of the creditor at any time had approved that use expressly or by his actings, and the said use had not subsequently been discontinued.
- (4) Subject to the provisions of subsection (5) below, the whole amount due to the creditor in a heritable security on redemption under this section, including any sums due thereunder by way of interest or otherwise, shall not exceed the amount remaining unredeemed of—
- where the security constituted to any extent (whether expressly or otherwise) the consideration for the acquisition of the security subjects by the debtor or proprietor or his predecessor in title, any excess of the value of the security subjects at the date of the execution of the security over the amount of money paid for the subjects, and
  - any money advanced under the security to the debtor or proprietor and his predecessors in title, and

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- (c) any expense or charge reasonably incurred by the creditor in the exercise of a right to perform any obligation imposed on the debtor, which the debtor has failed to perform, and which was reasonably necessary for the protection of the security,

together with interest outstanding at the date of the said notice of redemption and interest due for the period between the date of that notice and the date of redemption, at the rate applicable in terms of the security immediately before that date.

- (5) In the application of paragraph (a) of subsection (4) above to security subjects which are burdened with two or more heritable securities to which this section applies, the maximum amount determined in accordance with that paragraph shall be apportioned among the securities according to the rights and preferences of the creditors in the securities; and the amount so apportioned in respect of each of the securities shall, on the redemption of any of the securities, be the maximum amount due in terms of that paragraph on the redemption at any time of all such securities.
- (6) In section 18 of the Conveyancing and Feudal Reform (Scotland) Act 1970 <sup>M14</sup> (as amended by the Redemption of Standard Securities (Scotland) Act 1971 <sup>M15</sup>), in subsection (1A), at the beginning there shall be inserted the words “ Without prejudice to section 11 of the Land Tenure Reform (Scotland) Act 1974 ”.

#### **Modifications etc. (not altering text)**

- C5** The text of ss. 11(6), 13, 14, 19, 23(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.

#### **Marginal Citations**

- M13** [1948 c. 38.](#)  
**M14** [1970 c.35](#)  
**M15** [1971 c.45](#)

## **12 Restriction to 20 years of period within which certain rights of redemption and reversion are exercisable.**

A right of redemption or reversion of land (other than the right of a lessor to the reversion of a lease), created in a deed executed after the commencement of this Act, which purports to be exercisable on the happening of an event which is bound to occur, or the occurrence of which is within the control of the person for the time being entitled to exercise the right or of a third party, shall be exercisable only within 20 years of the date of its creation.

## **13 Restriction on rights of preemption to apply in every case.**

In section 9 of the Conveyancing Amendment (Scotland) Act 1938 <sup>M16</sup> (limitation of effect of conditions as to pre-emption) there shall be added the following subsection—

- “(3) the provisions of this section shall apply in the case of any right of pre-emption, created in a deed or other writing executed after 1st September 1974, in favour of any person, of an interest in land in the event of a sale thereof or of any part thereof by the proprietor for the time being, as they apply in the case of such

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a right vested in the superior of a feu : and in the application of this section in such a case,

- (a) “superior”, “proprietor”, “feu” and “charter” shall be construed accordingly ;
- (b) in subsection (1) of this section, for the words “person in right of the superiority (whether or not his title thereto is complete)” there shall be substituted the words “ person in whom the right is vested ” ;
- (c) in subsection (2) of this section, the words “in use to receive and discharge the feuduty in respect of the feu” shall not apply.”

**Modifications etc. (not altering text)**

- C6** The text of ss. 11(6), 13, 14, 19, 23(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.

**Marginal Citations**

**M16** [1938 c.24](#)

**14 Amendment of s.17 of Crofters (Scotland) Act 1955.**

In section 17 of the Crofters (Scotland) Act 1955 <sup>M17</sup> (absentee crofters) (as amended by the Crofters (Scotland) Act 1961 <sup>M18</sup>) the following amendments shall be made—

- (a) in subsection (4) (right of absentee crofter, after order terminating his tenancy, to conveyance in feu of dwelling house), for the word “feuduty”, in both places where it occurs, there shall be substituted the words “the consideration” ;
- (b) in subsection (7) (rights of creditor in heritable security over house), for the words from “in addition” to “following subsection” there shall be substituted the words “as consideration under this section” ;
- (c) in subsection (8) (consideration for assistance given by landlord in respect of a house), for the words “be, in addition to any feuduty thereby exigible,” there shall be substituted the word “include”.

**Modifications etc. (not altering text)**

- C7** The text of ss. 11(6), 13, 14, 19, 23(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.

**Marginal Citations**

**M17** [1955 c.21](#)

**M18** [1961 c.58](#)

**15 Limitation of right of irritancy for non-payment of feuduty. 1597 c. 240(S.).**

No action of declarator of irritancy for non-payment of feuduty shall be raised by a superior after the commencement of this Act unless there has been default of payment of the feuduty to the superior for the five years preceding the raising of the action; and accordingly, in the Feu-duty Act 1597, for the reference to two years there shall be substituted a reference to five years.

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## 16 No casualties in future leases.

In leases executed after the commencement of this Act, it shall not be lawful to stipulate for the payment of any casualty, but this provision shall be without prejudice to the right to stipulate for review of rent or for a permanent or periodical variation of rent in accordance with any condition of or relating to the lease.

## 17 Interposed leases.

- (1) It shall be competent, and shall be deemed always to have been competent, for the person in right of the lessor of a lease to grant, during the subsistence of that lease, a lease of or including his interest in the whole or part of the land subject to the lease first mentioned, and whether longer or shorter than or of the same duration as that lease, and the said grant shall be effectual (or, as the case may be, shall be deemed to have been effectual) for all purposes as a lease of land; and the grantee or person in his right shall be deemed (whether before or after the commencement of this Act) to have entered into the possession of the land leased under the grant at the date of that grant: Provided that, in the case of a lease which is registrable under the <sup>M19</sup>Registration of Leases (Scotland) Act 1857, or which (being a lease granted before the commencement of this Act) would have been so registrable if this Act had been in force, the rights of parties shall be determined by reference to that Act, as amended by any other enactment, including this Act.
- (2) Subject to any agreement to the contrary, as from the date of the grant of a lease in terms of subsection (1) above, the lessee under the lease so granted shall become (or, as the case may be, shall be deemed to have become) the lessor of the lessee in the subsisting lease, on the same terms and conditions as if the subsisting lease had, in respect of the property subject to the lease granted as aforesaid, been assigned to the grantee of the lease so granted; and, on the determination, for any reason, of the lease so granted, any remaining rights and obligations of the person in right of the said grantee, in relation to the said subsisting lease, shall vest (or as the case may be, shall be deemed to have vested) in the person in right of the grantor of the lease granted as aforesaid, on the same terms and conditions as if that lease had not been granted.

### Marginal Citations

M19 1857 c. 26.

## 18 Amendment of law relating to registration of leases.

The Registration of Leases (Scotland) Act 1857 and the <sup>M20</sup>Long Leases (Scotland) Act 1954 shall have effect subject to the provisions of Schedule 6 to this Act.

### Marginal Citations

M20 1954 c. 49.

## 19 Recording of extract orders of Land Tribunal.

Section 3(1)(d) of the Lands Tribunal Act 1949 <sup>M21</sup> (as inserted by section 50(2) of the Conveyancing and Feudal Reform (Scotland) Act 1970 <sup>M22</sup>) and section 2(4) of

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the said Act of 1970 shall have effect, and shall be deemed always to have had effect, with the substitution, in both of those provisions, for the word “order”, of the words “extract of an order”.

**Modifications etc. (not altering text)**

- C8** The text of ss. 11(6), 13, 14, 19, 23(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.

**Marginal Citations**

- M21** 1949 c.42  
**M22** 1970 c.35

**20 Abolition of registration and recording, etc., of documents in Office of Chancery.**

It shall cease to be competent to register or record in the books kept in the Office of Chancery in Scotland any of the documents directed to be so registered or recorded by section 7 of the <sup>M23</sup>Crown Lands (Scotland) Act 1833, or to enter in the minute book of that Office a minute or memorandum of any such document directed to be so entered by section 7 of the <sup>M24</sup>Commissioners of Works Act 1852; and accordingly the said sections shall cease to have effect, and, in paragraph 2(b) of Schedule 2 to the <sup>M25</sup>Crown Estate Act 1961 (continuation in force of sections 7 and 8 of the said Act of 1833), for the words from “sections” onwards there shall be substituted the words “ section eight (which relates to the effect in Scotland of certain documents) ”.

**Marginal Citations**

- M23** 1833 c. 69.  
**M24** 1852 c. 28.  
**M25** 1961 c. 55.

**PART IV**

**GENERAL**

**21 Provisions for contracting out to be void.**

Subject to the provisions of sections 8(6) and 11(3) of this Act, any agreement or other provision, however constituted, which is made after the commencement of this Act, shall be void in so far as it purports to exclude or limit the operation of any enactment contained in this Act.

**22 Application to Crown.**

This Act shall apply to land held of the Crown and of the Prince and Steward of Scotland, and to land in which there is any other interest belonging to Her Majesty in right of the Crown or to a Government department, or held on behalf of Her Majesty for the purposes of a Government department, in like manner as it applies to other land.

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## 23 Interpretation and repeals.

- (1) In this Act, unless the context otherwise requires—
- “deed” has the meaning assigned to it in section 3 of the <sup>M26</sup>Titles to Land Consolidation (Scotland) Act 1868, section 3 of the <sup>M27</sup>Conveyancing (Scotland) Act 1874 and section 2 of the <sup>M28</sup>Conveyancing (Scotland) Act 1924;
- “heritable security” (except in relation to sections 4(5), 5(10) and 10(2)) does not include any security for the purpose of securing the payment of a ground annual or other periodical sum payable in respect of land, and “heritable creditors” shall be construed accordingly;
- “land” has the meaning assigned to it in section 2 of the said Act of 1924.
- (2) Unless the context otherwise requires, any reference in this Act to any other enactment is a reference thereto as amended, and includes a reference thereto as extended or applied, by or under any other enactment, including this Act.
- (3) The enactments specified in Schedule 7 to this Act are hereby repealed to the extent specified in relation thereto in that Schedule.

### Modifications etc. (not altering text)

- C9** The text of ss. 11(6), 13, 14, 19, 23(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.

### Marginal Citations

- M26** 1868 c. 101.  
**M27** 1874 c. 94.  
**M28** 1924 c. 27.

## 24 Short title, commencement and extent.

- (1) This Act may be cited as the Land Tenure Reform (Scotland) Act 1974.
- (2) This Act shall come into operation on 1st September 1974.
- (3) This Act shall extend to Scotland only.



**Status:**

Point in time view as at 25/09/1991.

**Changes to legislation:**

There are currently no known outstanding effects for the Land Tenure Reform (Scotland) Act 1974.