



Land Tenure Reform (Scotland) Act 1974

1974 CHAPTER 38

PART II

LIMITATIONS ON RESIDENTIAL USE OF PROPERTY LET UNDER FUTURE LONG LEASES

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

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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 ^{M1}Conveyancing (Scotland) Act 1874 and the ^{M2}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 ^{M3}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 ^{M4}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.

Modifications etc. (not altering text)

C1 S. 9(7) amended by [Land Registration \(Scotland\) Act 1979 \(c. 33, SIF 31:3\)](#), s. 29(2)(3)

Marginal Citations

M1 1874 c. 94.
M2 1924 c. 27.
M3 1971 c. 58.
M4 1868 c. 100. S.I. 1965 No. 321. 1907 c. 51.

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