



# Long Leases (Scotland) Act 2012

## 2012 asp 9

### PART 1

#### CONVERSION OF LONG LEASE TO OWNERSHIP

##### *Determination of “qualifying lease”*

#### **1 Meaning of “qualifying lease”**

- (1) A lease is a “qualifying lease” if it complies with subsection (3).
- (2) Subsection (1) is subject to section 3.
- (3) A lease complies with this subsection if, immediately before the appointed day, it is a right of lease in land—
  - (a) which is registered,
  - (b) granted for a period of more than 175 years, and
  - (c) in respect of which the unexpired portion of that period is—
    - (i) where the subjects of the lease wholly or mainly comprise a private dwelling house, more than 100 years,
    - (ii) in any other case, more than 175 years.
- (4) But a lease does not so comply if—
  - (a) the annual rent payable under the lease is over £100,
  - (b) the subjects of the lease include a harbour (either wholly or partly) in relation to which there is a harbour authority,
  - (c) it is one granted for the sole purpose of allowing the tenant to install and maintain pipes or cables, or
  - (d) it is one either—
    - (i) of minerals, or
    - (ii) which includes minerals and in respect of which a royalty, lordship or other payment of rent determined by reference to the exploitation of those minerals is or may be payable.
- (5) Where a lease is divided (whether as a result of partial assignation or otherwise), each part is treated as a separate lease for the purposes of this Act.

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*Status: This is the original version (as it was originally enacted).*

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- (6) For the purposes of subsection (3)(c)(i), “dwelling house” includes any yard, garden, outbuilding or other pertinent.

## **2 Further provision about annual rent**

- (1) This section applies for the purposes of section 1(4)(a) in determining the annual rent payable under a lease.
- (2) Subject to subsections (4) to (6), the rent payable under a lease is the rent as set out in a document mentioned in subsection (3).
- (3) The documents are—
- (a) the lease,
  - (b) a registered assignation of the lease, or
  - (c) a registered minute of variation or agreement in relation to the lease.
- (4) Where a *cumulo* rent is payable in relation to two or more leases, the annual rent payable under each lease is deemed to be nil.
- (5) Any rent payable under a lease which is expressed wholly or partly in non-monetary terms is, to the extent that it is so expressed, to be left out of account.
- (6) Any rent payable under a lease which is variable from year to year is, to the extent that it is so variable, to be left out of account.

## **3 Only one lease is qualifying lease**

- (1) This section applies where land is subject to two or more potential qualifying leases.
- (2) Subsections (3) and (4) have effect for the purposes of determining—
- (a) which of the leases is the qualifying lease, and
  - (b) of which land the lease is a qualifying lease.
- (3) A potential qualifying lease is not a qualifying lease if all of the land which forms the subjects of the lease forms the subjects of an inferior lease.
- (4) In any other case, a potential qualifying lease is the qualifying lease of land that—
- (a) forms the subjects of the potential qualifying lease, but
  - (b) does not form the subjects of an inferior lease.
- (5) In this section—
- “potential qualifying lease” means a lease that complies with section 1(3),
  - “inferior lease”, in relation to a potential qualifying lease, means a sublease—
    - (a) of the whole or part of the subjects of the potential qualifying lease, and
    - (b) which is itself a potential qualifying lease.

### *Conversion of right of lease to ownership*

## **4 Conversion of right of lease to right of ownership**

- (1) On the appointed day—

- (a) a qualifying lease becomes the right of ownership of the land in relation to which it is the qualifying lease,
  - (b) any right of ownership of that land existing immediately before that day is extinguished, and
  - (c) any superior lease is extinguished.
- (2) Subsection (1) is subject to section 62(1) (exempt leases not to convert).
- (3) In this Act, a “superior lease” means a lease of land in relation to which, and to the extent that, a qualifying lease is a sublease of that land.

### *Consequences of conversion*

## **5 Extinction of certain rights and obligations**

- (1) Subject to subsection (2), and sections 6 and 7 and Part 2, all rights and obligations arising (whether expressly or by implication) from—
- (a) a qualifying lease, and
  - (b) any superior lease,
- are extinguished on the appointed day.
- (2) Subsection (1) does not affect any right or obligation arising from a lease mentioned in that subsection in so far as that right or obligation is, by its nature, enforceable only as a personal right or obligation, that is to say, the right or obligation could not be enforced by or against the successor of a party to the lease.
- (3) Despite subsection (1)—
- (a) rent continues to be payable for any period before the appointed day, and
  - (b) if (in so far as so payable) it has not fallen due before that day, it falls due on that day.
- (4) Subject to subsection (5)—
- (a) on or after the appointed day, no proceedings for enforcement of any such rights or obligations as are mentioned in subsection (1) may be commenced,
  - (b) any proceedings already commenced for such enforcement are deemed to have been abandoned on that day and may, without further process and without any requirement that full judicial expenses be paid by the pursuer, be dismissed accordingly, and
  - (c) any decree or interlocutor already pronounced in proceedings for such enforcement is deemed to have been reduced or (as the case may be) recalled on that day.
- (5) Subsection (4) does not affect any proceedings, decree or interlocutor in relation to—
- (a) a right or obligation which subsists by virtue of section 6,
  - (b) a right or obligation which is created under section 7,
  - (c) a right or obligation which is converted under Part 2,
  - (d) a right to recover damages or to the payment of money (including rent), or
  - (e) a right of irritancy.

## **6 Subordinate real rights, reservations and pertinents**

- (1) This section applies where a right of ownership in land is created by the conversion of a qualifying lease under section 4(1)(a) (such land being referred to in this section as “the converted land”).
- (2) The converted land is subject to any subordinate real rights to which the qualifying lease was, immediately before the appointed day, subject.
- (3) The converted land is, subject to subsection (4), subject to—
  - (a) any subordinate real rights (other than any superior lease extinguished by virtue of section 4(1)(c)), and
  - (b) any other encumbrances,to which the converted land itself was, immediately before the appointed day, subject.
- (4) Any heritable security or proper liferent to which the converted land itself was subject immediately before the appointed day is, on that day and to the extent that the security or liferent affected the land, extinguished.
- (5) The converted land—
  - (a) includes any pertinent (whether express or implied) of the qualifying lease which, by its nature, may be a pertinent of land, and
  - (b) excludes anything capable of being held as a separate tenement in land (including any right so held by virtue of section 8) which is reserved (whether expressly or by implication) from—
    - (i) the qualifying lease, or
    - (ii) any superior lease.

## **7 Creation of servitudes on conversion**

- (1) This section applies where a right of ownership in land is created by the conversion of a qualifying lease under section 4(1)(a) (such land being referred to in this section as “the converted land”).
- (2) The converted land includes or (as the case may be) is subject to any servitudes which would have been created (whether expressly, by implication or by positive prescription) had the original grant of—
  - (a) the qualifying lease,
  - (b) any superior lease, or
  - (c) any partial assignation of a lease, where the subjects of that lease include the land which forms the subjects of the qualifying lease,been a conveyance of land.

## **8 Conversion of reserved sporting rights**

- (1) This section applies where a right of—
  - (a) game, or
  - (b) fishing,is reserved (whether expressly or by implication) from a qualifying lease or superior lease (such a right being referred to in this Act as a “sporting right”).

- (2) A landlord may, before the appointed day, execute and register a notice in the prescribed form.
- (3) The notice must—
  - (a) set out the title of the landlord,
  - (b) identify the land affected by the sporting right,
  - (c) set out the terms of such right, and
  - (d) set out the terms of any counter-obligation to the right.
- (4) For the purposes of subsection (2)—
  - (a) a notice is registered only when registered against the land identified in pursuance of subsection (3)(b), and
  - (b) the notice may be registered against the title of the owner of the land or the tenant under the qualifying lease.
- (5) Before submitting a notice for registration under this section, the landlord must swear or affirm before a notary public that to the best of the knowledge and belief of the landlord all the information contained in the notice is true.
- (6) For the purposes of subsection (5)—
  - (a) if the landlord is—
    - (i) an individual unable by reason of legal disability, or incapacity, to swear or affirm as mentioned in that subsection, then a legal representative of the landlord may swear or affirm, or
    - (ii) not an individual, then any person authorised to sign documents on its behalf may swear or affirm, and
  - (b) any reference in that subsection to the landlord is to be construed in accordance with paragraph (a).
- (7) If subsections (2) to (6) are complied with (and immediately before the appointed day the sporting right to which the notice relates is still enforceable), on the appointed day—
  - (a) that right becomes a separate tenement in land,
  - (b) in the case of a right of game, the separate tenement comprises—
    - (i) in a case where the right is expressly reserved, the rights and obligations specified in the lease and, in so far as is consistent with those express rights and obligations, an exclusive right to take hare, pheasant, partridge, grouse, and ptarmigan (any particular type of each where applicable),
    - (ii) in a case where the right is reserved by implication, an exclusive right to take hare, pheasant, partridge, grouse and ptarmigan (any particular type of each where applicable), and
  - (c) in the case of a right of fishing, the separate tenement comprises—
    - (i) in a case where the right is expressly reserved, the rights and obligations specified in the lease and, in so far as is consistent with those express rights and obligations, an exclusive right to fish for freshwater fish,
    - (ii) in a case where the right is reserved by implication, an exclusive right to fish for freshwater fish.

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- (8) Any exclusive right conferred by subsection (7)(b) is subject to section 1 of the Ground Game Act 1880 (c.47) (right of occupier to kill and take ground game).
- (9) Where a right becomes, under subsection (7)(a), a separate tenement in land—
  - (a) that right is subject to any counter-obligation enforceable immediately before the appointed day, and
  - (b) without prejudice to any other way in which such a counter-obligation may be extinguished, any such counter-obligation is extinguished on the extinction of the right.
- (10) In this section and section 9, any reference to a “landlord” is a reference—
  - (a) in a case where there is one superior lease, to the landlord under the superior lease,
  - (b) in a case where there are two or more superior leases, to the landlord under whichever of those leases is not itself subject to a superior lease.
- (11) This section is subject to section 75.

## **9 Further provision for section 8**

- (1) Where more than one qualifying lease is affected by the same sporting right, a landlord must, if that landlord wishes to execute and register a notice under section 8(2) in relation to those qualifying leases in respect of that right, do so in relation to each separately.
- (2) Where a qualifying lease is affected by more than one sporting right, a landlord may, if that landlord wishes to execute and register a notice under section 8(2), do so by a single notice.