



# Long Leases (Scotland) Act 2012

## 2012 asp 9

### PART 2

#### CONVERSION OF CERTAIN LEASEHOLD CONDITIONS TO REAL BURDENS

##### *Determination of “qualifying conditions”*

#### **10 Qualifying conditions**

- (1) A condition is a “qualifying condition” if—
  - (a) it is constituted in accordance with subsection (2),
  - (b) it is enforceable against the tenant (and the successors of the tenant) of—
    - (i) the qualifying lease, or
    - (ii) any superior lease,
  - (c) it complies with subsection (3), and
  - (d) it is not an excluded condition.
- (2) A condition is constituted in accordance with this subsection if it is set out in—
  - (a) the qualifying lease,
  - (b) any superior lease which is not a lease granted by virtue of section 17(1) of the Land Tenure Reform (Scotland) Act 1974 (c.38) (interposed leases),
  - (c) any deed varying a lease mentioned in paragraph (a) or (b), or
  - (d) any assignation of or other deed relating to a lease mentioned in paragraph (a) or (b) where the assignation or other deed is registered under section 3 of the Registration of Leases (Scotland) Act 1857 (c.26) (assignation of leases).
- (3) A condition complies with this subsection if it consists of—
  - (a) an obligation to do something (including an obligation to defray, or contribute towards, some cost),
  - (b) an obligation to refrain from doing something,
  - (c) a right to enter, or otherwise make use of, property which is for a purpose ancillary to an obligation mentioned in paragraph (a) or (b), or
  - (d) a provision for management or administration which is for a purpose ancillary to an obligation mentioned in paragraph (a) or (b).

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*Changes to legislation: There are currently no known outstanding effects for the Long Leases (Scotland) Act 2012, Cross Heading: Determination of “qualifying conditions”. (See end of Document for details)*

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- (4) In determining whether a condition complies with subsection (3), regard is to be had to the effect of the condition rather than to the way in which the condition is expressed.
- (5) A condition is an “excluded condition” if—
- (a) it is an obligation to pay rent,
  - (b) it confers a right of irritancy,
  - (c) the provision constituting it states that it is enforceable only by irritancy,
  - (d) it imposes a restriction on—
    - (i) assignation, or
    - (ii) subletting,
 that is neither a right of pre-emption, a right of redemption or reversion nor any other type of option to acquire the lease, or
  - (e) it imposes a monetary penalty which is payable on the failure of the tenant to comply with any of the other conditions under the lease.

**Commencement Information**

**I1** [S. 10](#) in force at 28.11.2013 by [S.S.I. 2013/322](#), [art. 2\(b\)](#)

**11 Restriction on conversion of qualifying conditions**

A qualifying condition does not become a real burden by virtue of this Part unless the real burden that would be so created complies with the provisions of section 3 (omitting subsection (5)) of the Title Conditions (Scotland) Act 2003 (asp 9).

**Commencement Information**

**I2** [S. 11](#) in force at 28.11.2013 by [S.S.I. 2013/322](#), [art. 2\(b\)](#)

**Changes to legislation:**

There are currently no known outstanding effects for the Long Leases (Scotland) Act 2012, Cross Heading: Determination of “qualifying conditions”.