



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.

[^{F1}(3ZA) The condition contained in subsection (1) above does not apply in relation to a private residential tenancy as defined in the Private Housing (Tenancies) (Scotland) Act 2016.]

[^{F2}(3A) The condition contained in subsection (1) above does not apply to a long lease executed after the commencement of section 138 of the Housing (Scotland) Act 2010 (asp 17) where at the time the lease is executed the lessee is—

- (a) a social landlord (within the meaning of section 165 of the Housing (Scotland) Act 2010);
- (b) a body connected to a social landlord (within the meaning of section 164 of the Housing (Scotland) Act 2010); ^{F3} ...

Changes to legislation: There are currently no known outstanding effects for the Land Tenure Reform (Scotland) Act 1974, Section 8. (See end of Document for details)

- (c) a rural housing body (within the meaning of section 122(1) of the Title Conditions (Scotland) Act 2003)]^{F4}; or
- (d) a body prescribed, or of a type prescribed, by the Scottish Ministers by order made by statutory instrument.]

^{F5}(3B) An order under subsection (3A)(d) may—

- (a) prescribe a body or type of body subject to conditions or restrictions,
- (b) prescribe conditions which a body or type of body must meet for the purposes of subsection (3A),
- (c) restrict the application of subsection (3A) to specified leases, or leases of specified descriptions,
- (d) prescribe circumstances in which subsection (3A) is to apply or cease to apply in relation to a body or type of body or any lease,
- (e) make provision about the consequences, in relation to any lease, of—
 - (i) a breach of any condition or restriction prescribed by the order, or
 - (ii) subsection (3A) otherwise ceasing to apply in relation to a body or type of body or the lease.

(3C) Provision made by virtue of subsection (3B)(e) may, in particular, include provision for the protection of the interests of tenants or occupiers of any dwelling-houses on the property which is subject to the lease.

(3D) An order under subsection (3A)(d)—

- (a) may modify any enactment, and
- (b) is not to be made unless a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Scottish Parliament.]

(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 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 [^{F6}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—

Changes to legislation: There are currently no known outstanding effects for the Land Tenure Reform (Scotland) Act 1974, Section 8. (See end of Document for details)

- [^{F7}(a) the land comprised in a lease constituting a 1991 Act tenancy, within the meaning of the Agricultural Holdings (Scotland) Act 2003 (asp 11);
- (aa) the land comprised in a lease constituting a short limited duration tenancy [^{F8}, a limited duration tenancy, a modern limited duration tenancy or a repairing tenancy], within the meaning of that Act;]
- (b) a holding, within the meaning of the Small Landholders (Scotland) Acts 1886 to 1931;
- (c) a croft, within the meaning of the ^{M1} 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 [^{F9}1984 or a [^{F10}Scottish secure tenancy within the meaning of the Housing (Scotland) Act 2001 (asp 10)], but nothing in [^{F11}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** S. 8(3ZA) inserted (1.12.2017) by Private Housing (Tenancies) (Scotland) Act 2016 (asp 19), s. 79(2), **sch. 4 para. 1**; S.S.I. 2017/346, reg. 2, sch.
- F2** S. 8(3A) inserted (1.3.2011) by Housing (Scotland) Act 2010 (asp 17), **ss. 138**, 166(2); S.S.I. 2011/96, art. 2, Sch.
- F3** Word in s. 8(3A)(b) repealed (31.8.2011) by Private Rented Housing (Scotland) Act 2011 (asp 14), **ss. 36(2)(a)**, 41(3); S.S.I. 2011/270, art. 2, Sch.
- F4** S. 8(3A)(d) and preceding word inserted (31.8.2011) by Private Rented Housing (Scotland) Act 2011 (asp 14), **ss. 36(2)(b)**, 41(3); S.S.I. 2011/270, art. 2, Sch.
- F5** S. 8(3B) - (3D) inserted (31.8.2011) by Private Rented Housing (Scotland) Act 2011 (asp 14), **ss. 36(3)**, 41(3); S.S.I. 2011/270, art. 2, Sch.
- F6** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 75:2), **s. 1**
- F7** S. 8(5)(a)(aa) substituted for s. 8(5)(a) (27.11.2003) by Agricultural Holdings (Scotland) Act 2003 (asp 11), s. 95(3)(4), **Sch. para. 4** (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)
- F8** Words in s. 8(5)(aa) substituted (30.11.2017) by The Land Reform (Scotland) Act 2016 (Supplementary, Consequential, Transitory and Saving Provisions) Regulations 2017 (S.S.I. 2017/416), reg. 1(1), **sch. 1 para. 3(2)** (with sch. 2 para. 3)
- F9** Words substituted by Housing (Scotland) Act 1986 (c. 65, SIF 61), s. 25(1), **Sch. 2 para. 3(a)**
- F10** Words in s. 8(7) substituted (30.9.2002) by 2001 asp 10, s. 112, **Sch. 10 para. 4**; S.S.I. 2002/321, art. 2, **Sch.** (subject to transitional provisions in arts. 3-5)
- F11** Words substituted by Housing (Scotland) Act 1986 (c. 65, SIF 61), s. 25(1), **Sch. 2 para. 3(b)**

Marginal Citations

- M1** 1961 c. 58.

Changes to legislation:

There are currently no known outstanding effects for the Land Tenure Reform (Scotland) Act 1974, Section 8.