

## **LONG LEASES (SCOTLAND) ACT 2012**

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### **EXPLANATORY NOTES**

#### **PART 5: EXEMPTION FROM CONVERSION AND CONTINUING LEASES**

##### *Overview of Part 5 of the Act*

249. This Part contains provisions on the landlord being able to exempt a lease, by agreement with the tenant or through an order of the Lands Tribunal, if the annual rent is over £100 either immediately before the appointed day or at any point in the 5 years before Royal Assent. Part 5 also makes provision on the tenant opting out of converting a lease to ownership by exempting the lease and recalling the exemption. It also contains provisions on the registration of unregistered leases. These are then treated as leases which are exempt from conversion but with the tenant having the option of recalling this exemption.

##### *Exempt leases*

##### *Section 62: Exempt leases*

250. This section sets out the consequences of a lease being an exempt lease when the appointed day arrives. The effect is to suspend the process of conversion in relation to that lease and any superior lease. Existing landlord-tenant relationships continue in force as before. “Exempt leases” are defined by reference to sections 63 to 66.

##### *Types of exempt leases*

##### *Section 63: Exemption of qualifying lease by registration of notice*

251. This section allows the tenant of a qualifying lease to opt out of conversion so that it becomes an “exempt lease”. The section requires the tenant to register a notice of exemption at least two months before the appointed day.

##### *Section 64: Exemption of qualifying lease by registration of agreement or order*

252. This section allows a landlord to claim an exemption in respect of a lease where the annual rental is over £100.
253. Subsection (1) provides that the landlord must register an agreement with the tenant or an order made by the Lands Tribunal no later than 2 months before the appointed day.
254. Subsection (2) makes provision in respect of the form of the agreement with the tenant.
255. Subsection (2)(c)(i) provides that one option is for the agreement to state that the annual rent immediately before the appointed day will be over £100. Such an agreement might be sought, for example, where the landlord allocates *cumulo* rent under section 39 and the allocated rent for an individual lease is over £100.
256. Subsection (2)(c)(ii), as read with subsection (3), provides that another option is for the agreement to state that the annual rent was over £100 at any point in the 5 years before Royal Assent. This reflects that some leases may have variable rent. Variable rent may

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mean that the rent paid in any one year in the 5 years before Royal Assent exceeds £100 even though the base rent laid down in the lease is under £100.

***Section 65: Certain leases registered near or after the appointed day***

257. An unregistered lease which otherwise satisfies the requirements for conversion is not a qualifying lease under section 1. This section makes provision for the situation where the lease is subsequently registered.
258. An unregistered lease which is first registered in the year before the appointed day or at any time thereafter is treated as an exempt lease. This enables the lease to be converted into ownership by registering a recall notice under section 67. This procedure gives the landlord of that lease notification of conversion of the lease to ownership and the opportunity to register notices converting conditions into real burdens etc. Where first registration of the lease takes place in the year before the appointed day, section 62 suspends the process of conversion.

***Section 66: Subleases of exempt leases***

259. The tenant under an exempt lease may grant a sublease which fulfils the criteria for conversion. This section provides that on registration the sublease is to be treated as an exempt lease. The tenant may then register a recall notice.

***Section 67: Recall of exemption***

260. This section allows the tenant under an exempt lease to register a recall notice, so long as the lease is not exempted under section 64 by the landlord. The tenant may register a recall notice before or after the appointed day.
261. Under subsection (2), on registration of a recall notice the exempt lease ceases to be an exempt lease. It then becomes eligible for conversion so long as it meets the general criteria for conversion. In particular, the unexpired duration of the lease must at the appointed day (see subsection (3)) be more than 100 years (for a residential lease) or more than 175 years (for a non-residential lease).
262. Subsection (3) prescribes the appointed day where the notice of recall is registered in the six months before or on or at any time after the standard appointed day laid down in section 70 – appointing it as the first Whitsunday (28 May) or Martinmas occurring 6 months or more after the notice of recall is registered. The effect of deferring the appointed day is to give a landlord of the qualifying lease or any superior lease a period of six months in which to consider whether to register notices converting leasehold conditions into real burdens.
263. Subsection (4) removes the requirement for the landlord to serve a preliminary notice in order to claim compensation or additional payments of more than £500. The purpose of such a notice is to invite consideration of opting out but that is not relevant where the decision to recall has been made by the tenant.

***Supplementary***

***Section 68: Exemption and recall notices: supplementary***

264. This section sets out rules for the service and registration of a notice of exemption or a notice of recall.
265. Subsections (2) and (3) provide for the sending of a copy of the exemption notice or recall notice to the landlord of the qualifying or exempt lease and any landlord of a superior lease. Service can be on the person who is registered as landlord. 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.

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266. Subsection (4) requires the notice to be registered against the title of the tenant. This allows anyone dealing with the lease to see the position.

***Section 69: Application to Lands Tribunal for order confirming rent***

267. This section makes provision for the landlord to obtain an order from the Lands Tribunal that the annual rent in relation to a lease exceeds £100. If such an order is granted, the landlord may register the order under section 64 to claim an exemption.
268. Subsection (3) provides that an application can only be made to the Tribunal if an attempt has been made to reach agreement with the tenant. Subsection (4) provides that any application to the Tribunal must outline what had been done to obtain an agreement and must be made within a year of the section coming into force.
269. Subsection (1)(a) provides that the application may be for an order that the annual rent immediately before the appointed day will be over £100. Such an order might be sought, for example, where the landlord allocates *cumulo* rent under section 39 and the allocated rent for an individual lease is over £100.
270. Subsection (1)(b), as read with subsection (2), provides that the application may be for an order that the annual rent was over £100 at any point in the 5 years before Royal Assent. This reflects that some leases may have variable rent. Landlords may wish to claim an exemption as variable rent may mean that the rent paid in any one year in the 5 years before Royal Assent exceeds £100 even though the base rent laid down in the lease is under £100.