



# Long Leases (Scotland) Act 2012

## 2012 asp 9

### PART 4

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

##### *Compensatory payment*

#### **45 Requiring compensatory payment**

- (1) This section applies where, on the appointed day, the rights of a landlord under a lease are extinguished by virtue of Part 1.
- (2) The former landlord under such a lease may serve on the former tenant a notice in the prescribed form requiring that a compensatory payment be made to the former landlord by the former tenant.
- (3) The compensatory payment must be—
  - (a) calculated in accordance with section 47, and
  - (b) specified in the notice.
- (4) A notice served under subsection (2) must be—
  - (a) served before the expiry of the period of 2 years beginning with the appointed day, and
  - (b) accompanied by a copy of the prescribed explanatory note.
- (5) Where the compensatory payment required 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.
- (7) In this Act—
  - “compensatory payment” means a payment of the kind mentioned in subsection (2),
  - “instalment document” is to be construed in accordance with section 57(2).

#### **46 Making compensatory payment**

- (1) This section applies where the former landlord has served notice in accordance with section 45.
- (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 compensatory payment to the former landlord.
- (3) Subsection (2) is subject to section 57.

#### *Calculation of compensatory payment*

#### **47 Calculation of the compensatory payment**

The compensatory payment in relation to a lease is calculated as follows—

##### *Step 1*

Determine the annual rent (AR) in accordance with section 48.

##### *Step 2*

Calculate the notional annual renewal premium (NARP) (if any) in accordance with section 49.

##### *Step 3*

Calculate the annual income (AI) according to the following formula—

$$AI = AR + NARP$$

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##### *Step 4*

Calculate the sum of money which would, if invested in 2.5 per cent Consolidated Stock at the middle market price at the close of business last preceding the appointed day, produce an annual sum equal to AI.

The sum calculated is the compensatory payment.

#### *Annual rent*

#### **48 Determination of the annual rent**

- (1) For the purposes of section 47, the annual rent in relation to a lease is—
  - (a) where the lease is not a partially continuing lease and the rent payable immediately before the appointed day was a *cumulo* rent, the annual rent allocated to the lease under section 40,
  - (b) where the lease is a partially continuing lease, the annual rent allocated to the converted subjects under section 41,
  - (c) in any other case, the annual rent payable under the lease.
- (2) Any rent payable under the lease which is expressed wholly or partly in non-monetary terms is, to the extent that it is so expressed, to be left out of account.
- (3) Any rent payable under the lease which is variable from year to year is, to the extent that it is so variable, to be left out of account.

### *Renewal premiums*

#### **49 Calculation of notional annual renewal premium**

- (1) This section applies where—
  - (a) a lease contains a renewal obligation,
  - (b) the renewal premium (determined in accordance with subsection (3)) next payable on or after the appointed day is less than or equal to £100, and
  - (c) the lease complies with section 1(3)(b) and (c) by virtue of section 71(1)(b).
- (2) For the purpose of section 47, the notional annual renewal premium is calculated according to the following formula—

$$\text{NARP} = \frac{\text{RP}}{\text{Y}}$$

where—

NARP is the notional annual renewal premium,  
RP is the renewal premium (determined in accordance with subsection (3)) next payable on or after the appointed day,  
Y is the renewal period (expressed as a number of years).

- (3) The renewal premium is—
  - (a) where the lease is not a partially continuing lease and the renewal premium payable immediately before the appointed day was a *cumulo* renewal premium, the renewal premium allocated to the lease under section 42,
  - (b) where the lease is a partially continuing lease, the renewal premium allocated to the converted subjects under section 43,
  - (c) in any other case, the renewal premium payable under the lease.

### *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,

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- (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.
- (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

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- (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—
  - (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.

### *Supplementary*

## **56 Claims in excess of £500: preliminary notice**

- (1) This section applies where a landlord intends, after the appointed day, to require or (as the case may be) claim from the tenant under a qualifying lease—
  - (a) a compensatory payment which is,
  - (b) an additional payment which is, or
  - (c) two or more additional payments which, taken together, are, likely to exceed £500.
- (2) The landlord must, not later than 6 months before the appointed day, serve on the person registered as tenant a notice (such notice being referred to in this Act as a “preliminary notice”) stating the landlord’s intention to require or (as the case may be) claim such a payment.
- (3) The preliminary notice must—
  - (a) be in the prescribed form,
  - (b) state—
    - (i) the amount of compensatory payment to be required or (as the case may be) additional payment to be claimed, or
    - (ii) where such amount cannot be determined, the best estimate of such amount, and
  - (c) be accompanied by a copy of the prescribed explanatory note.
- (4) Where a preliminary notice has not been served in accordance with this section—
  - (a) the amount of compensatory payment required under section 45(2),
  - (b) the amount of additional payment claimed under section 50(2), or
  - (c) where two or more additional payments are claimed, the total amount of such payments,may not exceed £500.

## **57 Making payment by instalments**

- (1) This section applies where an instalment document under section 45(5), 50(5) or 54(4) is served on a former tenant.
- (2) An instalment document must be—
  - (a) a filled out document in the prescribed form, and
  - (b) accompanied by a copy of the prescribed explanatory note.
- (3) Subject to subsection (4), the former tenant obtains the option of making the compensatory or (as the case may be) additional payment by instalments only if—

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- (a) the former tenant signs, dates and returns the instalment document within the period which (but for this section) is allowed for making that payment—
    - (i) in the case of a compensatory payment, under section 46, or
    - (ii) in the case of an additional payment, under section 53(2) or (as the case may be) 54(5), and
  - (b) when so returning such document, the former tenant pays to the former landlord an amount equivalent to one tenth of the payment (such amount being payable in addition to the payment and irrespective of how or when such payment is subsequently made).
- (4) If on or after the date on which an instalment document is served on the former tenant under a qualifying lease the former tenant ceases, by virtue of a sale or transfer for valuable consideration, to have right to the land in respect of which the claim for payment has been made or any part of that land then—
- (a) where the former tenant has obtained the option mentioned in subsection (3), the former tenant loses that option and the outstanding balance of the entire payment falls due on the seventh day after the day on which the former tenant ceases to have that right, and
  - (b) where the former tenant has not obtained that option, the former tenant loses the right to obtain it and the following apply accordingly—
    - (i) in the case of a compensatory payment, section 46(2), or
    - (ii) in the case of an additional payment, section 53(2) or (as the case may be) 54(5).
- (5) Subsections (6) to (8) apply where the option of making the payment by instalments is obtained.
- (6) The instalments are to be equal instalments payable on the term days of Whitsunday and Martinmas which follow the making of the payment under subsection (3)(b).
- (7) The number of instalments is set out in the following table—

<i>Amount of compensatory or additional payment</i>	<i>Number of instalments</i>
£50 or more than £50 but no more than £500	5
More than £500 but no more than £1,000	10
More than £1,000 but no more than £1,500	15
More than £1,500	20

- (8) In a case where any instalment payable by virtue of subsections (6) and (7) remains unpaid for 42 days after falling due, the outstanding balance of the entire payment immediately falls due.
- (9) In any other case, the former tenant may pay that outstanding balance at any time.



## **58 Collecting third party to disclose information**

- (1) This section applies where a landlord or (as the case may be) former landlord receives or has at any time received from a third party an amount—
  - (a) collected in respect of rent from, and
  - (b) remitted to the landlord or former landlord on behalf of, a tenant or (as the case may be) former tenant.
- (2) The third party must—
  - (a) if required by the landlord or (as the case may be) former landlord for the purpose of serving notice under section 45(2),
  - (b) in so far as it is practicable, and
  - (c) as soon as is reasonably practicable, disclose to the landlord or former landlord the information mentioned in subsection (3).
- (3) The information referred to in subsection (2) is—
  - (a) the identity and address of the tenant or former tenant, and
  - (b) in a case where the rent remitted is part of a *cumulo* rent, the amount so collected from the tenant or former tenant.

## **59 Duty to disclose identity etc. of former tenant**

- (1) This section applies where—
  - (a) a former landlord purports to serve notice under section 45(2) or 50(2) on the former tenant, and
  - (b) the person on whom that notice is served—
    - (i) was the tenant at some time before the appointed day, but
    - (ii) is not the former tenant.
- (2) The person on whom the notice is served must as soon as is reasonably practicable disclose to the former landlord—
  - (a) the identity and address of the former tenant, or
  - (b) (if that person cannot do so) such other information as that person has which might enable the former landlord to discover that identity and address.

## **60 Prescription of requirement to make payment**

In Schedule 1 to the Prescription and Limitation (Scotland) Act 1973 (c.52) (which specifies obligations affected by prescriptive periods of 5 years under section 6 of that Act)—

- (a) in paragraph 1, after sub-paragraph (ac) there is inserted—
  - “(aca) to any obligation to make a payment under section 46, 53(2) or 54(5) of the Long Leases (Scotland) Act 2012 (asp 9),” and
- (b) in paragraph 2(e), for the words “, (aa), (ab) or (ac)” substitute “to (aca)”.

## **61 Interpretation of Part 4**

- (1) In this Part—

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“former landlord”, in relation to a lease, means the person who was the landlord immediately before the appointed day, and

“former tenant”, in relation to a lease, means the person who was the tenant immediately before the appointed day.

- (2) Where, immediately before the appointed day, the right as tenant under a lease is held by two or more persons in common—
- (a) they are—
    - (i) severally liable to make any compensatory or (as the case may be) additional payment,
    - (ii) as between themselves, liable in the proportions in which they hold the right as tenant, and
  - (b) subject to section 74, they are together to be treated for the purposes of this Part as being a single tenant.