



Land Tenure Reform (Scotland) Act 1974

1974 CHAPTER 38

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 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 dwellinghouse.

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—

- (a) 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
- (b) any money advanced under the security to the debtor or proprietor and his predecessors in title, and
- (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 (as amended by the Redemption of Standard Securities (Scotland) Act 1971), 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 ".

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 Restrictions on rights of pre-emption to apply in every case

In section 9 of the Conveyancing Amendment (Scotland) Act 1938 (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 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."

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

In section 17 of the Crofters (Scotland) Act 1955 (absentee crofters) (as amended by the Crofters (Scotland) Act 1961) 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 house), for the words " be, in addition to any feuduty thereby exigible," there shall be substituted the word " include ".

15 Limitation of right of irritancy for non-payment of feuduty

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.

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 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.

18 Amendment of law relating to registration of leases

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

19 Recording of extract orders of Lands Tribunal

Section 3 (1)(d) of the Lands Tribunal Act 1949 (as inserted by section 50(2) of the Conveyancing and Feudal Reform (Scotland) Act 1970) and section 2(4) of 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 ".

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 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 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 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) ".