

LONG LEASES (SCOTLAND) ACT 2012

EXPLANATORY NOTES

PART 6: GENERAL AND MISCELLANEOUS

Duration of lease etc

Section 71: Determining duration of lease

274. The provision sets out a number of rules for calculating the period of a lease. The period of a lease is relevant for the purposes of working out whether a lease qualifies for conversion (section 1(3)); whether an additional payment can be claimed for the residual value of the reversionary interest (section 51(1)(e)) and how that value is to be assessed (section 52(3) and (4)); and whether an additional payment can be claimed for the loss of a right to bring a lease to an end early (section 51(1)(f)). In each case the duration of the lease is calculated in the same way.
275. Subsection (1) sets out the rules for break options (which are disregarded), for renewals (which are included), for calculating the lifetime of a tenant (for the exceptional cases where this might be relevant), and for consecutive leases (which are included). A consecutive lease is a lease which is granted during the term of the first lease on essentially the same terms and conditions as the first lease and which is to run from the moment the first lease ends.
276. Subsection (2) makes clear that a calculation of the period of a lease in accordance with the rules in subsection (1) is subject to section 67 of the Abolition of Feudal Tenure etc. (Scotland) Act 2000. That provision (with certain exceptions) prohibits the grant of a lease for more than 175 years. The provision has no relevance for break options and so subsection (2) does not apply to such options.

Section 72: Leases continuing on tacit relocation

277. This section relates to leases continuing on tacit relocation (leases continuing on a year by year basis where, for example, a renewal was due to have taken place but did not actually happen). The section provides that Part 4, on compensation, applies to such leases as does section 71, on determining the duration of the lease, as if any provision requiring the landlord to renew the lease had been complied with.
278. To give an example, some leases in Blairgowrie are for 99 years but contain provisions requiring the landlords to renew them in perpetuity for further periods of 99 years. The effect of section 72 is that where such leases have not been renewed but continue on tacit relocation, the renewal is deemed to have taken place, including conditions about further renewals. This means that the durational requirements for leases to convert to ownership are met.