

LONG LEASES (SCOTLAND) ACT 2012

EXPLANATORY NOTES

PART 2: CONVERSION OF CERTAIN LEASEHOLD CONDITIONS TO REAL BURDENS

Conversion of conditions to burdens

Section 14: Conversion by nomination of benefited property

65. This section allows a person with a right to enforce a qualifying condition (the “entitled person”) to convert the condition into a real burden in favour of neighbouring land. “Entitled person” is defined in section 13(4). The entitled person is usually the landlord (of the qualifying lease or a superior lease) but in some circumstances is a neighbour.
66. Subsections (1) and (2) provide that where a conversion condition set out in subsection (4) is met, or the Lands Tribunal for Scotland makes an order under section 21, an entitled person may prospectively convert a qualifying condition into a real burden by executing and registering a notice.
67. Subsection (3) sets out the content of the notice. Further provision as to counter-obligations (paragraph (h)) is made in section 34.
68. Subsections (5) and (6) determine what land may be nominated by an entitled person as a benefited property. In the majority of cases the entitled person is the landlord. In such a case, the land to be nominated as the benefited property is land which either:
- the landlord owns and which is not subject to a qualifying or exempt lease; or
 - land which the landlord is tenant of under a qualifying or exempt lease.
69. In the case of third parties, the land which may be nominated as a benefited property is that land to which the right to enforce attaches (whether to the ownership of that land or to the tenant’s interest under a lease of that land).
70. For example, A is the tenant of a qualifying lease and has assigned the lease in part to B, imposing a qualifying condition. Section 13(3) makes it clear that A has the right to enforce that condition and section 13(4) provides that A is an entitled person for the purposes of section 14.
71. To convert the qualifying condition, A has to serve a notice nominating land as the prospective benefited property. The land to be nominated as the benefited property has to satisfy section 14(5) as read with section 14(6) given that A is not a landlord. In other words, if the land to be nominated is subject to a qualifying or exempt lease, the entitled person has not only to be the tenant of that lease (subsection (5)) but also that lease has to be the lease to which the entitlement to enforce the condition attaches (by virtue of subsection (6)).
72. **Section 32** deals with cases where a qualifying condition is expressly enforceable by the owner or tenant of land other than the qualifying land.

Section 15: Conversion by nomination: registration

73. Subsection (1) requires dual registration of the notice against both the burdened and the benefited property. Under subsection (2), there is a choice in both cases of registering against the title of the owner or (where applicable) the title of the tenant.
74. Subsection (3) provides that the notice must be sworn or affirmed before a notary public. In the normal case this must be done personally but some exceptions are set out in subsection (4).

Section 16: Conversion by nomination: effect

75. This section converts the qualifying condition into a real burden on the appointed day provided that the requirements of the section have been complied with and immediately before the appointed day the qualifying condition is still enforceable by the entitled person or a successor of that person.

Section 17: Conversion by agreement

76. This section allows the “entitled person” (as defined in section 13(4)) to enter into an agreement with the tenant of the qualifying lease for the purpose of converting a qualifying condition into a real burden in favour of neighbouring land. The entitled person is usually the landlord (of the qualifying lease or a superior lease) but in some circumstances is a neighbour. An attempt to reach agreement is a prerequisite to an application under section 21 for an order from the Lands Tribunal dispensing with the need for any of the conversion conditions set out in section 14(4) to be satisfied.
77. Subsection (1) requires a notice to be served on the tenant under the qualifying lease as a preliminary to the agreement.
78. Subsections (2) and (3) determine what land may be nominated as a benefited property.
79. Subsection (4) sets out the content of the notice. Further provision as to counter-obligations (paragraph (f)) is made in section 34.
80. Subsection (5) allows the parties to the agreement to modify the terms of the qualifying condition or any counter-obligation.
81. Subsection (6) regulates the form and content of the agreement.
82. Subsection (7) provides that this section is subject to section 36, which lays down further provision for notices and agreements.

Section 18: Conversion by agreement: registration

83. Subsection (1) requires dual registration of the agreement against both the burdened and the benefited property. Under subsection (2), there is a choice in both cases of registering against the title of the owner or (where applicable) the title of the tenant.

Section 19: Conversion by agreement: effect

84. This section converts the qualifying condition into a real burden on the appointed day if the requirements have been met and immediately before the appointed day the qualifying condition is still enforceable by the entitled person or a successor of that person.

Section 20: Conversion by agreement: title not completed

85. This section provides the method for deduction of title in cases where under the general law deduction of title would be required.