

LONG LEASES (SCOTLAND) ACT 2012

EXPLANATORY NOTES

PART 3: ALLOCATION OF RENTS AND RENEWAL PREMIUMS ETC.

Allocation of rent

Section 39: Allocation of cumulo rent before appointed day

161. This section allows the landlord to allocate *cumulo* rent before the appointed day. This allows landlords to claim an exemption from the Act, if the annual rental for an individual lease after the *cumulo* rent has been allocated is over £100 (see section 64).
162. Subsection (1) and (2) provide that where two or more leases are subject to *cumulo* rent and one or more of the leases is a qualifying lease (defined in section 1), the landlord may allocate the *cumulo* rent.
163. Subsection (3) provides that the allocation must be reasonable and subsection (4) provides that the allocation is presumed to be reasonable if it accords with any apportionment that has already taken place. This presumption is relevant only in cases where an apportionment was made without the consent of the landlord. For example, where the rent is collected by a property manager or other third party and remitted to the landlord in a single sum. Subsection (5) provides that once the allocation by the landlord has taken place the rental for each individual lease is the annual rental and is not *cumulo* rent for the purposes of this Act.

Section 40: Allocation of cumulo rent after appointed day

164. Where the annual rent payable under the lease is a *cumulo* rent, as defined in section 38, that rent requires to be allocated before the compensatory payment can be calculated under Part 4. This section sets out the rules for doing so.
165. Subsection (2) directs the landlord to allocate the *cumulo* rent between the leases within 2 years of the appointed day. The rent is to be allocated between all of the leases in respect of which *cumulo* rent was payable. The allocation must be in such proportions as are reasonable in the circumstances (subsection (3)).
166. Subsection (4) creates a presumption that the landlord's allocation is reasonable if it accords with an apportionment made before the appointed day. This presumption is relevant only in cases where an apportionment was made without the consent of the landlord. For example, where the rent is collected by a property manager or other third party and remitted to the landlord in a single sum. To assist the landlord, section 58 requires any third party collector to disclose to the landlord information about the tenants from whom the rent has been collected and the amount collected.
167. Under subsection (5), the sum allocated to a lease that continues after the appointed day is the annual rent payable under that lease from the appointed day, subject to any allocation under section 41 in relation to partially continuing leases.

Section 41: Partially continuing leases: allocation of rent

168. Section 41 is concerned with a lease that is partly extinguished and partly continues on and after the appointed day. “Partially continuing lease” is defined in section 37. A lease is a partially continuing lease if, for example, there is a partial sublease further down the leasehold chain which is exempt from conversion under Part 5. Instead of being extinguished in full, the higher lease continues in force in relation to the subjects of the exempt lease.
169. Subsection (1) directs the landlord of a partially continuing lease to allocate the annual rent payable under the lease between the continuing part and the extinguished part (the “continuing subjects” and the “converted subjects”). Subsection (2)(b) provides that if the rent payable under the lease was a *cumulo* rent, as defined in section 38, the landlord must allocate the *cumulo* rent between the relevant leases, as outlined in section 40, before carrying out the allocation under this section.
170. Under subsection (4), the sum allocated to the continuing part of the lease is the annual rent payable under that lease from the appointed day.