



Long Leases (Scotland) Act 2012

2012 asp 9

PART 6

GENERAL AND MISCELLANEOUS

The appointed day

70 The appointed day

In this Act, the “appointed day” means the first Martinmas occurring on or after the day 2 years after the day on which this section comes into force.

Duration of lease etc.

71 Determining duration of lease

- (1) In calculating the period for which a lease is granted for the purposes of any provision of this Act—
- (a) any provision of a lease (however expressed) enabling the lease to be terminated earlier than the date on which it would otherwise terminate must be disregarded,
 - (b) where a lease includes provision (however expressed) requiring the landlord to renew the lease, the period for which any such renewed lease would, were that provision complied with, be granted must be added to the period for which the original lease is granted,
 - (c) where the period for which a lease is granted is expressed (in whole or in part) by reference to the lifetime of a person, the period expressed by reference to that lifetime is—
 - (i) in a case where such person is deceased and the period beginning on the first day of the period for which the lease was granted and ending on the day that person died can be ascertained, that period,
 - (ii) in a case where such person is identifiable and is not deceased, deemed to be the period of life expectancy as calculated in accordance with the table of life expectancy set out in regulations made by the Scottish Ministers, or

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- (iii) in any other case, deemed to be a period of 35 years, and
 - (d) where, before the end of the period for which a lease is granted, the parties to that lease enter into a subsequent lease—
 - (i) of the same subjects as the original lease, and
 - (ii) for a period beginning immediately after the end of the period for which such lease is granted,
 the period for which the subsequent lease is granted must be added to the period for which the original lease is granted.
- (2) Subsection (1)(b) to (d) is subject to section 67 of the Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5) (prohibition of leases of more than 175 years).

72 Leases continuing on tacit relocation

Part 4 and section 71(1)(b) apply in relation to a lease which is continuing by tacit relocation as if any provision (however expressed)—

- (a) included in the lease prior to it so continuing, and
- (b) requiring the landlord to renew the lease,

had been complied with.

Extinction of right of irritancy in certain leases

73 Extinction of right of irritancy in certain leases

- (1) On and after the day on which this section comes into force, it is not competent for a lease to which subsection (2) applies to be terminated by irritancy.
- (2) This subsection applies to a lease which, immediately before the day on which this section comes into force, is a right of lease in land which—
 - (a) complies with section 1(3), or
 - (b) had it been registered, would comply with that section.
- (3) But subsection (2) does not apply to a lease which, on the day this section comes into force, is an exempt lease by virtue of section 64.
- (4) Any proceedings already commenced to enforce any right of irritancy in relation to a lease to which subsection (2) applies are deemed to be abandoned on the day on which this section comes into force and may, without further process and without any requirement that full judicial expenses be paid by the pursuer, be dismissed accordingly.
- (5) Subsection (4) does not affect any cause in which final decree (that is to say, any decree or interlocutor which disposes of the cause and is not subject to appeal or review) is granted before the coming into force of this section.

Notices etc.

74 Service of notices

- (1) Service of a notice on a person under section 17(1)(a) or Part 4 must be effected—
 - (a) by delivering it to the person,

- (b) by sending it to the person at a place mentioned in subsection (2)—
 - (i) by a registered post service (as defined in section 125(1) of the Postal Services Act 2000 (c.26)), or
 - (ii) by a postal service which provides for the delivery of the notice to be recorded,
 - (c) in a case where a notice sent under paragraph (b) is returned to the person who sent it with an intimation that it could not be delivered—
 - (i) by delivering it, or
 - (ii) by sending it by post,with that intimation to the Extractor of the Court of Session.
- (2) The place referred to in subsection (1)(b) is—
- (a) the person’s place of residence,
 - (b) the person’s place of business,
 - (c) a postal address which the person ordinarily uses, or
 - (d) if none of those places or that address is known at the time of delivery or posting, whatever place is at that time the person’s most recently known—
 - (i) place of residence,
 - (ii) place of business, or
 - (iii) postal address which the person ordinarily used.
- (3) For the purposes of this Act, any of the following is sufficient evidence of service of the notice—
- (a) an acknowledgement in the prescribed form signed by the person on whom the notice is served,
 - (b) in the case of a notice sent under subsection (1)(b), a certificate in the prescribed form signed by the sender of the notice and accompanied by the postal receipt,
 - (c) in the case of a notice delivered or sent under subsection (1)(c), an acknowledgement of receipt by the Extractor on a copy of the notice.
- (4) The date on which a notice is served on a person is the date of delivery or (as the case may be) posting of the notice.
- (5) In this section, “notice” includes an instalment document.

75 Notices: pre-registration requirements

- (1) This section applies in relation to any notice which is to be submitted for registration under section 8 or Part 2.
- (2) Except where it is not reasonably practicable to do so, the person who intends to execute the notice must, before so doing, send by post to the tenant under the qualifying lease (addressed to “The Tenant” where the name of that person is not known) a copy of—
 - (a) the notice, and
 - (b) the prescribed explanatory note relating to the notice.
- (3) The person who executes the notice must, in the notice, state either—
 - (a) that a copy of the notice has been sent in accordance with subsection (2), or

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- (b) that it was not reasonably practicable for such a copy to be sent (and the reasons why that was so).

76 Keeper's duty as regards documents

- (1) In relation to any notice submitted for registration under this Act, the Keeper is not required to determine whether the terms of section 68(2) or (as the case may be) 75(2) have been complied with.
- (2) In relation to any notice or (as the case may be) agreement submitted for registration under—
 - (a) section 14, 17, 23, 24, 25, 26, 27 or 28, the Keeper is not required to determine whether, for the purposes of registering the notice or agreement, a qualifying condition is enforceable by the person submitting the notice or agreement for registration,
 - (b) section 14, the Keeper is not required to determine—
 - (i) in pursuance of subsection (3)(e) of that section, that an attempt to reach agreement has been made in accordance with section 21(3), or
 - (ii) where the condition specified under subsection (3)(f) of that section is the condition mentioned in subsection (4)(a) of that section, whether the terms of that condition are satisfied,
 - (c) section 17, the Keeper is not required to determine whether the requirements of section 17(1)(a) are satisfied, or
 - (d) section 24 to 26, the Keeper is not required to determine whether—
 - (i) for the purposes of subsection (1) of the section in question, a qualifying condition is imposed for the reasons mentioned in that subsection, or
 - (ii) the statement made in pursuance of section 24(2)(g), 25(2)(f) or (as the case may be) 26(2)(g) is correct.
- (3) The Keeper is not required to determine for the purposes of section 8(7) whether immediately before the appointed day a sporting right is still enforceable.
- (4) The Keeper is not required to determine for the purposes of section 16, 19, 23(7), 24(4), 25(4), 26(4), 27(5) or 28(5) whether immediately before the appointed day a qualifying condition is, or is still, enforceable, or by whom.
- (5) In relation to any order submitted for registration under section 64(1)(c)(ii), the Keeper is not required to determine that an attempt to reach agreement has been made in accordance with section 69(3).

77 Disputed notices: reference to Lands Tribunal

- (1) A dispute arising in relation to a notice registered under this Act may be referred to the Lands Tribunal.
- (2) In determining the dispute, the Lands Tribunal may make such order as it thinks fit discharging or, to such extent as may be specified in the order, restricting the notice in question.
- (3) An order under subsection (2) has effect in respect of a third party when an extract of the order is registered.

78 Certain documents registrable despite initial rejection

- (1) This section applies where one of the following is rejected by the Keeper—
 - (a) a notice submitted before the appointed day for registration under section 8(2) or Part 2,
 - (b) an agreement submitted before the appointed day for registration under section 17(1)(c),
 - (c) an exemption notice submitted before the day falling 2 months before the appointed day for registration under section 63, or
 - (d) an agreement submitted before the day falling 2 months before the appointed day for registration under section 64(1)(c).
- (2) Where a court or the Lands Tribunal determines the notice or agreement is registrable, it may be registered not later than the day falling 2 months after the day on which the court or the Lands Tribunal made the determination.
- (3) An exemption notice or an agreement mentioned in subsection (1)(d) which is registered under subsection (2) on or after the day falling 2 months before the appointed day is to be treated as if it had been registered before that day.
- (4) Any other notice or agreement which is registered under subsection (2) on or after the appointed day is to be treated as if it had been registered before the appointed day.
- (5) The Scottish Ministers may by order—
 - (a) specify a date after which (or a period after the expiry of which) notices and agreements cannot be registered under subsection (2),
 - (b) provide that subsection (2) applies only where the application to the court or to the Lands Tribunal which resulted in the determination is made within such period as the order may specify.
- (6) In this section, “court” means Court of Session or sheriff.

Miscellaneous

79 Amendments to enactments

The schedule makes minor and consequential amendments.

80 Interpretation

- (1) In this Act, unless the context otherwise requires—
 - “the 2003 Act” means the Title Conditions (Scotland) Act 2003 (asp 9),
 - “additional payment” has the meaning given by section 50,
 - “appointed day” has the meaning given by section 70,
 - “compensatory payment” has the meaning given by section 45,
 - “*cumulo* renewal premium” has the meaning given by section 38(1),
 - “*cumulo* rent” has the meaning given by section 38(1),
 - “exempt lease” has the meaning given by section 62,
 - “freshwater fish” means any fish living in fresh water—
 - (a) including trout and eels (and the fry of eels),

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(b) excluding salmon and any kind of fish which migrate between the open sea and tidal waters,
 “harbour” and “harbour authority” have the meanings given by section 57(1) of the Harbours Act 1964 (c.40),
 “Keeper” means Keeper of the Registers of Scotland,
 “land” includes anything held or which, by its nature, may be held as a separate tenement,
 “landlord”, in relation to a lease, means the person who has right as landlord under the lease whether or not such person has completed title (and, where more than one person comes within that description, the person who most recently acquired that right),
 “Lands Tribunal” means Lands Tribunal for Scotland,
 “lease” includes a sublease,
 “owner”, in relation to any land, means the person who has right to the land whether or not such person has completed title (and, where more than one person comes within that description, the person who most recently acquired that right),
 “partially continuing lease” has the meaning given by section 37,
 “prescribed” means prescribed by the Scottish Ministers in regulations,
 “qualifying lease” has the meaning given by section 1(1),
 “qualifying condition” means a condition which qualifies under section 10,
 “Register of Sasines” has the same meaning as in section 2 of the Conveyancing (Scotland) Act 1924 (c.27),
 “registered” means registered in the Land Register of Scotland or (as the case may be) recorded in the Register of Sasines; and cognate expressions are to be construed accordingly,
 “renewal obligation” has the meaning given by section 37,
 “renewal period” has the meaning given by section 37,
 “renewal premium” has the meaning given by section 37,
 “sporting right” has the meaning given by section 8(1),
 “superior lease” has the meaning given by section 4, and
 “tenant”, in relation to a lease, means the person who has right as tenant under the lease, whether or not such person has completed title (and where more than one person comes within that description, the person who most recently acquired that right).

(2) Subject to the provisions of this Act, expressions used in this Act and in the 2003 Act have the same meaning in this Act as they do in that Act.

81 Ancillary provision

- (1) The Scottish Ministers may by order make such supplementary, incidental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of or in connection with this Act.
- (2) Subject to subsection (3), an order under subsection (1) is subject to the negative procedure.
- (3) An order under subsection (1) which adds to, replaces or omits any part of the text of an Act (including this Act) is subject to the affirmative procedure.

82 Subordinate legislation

- (1) Any power of the Scottish Ministers to make an order under section 78(5) or regulations under this Act includes power to make—
 - (a) such incidental, consequential, supplementary, transitional, transitory or saving provision as the Scottish Ministers think necessary or expedient, and
 - (b) different provision for different purposes.
- (2) Orders under section 78(5) and regulations under this Act are subject to the negative procedure.

83 Commencement

- (1) Sections 81 and 82, this section and section 84 come into force on the day of Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.
- (3) An order under subsection (2) may include such transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient in connection with the commencement of this Act.

84 Short title

The short title of this Act is the Long Leases (Scotland) Act 2012.