STATUTORY INSTRUMENTS

1967 No. 532 (S. 40)

LAND COMMISSION

BETTERMENT LEVY

The Estate Duty Allowance (Scotland) Regulations 1967

Made - - - - - -	30*th March* 1967
Laid before the House of Commons	5*th April* 1967
Coming into Operation - - -	6*th April* 1967

In exercise of the powers conferred on me by section 98 of, and paragraph 12 of Schedule 6 and paragraphs 10 and 31 to 33 of Schedule 7 to, the Land Commission Act 1967(a), and of all other powers enabling me in that behalf, I, being for the purposes of these regulations the appropriate Minister in relation to Scotland, hereby make the following regulations:

PRELIMINARY

Citation, extent and commencement

1. These regulations, which may be cited as the Estate Duty Allowance (Scotland) Regulations 1967, apply to Scotland and shall come into operation on 6th April 1967 (being the first appointed day under the Act (b)).

Interpretation

2.—(1) In these regulations the following expressions have the meanings hereby assigned to them respectively, that is to say:—

"the Act" means the Land Commission Act 1967, and "Schedule 5" and "Schedule 7" mean Schedule 5 and Schedule 7 to the Act respectively;

"the Commission" means the Land Commission;

"the chargeable interest" and "the chargeable owner" have the meanings assigned to them by paragraph 2(1) of Schedule 5;

and in relation to any chargeable act or event—

"the chargeable land" means the land in which the chargeable interest subsists;

"the dutiable land" means—

(*a*) where the chargeable land or any part thereof passed on any death referred to in these regulations, so much of the chargeable land as so passed; and

(*b*) where only an interest in the chargeable land or any part thereof so passed, so much of the chargeable land as is land in which that interest subsisted;

"the six year period" means the period beginning six years before the relevant date and ending immediately before that date;

(a) 1967 c. 1. (b) *See* S.I. 1967/146 (1967 I, p. 241).

"interest in expectancy" has the meaning assigned to it by section 22(1)(*j*) of the Finance Act 1894(**a**);

"the last relevant disposition" has the meaning assigned to it by paragraph 6 of Schedule 5; and

"predecessor" has the meaning assigned to it by paragraph 1(3) of Schedule 7.

(2) Any other expression used in these regulations of which there is a definition in the Act, or in respect of which there is in the Act any provision relating to the construction thereof, or of any reference thereto, has the meaning assigned to it by the Act, whether for the purposes of the Act as a whole or for the purposes only of Part III thereof, or of any Schedule to the Act or any Part of any such Schedule.

(3) Except in so far as the context otherwise requires—

(*a*) any reference in these regulations to an enactment is a reference to that enactment as amended or extended by or under any other enactment;

(*b*) any such reference to any provision of the Act shall be construed as a reference to that provision as modified by these regulations or any other regulations made under the Act; and

(*c*) any such reference to a regulation bearing a number is a reference to the regulation bearing that number in these regulations.

(4) Any reference in these regulations to the passing of any land on any death shall be taken to be a reference to the fact that that land or an interest in that land passed, or is deemed to have passed, for the purpose of the enactments relating to estate duty, and any such reference to the passing of any interest in any land shall be taken to be a reference to the fact that that interest so passed or is deemed to have so passed.

(5) The Interpretation Act 1889(**b**) applies for the interpretation of these regulations as it applies for the interpretation of an Act of Parliament.

ALLOWANCE IN SPECIAL CASES

Life interests

3.—(1) Parts I, II and III of the Schedule to these regulations shall have effect for the purpose of assessing levy in respect of a chargeable act or event where—

(*a*) the dutiable land passed on the death referred to in sub-paragraph (*b*) of this paragraph and was (subject as mentioned in paragraph (3) of this regulation) immediately before that death held upon trust;

(*b*) a person (in this regulation and in regulation 5(3) referred to as "the deceased") who satisfied the provisions of paragraph (2) of this regulation died within the six year period;

(*c*) estate duty was leviable on his death in respect of the dutiable land or the interest of the deceased or any other person in the dutiable land; and

(*d*) there has not before the relevant date been any previous chargeable act or event in connection with which an allowance under Schedule 7 or these regulations fell or falls to be made in respect of that land or that interest.

(**a**) 1894 c. 30. (**b**) 1889 c. 63.

(2) A person shall be taken to satisfy the provisions of this paragraph if immediately before his death he had the sole beneficial interest, ceasing on his death or on the death of another person, in the dutiable land by virtue of a trust which included that land among its assets, and for the purpose of ascertaining whether that interest so ceased section 40 (Estate duty: interests limited to cease on death) of the Finance Act 1966(a) shall apply as it applies for the purpose of determining the questions in subsection (1) of that section.

(3) Where any interest in the dutiable land limited to cease on the death of any person is prior to that death disposed of or determined in such a manner that by virtue of section 43 of the Finance Act 1940(b) the dutiable land is deemed to be included in the property passing on that death to the extent mentioned in that section, the reference in sub-paragraph (*a*) of paragraph (1) and paragraph (2) of this regulation to the time immediately before that death shall be treated as a reference to the time immediately before that disposal or determination.

Interests in expectancy (duty paid on cesser of life interest by death)

4.—(1) Parts I, II and IV of the Schedule to these regulations shall have effect for the purpose of assessing levy in respect of a chargeable act or event where—

(*a*) the dutiable land passed on the death referred to in sub-paragraph (*b*) of this paragraph and immediately before that death the land was held upon trust;

(*b*) a person (in this regulation and in regulation 5(4)(*b*) referred to as "the deceased") who satisfied the provisions of paragraph (2) of regulation 3 or was a person to whom paragraph (2) of this regulation applies died within the six year period;

(*c*) before his death estate duty became leviable on the death of the person entitled to the interest in expectancy in the dutiable land, being the only person with such an interest extending to the whole of that land;

(*d*) the person accountable for duty in respect of the interest in expectancy exercised his option under section 7(6) of the Finance Act 1894 to pay the duty when the interest fell into possession;

(*e*) that interest fell into possession on the death of the deceased; and

(*f*) there has not before the relevant date been any previous chargeable act or event in connection with which an allowance under Schedule 7 or these regulations fell or falls to be made in respect of that land or that interest.

(2) A person shall be taken to be a person to whom this paragraph applies if he satisfied all the provisions of paragraph (2) of regulation 3 except that he did not have the sole beneficial interest in the dutiable land by virtue of a trust.

Concurrent interests and interests in expectancy (other cases)

5.—(1) This regulation shall have effect for the purpose of assessing levy in respect of a chargeable act or event where paragraph (2), (3), (4) or (5) of this regulation applies.

(2) This paragraph applies where—

(*a*) a person (in this paragraph referred to as "the deceased") who was a predecessor of the chargeable owner died within the six year period;

(a) 1966 c. 18. (b) 1940 c. 29.

(*b*) an interest in the chargeable land passed on the death of the deceased and estate duty was leviable in respect of that interest;

(*c*) that interest was an interest which the deceased held jointly *pro indiviso* with another person;

(*d*) that interest either would have been the chargeable interest if the deceased had been solely entitled to it or was an interest whether by virtue of a trust or otherwise in part of the chargeable land and would have been the chargeable interest if it had extended to the whole of that land and the deceased had been solely entitled to it; and

(*e*) there has not before the relevant date been any previous chargeable act or event in connection with which an allowance under Schedule 7 or these regulations fell or falls to be made in respect of that interest.

(3) This paragraph applies where the circumstances were not all those described in paragraph (1) of regulation 3 but would have been if the deceased had had the sole beneficial interest in the dutiable land by virtue of a trust.

(4) This paragraph applies—

(*a*) where the circumstances were not all those described in paragraph (1) of regulation 4, but would have been if the deceased had been the only person with an interest in expectancy extending to the whole of the dutiable land; or

(*b*) where the circumstances were as described in sub-paragraphs (*a*), (*b*), (*c*), (*d*) and (*f*) of the said paragraph (1) and the said interest in expectancy fell into possession before the death of the deceased on a date within the six year period.

(5) This paragraph applies where—

(*a*) an interest in expectancy in the dutiable land passed on the death of the person entitled to that interest who died within the six year period, and at the date of that death the dutiable land was held upon trust;

(*b*) estate duty was leviable in respect of that interest and the person accountable for duty did not exercise his option under section 7(6) of the Finance Act 1894 to pay the duty when the interest fell into possession; and

(*c*) there has not before the relevant date been any previous chargeable act or event in connection with which an allowance under Schedule 7 or these regulations fell or falls to be made in respect of that interest.

(6) If the chargeable owner, or a successor in title of his in whom the chargeable interest has become vested by operation of law, serves on the Commission a notice (in this regulation referred to as a "notice of claim") specifying that interest and stating—

(*a*) that a person specified in the notice died on a date so specified, and that confirmation in respect of his estate was expede on a date and at the sheriff court so specified;

(*b*) that estate duty was payable on the death of the person specified in the notice; and

(*c*) that the circumstances are those set out in paragraph (2), (3), (4) or (5) of this regulation (as the case may be);

and requesting the Commission to make an allowance under this regulation, the Commission may make such allowance under Schedule 7 as, after consultation with the Commissioners of Inland Revenue and having regard to the provisions of Part II of Schedule 7, they determine to be appropriate.

(7) In any case where the Commission decide to make an allowance under this regulation, they shall in writing inform the person who served the notice of claim at the address of that person given in that notice of the amount of such allowance, and paragraph 3 of Schedule 7 shall then apply as it applies where an appropriate allowance falls to be made in accordance with paragraph 2 of that Schedule.

William Ross,
One of Her Majesty's
Principal Secretaries of State.

St. Andrew's House,
Edinburgh, 1.

30*th* March 1967

SCHEDULE

APPLICATION OF SCHEDULE 7

PART I

General Provisions

1. Subject to the following provisions of this Schedule, an allowance shall be made under Schedule 7 for the purpose of assessing levy where, in the circumstances specified in regulation 3 or regulation 4, the gross principal value of the dutiable interest exceeds the modified value of that interest in accordance with the provisions of Part II of Schedule 7 but subject to paragraph 4 and to Part III of Schedule 7.

PART II

Adaptations in relation to life interests and interests in expectancy

2. For the purpose specified in paragraph 1 of this Schedule, Schedule 7 shall have effect subject to the following provisions of this Schedule.

3. Any reference in Schedule 7 to the dutiable interest shall be taken to be a reference to that interest (whether the estate or interest of the proprietor of the *dominium utile* or, in relation to land not held on feudal tenure, the interest in the land of the owner thereof or a tenancy) in the dutiable land which corresponds to the chargeable interest.

4. Paragraphs 3 and 4 of Schedule 7 shall apply as if any reference to paragraph 2 of that Schedule were a reference to paragraph 1 of this Schedule.

5. In accordance with paragraph 8(3) of Schedule 7 regulation 16 (modified value of a dutiable interest) of the Betterment Levy (Tenancies and Reversions) (Scotland) Regulations 1967(a) shall have effect.

6. In accordance with paragraph 10 (modified value in Case F) of Schedule 7 regulations 4 to 8 of the Case F Supplemental (Scotland) Regulations 1967(b) shall have effect.

PART III

Adaptations in relation to life interests only

7. This Part of this Schedule shall have effect for the purpose of assessing levy in the circumstances specified in paragraph (1) of regulation 3.

(a) S.I. 1967/324 (1967 I, p. 1102). (b) S.I. 1967/325 (1967 I, p. 1118).

8. Paragraph 25 (notice of claim) of Schedule 7 shall apply as if for sub-paragraph (1)(*c*) the following were substituted—

"(*c*) that the person so specified was a person who satisfied the provisions of paragraph (2) of regulation 3 of the Estate Duty Allowance (Scotland) Regulations 1967 in relation to the land in which the chargeable interest subsists or some part of that land.".

9. Paragraph 27 (assumptions to be made by Commissioners of Inland Revenue) of Schedule 7 shall apply as if the reference to paragraph 1 of Schedule 7 were a reference to paragraph (1) of regulation 3 and as if for sub-paragraph (1)(*a*) the following were substituted—

"(*a*) the person specified in the notice of claim was a person who satisfied the provisions of paragraph (2) of regulation 3 of the Estate Duty Allowance (Scotland) Regulations 1967 in relation to the land in which the chargeable interest subsists or some part of that land.".

PART IV

Adaptations in relation to interests in expectancy under regulation 4

10. The following provisions of this Schedule shall have effect for the purpose of assessing levy in the circumstances specified in paragraph (1) of regulation 4.

11. Paragraphs 5 and 27 of Schedule 7 shall apply as if any reference in paragraph 5 to estate duty leviable on the death of the deceased were a reference to the estate duty payable in respect of the interest in expectancy referred to in regulation 4 when it fell into possession and any reference in either of those paragraphs to the estate of the deceased were a reference to that interest.

12. Paragraphs 14 to 17 of Schedule 7 shall not apply.

13. Paragraph 20 of Schedule 7 shall apply as if the reference to the rate at which estate duty leviable on the death of the deceased would have been payable on the dutiable interest were a reference to the rate at which estate duty would have been leviable on the interest in expectancy in the circumstances described in paragraph (1) of regulation 4 and as if any reference to the estate of the deceased were a reference to the estate of the person entitled to that interest in expectancy.

14. Paragraph 25 of Schedule 7 shall apply as if for sub-paragraph (1)(*b*) and (*c*) the following were substituted—

"(*b*) that the person so specified was, in relation to the land in which the chargeable interest subsists or some part of that land, a person who satisfied the provisions of paragraph (2) of regulation 3 of the Estate Duty Allowance (Scotland) Regulations 1967 or was a person to whom paragraph (2) of regulation 4 of those regulations applied; and

(*c*) that estate duty became payable on the death of that person in respect of an interest in expectancy which fell into possession on that death.".

15. Paragraph 27 of Schedule 7 shall apply as if the following further modifications were made therein—

(1) the reference to paragraph 1 of Schedule 7 were a reference to paragraph (1) of regulation 4; and

(2) for sub-paragraph (1) (*a*) the following were substituted—

"(*a*) the person specified in the notice of claim was, in relation to the land in which the chargeable interest subsists, or some part of that land, a person who satisfied the provisions of paragraph (2) of regulation 3 of the Estate Duty Allowance (Scotland) Regulations 1967 or was a person to whom paragraph (2) of regulation 4 of those regulations applied.".

EXPLANATORY NOTE

(This Note is not part of the regulations.)

These regulations provide for an allowance in respect of estate duty to be made on an assessment of betterment levy in certain cases for which Schedule 7 to the Land Commission Act 1967 does not provide.

Regulation 3 provides for an allowance to be made on the death of a person with a beneficial interest, ceasing on his death or on the death of another person, in land by virtue of a trust.

Regulation 4 provides for the case where, on the death of a person entitled to an interest in expectancy, his personal representatives have exercised their option to defer payment of estate duty in respect of that interest until it falls into possession and the interest falls into possession on the death of a person entitled to a prior life interest.

In the above cases the allowance is given only where the death on which estate duty becomes payable is not more than six years before the chargeable act or event which attracts levy, while the two regulations, with the Schedule, provide for the allowance to be given in accordance with the formula prescribed by Schedule 7.

Regulation 5 deals with cases concerning life interests and interests in expectancy for which regulations 3 and 4 do not provide. The formula prescribed by Schedule 7 is not applicable in these cases, and the amount of the allowance is left to the discretion of the Land Commission, who are required to consult the Commissioners of Inland Revenue and to have regard to the provisions of Schedule 7 in exercising their discretion.

The regulations apply to Scotland.