

LONG LEASES (SCOTLAND) ACT 2012

EXPLANATORY NOTES

PART 4: COMPENSATION FOR LOSS OF LANDLORD'S RIGHTS

Additional payment

Section 50: Claiming additional payment

206. To claim an additional payment for the loss of a right, the former landlord must serve a notice in the prescribed form on the former tenant within two years of the appointed day (subsections (2) and (4)). The amount claimed is calculated in accordance with section 52. The claim is against the immediate former tenant of the person making the claim except in the circumstances set out in subsection (3).
207. Under subsection (3), where the right lost by the former landlord of a superior lease is one specified in section 51(1)(e) to (g), the former landlord is directed to serve the notice claiming an additional payment on the former tenant of the qualifying lease rather than on the former tenant of the superior lease.
208. Subsection (4) sets out various requirements for the form and content of the notice. The notice must be accompanied by a copy of the explanatory note.
209. Under subsection (5), if the sum being claimed is £50 or more an instalment document has to be served along with the notice. This gives the tenant the option of paying by instalments in accordance with the scheme set out in section 57. If an instalment document is not served the notice has no effect.
210. Subsection (6) provides that the section is subject to section 56 the effect of which, in the case of a qualifying lease, is to restrict the maximum amount that can be claimed by way of additional payment to £500 unless a preliminary notice has been served.

Section 51: Extinguished rights

211. This section identifies the rights the loss of which may found a claim for an additional payment. In the notice making the claim it will be for the landlord to nominate, and to justify, the particular ground of claim (see section 50(4)).
212. Subsection (1)(a) refers to a right to a non-monetary rent. Paragraph 6.29 of the Scottish Law Commission report indicated that in around 1% of the leases it surveyed it found non-monetary rents such as six fat hens, oat farm meal and the services of a labourer for three days to work on the roads in a town.
213. Subsection (1)(b) refers to a right to have the rent reviewed or increased. Paragraph 6.30 of the Scottish Law Commission report indicated that provision for rent reviews was rare in ultra-long leases but the possibility should be acknowledged. Paragraph 6.31 of the report indicated that it is possible for rent to increase by way of a fixed formula rather than by virtue of a review.

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

- 214. Subsection (1)(c) refers to a right to a rent to the extent that the amount payable is variable from year to year. This might, for example, be relevant where rent is based on the turnover of a business.
- 215. Subsection (1)(d) refers to a right to receive a renewal premium of more than £100 (rights to receive lesser amounts can be recovered under the compensatory payment regime (see sections 47 and 49)).
- 216. Subsection (1)(e) relates to a landlord's right of reversion, so long as the lease would expire no later than 200 years after the appointed day. Reversionary rights occasionally may have a value over and above the income stream from rent. Rights falling into this category are to be valued in accordance with section 52(3) and (4).
- 217. Subsection (1)(f) refers to a right to bring a lease to an end before its normal expiry. The right has to be within the full control of the landlord and exercisable within 200 years of the appointed day. A break clause exercisable at regular intervals or a right of redemption or resumption exercisable at the landlord's discretion would be included but not a right to terminate on breach. A right (such as a right of redemption) which is converted into a real burden under sections 16, 19 or 23 is excluded.
- 218. Subsection (1)(g) refers to a right to development value provided that the right has not been converted into a real burden under sections 16 or 19. "Development value" is defined in subsection (2) as is the expression "right to development value".

Section 52: Calculating additional payment

- 219. This section sets out some general and some specific rules for determining the amount of an additional payment. Subsection (2) provides that the right is to be valued as at the appointed day.
- 220. Subsections (3) and (4) contain specific rules relating to the valuation of a landlord's reversionary interest in a claim under section 51(1)(e). In particular, the value is deemed to be the value of the right if sold on the open market by a willing seller to a willing buyer, with special buyers and special sellers (i.e. those with a particular interest in the property) disregarded.
- 221. Subsections (5) to (7) provide that any obligations on the landlord which are extinguished by conversion have to be taken into account (but not insofar as such obligations are preserved as a counter obligation to a real burden) as has any other entitlement of the landlord to recover in respect of the loss. "Any other entitlement" refers primarily to the compensatory payment calculated under section 47.
- 222. Subsection (8) caps a claim for the loss of the right to development value. In some cases, ultra-long leases may have been granted cheaply on the basis that the property was used for some limited purpose, such as the building of a church or a community hall.
- 223. Paragraph 6.45 of the Scottish Law Commission report said that if any leasehold conditions preserving development value were discharged by the Lands Tribunal, any compensation would be limited to a sum to make up for the effect the leasehold condition produced in reducing the consideration paid for the interest in the property. No account is taken of inflation. In other words, the loss of the right to development value is limited to the reduction in the price paid for the interest in the property at the time.

Section 53: Additional payment: former tenant agrees

- 224. This section applies where, following service of an additional payment notice under section 50, the former tenant agrees to make the payment specified in the notice. Unless the former tenant is entitled to pay by instalments (see section 57), payment must be made to the former landlord within 56 calendar days beginning with the day on which the notice was served on the former tenant.

225. There may be cases where the former tenant does not agree to pay the amount specified in the notice. In these cases, the former tenant and the former landlord may agree that a different amount should be paid (see section 54) or where agreement cannot be reached, the matter may be referred to the Lands Tribunal (see section 55).

Section 54: Additional payment: amount mutually agreed

226. Following service of an additional payment notice under section 50, the former landlord and former tenant may agree that a different amount be paid. This section regulates the procedure to be followed.
227. Subsection (2) requires the former landlord to serve a further notice in the prescribed form on the former tenant specifying the agreed amount and requesting payment. The notice must be served within 5 years of the appointed day to be valid. If a notice is not served, the obligation to pay does not arise and the landlord loses the right to collect the payment.
228. Subsection (3) sets out requirements for the form and content of the notice. The notice must be accompanied by a copy of the explanatory note (to be prescribed by the Scottish Ministers in regulations).
229. If the agreed sum is £50 or more, subsection (4) requires that an instalment document is served along with the notice. This gives the tenant the option of paying by instalments in accordance with the scheme set out in section 57. If an instalment document is not served, the notice has no effect.
230. Unless entitled to pay by instalments, subsection (5) requires the former tenant to make payment to the former landlord within 28 calendar days, beginning with the day on which the notice is served.

Section 55: Claim for additional payment: reference to Lands Tribunal

231. This section applies in cases where no agreement has been reached under section 53 or section 54.
232. Subsection (1) gives both the former tenant and the former landlord the right to refer any matter relating to a claim for an additional payment to the Lands Tribunal.
233. Subsection (2) gives the Lands Tribunal a wide discretion to determine the matter and make such order as it thinks fit.
234. Subsection (3) requires the Lands Tribunal to provide the former tenant with the option of paying by instalments in accordance with the statutory instalment scheme if the additional payment is fixed at £50 or more. This subsection makes certain amendments to the instalment scheme to take account of the fact that no instalment document will be served on the former tenant in such circumstances.
235. Subsection (4) provides that all references to the Lands Tribunal must be made within 5 years of the appointed day.