



Land Tenure Reform (Scotland) Act 1974

1974 CHAPTER 38

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—
 - (i) subject to a duration, whether definite or indefinite, which could (in terms of the grant and without any subsequent agreement, express or

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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.
- (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 Agricultural Holdings (Scotland) Act 1949 ;
 - (b) a holding, within the meaning of the Small Landholders (Scotland) Acts 1886 to 1931;
 - (c) a croft, within the meaning of the 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 1971, but nothing in that Act 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.

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 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 Conveyancing (Scotland) Act 1874 and the 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 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 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 (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.

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—

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- (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 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.