

LONG LEASES (SCOTLAND) ACT 2012

EXPLANATORY NOTES

PART 3: ALLOCATION OF RENTS AND RENEWAL PREMIUMS ETC.

Overview of Part 3 of the Act

156. Part 3 of the Act makes provision for the allocation of *cumulo* rent and *cumulo* renewal premium. “*Cumulo*” refers to a single payment made in relation to two or more leases.

Key terms

Section 37: Partially continuing leases and renewal obligations etc

157. This section defines certain terms.

Section 38: Cumulo rent and cumulo renewal premium

158. This section defines *cumulo* rent as a single rent payable under two or more leases and *cumulo* renewal premium as a single renewal premium payable in relation to two or more leases.
159. Subsection (2) qualifies the definitions of *cumulo* rent and *cumulo* renewal premium by providing that, where a rent or premium has been apportioned between the leases before the appointed day with the express or implied agreement of the parties, the rent or premium apportioned is to be the rent or premium payable under that lease.
160. The definition of *cumulo* renewal premium is qualified further by subsections (3) and (4). They provide that where a *cumulo* rent has been apportioned with the agreement of the parties but not the *cumulo* premium, the premium is allocated between the leases in the same proportions as the rent.

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

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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.

Allocation of renewal premium

Section 42: Allocation of cumulo renewal premium

171. Where a *cumulo* renewal premium (as defined in section 38) is payable under more than one lease, a landlord, for the purposes of claiming a compensatory payment or an additional payment for the loss of the renewal premium, has first to allocate the premium.
172. If the premium allocated is more than £100, compensation can only be claimed under section 51(1)(d) as an additional payment.
173. The allocation must be in such proportions as are reasonable in the circumstances (subsection (3)). Subsection (4) creates a presumption that an allocation of a premium is reasonable if it accords with an apportionment effective immediately before the

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appointed day or, if there is no such apportionment, it follows any allocation of *cumulo* rent made under section 40.

174. Under subsection (5), the renewal premium allocated to a lease that continues after the appointed day is the renewal premium payable under that lease from the appointed day, subject to any allocation under section 43 in relation to partially continuing leases.

Section 43: Partially continuing leases: allocation of renewal premium

175. Where a renewal premium (as defined in section 37) is payable under a partially continuing lease, a landlord, for the purposes of claiming a compensatory payment or an additional payment for the loss of the renewal premium, must first allocate the premium between the converted subjects and the continuing subjects.
176. Subsection (3) provides that if the renewal premium payable under the lease is a *cumulo* renewal premium, as defined in section 38, the landlord must allocate the *cumulo* renewal premium between the relevant leases, as outlined in section 42, before carrying out the allocation under this section.
177. If the premium allocated is more than £100, compensation can only be claimed under section 51(1)(d) as an additional payment.
178. The allocation must be in such proportions as are reasonable in the circumstances (subsection (4)). Subsection (5) creates a presumption that an allocation of a premium is reasonable if it follows an allocation of rent under section 41.
179. Under subsection (6), the sum allocated to the continuing part of the lease is the renewal premium payable under the lease from the appointed day.

Allocation disputed or not made

Section 44: Allocation disputed or not made: reference to Lands Tribunal

180. Under subsection (1), the tenant under a continuing lease or the continuing part of a lease can apply to the Lands Tribunal to:
- challenge the allocation of *cumulo* rent under sections 39 or 40;
 - challenge the allocation of *cumulo* renewal premium under section 42;
 - challenge the allocation of rent in relation to partially continuing leases under section 41;
 - challenge the allocation of renewal premium in relation to partially continuing leases under section 43;
 - seek the allocation of *cumulo* rent or *cumulo* renewal premium, if the landlord has failed to carry out an allocation within two years from the appointed day; and
 - seek the allocation of rent or renewal premium, where a lease is partially continuing, between the converted subjects and the continuing subjects, where the landlord has failed to do so within 2 years of the appointed day.
181. Where the landlord has made an allocation which is disputed, any application by the tenant to the Lands Tribunal must be made within 56 calendar days, beginning with the day on which notice of the allocation was given to the tenant. Where no allocation is made, the tenant may apply to the Tribunal at any time after the expiry of the two year period running from the appointed day.
182. This section does not give a former tenant of a lease, or part of a lease, extinguished on the appointed day, a right to challenge the amount of compensation claimed by the former landlord where an allocation has been made. However, it is a defence to a claim for compensation that the allocation was unreasonable.