

POLICY NOTE

THE LONG LEASES (SCOTLAND) ACT 2012 (COMMENCEMENT NO. 1) ORDER 2013

SSI 2013/322 (C. 25)

The powers to make this Order are conferred by section 83(2) of the Long Leases (Scotland) Act 2012 (“the 2012 Act”). The Order is laid before Parliament laid under section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010.

Policy Objectives

The 2012 Act converts ultra-long leases into ownership on the “appointed day”. “Ultra-long leases” are leases that were let for over 175 years and, for residential leases, have over 100 years left to run from the appointed day and, for non-residential leases, have over 175 years left to run from the appointed day.

Under the 2012 Act, compensatory payments for a former landlord are based on the annual rent payable under the ultra-long lease in question.

In some circumstances:

- additional payments may be payable by tenants to landlords;
- “qualifying conditions” in ultra-long leases may be converted to real burdens;
- landlords may execute and register a notice to preserve sporting rights.

The Government estimates that there are around 9,000 ultra-long leases in Scotland. The aim of the legislation is to clarify and simplify property law in this area.

This Order forms part of an implementation package for the 2012 Act. The provisions of the Act will be commenced in several phases. The Government also intends to make SSIs on forms, certain prescribed periods and fees in relation to any cases heard by the Lands Tribunal for Scotland.

Under the 2012 Act, the appointed day (when ultra-long leases convert to ownership) is the first Martinmas (28 November) occurring on or after the day two years from when section 70 comes into force. This Order commences section 70 on 28 November 2013. This means that the appointed day will be 28 November 2015.

Various steps under the 2012 Act will require to be taken prior to 28 November 2015, for example in relation to the execution, service and registration of notices. Consequently, this Order commences certain provisions on different dates. Accordingly, the following provisions are brought into force on 28 November 2013 as a consequence of this Order:

- sections 1 to 7. (These sections make provision on the determination of “qualifying lease” under the 2012 Act and on the conversion of right of lease to ownership and the consequences of such conversion).

- sections 10 to 12. (These sections make provision on the determination of leasehold conditions which may qualify to convert to real burdens under the Act and on the meaning of “qualifying land” in relation to a qualifying condition).
- sections 29 to 36. (These sections make provision on the conversion of qualifying leasehold conditions to facility or service or manager real burdens; on conversion where qualifying conditions under a common scheme affect related properties; on conversion where a qualifying condition is expressed as being enforceable by a third party; on cases where an obligation in a qualifying condition has been assumed by a public authority; on any counter-obligations; on the prescriptive period for converted conditions and on further matters).
- sections 45 to 55 and sections 57 to 61. (These sections, together with section 56, form Part 4 of the Act, on compensation for loss of landlord’s rights. They make provision on any compensatory and additional payments payable by tenants to landlords. Section 56 is being commenced by this Order on 21 February 2014).
- section 62. (This section makes provision on exempt leases).
- sections 65 and 66. (These sections make provision on certain leases registered near or after the appointed day and on subleases of exempt leases).
- section 68. (This section makes supplementary provision on exempt leases and on the recall of exempt leases).
- sections 71 and 72. (These sections make provision on determining the duration of leases and on leases continuing on tacit relocation).
- sections 74 to 76. (These sections make provision on the service of notices; on pre-registration requirements for notices and on the duties of the Keeper of the Registers of Scotland in relation to notices and agreements submitted for registration).
- section 78(5) and (6). (This relates to an order-making power on time periods in cases taken to the courts or the Lands Tribunal where the Keeper has rejected a notice or agreement for registration).
- section 80. (This section relates to interpretation).
- paragraph 3(2) to (4) of the schedule to the Act and section 79 only for the purposes of that commencement. (This relates to commencing some amendments to the Title Conditions (Scotland) Act 2003).
- certain provisions listed in the Schedule to the Order for the purpose of making regulations.

The following provisions are, under this Order, coming into force on 21 February 2014. These provisions mainly relate to serving and registering notices:

- sections 8 and 9. (These sections are about registering notices to preserve sporting rights).
- sections 13 to 28. (These sections relate to registering notices to convert a number of types of leasehold conditions to real burdens and to who is entitled to enforce a qualifying condition).
- sections 37 to 44. (These sections form Part 3 of the Act and relate to the allocation of rents and renewal premiums).
- section 56. (This section relates to a landlord serving a notice on the tenant to advise that the landlord is likely to claim a compensatory payment or an additional payment or payments exceeding £500).
- sections 63, 64 and 67. (These sections relate to exempting leases by registering a notice and recalling exemptions).
- section 69. (This section relates to an application to the Lands Tribunal by a landlord for an order confirming that the annual rental in a lease is over £100, and so the lease can be exempted).
- section 77. (This section relates to referring disputed notices to the Lands Tribunal).
- section 79 and the schedule to the Act (insofar as these were not already commenced on 28 November 2013). (These provisions relate to amendments to various pieces of legislation).

The Order commences section 78(1) to (4) on 6 March 2014. This relates to applications to the court or the Lands Tribunal to register notices or agreements which the Keeper has rejected.

The Order commences section 73, on irritancy, on 28 September 2015. Commencement on this date reflects that leases may be exempted under section 64 up until 28 September 2015. However, the Government will keep the commencement date for section 73 under review.

Consultation

A public consultation was carried out on a draft Long Leases (Scotland) Bill in 2010: <http://www.scotland.gov.uk/Publications/2010/03/26131302/0> There has also been a consultation in 2013 on aspects of implementing the 2012 Act: <http://www.scotland.gov.uk/Publications/2013/08/4913>

Impact Assessments

The 2010 consultation included a partial Regulatory Impact Assessment <http://www.scotland.gov.uk/Publications/2010/03/26131302/18>, an Equalities Impact Assessment <http://www.scotland.gov.uk/Publications/2010/03/26131302/19>, and a pre-screening report for Strategic Environmental Assessment purposes: <http://www.scotland.gov.uk/Publications/2010/03/26131302/19>

The Bill had Accompanying Documents in the usual way
<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/45695.aspx>

Civil Law and Legal System Division
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