

LONG LEASES (SCOTLAND) ACT 2012

EXPLANATORY NOTES

PART 4: COMPENSATION FOR LOSS OF LANDLORD'S RIGHTS

Supplementary

Section 56: Claims in excess of £500: preliminary notice

236. A landlord who intends to claim a sum which is likely to exceed £500 by way of compensatory or additional payment from the tenant of the qualifying lease has to serve a preliminary notice. This notice must be served no later than six months before the appointed day on the person who is registered at that time as the tenant. Separate notices have to be served in respect of each type of payment. If a notice is not served the amount of compensatory or additional payment that can be claimed is capped at £500.

Section 57: Making payment by instalments

237. Where the compensatory payment or additional payment is £50 or more the former landlord has to serve an instalment document along with the relevant notice. This section sets out the rules of the instalment scheme.
238. Subsection (2) provides that the instalment document must be completed in the prescribed form and accompanied by a copy of the explanatory note.
239. Subsection (3) requires that to obtain the option to pay by instalments, the former tenant has to sign, date and return the instalment document along with payment of a 10% surcharge. The tenant has to do this within the period allowed for payment of the compensatory or additional payment, which is either 56 or 28 calendar days.
240. Subsection (4) provides that the option of paying by instalments is lost by the former tenant of a qualifying lease in the event of a sale of the whole or part of the land now owned.
241. Subsections (6) and (7) set out the details of the instalment scheme. Whitsunday is 28 May and Martinmas is 28 November.
242. Subsection (8) provides for immediate payment of the balance if an instalment is unpaid for forty two calendar days.
243. Subsection (9) makes clear that in other cases the balance can be repaid at any time.

Section 58: Collecting third party to disclose information

244. This section requires any third party collector of rent (e.g. where rent has been on a *cumulo* basis) to disclose to the landlord information about the tenants from whom the rent has been collected and, where the rent remitted is part of a *cumulo* rent, the amount so collected, so far as this is practicable.

Section 59: Duty to disclose identity etc. of former tenant

245. This section requires a person on whom a notice was mistakenly served claiming a compensatory or additional payment to disclose the name and address of the former tenant or, failing that, such other information as will enable the former tenant to be traced.

Section 60: Prescription of requirement to make payment

246. This section provides that the obligation to pay the compensatory or additional payment prescribes (i.e. extinguishes) after 5 years. Prescription starts to run from the date the obligation to pay arises.

Section 61: Interpretation of Part 4

247. Subsection (1) defines former landlord and former tenant for the purposes of Part 4. It has to be read alongside the definitions of landlord and tenant in section 80(1). The definitions include a person who has a right to the interest but who has not completed title. If more than one person comes within the definition the latest such person is treated as the landlord or the tenant.
248. Subsection (2) provides where there are co-tenants their liability is joint and several as regards the compensatory or additional payment in a question with the former landlord and also among themselves. It also makes clear that for the purposes of Part 4 such tenants are to be treated as a single tenant except for the provisions regarding service of a notice.