



# Long Leases (Scotland) Act 2012

## 2012 asp 9

### PART 5

#### EXEMPTION FROM CONVERSION AND CONTINUING LEASES

##### *Exempt leases*

#### **62 Exempt leases**

- (1) If, immediately before the appointed day, land is subject to an exempt lease—
- (a) that lease does not become the right of ownership of the land,
  - (b) any right of ownership of that land existing immediately before the appointed day and any superior lease is not extinguished, and
  - (c) the provisions of this Act, in so far as they relate to—
    - (i) the conversion of a qualifying lease into the right of ownership, or
    - (ii) the extinction of a right of ownership or (as the case may be) lease,do not apply.
- (2) In this Part, “exempt lease” is to be construed in accordance with sections 63 to 66.

##### *Types of exempt lease*

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

A lease is an exempt lease if—

- (a) it is a qualifying lease, and
- (b) the tenant under the lease, not later than 2 months before the appointed day, executes and registers a notice in the prescribed form (referred to in this Act as an “exemption notice”).

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

- (1) A lease is an exempt lease if—
- (a) it is a qualifying lease,

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- (b) it is not a lease in relation to which *cumulo* rent is payable, and
  - (c) the landlord, not later than 2 months before the appointed day, registers against the title of the tenant—
    - (i) an agreement entered into with the tenant, or
    - (ii) an order made by the Lands Tribunal under section 69.
- (2) The agreement must—
- (a) be in the prescribed form,
  - (b) be signed by or on behalf of the landlord and the tenant,
  - (c) state either—
    - (i) that the annual rent payable under the lease immediately before the appointed day will be over £100, or
    - (ii) that the annual rent paid under the lease was over £100 at any point during the relevant period.
- (3) The relevant period is the period of 5 years ending on the day the Bill for this Act received Royal Assent.

## **65 Certain leases registered near or after the appointed day**

A lease is an exempt lease if—

- (a) it is not registered on the day falling 1 year before the appointed day,
- (b) it would, had it been so registered, have been converted on the appointed day into a right of ownership under section 4(1)(a),
- (c) despite not being registered, it constitutes a real right in land, and
- (d) it is subsequently registered (whether before, on or after the appointed day).

## **66 Subleases of exempt leases**

A sublease of an exempt lease is an exempt lease if—

- (a) it would have been converted on the appointed day into a right of ownership under section 4(1)(a), had the sublease been registered immediately before the appointed day, and
- (b) it is registered (before, on or after the appointed day).

### *Recall of exemption*

## **67 Recall of exemption**

- (1) This section applies in relation to a lease where—
- (a) the lease is an exempt lease (other than by virtue of section 64), and
  - (b) the tenant under the lease executes and registers a notice in the prescribed form (referred to in this Act as a “recall notice”).
- (2) On the day on which the recall notice is registered (“the registration day”) the lease ceases to be an exempt lease.
- (3) Where the registration day—
- (a) is less than 6 months before the appointed day,
  - (b) is the appointed day, or

(c) is after the appointed day,  
this Act applies as if the appointed day were the first Whitsunday or (as the case may be) Martinmas occurring on or after the day which falls 6 months after the registration day.

(4) Section 56 does not apply in relation to the lease.

### *Supplementary*

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

- (1) Subsections (2) and (3) apply to a tenant under a lease where—
  - (a) the lease is a qualifying lease and the tenant intends to execute and register an exemption notice, or
  - (b) the lease is an exempt lease and the tenant intends to execute and register a recall notice.
- (2) Except where it is not reasonably practicable to do so, the tenant must, before the notice is executed, send by post to the person registered as landlord under the lease and (as the case may be) the person registered as landlord under any superior lease a copy of—
  - (a) the notice, and
  - (b) the prescribed explanatory note.
- (3) Before the notice is executed, the tenant must state in the notice either—
  - (a) that a copy of the notice has been sent in accordance with subsection (2), or
  - (b) that it was not reasonably practicable for such a copy to be sent (and the reasons why that was so).
- (4) An exemption notice or (as the case may be) recall notice must be registered against the title of the tenant who executed the notice.

## **69 Application to Lands Tribunal for order confirming rent**

- (1) A landlord under a lease may apply to the Lands Tribunal for an order confirming either—
  - (a) that the annual rent payable under the lease immediately before the appointed day will be over £100, or
  - (b) that the annual rent paid under the lease was over £100 at any point during the relevant period.
- (2) The relevant period is the period of 5 years ending on the day the Bill for this Act received Royal Assent.
- (3) An application may be made under subsection (1) only if the landlord has first attempted to reach agreement as respects the annual rent with the tenant under the lease.
- (4) The application—
  - (a) must include a description by the landlord of the requisite attempt to reach agreement, and

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- (b) must be made not later than 1 year after the day on which this section comes into force.
- (5) The Lands Tribunal must give notice of the application, whether by way of advertisement or otherwise, to the tenant.
- (6) The tenant may oppose or make representations in relation to the application.
- (7) The Land Tribunal must allow the tenant to be heard in relation to the application.
- (8) The decision of the Lands Tribunal on an application under subsection (1) is final.
- (9) A tenant opposing an application made under subsection (1) incurs no liability in respect of expenses incurred by the landlord unless, in the opinion of the Lands Tribunal, the actings of the tenant are vexatious or frivolous.