



Long Leases (Scotland) Act 2012

2012 asp 9

PART 2

CONVERSION OF CERTAIN LEASEHOLD CONDITIONS TO REAL BURDENS

Determination of “qualifying conditions”

10 Qualifying conditions

- (1) A condition is a “qualifying condition” if—
 - (a) it is constituted in accordance with subsection (2),
 - (b) it is enforceable against the tenant (and the successors of the tenant) of—
 - (i) the qualifying lease, or
 - (ii) any superior lease,
 - (c) it complies with subsection (3), and
 - (d) it is not an excluded condition.
- (2) A condition is constituted in accordance with this subsection if it is set out in—
 - (a) the qualifying lease,
 - (b) any superior lease which is not a lease granted by virtue of section 17(1) of the Land Tenure Reform (Scotland) Act 1974 (c.38) (interposed leases),
 - (c) any deed varying a lease mentioned in paragraph (a) or (b), or
 - (d) any assignation of or other deed relating to a lease mentioned in paragraph (a) or (b) where the assignation or other deed is registered under section 3 of the Registration of Leases (Scotland) Act 1857 (c.26) (assignation of leases).
- (3) A condition complies with this subsection if it consists of—
 - (a) an obligation to do something (including an obligation to defray, or contribute towards, some cost),
 - (b) an obligation to refrain from doing something,
 - (c) a right to enter, or otherwise make use of, property which is for a purpose ancillary to an obligation mentioned in paragraph (a) or (b), or
 - (d) a provision for management or administration which is for a purpose ancillary to an obligation mentioned in paragraph (a) or (b).

- (4) In determining whether a condition complies with subsection (3), regard is to be had to the effect of the condition rather than to the way in which the condition is expressed.
- (5) A condition is an “excluded condition” if—
- (a) it is an obligation to pay rent,
 - (b) it confers a right of irritancy,
 - (c) the provision constituting it states that it is enforceable only by irritancy,
 - (d) it imposes a restriction on—
 - (i) assignation, or
 - (ii) subletting,that is neither a right of pre-emption, a right of redemption or reversion nor any other type of option to acquire the lease, or
 - (e) it imposes a monetary penalty which is payable on the failure of the tenant to comply with any of the other conditions under the lease.

11 Restriction on conversion of qualifying conditions

A qualifying condition does not become a real burden by virtue of this Part unless the real burden that would be so created complies with the provisions of section 3 (omitting subsection (5)) of the Title Conditions (Scotland) Act [2003 \(asp 9\)](#).