

LONG LEASES (SCOTLAND) ACT 2012

EXPLANATORY NOTES

PART 6: GENERAL AND MISCELLANEOUS

Overview of Part 6 of the Act

271. This Part contains provisions on a variety of issues: the appointed day; how to determine the duration of leases; leases continuing on tacit relocation; irritancy; service of notices; registration of notices; matters that the Keeper of the Registers of Scotland is not required to determine; referring disputed notices to the Lands Tribunal; the registration of documents rejected by the Keeper when the courts or the Lands Tribunal determine that they are registrable; amendments to enactments; interpretation; ancillary provisions; subordinate legislation and commencement.

The appointed day

Section 70: The appointed day

272. This section fixes the appointed day, which is the day when qualifying leases are converted into ownership. Martinmas (28 November) is chosen because that is one of the dates on which rent is normally payable. The period of two years between the coming into force of the section under section 70 and the appointed day enables the qualifying leases to be identified ahead of conversion. This in turn enables the statutory notices for conversion of qualifying conditions etc. to be served and registered before the appointed day.
273. The Term and Quarter Days (Scotland) Act 1990 regulates, in Scotland, the date of Martinmas (and Whitsunday, Candlemas and Lammas).

Duration of lease etc

Section 71: Determining duration of lease

274. The provision sets out a number of rules for calculating the period of a lease. The period of a lease is relevant for the purposes of working out whether a lease qualifies for conversion (section 1(3)); whether an additional payment can be claimed for the residual value of the reversionary interest (section 51(1)(e)) and how that value is to be assessed (section 52(3) and (4)); and whether an additional payment can be claimed for the loss of a right to bring a lease to an end early (section 51(1)(f)). In each case the duration of the lease is calculated in the same way.
275. Subsection (1) sets out the rules for break options (which are disregarded), for renewals (which are included), for calculating the lifetime of a tenant (for the exceptional cases where this might be relevant), and for consecutive leases (which are included). A consecutive lease is a lease which is granted during the term of the first lease on essentially the same terms and conditions as the first lease and which is to run from the moment the first lease ends.

276. Subsection (2) makes clear that a calculation of the period of a lease in accordance with the rules in subsection (1) is subject to section 67 of the Abolition of Feudal Tenure etc. (Scotland) Act 2000. That provision (with certain exceptions) prohibits the grant of a lease for more than 175 years. The provision has no relevance for break options and so subsection (2) does not apply to such options.

Section 72: Leases continuing on tacit relocation

277. This section relates to leases continuing on tacit relocation (leases continuing on a year by year basis where, for example, a renewal was due to have taken place but did not actually happen). The section provides that Part 4, on compensation, applies to such leases as does section 71, on determining the duration of the lease, as if any provision requiring the landlord to renew the lease had been complied with.
278. To give an example, some leases in Blairgowrie are for 99 years but contain provisions requiring the landlords to renew them in perpetuity for further periods of 99 years. The effect of section 72 is that where such leases have not been renewed but continue on tacit relocation, the renewal is deemed to have taken place, including conditions about further renewals. This means that the durational requirements for leases to convert to ownership are met.

Extinction of right of irritancy in certain leases

Section 73: Extinction of right of irritancy in certain leases

279. This section prevents the termination by irritancy of a lease of land granted for a period of more than 175 years which has an unexpired duration of more than 100 years (for residential leases) or has an unexpired duration of more than 175 years (for non-residential leases) and is not excluded by section 1(4) or section 64. The lease does not have to be registered to be covered by this section.
280. Irritancy is the premature termination of the lease by the landlord, when the tenant has failed to comply with one or more of the tenant's obligations under the lease. It includes a provision in a lease which deems a failure of the tenant to comply with any provision in the lease to be a material breach of contract. Any proceedings already commenced in relation to irritancy of a lease covered by this section are deemed to be abandoned (subsection (4)). However, any final decree granted is not affected (subsection (5)).

Section 74: Service of notices

281. This section sets out the rules for service of a notice (and preliminary notice) in respect of a compensatory or additional payment and in respect of serving notices to enter into an agreement with a tenant for the purpose of converting a qualifying condition into a real burden in favour of neighbouring land.
282. Liability to pay any compensatory or additional payment depends on service of a notice. The date of service is the starting point for the period allowed for payment or return of the instalment document. The date of service is the date of delivery or posting. When notices are returned undelivered, provision is made for service on the Extractor of the Court of Session.

Section 75: Notices: pre-registration requirements

283. This section applies to notices which require to be submitted for registration under section 8 (sporting rights) or under Part 2.
284. The section provides for the sending of a copy of the notice to the tenant under the qualifying lease. Normally service is by post and must precede registration. The notice must contain a statement about service, or an explanation as to why service was not reasonably practicable.

Section 76: Keeper's duty as regards documents

285. This section relieves the Keeper of the Registers of Scotland of the need to verify certain matters which the Keeper could not reasonably be expected to check.

Section 77: Disputed notices: reference to Lands Tribunal

286. This section gives the Lands Tribunal a broad jurisdiction to resolve disputes in relation to notices. The section applies not only to notices converting conditions into real burdens under Part 2 but also to notices converting reserved sporting rights (section 8) and to exemption and recall notices (sections 63, 64 and 67).

Section 78: Certain documents registrable despite initial rejection

287. This section allows registration, within limits, if the initial rejection of a notice or agreement by the Keeper is judicially overturned.
288. Subsection (1) identifies the notices and agreements in question.
289. Subsection (2) provides that a notice or agreement has to be registered within 2 months of the determination by the court (defined in subsection (6) as either the Court of Session or the Sheriff Court) or the Lands Tribunal. Under subsections (3) and (4), a notice which is registered after the appointed day is given retrospective effect.
290. Subsection (5) provides for the Scottish Ministers to specify a period of time within which application has to be made to the court or the Lands Tribunal. A different period may be prescribed for exempt leases as an exempt lease can be recalled at any time (other than a lease exempted under section 64) and so the appointed day for that lease is uncertain.

Miscellaneous

Section 79: Amendments to enactments

291. This section gives effect to the minor and consequential amendments in the schedule.

Section 80: Interpretation

292. Subsection (1) gives the meaning of certain terms. The majority of the terms have already been discussed in the Notes to the earlier sections.
293. Under subsection (2) expressions used in the Title Conditions (Scotland) Act 2003 are to have the same meaning unless otherwise provided. Section 122 of the 2003 Act is the interpretation provision. This technique allows a number of terms to be used without further explanation – including, for example, benefited property, burdened property, conservation body, conservation burden, economic development burden, enactment, facility burden, service burden, health care burden, manager burden, and notary public.

Section 81: Ancillary provision

294. This section provides ancillary order-making powers for Ministers.

Section 82: Subordinate legislation

295. This section regulates the making of subordinate legislation under the Act.

Section 83: Commencement

296. This section deals with the date of commencement. Different elements of the Act may be commenced at different times.

*These notes relate to the Long Leases (Scotland) Act 2012
(asp 9) which received Royal Assent on 7 August 2012*

Section 84: Short title

297. This section deals with the short title.

Schedule

298. This makes minor and consequential amendments.