# Long Leases (Scotland) Act 2012

**2012 asp 9**

## PART 3 S

ALLOCATION OF RENTS AND RENEWAL PREMIUMS ETC.

*Key terms*

### 37 Partially continuing leases and renewal obligations etc. S

In this Act—

"partially continuing lease" means a lease which, on the appointed day—

(a) is extinguished by virtue of Part 1, in respect of part of the subjects of the lease (such subjects being referred to in this Act as the "converted subjects"), and

(b) whether by exemption under Part 5 or otherwise, continues in respect of any other subjects (such subjects being referred to in this Act as the "continuing subjects"),

"renewal obligation" means an obligation on the landlord under a lease to renew it after a fixed period on payment by the tenant of a premium,

"renewal period" means, in relation to a renewal obligation, the fixed period after which the landlord must renew the lease,

"renewal premium" means, in relation to a renewal obligation, the premium payable.

**Commencement Information**

**I1** S. 37 in force at 21.2.2014 by S.S.I. 2013/322, **art. 3(c)**

### 38 *Cumulo* rent and *cumulo* renewal premium S

(1) In this Act—

"cumulo rent" means, subject to subsection (2), a single rent payable in relation to two or more leases, and

"cumulo renewal premium" means, subject to subsections (2) to (4), a single renewal premium payable in relation to two or more leases.

(2) Where such rent or renewal premium—

(a) has been apportioned between—

(i) those leases, or

(ii) some of those leases, and

(b) the parties to those leases consented (whether expressly or by implication) to the apportionment,

any rent or renewal premium so apportioned is not *cumulo* rent or (as the case may be) not a *cumulo* renewal premium and is the rent or renewal premium payable under the lease for the purposes of this Act.

(3) Subsection (4) applies if—

(a) subsection (2) applies to rent payable under two or more leases, and

(b) a single renewal premium is payable under the leases.

(4) For the purposes of this Act—

(a) the renewal premium is to be treated as if it were apportioned between the leases in the same proportion as the apportionment of rent, and

(b) that apportioned renewal premium is the renewal premium payable under the lease.

**Commencement Information**

**I2** S. 38 in force at 21.2.2014 by S.S.I. 2013/322, **art. 3(c)**

*Allocation of rent*

## 39 Allocation of *cumulo* rent before appointed day S

(1) This section applies where—

(a) a *cumulo* rent is payable in relation to two or more leases, and

(b) one or more of the leases is a qualifying lease.

(2) The landlord may, at any time before the appointed day, allocate the *cumulo* rent between the leases mentioned in subsection (1)(a).

(3) The allocation under subsection (2) must be in such proportions as are reasonable in all the circumstances.

(4) For the purposes of subsection (3), the proportions are presumed to be reasonable in so far as they accord with any apportionment of the *cumulo* rent that was effective immediately before the allocation under (2).

(5) Where the landlord allocates the *cumulo* rent between two or more leases under subsection (2), the annual rent payable under each lease from the day on which the landlord gives notice to the tenant of the allocation is the annual rent allocated to the lease and such rent is not *cumulo* rent for the purposes of this Act.

**Commencement Information**

**I3** S. 39 in force at 21.2.2014 by S.S.I. 2013/322, **art. 3(c)**

## 40 Allocation of *cumulo* rent after appointed day S

(1) This section applies where—

(a) immediately before the appointed day, a *cumulo* rent was payable in relation to two or more leases, and

(b) on that day, one or more of the leases is extinguished by virtue of Part 1 in respect of any subjects of the leases.

(2) The landlord must, before the expiry of the period of 2 years beginning with the appointed day, allocate the *cumulo* rent between the leases mentioned in subsection (1)(a).

(3) The allocation under subsection (2) must be in such proportions as are reasonable in all the circumstances.

(4) For the purposes of subsection (3), the proportions are presumed to be reasonable in so far as they accord with any apportionment of the *cumulo* rent that was effective immediately before the appointed day.

(5) The annual rent payable from the appointed day under a lease which is not wholly extinguished by virtue of Part 1 is (subject to section 41) the annual rent allocated to the lease under subsection (2).

(6) In this section and sections 41, 42 and 43, "landlord" includes former landlord.

**Commencement Information**

**I4** S. 40 in force at 21.2.2014 by S.S.I. 2013/322, **art. 3(c)**

## 41 Partially continuing leases: allocation of rent S

(1) The landlord in relation to a partially continuing lease must, before the expiry of the period of 2 years beginning with the appointed day, allocate the annual rent between the converted subjects and continuing subjects.

(2) In subsection (1), the annual rent is—

(a) the annual rent payable under the lease immediately before the appointed day, or

(b) where a *cumulo* rent is allocated to the lease under section 40(2), the annual rent so allocated.

(3) The allocation under subsection (1) must be in such proportions as are reasonable in all the circumstances.

(4) The annual rent payable from the appointed day under the partially continuing lease is the annual rent allocated to the continuing subjects under subsection (1).

**Commencement Information**

**I5** S. 41 in force at 21.2.2014 by S.S.I. 2013/322, **art. 3(c)**

*Allocation of renewal premium*

## 42 Allocation of *cumulo* renewal premium S

(1) This section applies where—

(a) immediately before the appointed day, the renewal premium payable in relation to two or more leases containing a renewal obligation was a *cumulo* renewal premium,

(b) on that day, one or more of the leases is extinguished by virtue of Part 1 in respect of any subjects of the leases, and

(c) a lease mentioned in paragraph (b) complies with section 1(3)(b) and (c) by virtue of section 71(1)(b).

(2) The landlord must, before the expiry of the period of 2 years beginning with the appointed day, allocate the *cumulo* renewal premium between the leases mentioned in subsection (1)(a).

(3) The allocation under subsection (2) must be in such proportions as are reasonable in all the circumstances.

(4) For the purposes of subsection (3)—

(a) the proportions are presumed to be reasonable in so far as they accord with any apportionment of the *cumulo* renewal premium that was effective immediately before the appointed day,

(b) where there is no such apportionment, the proportions are presumed to be reasonable in so far as they accord with any allocation of rent under section 40.

(5) The renewal premium payable from the appointed day under a lease which is not wholly extinguished by virtue of Part 1 is (subject to section 43) the renewal premium allocated to the lease under subsection (2).

**Commencement Information**

**I6** S. 42 in force at 21.2.2014 by S.S.I. 2013/322, **art. 3(c)**

## 43 Partially continuing leases: allocation of renewal premium S

(1) This section applies to a lease which—

(a) contains a renewal obligation,

(b) complies with section 1(3)(b) and (c) by virtue of section 71(1)(b), and

(c) is a partially continuing lease.

(2) The landlord must, before the expiry of the period of 2 years beginning with the appointed day, allocate the renewal premium between the converted subjects and continuing subjects.

(3) For the purposes of subsection (2), the renewal premium is—

(a) the renewal premium payable under the lease immediately before the appointed day, or

(b) where a *cumulo* renewal premium is allocated to the lease under section 42(2), the premium so allocated.

(4) The allocation under subsection (2) must be in such proportions as are reasonable in all the circumstances.

(5) For the purposes of subsection (4), the proportions are presumed to be reasonable in so far as they accord with any allocation of rent under section 41.

(6) The renewal premium payable from the appointed day under the partially continuing lease is the renewal premium allocated to the continuing subjects under subsection (2).

**Commencement Information**

**I7** S. 43 in force at 21.2.2014 by S.S.I. 2013/322, **art. 3(c)**

*Allocation disputed or not made*

### 44 Allocation disputed or not made: reference to Lands Tribunal S

(1) This section applies where—

(a) a tenant under a lease referred to in section 39(1)(a) disputes the allocation made under section 39(2),

(b) a tenant under a lease referred to in section 40(5) disputes the allocation made under section 40(2),

(c) a tenant under a lease referred to in section 42(5) disputes the allocation made under section 42(2),

(d) a tenant under a partially continuing lease disputes the allocation made under section 41(1) or section 43(2),

(e) a landlord under a lease referred to in section 40(5) or 42(5) does not, within the period of 2 years beginning with the appointed day, give notice to a tenant of an allocation under section 40(2) or 42(2), or

(f) a landlord under a partially continuing lease does not, within the period of 2 years beginning with the appointed day, give notice to a tenant of—

(i) an allocation under section 41(1), or

(ii) where section 43 applies to the lease, an allocation under subsection (2) of that section.

(2) The tenant may apply to the Lands Tribunal for an order—

(a) where this section applies by virtue of subsection (1)(a), fixing the annual rent payable under the lease from the day the landlord gave notice to the tenant of the allocation,

(b) in any other case, fixing the annual rent or (as the case may be) the renewal premium payable under the lease from the appointed day.

(3) Where this section applies by virtue of subsection (1)(a) to (d), an application under subsection (2) must be made before the expiry of the period of 56 days beginning with the day on which the landlord gives notice to the tenant of the allocation.

**Commencement Information**

**I8** S. 44 in force at 21.2.2014 by S.S.I. 2013/322, **art. 3(c)**

**Status:**
Point in time view as at 21/02/2014.

**Changes to legislation:**
There are currently no known outstanding effects for the Long Leases (Scotland) Act 2012, Part 3.