



# Law Reform (Miscellaneous Provisions) (Scotland) Act 1985

## 1985 CHAPTER 73

### *Provisions relating to leases*

#### **1 Limitation on use of property held on long lease not to apply to property held on certain renewable leases.**

In subsection (4) of section 8 of the <sup>M1</sup>Land Tenure Reform (Scotland) Act 1974 (property on long lease not to be used as private dwelling house) in the definition of “long lease” there shall be inserted at the end the following—

“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.”

#### **Marginal Citations**

**M1** 1974 c. 38.

#### **2 Power of sheriff to grant renewals of certain long leases.**

After section 22 of the <sup>M2</sup>Land Registration (Scotland) Act 1979 there shall be inserted the following section—

##### **“22A Power of sheriff to grant renewals of certain long leases.**

- (1) Where a landlord has failed to renew a long lease in implement of an obligation in or under it, the sheriff may, on summary application by the tenant, make an order directing the sheriff clerk to execute a renewal of the lease instead of the landlord.

*Status: Point in time view as at 31/01/2018.*

*Changes to legislation: Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, Cross Heading: Provisions relating to leases is up to date with all changes known to be in force on or before 23 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) On making an order under subsection (1) above, the sheriff may require the tenant to consign in court such amount (whether by way of rent or expenses or otherwise) in respect of the lease and its renewal as appears to the sheriff to be lawfully due and payable or appears to him would have been so due and payable had the landlord duly renewed the lease.
- (3) A renewal executed under this section shall have the like force and effect as if it were executed by the landlord.
- (4) Without prejudice to subsection (7)(a) below, a landlord shall be regarded, for the purposes of subsection (1) above, as having failed to renew a lease in implement of an obligation in or under it if, having been given written notice in accordance with subsection (5) below by the tenant that he requires the landlord, in implement of the obligation, to renew the lease, the landlord has failed to do so when he was obliged to and continues so to fail.
- (5) Notice is in accordance with this subsection if it is given not less than 3 months before the lodging of the summary application.
- (6) Subsection (4) above is subject to subsection (7)(b) below and to any provision in or under the lease for earlier, or a longer period of, notice requiring renewal of the lease than that mentioned in subsection (5) above.
- (7) If the sheriff is satisfied that a landlord is unknown or cannot be found, he may—
  - (a) in a case where the tenant is thereby prevented from bringing the landlord, in accordance with the lease, under an obligation to renew it, order that the landlord shall be regarded, for the purposes of subsection (1) above, as having failed to renew the lease in implement of an obligation under it; and
  - (b) in any other case, dispense with notice under subsection (4) above.
- (8) The sheriff may, on the application of any party, order the investment, payment or distribution of any sums consigned in court under subsection (2) above, and in so doing the sheriff shall have regard to the respective interests of any parties appearing to have a claim on such sums.
- (9) The sheriff's power under subsection (8) above extends to ordering that any award of expenses of the application under this section be paid out of any sums consigned in court under subsection (2) above."

#### Marginal Citations

M2 1979 c. 33.

### 3 Creation of real conditions in assignments of certain long leases.

Section 3 of the <sup>M3</sup>Registration of Leases (Scotland) Act 1857 (assignments of recorded leases) shall be renumbered as subsection (1) of that section and after that subsection there shall be inserted the following subsections—

“(2) Notwithstanding—

*Status: Point in time view as at 31/01/2018.*

*Changes to legislation: Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, Cross Heading: Provisions relating to leases is up to date with all changes known to be in force on or before 23 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) any restriction imposed by subsection (1) above on the power under that subsection to assign such a lease; or
- (b) any rule of law to the contrary,

it shall be, and shall be deemed always to have been, competent in an assignation under this section to impose conditions and make stipulations which, upon the recording of such assignation or the registration under the Land Registration (Scotland) Act 1979 of the assignee's interest, shall be as effectual against any singular successor of the assignee in the subjects assigned as if such assignee had been a grantee of the lease and it had been duly recorded or, as the case may be, the grantee's interest had been so registered.

- (3) Nothing in subsection (2) above makes effectual against any successor of the assignee any obligation of periodical payment other than a payment—
  - (a) of rent or of an apportionment of rent;
  - (b) in defrayal of a contribution towards some continuing cost related to the lands and heritages subject to the lease assigned; or
- (4) A provision in an assignation which purports to make effectual against any successor of the assignee any obligation of periodic payment other than one specified in paragraphs (a) to (c) of subsection (3) above shall not render the deed void or unenforceable, but the assignation shall have, and shall be deemed always to have had, effect only to the extent (if any) that it would have had effect if it had not imposed such obligation.
- (5) Section 32 of the Conveyancing (Scotland) Act 1874 (which enables reservations, conditions, covenants etc. affecting lands to be effectually imported into one deed by reference to another) and section 17 of the Land Registration (Scotland) Act 1979 (which provides that certain obligations in deeds of conditions shall become real obligations upon the recording of the deed or registration of the obligation) shall, with the necessary modifications, respectively apply for the purposes of enabling conditions and stipulations to be effectually imported into any assignation under this section and enabling land obligations in a deed of conditions relating to the land subject to the assignation to become real obligations affecting the land.

In this subsection "land obligation" has the meaning assigned to it by section 1(2) of the Conveyancing and Feudal Reform (Scotland) Act 1970."

#### Marginal Citations

M3 1857 c. 26.

#### 4 Irritancy clauses etc. relating to monetary breaches of lease.

- (1) A landlord shall not, for the purpose of treating a lease as terminated or terminating it, be entitled to rely—
  - (a) on a provision in the lease which purports to terminate it, or to enable him to terminate it, in the event of a failure of the tenant to pay rent, or to make any other payment, on or before the due date therefor or such later date or within such period as may be provided for in the lease; or
  - (b) on the fact that such a failure is, or is deemed by a provision of the lease to be, a material breach of contract,

*Status: Point in time view as at 31/01/2018.*

*Changes to legislation: Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, Cross Heading: Provisions relating to leases is up to date with all changes known to be in force on or before 23 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

unless subsection (2) or (5) below applies.

- (2) This subsection applies if—
- (a) the landlord has, at any time after the payment of rent or other payment mentioned in subsection (1) above has become due, served a notice on the tenant—
    - (i) requiring the tenant to make payment of the sum which he has failed to pay together with any interest thereon in terms of the lease within the period specified in the notice; and
    - (ii) stating that, if the tenant does not comply with the requirement mentioned in sub-paragraph (i) above, the lease may be terminated; and
  - (b) the tenant has not complied with that requirement.
- (3) The period to be specified in any such notice shall be not less than—
- (a) a period of 14 days immediately following the service of the notice; or
  - (b) if any period remaining between the service of the notice and the expiry of any time provided for in the lease or otherwise for the late payment of the sum which the tenant has failed to pay is greater than 14 days, that greater period.
- (4) Any notice served under subsection (2) above shall be sent by recorded delivery and shall be sufficiently served if it is sent to the tenant's last business or residential address in the United Kingdom known to the landlord or to the last address in the United Kingdom provided to the landlord by the tenant for the purpose of such service.
- (5) This subsection applies if the tenant does not have an address in the United Kingdom known to the landlord and has not provided an address in the United Kingdom to the landlord for the purpose of service.

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

- C1** S. 4 excluded (3.2.1995) by 1994 c. 33, s. 106(3)(a); S.I. 1995/127, art. 2(1), **Sch.1**  
S. 4 excluded (1.8.2000) by 1999 c. 33, s. 149(3)(e); S.I. 2000/1985, art. 2, **Sch.**
- C2** Ss. 4-7 excluded by 2002 c. 29, s. 269A(5) (as inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by **Criminal Finances Act 2017** (c. 22), **ss. 29(5), 58(1)(6)**; S.I. 2018/78, **reg. 3(l)**)

**5 Irritancy clauses etc. not relating to monetary breaches of leases.**

- (1) Subject to subsection (2) below, a landlord shall not, for the purpose of treating a lease as terminated or terminating it, be entitled to rely—
- (a) on a provision in the lease which purports to terminate it, or to enable the landlord to terminate it, in the event of an act or omission by the tenant (other than such a failure as is mentioned in section 4(1)(a) of this Act) or of a change in the tenant's circumstances; or
  - (b) on the fact that such act or omission or change is, or is deemed by a provision of the lease to be, a material breach of contract,
- if in all the circumstances of the case a fair and reasonable landlord would not seek so to rely.
- (2) No provision of a lease shall of itself, irrespective of the particular circumstances of the case, be held to be unenforceable by virtue of subsection (1) above.

*Status: Point in time view as at 31/01/2018.*

*Changes to legislation: Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, Cross Heading: Provisions relating to leases is up to date with all changes known to be in force on or before 23 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) In the consideration, for the purposes of subsection (1)(a) or (b) above, of the circumstances of a case where—
- (a) an act, omission or change is alleged to constitute a breach of a provision of the lease or a breach of contract; and
  - (b) the breach is capable of being remedied in reasonable time,
- regard shall be had to whether a reasonable opportunity has been afforded to the tenant to enable the breach to be remedied.

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

- C2** Ss. 4-7 excluded by 2002 c. 29, s. 269A(5) (as inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), **ss. 29(5)**, 58(1)(6); S.I. 2018/78, reg. 3(1))
- C3** S. 5 excluded (3.2.1995) by 1994 c. 33, **s. 106(3)(a)**; S.I. 1995/127, art. 2(1), **Sch.1**  
S. 5 excluded (1.8.2000) by 1999 c. 33, **s. 149(3)(e)**; S.I. 2000/1985, art. 2, **Sch.**

**6 Supplementary and transitional provisions relating to sections 4 and 5.**

- (1) The parties to a lease shall not be entitled to disapply any provision of section 4 or 5 of this Act from it.
- (2) Where circumstances have occurred before the commencement of sections 4 and 5 of this Act which would have entitled a landlord to terminate a lease in reliance on a provision in the lease or on the ground that the circumstances constituted a material breach of contract, but the landlord has not before such commencement given written notice to the tenant of his intention to terminate the lease in respect of those circumstances, he shall, after such commencement, be entitled to terminate the lease in respect of those circumstances only in accordance with the provisions of section 4 or 5 (as the case may be) of this Act.
- (3) Nothing in section 4 or 5 of this Act shall apply in relation to any payment which has to be made, or any other condition which has to be fulfilled, before a tenant is entitled to entry under a lease.

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

- C2** Ss. 4-7 excluded by 2002 c. 29, s. 269A(5) (as inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), **ss. 29(5)**, 58(1)(6); S.I. 2018/78, reg. 3(1))
- C4** S. 6 excluded (3.2.1995) by 1994 c. 33, **s. 106(3)(a)**; S.I. 1995/127, art. 2(1), **Sch.1**  
S. 6 excluded (1.8.2000) by 1999 c. 33, **s. 149(3)(e)**; S.I. 2000/1985, art. 2, **Sch.**

**7 Interpretation of sections 4 to 6.**

- (1) In sections 4 to 6 of this Act “lease” means a lease of land, whether entered into before or after the commencement of those sections, but does not include a lease of land—
- (a) used wholly or mainly for residential purposes;<sup>F1</sup>...
  - (b) comprising<sup>F1</sup>... a croft, the subject of a cottar or the holding of a landholder or a statutory small tenant<sup>F2</sup>; or
  - (c) where the lease is an agricultural lease.]

*Status: Point in time view as at 31/01/2018.*

*Changes to legislation: Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, Cross Heading: Provisions relating to leases is up to date with all changes known to be in force on or before 23 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) In subsection (1) above—

[<sup>F3</sup>“agricultural lease” means a lease constituting a 1991 Act tenancy within the meaning of the Agricultural Holdings (Scotland) Act 2003 (asp 11) or a lease constituting a short limited duration tenancy [<sup>F4</sup>, a limited duration tenancy, a modern limited duration tenancy or a repairing tenancy] (within the meaning of that Act);]

“cottar” has the same meaning as in section 28(4) of the <sup>M4</sup>Crofters (Scotland) Act 1955;

“croft” has the same meaning as in section 3 of the Crofters (Scotland) Act 1955; and

“holding” (in relation to a landholder or statutory small tenant), “landholder” and “statutory small tenant” have the same meanings as in the Small Landholders (Scotland) Acts 1886 to 1931.

#### Textual Amendments

- F1** Words in s. 7(1)(a)(b) repealed (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), **Sch. para. 7(a)(i)** (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)
- F2** S. 7(1)(c) and preceding word inserted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), **Sch. para. 7(a)(ii)** (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)
- F3** Words in s. 7(2) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), **Sch. para. 7(b)** (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)
- F4** Words in s. 7(2) substituted (30.11.2017) by [Land Reform \(Scotland\) Act 2016 \(asp 18\)](#), s. 130(1), **sch. 2 para. 2(2)** (with s. 128); S.S.I. 2017/299, reg. 2, sch. (with reg. 8)

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

- C2** Ss. 4-7 excluded by 2002 c. 29, s. 269A(5) (as inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), **ss. 29(5)**, 58(1)(6); S.I. 2018/78, reg. 3(l))
- C5** S. 7 excluded (3.2.1995) by 1994 c. 33, s. 106(3)(a); S.I. 1995/127, art. 2(1), **Sch. 1**  
S. 7 excluded (1.8.2000) by 1999 c. 33, s. 149(3)(e); S.I. 2000/1985, art. 2, **Sch.**

#### Marginal Citations

- M4** 1955 c. 21.

**Status:**

Point in time view as at 31/01/2018.

**Changes to legislation:**

Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, Cross Heading: Provisions relating to leases is up to date with all changes known to be in force on or before 23 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.