

LONG LEASES (SCOTLAND) ACT 2012

EXPLANATORY NOTES

PART 2: CONVERSION OF CERTAIN LEASEHOLD CONDITIONS TO REAL BURDENS

Entitlement to enforce qualifying conditions

Section 13: Determination of who may enforce condition

60. The notice procedure introduced by sections 14 to 28 for converting a qualifying condition into a real burden can only be used by a person who has the right to enforce the qualifying condition. Section 13 sets out some rules on who can enforce a qualifying condition.
61. Subsection (2) provides that a person who has not completed title to the property to which the right to enforce a qualifying condition attaches has the right to enforce the condition. Where more than one person comes within that description then only the person with the latest right to the property may enforce it.
62. Subsection (3) provides that where a lease has been partially assigned, the tenant or subtenant of the retained part of the lease can enforce conditions imposed in the assignation or related deed. Such a person can then serve a notice under sections 14, 17, and 23 to 28. The reference to a deed registered under section 3 of the Registration of Leases (Scotland) Act 1857 includes a deed of conditions registered under the old section 3(5) of the 1857 Act which was repealed and replaced by the Title Conditions (Scotland) Act 2003 (section 128, schedule 14 paragraph 1, and schedule 15).
63. Subsection (4) defines “entitled person” for the purposes of sections 14 to 21. The definition recognises that third parties may have a right to enforce a qualifying condition.
64. Subsection (5) sets out rules, for the purposes of sections 14 to 21, for the situation where a right to enforce is held by more than one person *pro indiviso* (*pro indiviso* property or land is owned by several persons in common). If the right to enforce is held in the capacity of landlord, all *pro indiviso* landlords have to act together. In a section 14 case, for example, they must all be parties to the notice and they must all own the land to be nominated as a benefited property. If the right to enforce is held by a third party, a *pro indiviso* holder of the right can act alone but the effect is to convert the condition into a real burden for the benefit of all *pro indiviso* holders.