



# Long Leases (Scotland) Act 2012

## 2012 asp 9

### PART 4

#### COMPENSATION FOR LOSS OF LANDLORD'S RIGHTS

##### *Additional payment*

#### **50 Claiming additional payment**

- (1) This section applies where, on the appointed day, a right of a landlord under a lease, being a right mentioned in section 51(1), is extinguished by virtue of Part 1.
- (2) The former landlord under the lease may serve on the former tenant a notice claiming that a payment, calculated in accordance with section 52, be made to the former landlord by the former tenant in respect of the extinction of the right (such payment being referred to in this Act as an “additional payment”).
- (3) Where—
  - (a) the lease mentioned in subsection (1) is a superior lease, and
  - (b) the extinguished right is a right referred to in section 51(1)(e) to (g),references to the “former tenant” in subsection (2) and sections 52 to 55 and 57 to 59 are to be construed as references to the former tenant under the qualifying lease.
- (4) The notice served under subsection (2) must—
  - (a) be served before the expiry of the period of 2 years beginning with the appointed day,
  - (b) be in the prescribed form,
  - (c) be accompanied by a copy of the prescribed explanatory note,
  - (d) set out the right which has been extinguished and in respect of which the claim is made,
  - (e) specify the amount of additional payment claimed and the basis on which the amount is calculated, and
  - (f) where the claim is in respect of a right to development value, set out the basis on which the development value is reserved under the lease.

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- (5) Where the additional payment claimed is equal to or greater than £50, the former landlord must, together with the notice served under subsection (2), serve on the former tenant an instalment document.
- (6) This section is subject to section 56.

## **51 Extinguished rights**

- (1) The rights referred to in section 50(1) are—
- (a) any right to a rent to the extent that such right is expressed wholly or partly in non-monetary terms,
  - (b) any right to have the amount payable as rent reviewed or increased from time to time,
  - (c) any right to a rent to the extent that the amount payable is variable from year to year,
  - (d) any right to receive a premium (other than a renewal premium which satisfies the condition in section 49(1)(b)) in return for renewing the lease after a fixed period, where, by virtue of section 71(1)(b) such a renewal is required in order for the lease to comply with section 1(3)(b) and (c),
  - (e) any right to resume natural possession of the land subject to a lease upon expiry of the lease, provided that the lease would expire no later than the end of the period of 200 years beginning with the appointed day,
  - (f) any right, other than a right of pre-emption, enabling a lease to be terminated earlier than the date on which the lease would otherwise expire, providing that such right—
    - (i) is exercisable no later than the end of the period of 200 years beginning with the appointed day,
    - (ii) is not a provision of the lease purporting to terminate the lease, or entitling the landlord to terminate it, in the event of a failure of the tenant to comply with any provision of the lease,
    - (iii) is not a provision of the lease deeming such a failure to be a material breach of contract, and
    - (iv) does not become a real burden by virtue of section 16, 19 or 23, and
  - (g) any right to development value, providing that such right does not become a real burden by virtue of section 16 or 19.
- (2) In this Part—
- “development value” means any significant increase in the value of a lease arising as a result of the subjects of the lease becoming free to be used, or dealt with, in some way not permitted under the lease, and
- any reference to a “right to development value” means a right to the benefit of any development value of a lease where—
- (a) the lease was granted subject to a condition, enforceable by the landlord, reserving to the landlord the benefit (whether wholly or in part) of any development value, and
  - (b) the consideration (including rent) paid for, or payable under, the lease was—
    - (i) nominal, or
    - (ii) significantly lower than it would have been had the lease not been subject to the condition.

## **52 Calculating additional payment**

- (1) This section applies for the purpose of calculating the amount of an additional payment.
- (2) The extinguished right mentioned in section 51(1) is to be valued as at the appointed day.
- (3) In the case of a claim for an additional payment arising from the extinction of the right mentioned in section 51(1)(e), the value mentioned in subsection (2) must represent the value which the right could reasonably be expected to obtain if sold on the open market by a willing seller to a willing buyer.
- (4) For the purposes of subsection (3)—
  - (a) it is to be presumed that the lease will continue until the expiry of the period for which it was granted, and
  - (b) no account should be taken of—
    - (i) any factor attributable to the known existence of a person (including the former tenant) who would be willing to buy the right at a price higher than other persons because of a characteristic of the right which relates peculiarly to that person's interest in buying it, and
    - (ii) any depreciation in the value of any other land owned by the former landlord.
- (5) Any obligations of the former landlord arising from the lease which are, on the appointed day, extinguished by virtue of Part 1 must be taken into account.
- (6) But no account is to be taken of any such obligation in so far as it is preserved as a counter-obligation to a real burden.
- (7) Any other entitlement (including under this Act) of the former landlord to recover any loss for which the additional payment is claimed must be taken into account.
- (8) In the case of a claim for an additional payment arising from the extinction of a right to development value, the additional payment may not exceed such sum as would make up for any effect which the right produced, at the time when the condition reserving the right was imposed, in reducing the consideration (including rent) paid for or payable under the lease.

## **53 Additional payment: former tenant agrees**

- (1) This section applies where—
  - (a) a former landlord has served on the former tenant a notice in accordance with section 50, and
  - (b) the former tenant agrees to make the additional payment specified in the notice to the former landlord.
- (2) The former tenant must, before the expiry of the period of 56 days beginning with the day on which the notice is served, make the additional payment to the former landlord.
- (3) Subsection (2) is subject to section 57.

## **54 Additional payment: amount mutually agreed**

- (1) This section applies where—

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- (a) a former landlord has served on the former tenant a notice in accordance with section 50(2), and
  - (b) the former tenant and the former landlord agree the amount of the additional payment, being an amount other than that specified in the notice.
- (2) The former landlord may, before the expiry of the period of 5 years beginning with the appointed day, serve on the former tenant a notice requiring that the agreed additional payment be made to the former landlord by the former tenant.
- (3) The notice referred to in subsection (2) must—
- (a) specify the agreed additional payment,
  - (b) be in the prescribed form, and
  - (c) be accompanied by a copy of the prescribed explanatory note.
- (4) Where the agreed additional payment is equal to or greater than £50, the former landlord must, together with the notice served under subsection (2), serve an instalment document on the former tenant.
- (5) The former tenant must, before the expiry of the period of 28 days beginning with the day on which the notice is served under subsection (2), make the additional payment to the former landlord.
- (6) Subsection (5) is subject to section 57.

## **55 Claim for additional payment: reference to Lands Tribunal**

- (1) If no agreement has been reached under section 53 or 54, the—
- (a) former landlord, or
  - (b) former tenant,
- may refer any matter arising in relation to a claim for an additional payment under section 50 to the Lands Tribunal.
- (2) In determining any such matter, the Lands Tribunal may make such order as it thinks fit (including an order fixing the amount of additional payment).
- (3) Where the Lands Tribunal makes an order fixing an additional payment which is equal to or greater than £50 it must provide the former tenant with the option of making the payment in instalments in accordance with section 57 but—
- (a) no instalment document is required,
  - (b) in subsection (3)(b) of that section, for the words “when so returning such document” there is to be substituted “before the expiry of the period of 28 days beginning with the day on which the Lands Tribunal makes the order fixing the additional payment”, and
  - (c) the reference in subsection (4) of that section to the date on which the instalment document is served is to be construed as a reference to the date on which the Lands Tribunal makes the order.
- (4) A reference under subsection (1) must be made before the expiry of the period of 5 years beginning with the appointed day.