

Dear Consultee

Consultation Paper on Long Leases (Scotland) Bill

This letter is to inform you of the launch of the attached consultation on Long Leases (Scotland) Bill.

The Bill would implement recommendations made by a Scottish Law Commission (SLC) report in December 2006 on the conversion of ultra-long leases to ownership. The SLC report can be found on their website at <http://www.scotlawcom.gov.uk/downloads/rep204.pdf>

The consultation is only available as an electronic publication, apart from a very limited number published in hard copy for consultees who do not have access to the internet.

We are inviting written or online responses to this consultation paper by 30 June 2010. If you have any queries please contact Sandra Jack (Email: Sandra.jack@scotland.gsi.gov.uk or Tel: 0131 244 2025).

Please indicate in your response which questions you are responding to as this will help our analysis of responses.

Please send your response with the completed **Respondent Information Form** (see "Handling your response" in the consultation document) to:

PropertyLaw@scotland.gsi.gov.uk

or to

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Yours faithfully

Sandra Jack

Long Leases (Scotland) Bill

CONSULTATION

March 2010

CONSULTATION ON LONG LEASES (SCOTLAND) BILL

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This consultation consists of the following documents:

Consultation paper, containing:

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Draft Long Leases (Scotland) Bill. The purpose of this consultation is to inform the content of a Long Leases (Scotland) Bill. Consultees should note that the draft Bill would be subject to drafting and other changes before being introduced in Parliament (**available on-line only**). Schedule 1 to the draft Bill (on minor and consequential amendments) has not yet been drafted.

Partial Regulatory Impact Assessment (**available on-line only**).

Equalities Impact Assessment (**available on-line only**).

Pre-screening report for the Strategic Environmental Assessment (**available on-line only**).

Chapter 1 Introduction

We have the honour to submit to the Scottish Ministers our Report on Conversion of Long Leases. *Scottish Law Commission, November 2006*

1.01 The broad principle outlined in this consultation is that ultra-long leases should be converted to ownership with appropriate compensation for landlords. This would implement the report by the Scottish Law Commission (SLC) on Conversion of Long Leases¹ (“the SLC Report”). This consultation seeks views on the Government’s proposed approach to implementing the SLC Report.

1.02 The SLC is established by statute to promote law reform. It recommends ways of simplifying, updating and improving the law of Scotland. More information on the SLC can be found on their website.²

1.03 The SLC Report on long leases completes a detailed review of the structure of land law in Scotland. Previous SLC Reports resulted in:

- The Abolition of Feudal Tenure etc. (Scotland) Act 2000 (“the 2000 Act”).
- The Title Conditions (Scotland) Act 2003 (“the 2003 Act”)
- The Tenements (Scotland) Act 2004 (“the 2004 Act”)

1.04 The 2000 Act abolished feudal tenure - land held by a vassal on perpetual tenure from a superior - in favour of outright ownership on the part of the vassal, implementing the SLC Report on Abolition of the Feudal System³.

1.05 The 2003 Act reformed the law on real burdens (ie obligations affecting land or buildings), implementing the recommendations of the SLC Report on Real Burdens⁴. Together, the 2000 and 2003 Acts form the core of a comprehensive system for property ownership in Scotland.

1.06 The SLC Report on Conversion of Long Leases recommends a Long Leases (Scotland) Bill be introduced. Leases granted for more than 175 years which immediately before a day appointed under statute (“the appointed day”) have more than 100 years left to run would be converted to ownership on that day in much the same way that feus were converted to ownership under the 2000 Act. Compensation and additional payments would be payable to landlords.

¹ <http://www.scotlawcom.gov.uk/downloads/rep204.pdf>

² <http://www.scotlawcom.gov.uk/>

³ <http://www.scotland.gov.uk/deleted/library/documents-w10/afs1-00.htm>

⁴ <http://www.scotlawcom.gov.uk/downloads/rep181.pdf>

1.07. In this consultation, leases eligible for conversion are referred to as “ultra-long leases” (all leases granted for a duration over 20 years are referred to in this consultation as “long leases”).

1.08 The Government considers that the following points make it desirable to legislate along the lines suggested by the SLC:

- Ultra-long leases amount to virtual ownership. It would simplify property law in Scotland to convert them to ownership.
- There is an argument that ultra-long leases are feus in disguise (eg where feus could not be granted, mainly because the land was entailed). Therefore, converting ultra-long leases to ownership would be in line with the earlier conversion of feus into ownership.
- The hierarchical structure of ultra-long leases and subleases is needlessly complex in circumstances where the only real value is that held by the ultimate tenant.
- Some ultra-long leases may be vulnerable to irritancy (ie unilateral termination by the landlord, without compensation) in the event of non-payment of rent or a failure to observe one of the conditions of the lease.
- The conditions in the ultra-long lease may verge on the unacceptable, given that the land is in virtual ownership,
- The conditions in the ultra-long lease may allow an inappropriate degree of control by a person who, unless a close neighbour, has little or no interest in the land.
- The conditions may also provide an opportunity for the landlord to charge the tenant for the conditions to be waived – this may make the landlord’s interest attractive to title raiders.
- Because ultra-long leases are relatively rare, are concentrated within small geographical areas, and can no longer be granted (see paragraph 2.01 of this consultation) they are unfamiliar to many legal practitioners. This may cause problems when a transaction involving a property with an ultra-long lease takes place and may increase the costs of the transaction. Pro-forma missives may not provide for the title being held on an ultra-long lease and if they are not appropriately adjusted can lead in extreme cases to property transactions falling through.
- A tenant with an ultra-long lease may encounter difficulties in relation to secured financing. A small number of lenders will not advance money on the security of an ultra-long lease. Others are wary of potential problems, such as premature termination as a result of irritancy or of confusion (“confusion” in this context occurs where the

same person is both landlord and tenant). There may be particular problems in relation to renewable ultra-long leases.

- The law on tenements assumes ownership but some flats in tenements may be held on ultra-long leases
- Not to convert ultra-long leases now would be to store up problems in the long term, when such ultra-long leases come to an end and the tenant loses the property without compensation, including compensation for any improvements.

1.09. Given the points above, **the Government agrees with the recommendation in the SLC Report, at paragraph 2.12, that the right of a tenant under an ultra-long lease should be converted into a right of ownership, and the right of the landlord should correspondingly be extinguished**, with compensation and other payments payable to the landlord.

1.10 Therefore, subject to the views of consultees, and the availability of Parliamentary time, the Government is considering the introduction of a Bill in the Scottish Parliament to convert ultra-long leases into ownership.

1.11. The Government estimates, in paragraph 2.13 of the partial Regulatory Impact Assessment accompanying this consultation, that around 9,000 ultra-long leases would qualify for conversion under the Bill. This figure is recognised to be approximate.

1.12 This consultation does not repeat the detailed consideration of ultra-long leases contained in the SLC Report. Instead, the aim of this consultation is:

- To outline the key proposals which the Government intends would be included in a Bill.
- To outline points where the Government proposes some changes from the SLC recommendations (eg where legislation has been updated since the SLC Report was published).
- To seek views from consultees on specific points.

1.13 Our intention overall is to avoid restatement of matters already clearly explained by the SLC, except where useful for accessibility, context and the like. **Unless otherwise indicated in this consultation, the Government can be assumed, for the purposes of this consultation, to accept the SLC recommendations and the reasons for them.**

1.14 Particular areas we would draw consultees' attention to are:

- Paragraphs 2.24 to 2.33 of this consultation. After considering the points made by the SLC, the Government is seeking views on its proposal to take no action in relation to those residential ground leases

that would not be eligible for conversion to ownership because the lease was granted for less than 175 years or the lease has 100 years or less left to run, or both.

- Paragraph 3.06 of this consultation, on preserving any final decrees on irritancy in place when Royal Assent is granted.
- Material on climate change burdens at paragraphs 3.12 to 3.14 (climate change burdens were introduced after the SLC Report).
- Chapter 7 of this consultation on Stamp Duty Land Tax, where we are proposing a different approach to that proposed by the SLC, following changes to UK legislation after the SLC reported.

1.15. The SLC Report contained a draft Bill. This draft Bill contained, in schedules 1 to 19, prescribed forms. The Government proposes that forms required in relation to ultra-long leases should be prescribed by a Scottish Statutory Instrument made after Royal Assent. Forms to be prescribed would be likely to include:

- 1: Form of notice for preservation of sporting rights;
- 2: Form of notice for conversion of qualifying condition by nomination of benefited property;
- 3: Form of notice seeking agreement to the conversion of qualifying condition;
- 4: Form of notice for conversion of qualifying condition into personal pre-emption burden or personal redemption burden;
- 5: Form of notice for conversion of qualifying condition into economic development burden;
- 6: Form of notice for conversion of qualifying condition into healthcare burden;
- 7: Form of notice for conversion of qualifying condition into conservation burden;
- 8: Form of notice for conversion of qualifying condition into conservation burden by nomination of conservation body or the Scottish Ministers to have title to enforce real burden;
- 9: Form of notice requiring compensatory payment etc: *cumulo* rent
- 10: Form of notice requiring compensatory payment etc: partially continuing lease
- 11: Form of notice requiring compensatory payment etc. in ordinary case

- 12: Form of notice requesting additional payment;
- 13: Form of further notice requiring additional payment following agreement;
- 14: Form of preliminary notice for compensatory payment exceeding £500;
- 15: Form of preliminary notice for additional payment exceeding £500
- 16: Form of instalment document;
- 17: Form A - Acknowledgement of service and Form B - Certificate of posting;
- 18: Form of notice of exemption from conversion of a qualifying lease;
- 19: Form of notice of recall of prior exemption from conversion of a qualifying lease;
- 20: Form to allow qualifying conditions to be converted into a climate change burden.

Chapter 2 Leases

A lease or “tack” is a contract whereby “the use and possession of lands, houses or other heritable subjects are given to the tenant for a return, known as rent or lordship, in money or goods”. *Guthrie Report, 1952*

Introduction – current legislation on leases

2.01 Under current legislation in Scotland:

- Leases over 20 years long are registrable in the Land Register or the Register of Sasines.
- Section 67 of the Abolition of Feudal Tenure etc. (Scotland) Act 2000 prevents, with some exceptions, leases granted since 9 June 2000 continuing for more than 175 years.
- The Land Tenure Reform (Scotland) Act 1974 has the effect of prohibiting residential leases of longer than 20 years.

2.02 The Scottish Government is considering potential amendments to the 1974 Act, to allow some residential leases to last longer than 20 years, with the aim of encouraging investment in affordable housing⁵. However, any changes to the 1974 Act would **not** lead to the re-introduction of the ultra-long leases being considered in this consultation paper.

Background on long and ultra-long leases

2.03 The SLC Report, and the Report of the Scottish Leases Committee published in 1952 and chaired by Lord Guthrie (“the Guthrie Report”)⁶, contain information on the incidence of long leases in Scotland and why long leases were granted in the first place.

2.04 Paragraph 43 of the Guthrie Report indicated that the use of long leases in the eighteenth and nineteenth centuries can be attributed primarily to some prohibition in the titles under which land was held. Many landed estates were held under a deed of entail (a restriction on use of property) by which sub-feuing was precluded. There were also other cases where there were prohibitions against sub-feuing.

2.05 Paragraph 43 of the Guthrie Report goes on to note that these prohibitions were in force when the industrial development of Scotland was taking place and houses were required near the new mines and mills. Those landowners who could not grant feus found that by using long leases building development could still take place in their areas.

⁵ <http://www.scotland.gov.uk/Publications/2010/03/04140613/8>

⁶ Report of the Scottish Leases Committee, presented by the Secretary of State for Scotland to Parliament by Command of Her Majesty, September 1952, Command 8656. Chaired by Lord Guthrie. Scottish Home Department.

2.06 A survey carried out by the SLC in the year 2000 showed that long leases were used only by certain landed estates with the result that it is a normal form of land tenure only in certain geographical areas⁷. Practitioners referred to pockets of long leases in Alva, Ardrossan, Saltcoats, Stevenson and Wishaw. (Paragraph 10 of Appendix C to the SLC Report, as read with footnotes 13 and 14).

2.07 The SLC survey showed that most long leases have been granted either for around 999 years or for 125 years or less. There is little in between. (Paragraph 2.14 of the SLC Report).

SLC recommendations

2.08 The SLC went on to recommend that ultra-long leases should be converted to ownership. To qualify for conversion, ultra-long leases would need to:

- have an initial duration of more than 175 years; and
- have an unexpired duration of more than 100 years.

2.09 In terms of the rationale for these recommendations, the grant of a lease of more than 175 years effectively amounts to a transfer of ownership.

2.10 In relation to the need for an unexpired duration of more than 100 years, the SLC asked the Royal Institution of Chartered Surveyors in Scotland (RICS) for their view on the point at which the value of a landlord's interest in a long lease can be treated as negligible. The RICS suggested that the appropriate figure in most cases was an unexpired duration of 100 years. (Paragraph 2.17 of the SLC Report).

2.11 As a result, the Government considers that when the unexpired duration of a long lease drops below 100 years the landlord can be considered to have a reversionary and economic interest in the property. Therefore, any compensation for loss of rights would have to be markedly higher than is proposed under the scheme proposed in this consultation paper. (Chapter 5 of this consultation outlines the compensation and other payments which may be payable to landlords when ultra-long leases convert to ownership).

2.12 The SLC went on to recommend that:

- except where a tenant opts out of conversion by registration of a notice of exemption (discussed at paragraph 2.22 below), conversion of a qualifying ultra-long lease should be mandatory. (Paragraph 3.8 of the SLC Report)

⁷ This survey was carried out by the SLC with Registers of Scotland and was based on registered leasehold titles. Only leases with a duration longer than 20 years are registrable.

- on the “appointed day”, there should be automatic conversion of all qualifying ultra-long leases (that are not exempt leases) (Paragraph 3.13 of the SLC Report)
- an ultra-long lease is converted into ownership of the land (Paragraph 3.22 of the SLC Report).
- the landlord’s ownership should be extinguished on the appointed day (paragraph 3.23 of the SLC Report) although rights or obligations which are enforceable as a personal right or obligation (ie the right or obligation could not be enforced by or against the successor of a party to the lease) should not be affected. (Paragraphs 4.74 to 4.77 of the SLC Report).

Question 1 Do you agree that the Government should introduce a Bill which would convert leases lasting more than 175 years and with more than 100 years left to run into ownership?

If you hold a different view, please explain why.

Calculation of duration of ultra-long leases

2.13 The SLC went on to consider how the duration of an ultra-long lease which would be eligible for conversion should be calculated. In particular, they recommended, in paragraph 2.30, that:

- Where leases include provisions requiring the landlord to renew the lease, such renewals should be included in the calculation of the duration of the lease, for the purpose of determining whether it is an ultra-long lease. (Paragraph 2.25).
- The durations of consecutive leases of the same subjects should be aggregated. (Paragraph 2.26).
- Any provision enabling an ultra-long lease to be terminated early should be disregarded. (Paragraph 2.28).
- Any provision in an ultra-long lease by which duration is provided for partly by reference to the lifetime of the tenant should be included (Paragraph 2.29)⁸.

Sub-leases

2.14. In paragraph 2.45 of their Report, the SLC noted that land may have been sublet. In these cases, the SLC recommended that the qualifying ultra-long lease for conversion to ownership should be the lowest in the chain. In paragraph 2.46 of their report, the SLC note that an ultra-long lease which is divided by partial assignation is treated as two independent ultra-long leases. In paragraph 3.24 of their report, the SLC recommended that on the appointed day any lease intermediate between the landlord’s ownership and the qualifying ultra-long lease should be extinguished.

⁸ The draft Bill contained in the SLC Report had a life expectancy table at schedule 20. The Government’s intention is to prescribe a life expectancy table by way of a Scottish Statutory Instrument.

Exempt leases

2.15 The SLC proposed that certain ultra-long leases should be exempt from conversion.

2.16 Inalienable property. In paragraphs 2.36 to 2.38 of its report, the SLC discussed a number of scenarios where property may not be capable of being transferred outright (“alienated”). The SLC recommended in paragraph 2.44 that a lease should not be eligible for conversion if it is a lease of land or a right in land which, by its nature, cannot be owned separately from other land and the lease does not include that other land.

2.17 Mineral leases. The SLC indicated that leases purely relating to minerals should be exempt from conversion. The SLC noted in paragraph 2.35 of their Report that leases of minerals alone are arranged on a different financial basis to other leases and so should not be covered by a conversion scheme.

2.18 In essence, the financial arrangements for mineral leases are that the tenant is expected to use the minerals (by extraction); the minerals are the tenant's property rather than the landlord's; and the rent is typically a royalty based on the tonnage extracted. Changing those arrangements (by converting the lease of minerals to ownership) would raise questions on how compensation could be calculated when future mining tonnage is highly uncertain.

2.19 In paragraph 5.3 of their Report, the SLC note that “an ordinary lease confers only the right to use the surface, and minerals are impliedly reserved [ie not included in the lease]. The landlord (or those authorised by him) has a right to work the minerals but is liable for surface damage. This implied reservation is frequently re-expressed, and glossed, in the lease itself”. Later on in this paragraph, the SLC say that “Conversion cannot improve on the lease. If, as almost always, the minerals were excluded from the lease then they are excluded from the property now acquired by the former tenant”.

2.20 In the light of the SLC Report, the Scottish Government considers that:

- Leases relating purely to minerals should be exempt from conversion.
- Ultra-long leases of surface land will almost certainly have excluded minerals beneath the surface and, as a result, minerals beneath the surface will be excluded from property being converted from leasehold to ownership.
- Surface land held by a tenant as part of a lease which includes mineral rights should not be eligible for conversion. The rationale here is that the financial arrangements are likely to be based on the financial arrangements for mineral leases generally.
- Surface land held by a tenant which is not part of a lease which includes the mineral rights and which meets the criteria to become a qualifying ultra-long lease, should be eligible for conversion in the

normal way (with the tenant's normal right to opt out and the landlord's normal right to compensation and additional payments if the tenant does not opt out). The justification here is that a qualifying ultra-long lease of surface land only is unlikely to be based on the financial arrangements for mineral leases.

2.21 The provisions on compensation in Chapter 5 of this consultation have nothing specific on minerals, given the proposal to exclude ultra-long leases of minerals from this scheme.

Question 2. Do you agree that:

- Leases relating purely to minerals should be exempt from conversion?
- Surface land held by a tenant as part of a lease which includes mineral rights should not be eligible for conversion?

If you hold a different view, please explain why.

2.22 Where the tenant opts out. Tenants (but not landlords) may choose to opt out of conversion to ownership. Chapter 7 of the SLC Report recommends:

- A qualifying ultra-long lease should be exempt from conversion to ownership so long as a notice of exemption is registered by the tenant and not recalled.
- A notice can only be registered by the tenant under the qualifying ultra-long lease and not later than 2 months before the appointed day.
- A notice should be registered against the interest of the tenant.
- Except where not reasonably practicable, the notice should be sent to the landlord under the qualifying ultra-long lease and the landlord under any superior lease.
- A sub-lease of an exempt lease should on registration be exempt from conversion.
- A tenant under a qualifying ultra-long lease can recall an exemption by service and registration of a notice of recall, so long as the ultra-long lease still has more than 100 years to run.

2.23 Unregistered leases. In paragraph 2.31 of their Report, the SLC notes that only registered ultra-long leases (ie registered in the Land Register of Scotland or recorded in the Register of Sasines) should be eligible for conversion. However, the SLC recommend in paragraphs 8.14 to 8.18 of their Report that if on the day falling one year before the appointed day, an ultra-long lease that would otherwise qualify for conversion is unregistered but subsequently becomes registered, then it automatically becomes an exempt lease with the tenant able to recall that exemption just as a tenant of a registered lease who initially chose to opt out of conversion can recall an exemption.

Residential ground leases

2.24 As well as ultra-long leases, the SLC Report also considered, in Part 9, residential ground leases. These were defined in the SLC Report, in paragraph 9.1, as:

“a lease of bare ground – of land not yet built on. In a ground lease the landlord supplies the land and the tenant the buildings; and the rent is attributable to the former [ie the land] but not to the latter [ie the buildings]”.

2.25 In many cases, residential ground leases will be eligible for conversion to ownership under the proposals described in this consultation paper as they will be ultra-long leases granted for more than 175 years and with more than 100 years left to run. The SLC noted in paragraphs 9.3 to 9.5 of their Report that:

- “Most ground leases which survive today are likely to have been granted for 999 years or other periods amounting to quasi-alienation, and as such will fall to be converted automatically under the scheme for ultra-long leases set out in the earlier parts of this Report”.
- Their survey (of some 2,500 leases) disclosed only 46 granted for more than 50 but less than 175 years and which might plausibly be regarded as residential.
- There would also be a small number of long leases originally granted for longer than 175 years but with an unexpired duration left of less than 100 years.
- The SLC survey did not cover all of Scotland. They asked their consultees for views but “no new information, however, was brought forward by consultees and our figures were not challenged”.

2.26 Part 9 of the SLC Report considers the case for and against the introduction of a scheme to protect tenants holding residential ground leases who would not be able to convert to ownership under the proposals described in this consultation paper.

2.27 The main arguments for protection are outlined in paragraphs 9.8 to 9.12 of the SLC Report. In brief:

- At the end of a ground lease the tenant loses his home while the landlord merely realises an investment. Usually the tenant is not compensated for improvements.
- Generally, the tenant has no right to stay on at the end of the lease, whether as owner under a conversion scheme or as a tenant under a statutory tenancy.
- There may not be alternative accommodation in the immediate vicinity.

2.28 The main arguments against protection are outlined in paragraphs 9.13 to 9.20 of the SLC Report:

- The lease is a contract freely entered into and in buying the lease tenants buy with their eyes open. The law should hesitate before it interferes with such “justified expectations”. (However, the SLC note that this argument may seem to have less force where the lease has passed down the family and it may not always be clear what the original tenant agreed to).
- A right to convert ground leases into ownership was available from 1954 to 1959 as a result of the Long Leases (Scotland) Act 1954. (However, this only covered residential leases granted before 10 August 1914 and a significant number of the leases now surviving were granted after 1914).
- As outlined elsewhere in this consultation, compensation would need to be payable for any scheme converting leases to ownership. The level of compensation can be expected to increase as a lease approaches its end so that for a lease in its final years the amount payable would have to be substantial.
- If, instead of a scheme converting leases to ownership, security of tenure were granted, this could be costly for tenants as it would result in a sharp increase in rent or a one off payment.
- Conversion already exists on a voluntary basis and a statutory scheme for conversion might drive up levels of compensation.

2.29 Paragraph 9.25 of the SLC Report indicates that the SLC concluded that they should not pursue the subject of residential ground leases further (at least as part of that report). The SLC indicate that two factors in particular influenced that decision.

2.30 The first reason was a lack of information. The SLC indicated that:

“our best guess, on the basis of our own empirical work, is that the number of residential ground leases still in existence is less than 1000, that a significant number of these have either expired and are continuing by tacit relocation or are within a few years of expiry, that the current tenant is a successor (and often a remote successor) of the original tenant and did not build the house currently standing on the land, and that in most cases the tenant acquired by purchase and not by succession. If these suppositions are accurate, a legislative solution would not seem an appropriate or a proportionate response.”

2.31 The second reason given by the SLC is that a recommendation from them would go beyond general law reform and into the field of social policy, when their consultation did not reveal clear agreement both on the problem and on its solution.

2.32 The Government can, of course, propose social policy reform. However, the Government considers that where a lease is due to expire relatively soon, if a statutory scheme were set up for converting such leases to ownership (or providing some other form of compensation) the compensation payable to landlords by tenants for removing landlords' rights would have to be much higher than is proposed in this consultation for ultra-long leases, as the landlords' rights have much more value.

2.33 Therefore, it seems preferable not to introduce legislation in this area and instead rely on negotiations between the tenant and the landlord as the lease nears its end.

Question 3. Do you agree that the Government should **not** bring forward legislation in respect of residential ground leases ineligible for conversion to ownership under the scheme proposed in this consultation (either because the lease was for 175 years or less or had only 100 years or less left to run or both)?

If you hold a different view, please explain why.

Chapter 3 Implications of ownership and conversion of leasehold conditions into real burdens

(1) A real burden is an encumbrance on land constituted in favour of the owner of other land in that person's capacity as owner of that other land.

(2) In relation to a real burden—

- (a) the encumbered land is known as the "burdened property"; and
- (b) the other land is known as the "benefited property".

(3) Notwithstanding subsections (1) and (2) above, the expression "real burden" includes a personal real burden; that is to say a conservation burden, a rural housing burden, a maritime burden, an economic development burden, a health care burden, a manager burden, a personal pre-emption burden and a personal redemption burden (being burdens constituted in favour of a person other than by reference to the person's capacity as owner of any land).

Section 1 of the Title Conditions (Scotland) Act 2003

Introduction

3.01 The general principle in this consultation paper is that when ultra-long leases are converted into ownership, a number of real rights and conditions would need to be preserved.

Real rights and conditions

3.02 In paragraphs 3.25 to 3.30 of their Report, the SLC discuss real rights and conditions of the ultra-long lease. Key points are:

- Any encumbrances granted by the tenant (eg a standard security) in relation to the ultra-long lease should affect the land after conversion to ownership.
- Encumbrances granted by the landlord in relation to the land which affect the way in which the land is used and occupied (eg servitudes, real burdens and public rights of way) should survive conversion.
- Encumbrances granted by the landlord in relation to the land which do not impact on occupation and use (ie security and proper liferent) should not survive conversion.
- Any debts already due on the appointed day should continue to be due.

Reservations and pertinents

3.03 In paragraph 3.31 of their Report, the SLC note that reservations from the ultra-long lease (the obvious example being mineral rights, discussed at 2.17 to 2.21 above) and pertinents of the lease (ie additional rights exercised in association with the property but beyond its boundaries) should generally be reflected in ownership after conversion.

3.04 Paragraphs 3.34 to 3.41 of the SLC Report discusses servitudes (rights over land). Paragraph 3.34 notes that servitudes are rare in ultra-long leases but the report goes on to note that access and other rights may well have been created in an ultra-long lease or may exist in practice. The SLC recommends in paragraph 3.41 that access and other rights in relation to land that is converting from leasehold to ownership should convert to servitudes.

Irritancy

3.05 For most ultra-long leases, irritancy (unilateral termination of the lease by the landlord, without compensation) has already been abolished. Sections 5 and 6 of the Leasehold Casualties (Scotland) Act 2001 have abolished irritancy for most ultra-long leases (i.e. for those granted before 10 August 1914 and with rent payable of not more than £150 per year).

3.06 The Scottish Government proposes that irritancy should be abolished for all ultra-long leases when Royal Assent is granted for the Long Leases (Scotland) Bill: this is in line with paragraph 3.29 of the SLC Report. The Scottish Government further proposes that any final decrees (ie decrees not subject to appeal or review) in relation to irritancy which are in place when Royal Assent is granted should remain in place. This is in line with section 53(2) of the Abolition of Feudal Tenure etc. (Scotland) Act 2000 and section 8 of the Leasehold Casualties (Scotland) Act 2001.

Converting leasehold conditions into real burdens - general

3.07 Part 4 of the SLC Report discusses the potential conversion of conditions in ultra-long leases into real burdens in the title deeds. The SLC note that not all conditions will become real burdens. Key points are:

- A condition should not become a real burden unless it binds successors. (Paragraph 4.4 of the SLC Report).
- The condition must be of a kind which is capable of being constituted as a real burden, as laid out in the Title Conditions (Scotland) Act 2003. (Paragraph 4.5 of the SLC Report).
- Penalty clauses should be excluded. (Paragraph 4.8 of the SLC Report).
- Irritancy clauses should be excluded. (Paragraph 4.9 of the SLC Report see also paragraphs 3.05 and 3.06 above of this consultation).
- Conditions said to be enforced by irritancy should be excluded.
- A condition which is just implied in the ultra-long lease should be excluded (paragraph 4.13 of the SLC Report), including any implied conditions in relation to “inversion of possession” (where the tenant uses the land for a purpose not originally intended). (Paragraphs 4.14 to 4.16 of the SLC Report).

3.08 The terms of a real burden must be set out in a constitutive deed (paragraph 4.13 of the SLC Report). The SLC Report goes on to outline what

deeds may be considered as “constitutive” for these purposes. The SLC recommends that the following should be regarded as constitutive deeds:

- The ultra-long lease qualifying for conversion to ownership. (Paragraph 4.19 of the SLC Report).
- Intermediate or “superior” leases, where land has been sub-let (Paragraphs 4.19 to 4.24 of the SLC Report). “Interposed” leases are specifically excluded. (Paragraph 4.19 of the SLC Report).
- Registered deeds of variation of leases. (Paragraph 4.25 of the SLC Report).
- Assignations and deeds of conditions. (Paragraph 4.26 of the SLC Report).

3.09 In broad terms, the Scottish Government considers that conditions in ultra-long leases which could be converted into real burdens can be regarded as falling into the following categories:

- Conditions which regulate the maintenance, management, reinstatement or use of a facility. These will become facility burdens on the appointed day, with benefited properties and burdened properties. (Paragraphs 4.30 to 4.33 of the SLC Report).
- Obligations to provide services from the land subject to the ultra-long lease to some other land. These will become facility burdens on the appointed day, with benefited properties and burdened properties. (Paragraph 4.35 of the SLC Report).
- Obligations relating to the power of management over a group of related properties. These will become manager burdens on the appointed day. (Paragraph 4.36 of the SLC Report).
- Personal real burdens, where there is no benefited property as such and the burden is held directly by a public body. These are discussed in more detail in paragraphs 3.11 to 3.14 below.
- Conditions relating to neighbouring land. These are discussed in more detail in paragraphs 3.15 to 3.17 below.
- Some conditions enforceable by third parties. These are discussed in more detail in paragraph 3.18 below.

3.10 Section 8 of the Title Conditions (Scotland) Act 2003 lays down provisions on the enforcement of real burdens. Section 8(1) provides that a real burden is enforceable by any person who has both title and interest to enforce it.

Personal real burdens

3.11 Personal real burdens are defined in section 1(3) of the Title Conditions (Scotland) Act 2003. In brief, they are burdens constituted in favour of a person other than by reference to the person’s capacity as owner of any land. The SLC Report outlines that the following leasehold conditions may be converted into personal real burdens:

- Any qualifying leasehold condition which has the purpose of preserving or protecting the architectural, historical or other special characteristics of the land should become a conservation burden enforceable by a conservation body or the Scottish Ministers, so long as a notice in the prescribed form is duly registered in the Land Register or Register of Sasines. (Paragraph 4.37 of the SLC Report).
- A qualifying leasehold condition which confers a right of pre-emption or redemption should be converted into a personal pre-emption burden or a personal redemption burden so long as a notice in the prescribed form is duly registered in the Land Register or Register of Sasines. (Paragraph 4.38 of the SLC Report).
- A qualifying condition which has the purpose of promoting economic development should become an economic development burden held by the Scottish Ministers or by a local authority so long as a notice in the prescribed form is duly registered in the Land Register or Register of Sasines. (Paragraph 4.39 of the SLC Report).
- A qualifying condition which has the purpose of promoting the provision of facilities for health care should become a health care burden held by the Scottish Ministers so long as a notice in the prescribed form is duly registered in the Land Register or Register of Sasines. (Paragraph 4.40 of the SLC Report).

3.12 Since the SLC Report, there has been a relevant amendment to the Title Conditions (Scotland) Act 2003. Section 68 of the Climate Change (Scotland) Act 2009 inserted section 46A into the 2003 Act. Section 46A comes into force on 1 April 2010⁹. The Scottish Government is currently preparing guidance on this section.

3.13 Section 46A of the 2003 Act lays down that from 1 April 2010 it shall be competent to create a personal real burden in favour of a public body or trust, or of the Scottish Ministers, for the purpose of reducing greenhouse gas emissions; and any such burden shall be known as “a climate change burden”. It further lays down that “a climate change burden” may only consist of an obligation, in the event of the burdened property being developed, for the property to meet specified mitigation and adaptation standards (to reduce greenhouse gas emissions).

3.14 In the light of this amendment, the Scottish Government intend that any qualifying leasehold conditions which have the aim of reducing greenhouse gas emissions when the property is developed should become a climate change burden held by the Scottish Ministers or a public body or trust so long as a notice in the prescribed form is duly registered in the Land Register or Register of Sasines.

⁹ See article 2(3) of The Climate Change (Scotland) Act 2009 (Commencement No. 1) Order 2009: http://www.opsi.gov.uk/legislation/scotland/ssi2009/ssi_20090341_en_1

Enforcement of conditions by the former landlord

3.15 Normally on the appointed day the (former) landlord will lose the right to enforce the conditions. There is however an exception in the SLC Report for landlords who also own neighbouring land. In some circumstances landlords can reallocate the condition to their land. The condition would become a real burden with the land which was the subject of the ultra-long lease being the burdened property and the landlord's neighbouring land, as nominated by the landlord, being the benefited property.

3.16 For this to happen, the landlord would need to serve a notice on the tenant and register it in the Land Register or Register of Sasines before the appointed day. Land will not normally be eligible for nomination unless it conforms to the "hundred metres rule": that is unless it contains a permanent building used as a place of human habitation or resort lying within 100 metres of the burdened property. (Paragraphs 4.42 to 4.48 of the SLC Report).

3.17 The SLC propose a number of exceptions to the 100 metre rule:

- Where the condition is a right of pre-emption or redemption.
- Where the land is a separate tenement¹⁰ such as minerals or salmon fishings and the condition was conceived for the benefit of that land.
- Where the tenant and the landlord reach agreement. (Paragraph 4.48 of the SLC Report).
- Where the Lands Tribunal waives the rule (applications to the Lands Tribunal can only be made **after** an attempt to reach an agreement with the tenant).

Enforcement of conditions by third parties.

3.18 The SLC Report goes on to consider the position of third parties in relation to leasehold conditions. The SLC concludes that:

- Rights to enforce conditions (eg held by neighbours) which are expressly conferred in the ultra-long lease should survive conversion of the ultra-long lease. (Paragraphs 4.50 and 4.51 of the SLC Report).
- Where qualifying conditions are imposed under a common scheme on a group of related properties, such conditions should become real burdens on the appointed day. (Paragraph 4.52 of the SLC Report).
- Where qualifying conditions are imposed in, or in association with, a partial assignation of land, the tenants of the retained land should be able to convert the condition into a real burden. (Paragraphs 4.53 and 4.54 of the SLC Report).

¹⁰ "Separate tenement" means rights which can be owned separately from the physical land to which they relate.

Other matters relating to the conversion of conditions

3.19 In paragraphs 4.58 and 4.59 of the SLC Report, the SLC recommend that only one notice or agreement should be registered in relation to a condition. The purpose of this is to prevent one condition being converted into more than one burden – thereby potentially increasing enforcement rights – simply because the condition happens to qualify under more than one head.

3.20 In paragraphs 4.60 to 4.62, the SLC note that notices for conversion of conditions into real burdens should be served on tenants, with a separate notice for each property.

3.21 In paragraphs 4.64 and 4.65, the SLC recommend that following section 4(5) of the 2003 Act there will be a statutory requirement that notices (or agreements) creating real burdens should be registered against both the burdened property and the benefited property; unless they are personal real burdens which do not require dual registration.

3.22 In paragraph 4.67, the SLC recommend that notices converting conditions into real burdens, notices preserving reservations and notices of exemptions should be capable of being challenged in the Lands Tribunal and that extracts of Lands Tribunal orders should be capable of registration.

3.23 The SLC also note in paragraph 4.69 that applications to rectify obvious defects can, in Land Register cases, be made straight to the Keeper of the Registers (see paragraph 6.01 of this consultation paper). They further note, in paragraph 4.70, that real burdens may be challenged in the Lands Tribunal under the Title Conditions (Scotland) Act 2003.

3.24 The SLC note in paragraphs 4.71 to 4.72 that any qualifying conditions converted to real burdens should be subject to compliance with any obligation which was the direct counterpart of the condition.

Chapter 4 Preservation of landlords' rights in relation to fishing and game

Even a bad day of fishing is better than a good day of work. *Anonymous.*

Introduction and general principles

4.01 Paragraph 5.13 of the SLC Report made the following points in relation to the preservation of landlords' sporting rights:

- Although not common in the context of ultra-long leases, sporting rights where they exist may be of considerable value.
- If they were not preserved it would be necessary to provide separately for compensation.
- Consistency with the 2000 Act also argues for preservation of sporting rights.

Freshwater fishings (excluding salmon) and game

4.02 In paragraph 2.36 of their Report, the SLC note that shootings and freshwater fishings can be leased but neither is capable at present of being owned separately from the land (or river) (ie not capable of being held as a "separate tenement"). The SLC go on to say that "leases of property inalienable in this sense are necessarily excluded from conversion to ownership". (In this context, freshwater fishings do not include salmon fishings as salmon fishings are held as separate tenements – paragraph 5.8 of the SLC Report refers. More information on salmon fishings is at paragraphs 4.08 to 4.11 of this consultation paper).

4.03 The SLC recommend that landlords should be able to register a statutory form to preserve rights to freshwater fishing or to game. The notice would be served on the tenant; sworn or affirmed before a notary public; registered in the Land Register or Register of Sasines (against the interest of either the landlord or the tenant) and transformed into a separate tenement (paragraph 5.16 of the SLC Report).

4.04 In relation to game, the Government would propose that game birds for the purposes of the long leases legislation will be considered to be pheasants, partridges, grouse (or moor game), black (or heath) game and ptarmigan (this is based on the definition of "game bird" in section 27(1) of the Wildlife and Countryside Act 1981).¹¹

4.05. In addition, the SLC notes, in paragraph 5.22 of its Report, that landlords should be able to preserve right to take and kill hares. Such rights would not be exclusive, as the Ground Game Act 1880 provides rights for occupiers to take and kill hares (and rabbits), with the aim of preserving crops. The SLC does not make any recommendations in relation to the preservation

¹¹ The Government has consulted on a potential Wildlife and Natural Environment Bill: <http://www.scotland.gov.uk/Publications/2009/06/17133414/0>

of landlords' rights to take and kill rabbits. Therefore, in line with the Government's general approach of following the approach taken by the SLC unless there is a good reason to do otherwise, we are not proposing that landlords should be able to preserve any rights in relation to the taking and killing of rabbits.

4.06 Similarly, the SLC make no recommendations in relation to preserving landlords' rights to deer and so we are not proposing that landlords should be able to preserve any rights in relation to the taking and killing of deer.

4.07 In summary, the Government is proposing that landlords should be able to register a statutory form to preserve rights to take and kill pheasants, partridges, grouse (or moor game), black (or heath) game, ptarmigan and, on a non-exclusive basis, hares.

Salmon fishings

4.08 On salmon fishings, the SLC note in paragraph 2.36 that the right to fish for salmon is a separate tenement and may be alienated as well as leased. They go on to say in paragraph 5.8 that "if the fishings are not mentioned [in a lease] they are excluded..... Either salmon fishings are included in a qualifying lease or not. If included, there is a change of ownership on the appointed day in the usual way. If not included they are wholly unaffected by the conversion of lease into ownership".

4.09 The Scottish Government considers that it follows that any ultra-long leases of, or including, salmon fishings would convert into ownership to include the salmon fishings, provided that such ultra-long leases meet the general criteria for conversion outlined in this consultation paper and in the SLC Report. Compensation for landlords in relation to loss of salmon fishings would be based on the compensation and other payments outlined in Chapter 5 of this consultation – there is nothing specific on loss of salmon rights.

4.10 There is also a question in relation to any *non-exclusive* rights (ie rights which the landlord holds as well as the tenant) to fish salmon. This scenario is mentioned in the first paragraph of the note to section 7 of the Bill contained in the SLC Report.

4.11 The Scottish Government is not aware of the existence of any such non-exclusive rights in practice and would welcome any information from consultees on the incidence of such rights. Non-exclusive rights could occur, for example, where salmon fishing rights are the subject of an ultra-long lease but the landlord has also retained a right to fish for salmon. The Scottish Government considers that any such rights should be capable of being preserved. One option might involve converting them into separate tenements, in the same manner as is proposed for sporting rights more generally.

Question 4. Do you agree that:

- Landlords should be able to register a statutory form to preserve rights to freshwater fishing (i.e. fish other than salmon) or to game (ie pheasants, partridges, grouse (or moor game), black (or heath) game, ptarmigan and hares)?
- Any non-exclusive rights to fish salmon which landlords may hold in qualifying ultra-long leases should also be capable of being preserved?

If you hold a different view, please explain why.

Chapter 5 Compensation and other payments

Money makes the world go around. *Liza Minnelli*

Compensation

5.01 The general principle is that compensation (and other payments) should be payable for loss of landlords' rights. The SLC note in paragraph 6.1 of their Report that compensation due to the landlord by the tenant should be based on the rent. The rent in most ultra-long leases is very low. Paragraph 17 of Appendix C of the SLC Report notes that of the ultra-long leases they studied only 26 (1.52% of the sample) had a rent of more than £50 and of those a mere 7 had a rent of much more than £100.

5.02 The SLC discusses in paragraphs 6.1 to 6.9 whether compensation should be calculated by reference to 2.5% Consolidated Stock (whereby the former landlord would be entitled to such sum as if invested in 2.5% Consolidated Stock would produce an annual sum equal to the rent) or on a fixed multiplier. With some hesitation, the SLC supported basing the compensation on 2.5% Consolidated Stock (paragraph 6.8 of the SLC Report).

5.03 The Scottish Government agrees with that view as it is consistent with the approach taken in relation to the abolition of feu duty and is an accepted method of calculating compensation. The price of 2.5% Consolidated Stock varies. On 1 March 2010, the price was £50.74. Therefore, to redeem a rent of £2.50 you would need to spend £50.74¹². This suggests a "multiplier" of 20.3¹³.

5.04 The SLC go on to note that in many cases the original subjects of let have been divided, by assignation of a part. Their survey suggested this may have occurred in more than half of all long leases. The SLC indicate that where a *cumulo* rent (or *cumulo* renewal premium¹⁴, if any) applied the landlord should allocate the rent among ultra-long leases in such proportions as are reasonable and that an allocation should be deemed reasonable if it follows an existing informal apportionment made before the appointed day. (Paragraphs 6.11 to 6.14 of the SLC Report). Where an apportionment has been agreed between landlords and tenants before the appointed day that would simply be treated as the rent or premium payable in respect of a lease.

5.05 The SLC also note that some leases may continue in part and in such cases the landlord should allocate rent to the extinguished part (for the

¹² This is because the **nominal** amount of Consolidated Stock, on which the interest is paid, is £100: the actual price of the nominal amount of the Stock varies.

¹³ To give another example, if the rent is £5, the compensation due would be £101.48. 101.48 divided by 5 is 20.3.

¹⁴ *Cumulo* relates to a single rent (or renewal premium) payable in relation to two or more leases.

purposes of compensation) and to the continuing part (for the purposes of on-going rent). (Paragraph 6.15 of the SLC Report).

5.06 The SLC recommend that compensatory or additional payments should only be due if the landlord serves a notice on the tenant within 2 years of the appointed day. (Paragraphs 6.17 to 6.20 of the SLC Report). An additional notice is required before the appointed day if more than £500 is claimed by way of either compensatory or additional payments. (Paragraphs 6.48 to 6.51 of the SLC Report).

5.07 In some cases, a renewal premium (*grassum*) may be payable when ultra-long leases are renewed. The SLC recommend that where the premium is £100 or less, the averaged annual amount should, for compensation purposes, be added to the annual rent. (Paragraphs 6.22 to 6.26 of the SLC Report). Where the renewal premium is over £100, it should be regarded as an item which may lead to a claim for an additional payment (see paragraph 5.13 below).

Additional payments

5.08 The SLC also note in paragraph 6.28 of their Report that:

“occasionally the compensatory payment will not be a sufficient measure of the landlord’s loss. Such cases are likely to be rare: but except where the difference is too slight to be worthy of separate compensation, the landlord should be able to seek an additional payment from the tenant. In this section we isolate the particular grounds on which a further payment may be needed. These grounds are intended to be exhaustive, for an open category would invite speculative claims, create uncertainty, and lead to disputes. In the notice making claim to an additional payment it will be for the landlord to nominate, and to justify, the particular ground of claim”.

5.09. The various heads for potential claims are outlined below. In most cases, the SLC indicate (see the recommendation at paragraph 6.47 of their Report) that the amount of any additional payments should either be agreed between the parties following service of a notice or, failing agreement, the amount fixed by order of the Lands Tribunal. The SLC also indicate that additional payments should take account of the extinction of a landlord’s obligations and the compensatory and any other payments the landlord may be entitled to recover in respect of the loss.

5.10 Non-monetary rents. The SLC note in paragraph 6.29 of their Report that non-monetary payments were found in around 1% of the leases in their survey. For example, in one lease six fat hens formed part of the rent. The SLC note that the landlord could obtain a valuation of the right and if a monetary equivalent of the rent could be agreed, the payment normally due could be derived by applying the 2.5% Consolidated Stock formula.

5.11 Rent review. The SLC state in paragraph 6.30 of their Report that the likely consequences of any rent review (which is acknowledged to be unlikely in long leases) must be built into any calculation of compensation.

5.12 Rent increase. The SLC state in paragraph 6.31 of their Report that any provisions in the lease for rent increases should found a claim for additional payment.

5.13 Renewal premiums exceeding £100. The SLC say in paragraph 6.32 of their Report that “only those renewals needed to raise the lease to the qualifying duration [175 years] are relevant”. Thus, for example, for a lease granted for 99 years but renewable for further periods of 99 years upon payment of £1,000 which has, on the appointed day, 30 years still to run, a single renewal would be sufficient to meet the qualifying level of an ultra-long lease of 175 years with an unexpired duration of 100 years. Therefore, the additional payment to the landlord would be on the value on the appointed day of a right to receive £1,000 in 30 years’ time.¹⁵

5.14 Residual value of reversionary interest. In paragraph 6.33 of their report, the SLC suggest that ultra-long leases with less than 200 years left to run may be entitled to receive a payment in respect of reversionary interest. The SLC indicate in paragraph 6.47 that any payment here should:-

- take account of the extinction of landlords’ obligations and any compensatory and other payments; and
- otherwise be the value which reversion would have on the open market, disregarding bidders with a special interest and any depreciation in the value of other land owned by the landlord.

5.15 Any additional payment for reversionary payment would need to take account (and be reduced by) any compensation payable for loss of rent.

5.16 Early termination. In paragraphs 6.34 and 6.35 of their Report, the SLC indicate that landlords may be entitled to additional payments in respect of rights to terminate an ultra-long lease before its normal expiry. In such cases, an additional payment should only be available where the termination rights are within the full control of the landlord. A right to terminate on breach (irritancy or the equivalent) should be excluded. Rights of pre-emption should also be excluded as these can be converted into real burdens.

5.17 Right to development value. In paragraphs 6.36 and 6.37 of their Report, the SLC note that some ultra-long leases may have been granted cheaply on the basis that the property would be used for some limited purpose only. If, subsequently, this restriction should be discharged, the landlord would expect to receive some recompense from the tenant. This possibility will disappear on conversion to ownership.

¹⁵ Paragraph 5.5 of Scottish Law Commission Report 165, on leasehold casualties, provides more information on this type of calculation:
<http://www.scotlawcom.gov.uk/downloads/rep165.pdf>

5.18 Paragraph 6.45 of the SLC Report indicates that any additional payment should be limited to such sum as would make up for any effect which the condition produced, when it was imposed, in reducing the consideration. No account is taken of inflation.

Question 5. Do you agree that these grounds for additional payments cover all reasonable situations which could arise?

If you hold a different view, please explain why.

Further matters on compensation and additional payments

5.19 Amounts over £500. Paragraph 6.49 of the SLC Report recommends that where more than £500 is being claimed by way of compensation or additional payments, a notice must be served not later than six months before the appointed day. Otherwise, any claim by a landlord would be limited to £500 in any claim for compensatory or additional payment.

5.20 Intermediate tenants. Paragraphs 6.52 to 6.55 of the SLC Report deal with intermediate tenants where intermediate leases exist. Paragraph 6.54 explains why a distinction must be drawn between loss of rent and loss of other rights.

5.21 The former is of benefit to the immediate tenant as they are no longer liable for rent. It follows that it is appropriate for any claim which is based on, or related to, the loss of rent to be made against the immediate tenant.

5.22 However, some rights for which an additional payment are due do not relate to rent and will only be of benefit to the tenant under the qualifying lease. These are the right to resume natural possession of the land, the right to enable a lease to be terminated early and any right to development value. Therefore, such claims should be directed to the tenant under the qualifying lease, as opposed to the tenant under a superior lease.

5.23 Crystallisation of liability. Paragraphs 6.56 to 6.62 of the SLC Report discuss crystallisation of liability. A key point here is that the tenancy may have changed hands but the title may not have been completed (by registration). To deal with this, the legislation will provide that, for the purposes of compensation, “former landlord” and “former tenant” means the person who immediately before the appointed day has right to the interest of the landlord or, as the case may be, of the tenant.

5.24 Serving of notices. The SLC recommend, in paragraphs 6.70 to 6.73 of their Report, that notices should be served by hand delivery or by registered post or recorded delivery. The date of service is the date of delivery or posting. Documents returned marked undelivered could be re-served on the Extractor of the Court of Session.

5.25 The legislation will also provide that where a notice is mistakenly served on somebody who was a tenant at some time before the appointed

day but was not the tenant at the appointed day, that person shall be under a statutory duty to disclose the name and address of the proper tenant or, failing that, such other information as might enable the proper tenant to be traced. This duty could be enforced by the landlord obtaining an order of specific implement in the Court of Session or the sheriff court.

5.26 Instalment scheme. The SLC propose that payments by tenants to landlords can be made by instalments. This will only apply where the amount of compensatory or additional payment claimed is £50 or more. For this purpose, compensatory and additional payments are viewed separately (ie if £40 was claimed by way of compensatory payment and £150 as additional payment, only the latter would qualify to be paid by instalments). Where a tenant decides to pay by instalments, a surcharge of 10% is payable, due at the time when the tenant elects to pay by instalments. Instalments are payable on each term day of Whitsunday (28 May) and Martinmas (28 November), until the liability is cleared.

5.27 The instalments will be payable as outlined in the table below:

Amount payable	Number of instalments
£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

5.28 The unpaid balance should become immediately due and payable if:

- An instalment is unpaid for more than 6 weeks; or
- Following sale, the former tenant ceases to be the owner of the property. (In which case, payment in full is due not later than a week after the former tenant ceases to be the owner).

Chapter 6 Protection of the Keeper of the Registers

The Keeper of the Registers is a non-Ministerial office holder who also acts as Chief Executive of Registers of Scotland. The Keeper is appointed by the Scottish Ministers with the consent of the Lord President of the Court of Session. The Keeper's exercise of her statutory functions is subject to review by the Lands Tribunal and civil courts in various ways and she is also accountable to the Scottish Ministers for achieving financial objectives as determined by them. *Registers of Scotland*.

6.01 Paragraphs 8.1 to 8.6 of the SLC Report recommend that:

- The Keeper should be given the power to rectify the Land Register as a consequence of legislation on leasehold conversion.
- This rectification is not to be seen as prejudicing any proprietor in possession (except in relation to the deletion in error of a leasehold condition).
- There should be no entitlement to indemnity under section 12 of the Land Registration (Scotland) Act 1979 following this rectification, (except in relation to the deletion in error of an encumbrance).

6.02 Paragraph 8.11 of the SLC Report recommends that the Keeper should not be required to verify various matters. These are:

- Whether a copy of a notice has been duly served;
- Whether, in the case of a notice or agreement converting leasehold conditions into real burdens, the conditions were enforceable by the landlord (or other sender);
- Whether, in the case of such a notice or agreement, the conditions were still enforceable immediately before the appointed day;
- Whether, in the case of a notice nominating a benefited property, the requirement of a building within 100 metres of the burdened property has been met;
- Whether, in a case where the 100 metres requirement has been dispensed with by the Lands Tribunal, the order of the Tribunal was preceded by an attempt by the parties to reach agreement;
- Whether, in the case of an agreement converting leasehold conditions into real burdens, a preliminary notice has been served;
- Whether, in the case of a notice converting a leasehold condition into an economic development burden or health care burden, the requirement that the condition was imposed for the purpose of promoting economic development or the provision of facilities for health care was met;¹⁶
- Whether, in the case of a notice converting a sporting right into a separate tenement, the sporting right was still enforceable immediately before the appointed day.

¹⁶ A similar provision will be put in place in relation to climate change burdens.

6.03 The SLC also recommend in their Report that where a notice or agreement submitted for registration is rejected by the Keeper but is subsequently determined by the court or the Lands Tribunal to be registrable, it should be possible to register the notice or agreement late, but no later than:

- Two months after the determination; or
- Such date as the Scottish Ministers may prescribe

whichever occurs first.

Chapter 7 Stamp Duty Land Tax

Taxes, after all, are dues that we pay for the privileges of membership in an organised society. *Franklin D. Roosevelt*

7.01 The SLC considered Stamp Duty Land Tax¹⁷ in paragraphs 8.19 to 8.26 of their Report. They noted that there could be some debate as whether conversion of an ultra-long lease to ownership was a chargeable consideration but concluded that it was. The SLC went on to recommend that ultra-long leases which convert to ownership should be treated as a land transaction which is exempt from Stamp Duty Land Tax.

7.02 However, there have been changes to UK legislation since the SLC wrote its Report. The current versions of sections 77 and 77A of the Finance Act 2003 were inserted by section 94(2) of the Finance Act 2008. Among other matters, sections 77 and 77A provide that an acquisition of ownership where the chargeable consideration is less than £40,000 does not have to be notified for Stamp Duty Land Tax purposes. (Any obligation to pay Stamp Duty Land Tax would fall at a higher figure).

7.03 As indicated in the partial Regulatory Impact Assessment (RIA) accompanying this consultation, the number of qualifying ultra-long leases is low. The partial RIA also suggests that most compensatory payments will be low (given that compensation is based on rent and paragraph 17 of Appendix C to the SLC Report suggests that around 99% of ultra-long lease rents are under £100 a year, with most being under £5 a year). The Scottish Government expects that additional payments will also be low: see paragraphs 5.11 to 5.22 of the partial RIA.

7.04 As a consequence, the number of cases where notification will be required will be very low and it is considered that the probability of actual liability for Stamp Duty Land Tax will also be low. **In the light of this, the Scottish Government does not propose to seek any specific exemption from Stamp Duty Land Tax for ultra-long leases which convert to ownership.**

¹⁷ Stamp Duty Land Tax is a reserved matter under the Scotland Act 1998. Responsibility for Stamp Duty Land Tax rests with HM Treasury and HM Revenue and Customs.

Chapter 8 Conclusion

Parting is such sweet sorrow. *Juliet, in Romeo and Juliet.*

8.01 The questions asked in this consultation are:

Question 1 Do you agree that the Government should introduce a Bill which would convert leases lasting more than 175 years and with more than 100 years left to run into ownership?

If you hold a different view, please explain why.

Question 2. Do you agree that:

- Leases relating purely to minerals should be exempt from conversion?
- Surface land held by a tenant as part of a lease which includes mineral rights should not be eligible for conversion?

If you hold a different view, please explain why.

Question 3. Do you agree that the Government should **not** bring forward legislation in respect of residential ground leases ineligible for conversion to ownership under the scheme proposed in this consultation (either because the lease was for 175 years or less or had only 100 years or less left to run or both)?

If you hold a different view, please explain why.

Question 4. Do you agree that:

- Landlords should be able to register a statutory form to preserve rights to freshwater fishing (ie fish other than salmon) or to game (ie pheasants, partridges, grouse (or moor game), black (or heath) game, ptarmigan and hares)?
- Any non-exclusive rights to fish salmon which landlords may hold in qualifying ultra-long leases should also be capable of being preserved?

If you hold a different view, please explain why.

Question 5. Do you agree that these grounds for additional payments cover all reasonable situations which could arise?

If you hold a different view, please explain why.

8.02 In addition, consultees are asked

Question 6. Are there any other points you would like to make? If so, what?

8.03 Responses should be sent by 30 June 2010 to:

Propertylaw@scotland.gsi.gov.uk or

Sandra Jack
Civil Law Division
Scottish Government
St Andrew's House
Regent Road
Edinburgh
EH1 3DG

Scottish Government

ANNEX A: Glossary

<i>Cumulo</i> :	<i>Cumulo</i> rent or renewal premium is a single rent or premium payable in relation to two or more leases.
Entail:	Restriction on use of property to a specified succession of heirs.
Irritancy:	Unilateral termination of the lease by the landlord, without compensation by reason of breach of lease conditions by the tenant.
Real burden:	An encumbrance on land.
Right of pre-emption:	Right of first refusal to purchase property.
Right of redemption:	Right where the tenant's interest reverts to the landlord on the occasion of a specified event or on a specific date.
Separate tenement:	Rights which can be owned separately from the physical land to which they relate.
Ultra-long lease:	For the purposes of this consultation, this term refers to leases granted for more than 175 years which, immediately before the appointed day, have more than 100 years left to run.
Servitudes:	A right possessed by one person to use another's property.

ANNEX B: The Scottish Government consultation process

Consultation is an essential and important aspect of the Scottish Government's working methods. Given the wide-ranging areas of work of the Scottish Government, there are many varied types of consultation. Scottish Government consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

The Scottish Government encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors and no two exercises are likely to be the same.

Typically, Scottish Government consultations involve a consultation paper inviting answers to specific questions or more general views about the material presented. Consultation papers are distributed to organisations and individuals with an interest in the issue, electronically or in hard copy and are placed on the Scottish Government's consultations webpage to allow for participation from a wider audience.

Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Government library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4556).

All Scottish Government consultation papers and related publications (eg, analysis of response reports) can be accessed at <http://www.scotland.gov.uk/consultations>

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence.

Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review,
- inform the development of a particular policy,
- help decisions to be made between alternative policy proposals, or
- be used to finalise legislation before it is implemented.

Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

ANNEX C: Responding to this consultation paper

Please send your response with the completed Respondent Information Form at Annex E to:

PropertyLaw@scotland.gsi.gov.uk or

Sandra Jack
Civil Law Division
Scottish Government
St Andrew's House
Regent Road
Edinburgh
EH1 3DG

If you have any queries contact Sandra Jack on 0131 244 2025.

We would be grateful if you could clearly indicate in your response which questions or parts of the consultation paper you are responding to as this will aid our analysis of the responses received.

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at <http://www.scotland.gov.uk/consultations>.

The Scottish Government now has an email alert system for consultations (**SEconsult**: <http://www.scotland.gov.uk/consultations/seconsult.aspx>). This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new consultations (including web links). SEconsult complements, but in no way replaces SG distribution lists, and is designed to allow stakeholders to keep up to date with all SG consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the **Respondent Information Form** at Annex E. This will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

The Scottish Government are subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public and after we have checked that they contain no potentially defamatory material, responses will be made available to the public in the Scottish Government Library (see the attached Respondent Information Form), these will be made available to the public. You can make arrangements to view responses by contacting the SG Library on 0131 244 4552. Responses can be copied and sent to you, but a charge may be made for this service.

What happens next?

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach a decision on long leases. The analysis of responses will be published. Subject to comments from consultees, and the availability of Parliamentary time, the Scottish Government would propose to introduce a Bill in the Scottish Parliament to implement the recommendations of the Scottish Law Commission on Long Leases.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to Sandra Jack: sandra.jack@scotland.gsi.gov.uk or on 0131 244 2025.

ANNEX D: List of consultees

Association of Deer Management Groups
British Association for Shooting and Conservation
British Bankers Association
British Deer Society
Building Societies Association
Centre for Research into Law Reform, University of Glasgow
Chartered Institute of Housing
Coal Authority
Committee of Scottish Clearing Bankers
Convention of Scottish Local Authorities, and all local authorities in Scotland.
Council of Mortgage Lenders.
Crofters Commission
Crown Estate
Department of Energy and Climate Change
Equalities and Human Rights Commission
Faculty of Advocates
Game and Wildlife Conservation Trust
HM Treasury
Keeper of the Registers of Scotland
Lands Tribunal for Scotland
Law Society of Scotland
Members of the European Parliament representing Scotland
Mineral Products Association
National Farmers Union of Scotland
Royal Institution of Chartered Surveyors in Scotland
Royal Town Planning Institute
Scotland Office
Scottish Anglers National Association
Scottish Association for Country Sports
Scottish Coal
Scottish Countryside Alliance
Scottish Estates Business Group
Scottish Gamekeepers Association
Scottish Law Agents Society
Scottish Law Commission
Scottish Legal Aid Board
Scottish Natural Heritage
Scottish Property Federation
Scottish Rural Property and Business Association
Scottish Society of Directors of Planning
Society of Solicitors in the Supreme Courts of Scotland
Society of Writers to HM Signet
Valuation Office Agency

In addition, the Scottish Government will also send this consultation paper to:

- Those who responded to the SLC discussion paper, if not already included above (see page 250 of the SLC Report).
- The Justice Committee of the Scottish Parliament.
- The Scottish Parliament Information Centre (SPICE).
- The six Legal Deposit or “Copyright” libraries.
- All Scottish Members of the European Parliament.

ANNEX E



RESPONDENT INFORMATION FORM

Please Note That This Form Must Be Returned With Your Response To Ensure That We Handle Your Response Appropriately

1. Name/Organisation

Organisation Name

Title Mr Ms Mrs Miss Dr Please tick as appropriate

Surname

Forename

2. Postal Address

<input type="text"/>		
Postcode	Phone	Email

3. Permissions

I am responding as...

Individual

/ Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation will be made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your response to be made available?

Please tick as appropriate Yes No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate Yes No

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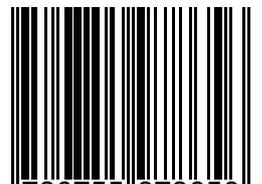
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Long Leases (Scotland) Bill

[CONSULTATION DRAFT]

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Long Leases (Scotland) Bill

[CONSULTATION DRAFT]

An Act of the Scottish Parliament to convert the right of lease in relation to certain long leases into ownership; to create, on such conversion, separate tenements in relation to certain rights of game and fishing; to provide for the conversion into real burdens of certain rights and obligations under such leases; to provide for payment to former owners of land of compensation for loss of it on conversion; to provide for tenants of qualifying long leases to opt out of conversion; and for connected purposes.

PART 1

CONVERSION OF LONG LEASE TO OWNERSHIP

Determination of “qualifying lease”

1 Meaning of “qualifying lease”

- (1) A lease is a “qualifying lease” if it complies with subsection (3).
- (2) But subsection (1) is subject to section 2.
- (3) A lease complies with this subsection if, immediately before the appointed day, it is a right of lease in land—
 - (a) which is registered,
 - (b) granted for a period of more than 175 years,
 - (c) in respect of which the unexpired portion of such period is more than 100 years, and
 - (d) which is not a lease—
 - (i) of minerals, or
 - (ii) which includes minerals and in respect of which a royalty, lordship or other payment of rent determined by reference to the exploitation of those minerals is or may be payable.
- (4) Where a lease is divided (whether as a result of partial assignation or otherwise), each part is treated as a separate lease for the purposes of this Act.

2 Only one lease of particular land to be qualifying lease

- (1) This section applies where land is subject to two or more potential qualifying leases.

- (2) Subsections (3) and (4) apply for the purposes of determining—
 - (a) which of the leases is the qualifying lease, and
 - (b) of which land the lease is a qualifying lease.
- (3) A potential qualifying lease is not a qualifying lease if all of the land which forms the subjects of the lease forms the subjects of an inferior lease.
- (4) In any other case, a potential qualifying lease is the qualifying lease of land that—
 - (a) forms the subjects of the potential qualifying lease, but
 - (b) does not form the subjects of an inferior lease.
- (5) In this section—
 - “potential qualifying lease” means a lease that complies with section 1(3),
 - “inferior lease”, in relation to a potential qualifying lease, means a sublease—
 - (a) of the whole or part of the subjects of the potential qualifying lease, and
 - (b) which is itself a potential qualifying lease.

Conversion of right of lease to ownership

3 Conversion of right of lease to right of ownership

- (1) On the appointed day—
 - (a) a qualifying lease becomes the right of ownership of the land in relation to which it is the qualifying lease,
 - (b) any right of ownership of that land existing immediately before that day is extinguished, and
 - (c) any superior lease is extinguished.
- (2) Subsection (1) is subject to section 62(1) (exempt leases not to convert).
- (3) In this Act, a “superior lease” means a lease of land in relation to which, and to the extent that, a qualifying lease is a sublease of that land.

Consequences of conversion

4 Extinction of certain rights and obligations on appointed day

- (1) Subject to subsection (2) and sections 5 and 6 and Part 2, all rights and obligations arising (whether expressly or by implication) from—
 - (a) a qualifying lease, and
 - (b) any superior lease,
 are extinguished on the appointed day.
- (2) Subsection (1) does not affect any right or obligation arising from a lease mentioned in that subsection in so far as that right or obligation is, by its nature, enforceable only as a personal right or obligation, that is to say, the right or obligation could not be enforced by or against the successor of a party to the lease.
- (3) Despite subsection (1)—
 - (a) rent continues to be payable for any period before the appointed day, and

- (b) if (in so far as so payable) it has not fallen due before that day, it falls due on that day.
- (4) Subject to subsection (5)—
 - (a) on or after the appointed day, no proceedings for enforcement of any such rights or obligations as are mentioned in subsection (1) may be commenced,
 - (b) any proceedings already commenced for such enforcement are deemed to have been abandoned on that day and may, without further process and without any requirement that full judicial expenses be paid by the pursuer, be dismissed accordingly, and
 - (c) any decree or interlocutor already pronounced in proceedings for such enforcement is deemed to have been reduced or, as the case may be, recalled on that day.
- (5) Subsection (4) does not affect any proceedings, decree or interlocutor in relation to—
 - (a) a right or obligation which subsists by virtue of section 5,
 - (b) a right or obligation which is converted under Part 2,
 - (c) a right or obligation which is created under section 6,
 - (d) a right to recover damages or to the payment of money (including rent), or
 - (e) a right of irritancy.

5 Subordinate real rights, reservations and pertinents

- (1) This section applies where a right of ownership in land is created by the conversion of a qualifying lease under section 3(1)(a) (such land being referred to in this section as “the converted land”).
- (2) The converted land is subject to any subordinate real rights to which the qualifying lease was, immediately before the appointed day, subject.
- (3) The converted land is, subject to subsection (4), subject to—
 - (a) any subordinate real rights (other than any superior lease extinguished by virtue of section 3(1)(c)), and
 - (b) any other encumbrances,to which the converted land itself was, immediately before the appointed day, subject.
- (4) Any heritable security or proper liferent to which the converted land itself was subject immediately before the appointed day is, on that day and to the extent that the security or liferent affected the land, extinguished.
- (5) The converted land—
 - (a) includes any pertinent (whether express or implied) of the qualifying lease which, by its nature, may be a pertinent of land, and
 - (b) excludes anything capable of being held as a separate tenement in land (including any right so held by virtue of section 7) which is reserved (whether expressly or by implication) from—
 - (i) the qualifying lease, or
 - (ii) any superior lease.

6 Creation of servitudes on conversion

- (1) This section applies where a right of ownership in land is created by the conversion of a qualifying lease under section 3(1)(a) (such land being referred to in this section as “the converted land”).
- (2) The converted land includes or, as the case may be, is subject to any servitudes which would have been created (whether expressly, by implication or by positive prescription) had the original grant of—
 - (a) the qualifying lease,
 - (b) any superior lease, and
 - (c) any partial assignation of a lease, where the subjects of that lease include the land which forms the subjects of the qualifying lease,been a conveyance of land.

7 Conversion of reserved sporting rights

- (1) This section applies where a right of—
 - (a) game, or
 - (b) fishing,is reserved (whether expressly or by implication) from a qualifying lease or superior lease (such a right being referred to in this Act as a “sporting right”).
- (2) A landlord may, before the appointed day, execute and register a notice in the prescribed form.
- (3) The notice must—
 - (a) set out the title of the landlord,
 - (b) identify the land affected by the sporting right,
 - (c) set out the terms of such right, and
 - (d) set out the terms of any counter-obligation to the right.
- (4) For the purposes of subsection (2)—
 - (a) a notice is registered only when registered against the land identified in pursuance of subsection (3)(b), and
 - (b) the notice may be registered against the title of the owner of the land or the tenant under the qualifying lease.
- (5) Before submitting a notice for registration under this section, the landlord must swear or affirm before a notary public that to the best of the knowledge and belief of the landlord all the information contained in the notice is true.
- (6) For the purposes of subsection (5)—
 - (a) if the landlord is—
 - (i) an individual unable by reason of legal disability, or incapacity, to swear or affirm as mentioned in that subsection, then a legal representative of the landlord may swear or affirm, or

- (ii) not an individual, then any person authorised to sign documents on its behalf may swear or affirm, and
 - (b) any reference in that subsection to the landlord is to be construed in accordance with paragraph (a).
- (7) If subsections (2) to (6) are complied with and immediately before the appointed day the sporting right to which the notice relates is still enforceable, on the appointed day—
 - (a) that right becomes a separate tenement in land,
 - (b) in the case of a right of game, the separate tenement comprises—
 - (i) in a case where the right is expressly reserved, the rights and obligations specified in the lease and, in so far as is consistent with those express rights and obligations, an exclusive right to take hares, pheasants, partridges, grouse, black game and ptarmigan,
 - (ii) in a case where the right is reserved by implication, an exclusive right to take hares, pheasants, partridges, grouse, black game and ptarmigan, and
 - (c) in the case of a right of fishing, the separate tenement comprises—
 - (i) in a case where the right is expressly reserved, the rights and obligations specified in the lease and, in so far as is consistent with those express rights and obligations, an exclusive right to fish for freshwater fish,
 - (ii) in a case where the right is reserved by implication, an exclusive right to fish for freshwater fish.
- (8) Any exclusive right conferred by subsection (7)(b) is subject to section 1 of the Ground Game Act 1880 (c. 47) (right of occupier to kill and take ground game).
- (9) Where a right becomes, under subsection (7), a separate tenement in land—
 - (a) that right is subject to any counter-obligation enforceable immediately before the appointed day, and
 - (b) without prejudice to any other way in which such a counter-obligation may be extinguished, any such counter-obligation is extinguished on the extinction of the right.
- (10) In this section and section 8, any reference to a “landlord” is a reference—
 - (a) in a case where there is one superior lease, to the landlord under the superior lease,
 - (b) in a case where there are two or more superior leases, to the landlord under whichever of those leases is not itself subject to a superior lease.
- (11) This section is subject to section 71.

8 Further provision in respect of notices under section 7

- (1) Where more than one qualifying lease is affected by the same sporting right, a landlord must, if that landlord wishes to execute and register a notice under section 7(2) in relation to those qualifying leases in respect of that right, do so in relation to each separately.
- (2) Where a qualifying lease is affected by more than one sporting right, a landlord may, if that landlord wishes to execute and register a notice under section 7(2), do so by a single notice.

PART 2

CONVERSION OF CERTAIN LEASEHOLD CONDITIONS TO REAL BURDENS

Determination of “qualifying conditions”

9 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.

10 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 2003 Act.

Meaning of “qualifying land”

11 Meaning of “qualifying land”

In this Act, “qualifying land”, in relation to a qualifying condition, means the land which forms the subjects of the qualifying lease.

Entitlement to enforce qualifying conditions

12 Determination, for purposes of sections 13 to 28, of person entitled to enforce qualifying condition

- (1) Subsections (2) and (3) have effect for the purposes of determining in relation to sections 13 to 28 whether a person is entitled to enforce a qualifying condition.
- (2) A person having right to property to which the entitlement to enforce a qualifying condition attaches may enforce the qualifying condition whether or not the person has completed title to that right (and where more than one person comes within that description, only the person who most recently acquired that right may enforce the qualifying condition).
- (3) Where before the appointed day the tenant under a lease—
 - (a) assigns the lease in part, and
 - (b) includes in the assignation or, as the case may be, a deed registered under section 3 of the Registration of Leases (Scotland) Act 1857 (c.26), a qualifying condition, a person who is a tenant or subtenant of the part of the land that is not so assigned (or a successor as tenant or subtenant of such person) may enforce the qualifying condition.
- (4) In sections 13 to 20, a person is an “entitled person” if that person is entitled to enforce a qualifying condition (whether as landlord or otherwise).
- (5) Where the entitlement to enforce a qualifying condition is held in pro indiviso shares—
 - (a) if the entitlement is held as landlord, any reference in sections 13 to 20 to an entitled person is a reference to all of the persons holding such a share, and
 - (b) if the entitlement is held otherwise than as landlord, any reference in those sections to an entitled person is a reference to any of the persons holding such a share.

Conversion of conditions to burdens

13 Conversion by nomination of benefited property

- (1) This section applies to a qualifying condition where—
 - (a) at least one conversion condition is met, or
 - (b) the Lands Tribunal makes an order under section 20.
- (2) An entitled person may, before the appointed day, prospectively convert a qualifying condition into a real burden by executing and registering a notice.
- (3) The notice must—
 - (a) be in the prescribed form,
 - (b) set out the title of the entitled person to enforce the qualifying condition,
 - (c) identify the qualifying land, or any part of it, which the entitled person nominates as the burdened property in relation to the real burden,
 - (d) identify the land mentioned in subsection (5), or any part of it, which the entitled person nominates as a benefited property in relation to the burden,
 - (e) in a case where this section applies by virtue of an order under section 20, state that such an order has been made,
 - (f) in any other case, specify which of the conversion conditions is (or are) met,
 - (g) set out the terms of the qualifying condition, and
 - (h) set out the terms of any counter-obligation to the qualifying condition if it is a counter-obligation enforceable against the entitled person.
- (4) The conversion conditions are—
 - (a) that the land which would by virtue of this section and sections 14 and 15 become a benefited property has on it a permanent building which is in use wholly or mainly as a place of human—
 - (i) habitation, or
 - (ii) resort,and that building is, at some point, within 100 metres (measuring along a horizontal plane) of the land which would by virtue of this section and sections 14 and 15 become the burdened property,
 - (b) that the qualifying condition comprises a right of pre-emption or of redemption,
 - (c) that the land which would by virtue of this section and sections 14 and 15 become a benefited property comprises—
 - (i) minerals, or
 - (ii) salmon fishings or some other incorporeal property,and it is apparent from the terms of the qualifying condition that the condition was included in the lease for the benefit of such land.
- (5) The land referred to in subsection (3)(d) is land, other than the qualifying land, which—
 - (a) if the land is not subject to a qualifying or exempt lease, the entitled person is owner of, or

- (b) if the land is subject to such a lease, the entitled person is tenant of under that lease.
- (6) Where the entitled person holds the entitlement to enforce the qualifying condition otherwise than as landlord—
 - (a) the land referred to in subsection (5)(a) is the land to which the entitlement to enforce the condition attaches, and
 - (b) the lease referred to in subsection (5)(b) is the lease to which the entitlement to enforce the condition attaches.

14 Conversion by nomination: registration

- (1) For the purposes of section 13(2), a notice is registered only when registered against both the burdened property and the benefited property.
- (2) Registration under subsection (1) must—
 - (a) in the case of the burdened property, be against the title of—
 - (i) the owner of the property, or
 - (ii) the tenant under the qualifying lease of the property, and
 - (b) in the case of a benefited property, be against the title of—
 - (i) the owner of the property, or
 - (ii) if the property in question is subject to a qualifying lease or exempt lease, the tenant under such lease.
- (3) Before submitting any notice for registration under section 13, the entitled person must swear or affirm before a notary public that to the best of the knowledge and belief of the entitled person all the information contained in the notice is true.
- (4) For the purposes of subsection (3), if the entitled person is—
 - (a) an individual unable by reason of legal disability, or incapacity, to swear or affirm as mentioned in that subsection, then a legal representative of the entitled person may swear or affirm, or
 - (b) not an individual, then any person authorised to sign documents on its behalf may swear or affirm,

and any reference in that subsection to an entitled person is to be construed accordingly.

- (5) This section and section 13 are subject to sections 36 and 71.

15 Conversion by nomination: effect

- (1) This section applies in relation to a qualifying condition where—
 - (a) an entitled person registers a notice in accordance with sections 13 and 14, and
 - (b) immediately before the appointed day the qualifying condition is still enforceable by the entitled person (or that person's successor).
- (2) On the appointed day, the qualifying condition becomes a real burden in relation to which—
 - (a) the land identified in pursuance of section 13(3)(c) is the burdened property, and
 - (b) the land identified in pursuance of section 13(3)(d) is a benefited property.

16 Conversion by agreement

- (1) An entitled person may, before the appointed day—
 - (a) serve notice on the tenant under the qualifying lease, that the entitled person seeks to enter into an agreement with the tenant under this section—
 - (i) prospectively converting a qualifying condition into a real burden,
 - (ii) prospectively nominating the qualifying land, or any part of it, as the burdened property in relation to such burden, and
 - (iii) prospectively nominating land mentioned in subsection (2), or any part of that land, as a benefited property in relation to such burden,
 - (b) subject to subsection (5), enter into such an agreement with the tenant, and
 - (c) register that agreement.
- (2) The land referred to in subsection (1)(a)(iii) is land, other than the qualifying land, which—
 - (a) if the land is not subject to a qualifying or exempt lease, the entitled person is owner of, or
 - (b) if the land is subject to such a lease, the entitled person is tenant of under that lease.
- (3) Where the entitled person holds the entitlement to enforce the qualifying condition otherwise than as landlord—
 - (a) the land referred to in subsection (2)(a) is the land to which the entitlement to enforce the condition attaches, and
 - (b) the lease referred to in subsection (2)(b) is the lease to which the entitlement to enforce the condition attaches.
- (4) The notice referred to in subsection (1) must—
 - (a) be in the prescribed form,
 - (b) set out the title of the entitled person to enforce the qualifying condition,
 - (c) identify the land nominated as the burdened property,
 - (d) identify the land nominated as a benefited property,
 - (e) set out the terms of the qualifying condition, and
 - (f) set out the terms of any counter-obligation to the qualifying condition if it is a counter-obligation enforceable against the entitled person.
- (5) If the entitled person and the tenant think fit they may, by the agreement, modify the qualifying condition or any counter-obligation to the qualifying condition if it is a counter-obligation enforceable against the entitled person (or both the qualifying condition and any such counter-obligation).
- (6) An agreement mentioned in subsection (1)(b) must be a written agreement which—
 - (a) expressly states that it is made under this section, and
 - (b) includes all the information, other than that relating to service, required to be set out in completing the notice the form of which is prescribed under subsection (4)(a).

- (7) This section is subject to section 36.

17 Conversion by agreement: registration

- (1) For the purposes of section 16(1), an agreement is registered only when registered against both the burdened property and the benefited property.
- (2) Registration under subsection (1) must—
- (a) in the case of the burdened property, be against the title of—
 - (i) the owner of the property, or
 - (ii) the tenant under the qualifying lease of the property, and
 - (b) in the case of a benefited property, be against the title of—
 - (i) the owner of the property, or
 - (ii) if the property in question is subject to a qualifying lease or exempt lease, the tenant under such lease.

18 Conversion by agreement: effect

- (1) This section applies in relation to a qualifying condition where—
- (a) sections 16(1)(b) and (c) and (6) and 17 are complied with, and
 - (b) immediately before the appointed day the qualifying condition is still enforceable by the entitled person (or that person's successor).
- (2) On the appointed day, the qualifying condition becomes a real burden in relation to which—
- (a) the land identified in pursuance of section 16(4)(c) is the burdened property, and
 - (b) the land identified in pursuance of section 16(4)(d) is a benefited property.

19 Conversion by agreement: title not completed

- (1) Subsection (2) applies for the purposes of section 16 where—
- (a) the entitled person has not completed title to—
 - (i) the property by virtue of which such person is entitled to enforce a qualifying condition, or
 - (ii) the land nominated as a benefited property, and
 - (b) section 15(3) of the Land Registration (Scotland) Act 1979 (c.33) (circumstances where unnecessary to deduce title) does not apply.
- (2) The entitled person may enter into an agreement under section 16 only if in the agreement the entitled person deduces title from the person who appears in the Register of Sasines as having the last recorded title to the interest in question.
- (3) Subsection (4) applies for the purposes of section 16 where—
- (a) the tenant has not completed title to the qualifying lease, and
 - (b) section 15(3) of the Land Registration (Scotland) Act 1979 (c.33) (circumstances where unnecessary to deduce title) does not apply.

- (4) The tenant may enter into an agreement under section 16 only if in the agreement the entitled person, or the tenant, deduces title from the person who appears in the Register of Sasines as having the last recorded title to the interest in question.

Applications relating to section 13

20 Application to Lands Tribunal for order dispensing with requirement under section 13

- (1) This section applies where an entitled person cannot proceed under section 13(2) because none of the conditions set out in subsection (4) (“the conversion conditions”) of that section are met.
- (2) The entitled person may apply to the Lands Tribunal for an order under subsection (5).
- (3) An application may be made under subsection (2) only if the entitled person has first, in pursuance of section 16, attempted to reach agreement as respects the qualifying condition in question with the tenant under the qualifying lease.
- (4) An application under subsection (2)—
 - (a) must include a description by the entitled person of the requisite attempt to reach agreement, and
 - (b) must be made not later than 1 year after the day on which this section comes into force.
- (5) The Lands Tribunal may make an order dispensing with the need for any of the conversion conditions to be met if satisfied that, were the qualifying condition to be extinguished, there would be material detriment to the value or enjoyment of the entitled person’s ownership (taking such person to have ownership) of the land which is to be identified, in pursuance of section 13(3)(d), as a benefited property.
- (6) The decision of the Lands Tribunal on an application under subsection (2) is final.
- (7) A person opposing an application made under subsection (2) incurs no liability in respect of expenses incurred by the entitled person unless, in the opinion of the Lands Tribunal, the actings of the person opposing are vexatious or frivolous.

21 Manner of dealing with application under section 20

- (1) This section applies where the Lands Tribunal receives an application under section 20.
- (2) The Lands Tribunal must give notice of the application, whether by way of advertisement or otherwise, to—
 - (a) the tenant under the qualifying lease, and
 - (b) if the Lands Tribunal thinks fit, any other person.
- (3) The Scottish Ministers may, by rules under section 3 of the Lands Tribunal Act 1949 (c.42) (“the 1949 Act”), make further provision as to the notice to be given under subsection (2).
- (4) Any person (whether or not the person has received notice under subsection (2)) who—
 - (a) is a tenant under the qualifying lease, or
 - (b) is affected by that qualifying condition or by its proposed constitution as a real burden,

may, within such time as may be so prescribed, oppose or make representations in relation to the application.

- (5) The Lands Tribunal—
- (a) must allow any such person as is mentioned in subsection (4), and
 - (b) may allow any other person who appears to it to be affected by the qualifying condition to which the application relates or its proposed constitution as a real burden,
- to be heard in relation to the application.
- (6) Without prejudice to subsections (2) to (5), the Scottish Ministers may, in rules under section 3 of the 1949 Act, make special provision in relation to any matter pertaining to proceedings in applications under section 20 (or in any class of such applications).

22 Consequential amendment of Tribunals and Inquiries Act 1992

In section 11(7) of the Tribunals and Inquiries Act 1992 (c.53) (which makes provision for Scotland in relation to appeals from certain tribunals), in paragraph (c)—

- (a) the words after “under” become sub-paragraph (i), and
- (b) after that sub-paragraph insert “or
 - (ii) section 20 of the Long Leases (Scotland) Act 2010 (asp 00) (applications in relation to the conversion of certain conditions in leases into real burdens);”.

Personal real burdens

23 Conversion to personal pre-emption or personal redemption burden

- (1) Without prejudice to section 13, the person entitled to enforce a qualifying condition mentioned in subsection (2) (whether as landlord or otherwise) may, before the appointed day, prospectively convert that qualifying condition into a personal pre-emption burden or, as the case may be, into a personal redemption burden by executing and registering a notice.
- (2) The qualifying condition referred to in subsection (1) is a condition comprising—
- (a) a right of pre-emption, or
 - (b) a right of redemption.
- (3) The notice referred to in subsection (1) must—
- (a) be in the prescribed form,
 - (b) set out the title to enforce the qualifying condition of the person executing and registering the notice,
 - (c) identify the qualifying land (or any part of such land),
 - (d) set out the terms of the qualifying condition, and
 - (e) set out the terms of any counter-obligation to the qualifying condition if it is a counter-obligation enforceable against the person executing and registering the notice.
- (4) For the purposes of subsection (1)—

- (a) a notice is registered only when registered against the land identified in pursuance of subsection (3)(c), and
 - (b) the notice may be registered against the title of the owner of the land or of the tenant under the qualifying lease.
- (5) Before submitting any notice for registration under this section, the person entitled to enforce the qualifying condition must swear or affirm before a notary public that to the best of the knowledge and belief of that person all the information contained in the notice is true.
- (6) For the purposes of subsection (5), if the person entitled to enforce the qualifying condition is—
 - (a) an individual unable by reason of legal disability, or incapacity, to swear or affirm as mentioned in that subsection, then a legal representative of that person may swear or affirm, or
 - (b) not an individual, then any person authorised to sign documents on its behalf may swear or affirm,and any reference in that subsection to the person entitled to enforce the qualifying condition is to be construed accordingly.
- (7) If subsections (1) to (6) are complied with and immediately before the appointed day the qualifying condition is still enforceable by the person who executed and registered the notice under subsection (1) (or that person's successor), then, on that day—
 - (a) the qualifying condition is converted into a real burden in favour of that person, to be known as a “personal pre-emption burden” or, as the case may be, as a “personal redemption burden”, and
 - (b) the land identified in pursuance of subsection (3)(c) becomes the burdened property.
- (8) The right to a personal pre-emption burden or personal redemption burden may be assigned or otherwise transferred to any person.
- (9) An assignation or transfer under subsection (8) takes effect on registration.
- (10) Where the holder of a personal pre-emption burden or personal redemption burden does not have a completed title—
 - (a) title may be completed by the holder registering a notice of title, or
 - (b) without completing title, the holder may grant a deed—
 - (i) assigning the right to the burden, or
 - (ii) discharging, in whole or in part, the burden.
- (11) The holder must, in a deed granted under subsection (10)(b), deduce title from the person who appears in the Register of Sasines as having the last recorded title to the burden in question unless the deed is one to which section 15(3) of the Land Registration (Scotland) Act 1979 (circumstances where unnecessary to deduce title) applies.
- (12) This section is subject to sections 36 and 71.

24 Conversion to economic development burden

- (1) Where a local authority is, or the Scottish Ministers are, entitled to enforce a qualifying condition which is imposed for the purpose of promoting economic development, it or they may, before the appointed day, prospectively convert that qualifying condition into an economic development burden by executing and registering a notice.
- (2) The notice must—
 - (a) be in the prescribed form,
 - (b) set out the title to enforce the qualifying condition of the person executing and registering the notice,
 - (c) state that such person is a local authority or the Scottish Ministers,
 - (d) identify the qualifying land (or any part of such land),
 - (e) set out the terms of the qualifying condition,
 - (f) set out the terms of any counter-obligation to the qualifying condition if it is a counter-obligation enforceable against the person executing and registering the notice, and
 - (g) state that the qualifying condition was imposed for the purpose of promoting economic development and provide information in support of that statement.
- (3) For the purposes of subsection (1)—
 - (a) a notice is registered only when registered against the land identified in pursuance of subsection (2)(d), and
 - (b) the notice may be registered against the title of the owner of the land or of the tenant under the qualifying lease.
- (4) If subsections (1) to (3) are complied with and immediately before the appointed day the qualifying condition is still enforceable by the local authority or the Scottish Ministers then, on that day, the qualifying condition becomes an economic development burden—
 - (a) in favour of the local authority or, as the case may be, the Scottish Ministers, and
 - (b) in relation to which the land identified in pursuance of subsection (2)(d) is the burdened property.
- (5) This section is subject to sections 36 and 71.

25 Conversion to health care burden

- (1) Where the Scottish Ministers are entitled to enforce a qualifying condition which is imposed for the purpose of promoting the provision of facilities for health care, they may, before the appointed day, prospectively convert that qualifying condition into a health care burden by executing and registering a notice.
- (2) The notice must—
 - (a) be in the prescribed form,
 - (b) set out the title of the Scottish Ministers to enforce the qualifying condition,
 - (c) identify the qualifying land (or any part of such land),
 - (d) set out the terms of the qualifying condition,

- (e) set out the terms of any counter-obligation to the qualifying condition if it is a counter-obligation enforceable against the Scottish Ministers, and
 - (f) state that the qualifying condition was imposed for the purpose of promoting the provision of facilities for health care and provide information in support of that statement.
- (3) For the purposes of subsection (1)—
 - (a) a notice is registered only when registered against the land identified in pursuance of subsection (2)(c), and
 - (b) the notice may be registered against the title of the owner of the land or of the tenant under the qualifying lease.
- (4) If subsections (1) to (3) are complied with and immediately before the appointed day the qualifying condition is still enforceable by the Scottish Ministers then, on that day, the qualifying condition becomes a health care burden—
 - (a) in favour of the Scottish Ministers, and
 - (b) in relation to which the land identified in pursuance of subsection (2)(c) is the burdened property.
- (5) This section is subject to sections 36 and 71.

26 Conversion to climate change burden

- (1) Where a public body or trust is, or the Scottish Ministers are, entitled to enforce a qualifying condition which is imposed for the purpose of reducing greenhouse gas emissions, it or they may, before the appointed day, prospectively convert that qualifying condition into a climate change burden by executing and registering a notice.
- (2) The notice must—
 - (a) be in the prescribed form,
 - (b) set out the title to enforce the qualifying condition of the person executing and registering the notice,
 - (c) state that such person is a public body, trust or the Scottish Ministers,
 - (d) identify the qualifying land (or any part of such land),
 - (e) set out the terms of the qualifying condition,
 - (f) set out the terms of any counter-obligation to the qualifying condition if it is a counter-obligation enforceable against the person executing and registering the notice, and
 - (g) state that the qualifying condition was imposed for the purpose of reducing greenhouse gas emissions and provide information in support of that statement.
- (3) For the purposes of subsection (1)—
 - (a) a notice is registered only when registered against the land identified in pursuance of subsection (2)(d), and
 - (b) the notice may be registered against the title of the owner of the land or of the tenant under the qualifying lease.

- (4) If subsections (1) to (3) are complied with and immediately before the appointed day the qualifying condition is still enforceable by the public body, trust or the Scottish Ministers then, on that day, the qualifying condition becomes a climate change burden—
 - (a) in favour of the public body, the trust or, as the case may be, the Scottish Ministers, and
 - (b) in relation to which the land identified in pursuance of subsection (2)(d), is the burdened property.
- (5) In this section—

“emissions” has the meaning given by section 17(1) of the Climate Change (Scotland) Act 2009 (asp 12),

“greenhouse gas” has the meaning given by section 10(1) of that Act,

“public body” means a body listed in Part I or II of the Schedule to the Title Conditions (Scotland) Act 2003 (Conservation Bodies) Order 2003 (SSI 2003/453).
- (6) This section is subject to sections 36 and 71.

27 Conversion to conservation burden

- (1) Where a conservation body is, or the Scottish Ministers are, entitled to enforce a qualifying condition of the class described in subsection (2), it or they may, before the appointed day, prospectively convert that qualifying condition into a conservation burden for the benefit of the public by executing and registering a notice.
- (2) The class is those qualifying conditions which have the purpose of preserving, or protecting—
 - (a) the architectural or historical characteristics of the land, or
 - (b) any other special characteristics of land (including, without prejudice to the generality of this paragraph, a special characteristic derived from the flora, fauna or general appearance of the land).
- (3) The notice referred to in subsection (1) must—
 - (a) be in the prescribed form,
 - (b) set out the title to enforce the qualifying condition of the person executing and registering the notice,
 - (c) state that such person is a conservation body or the Scottish Ministers,
 - (d) identify the qualifying land (or any part of such land),
 - (e) set out the terms of the qualifying condition, and
 - (f) set out the terms of any counter-obligation to the qualifying condition if it is a counter-obligation enforceable against the person executing and registering the notice.
- (4) For the purposes of subsection (1)—
 - (a) a notice is registered only when registered against the land identified in pursuance of subsection (3)(d), and
 - (b) the notice may be registered against the title of the owner of the land or of the tenant under the qualifying lease.

- (5) If subsections (1) to (4) are complied with and immediately before the appointed day the qualifying condition is still enforceable by the conservation body or the Scottish Ministers then, on that day, the qualifying condition becomes a conservation burden—
 - (a) in favour of the conservation body or, as the case may be, the Scottish Ministers, and
 - (b) in relation to which the land identified in pursuance of subsection (3) is the burdened property.
- (6) The references in subsection (5) to—
 - (a) the conservation body include references to—
 - (i) any conservation body which is, or
 - (ii) the Scottish Ministers where they are, its successor as the person entitled to enforce the qualifying condition, and
 - (b) the Scottish Ministers include references to a conservation body which is their successor as such person.
- (7) This section is subject to sections 36 and 71.

28 Conversion to conservation burden where conservation body or Scottish Ministers nominated to enforce

- (1) The person (not being a conservation body or the Scottish Ministers) entitled to enforce a qualifying condition of the class described in section 27(2) (whether as landlord or otherwise) may before the appointed day—
 - (a) prospectively convert that condition into a conservation burden for the benefit of the public, and
 - (b) nominate a conservation body or the Scottish Ministers to have title to enforce that burden,by executing and registering a notice.
- (2) Subsection (1) applies only where the consent of the nominee to being so nominated is obtained—
 - (a) in a case where sending a copy of the notice, in compliance with section 71(2), is reasonably practicable, before that copy is so sent, and
 - (b) in any other case, before the notice is executed.
- (3) The notice referred to in subsection (1) must—
 - (a) be in the prescribed form,
 - (b) set out the title to enforce the qualifying condition of the person executing and registering the notice,
 - (c) state that the nominee is a conservation body (identifying it) or the Scottish Ministers, as the case may be, and
 - (d) comply with section 27(3)(d) to (f).
- (4) For the purposes of subsection (1)—
 - (a) a notice is registered only when registered against the land identified in pursuance of subsection (3)(d), and

- (b) the notice may be registered against the title of the owner of the land or of the tenant under the qualifying lease.
- (5) If subsections (1) to (4) are complied with and immediately before the appointed day the qualifying condition is still enforceable by the person who executed and registered the notice under subsection (1) (or that person's successor) then, on that day, the qualifying condition becomes a conservation burden—
 - (a) in favour of the conservation body or, as the case may be, the Scottish Ministers, and
 - (b) in relation to which the land identified in pursuance of subsection (3)(d), is the burdened property.
- (6) This section is subject to sections 36 and 71 except that, in the application of subsection (3)(b) of section 36 for the purposes of this subsection, such discharge as is mentioned in that subsection is to be taken to require the consent of the nominated person.

Other real burdens

29 Conversion to facility or service burden

- (1) Where a qualifying condition regulates the maintenance, management, reinstatement or use of heritable property which constitutes, and is intended to constitute, a facility of benefit to land other than the qualifying land then, on the appointed day, such condition becomes a facility burden in relation to which—
 - (a) the qualifying land is the burdened property, and
 - (b) the heritable property which constitutes the facility and any land to which the facility is (and is intended to be) of benefit is the benefited property.
- (2) Where a qualifying condition relates to the provision of services to land other than the qualifying land, then the qualifying condition, on the appointed day, becomes a service burden in relation to which—
 - (a) the qualifying land is the burdened property, and
 - (b) any land to which the services are provided is the benefited property.
- (3) Without prejudice to the generality of subsection (1), examples of property which might constitute a facility mentioned in that subsection are—
 - (a) a common part of a tenement,
 - (b) a common area for recreation,
 - (c) a private road,
 - (d) private sewerage,
 - (e) a boundary wall.

30 Conversion to manager burden

- (1) Where a qualifying condition confers on such person as may be specified in the condition power to—
 - (a) act as the manager of related properties,
 - (b) appoint some other person to be such manager, or
 - (c) dismiss any person appointed by virtue of the power mentioned in paragraph (b),

then, on the appointed day, such condition becomes a real burden in favour of such person and in relation to such burden the qualifying land is the burdened property.

- (2) A real burden constituted by virtue of subsection (1) is a manager burden.
- (3) For the purposes of subsection (1), whether properties are related properties is to be inferred from all the circumstances.
- (4) Without prejudice to the generality of this section circumstances giving rise to such an inference might include—
 - (a) the convenience of managing the properties together because they share—
 - (i) some common feature, or
 - (ii) an obligation for common maintenance of some facility,
 - (b) it being evident that the properties constitute a group of properties on which qualifying conditions are imposed under a common scheme, or
 - (c) there being shared rights to common property.

31 Conversion where common scheme affects related properties

- (1) Where qualifying conditions are imposed under a common scheme on a group of related properties, such conditions, on the appointed day, become real burdens in relation to which each property is a benefited and a burdened property.
- (2) For the purposes of subsection (1), whether properties are related properties is to be inferred from all the circumstances.
- (3) Without prejudice to the generality of this subsection, circumstances giving rise to such an inference might include—
 - (a) the convenience of managing the properties together because they share—
 - (i) some common feature, or
 - (ii) an obligation for common maintenance of some facility,
 - (b) there being shared rights to common property,
 - (c) the properties being subject to the common scheme by virtue of the same deed of conditions, or
 - (d) the properties each being a flat in the same tenement.
- (4) This section confers no right of pre-emption, redemption or reversion.

32 Conversion where expressly enforceable by certain third parties

Where a qualifying condition is expressed as being enforceable by—

- (a) the owner, or
- (b) the tenant,

of land other than the qualifying land, then, on the appointed day, such condition becomes a real burden in relation to which the qualifying land is the burdened property and that other land is a benefited property.

Exclusions from conversion

33 Qualifying conditions excluded from conversion: obligations assumed by local or other public authorities

Sections 29(1) and 31(1) do not apply to a qualifying condition in so far as such condition constitutes an obligation—

- (a) to maintain or reinstate, and
- (b) which has been assumed—
 - (i) by a local or other public authority, or
 - (ii) by virtue of any enactment, by a successor body to any such authority.

Effect of conversion on counter-obligations

34 Counter-obligations on conversion

- (1) Where a qualifying condition becomes, by virtue of any of sections 13 to 32, a real burden, the right to enforce the burden is subject to any counter-obligation mentioned in subsection (2).
- (2) The counter-obligations are—
 - (a) in the case of a real burden constituted by virtue of—
 - (i) section 13 or 23 to 28, those specified in the notice registered under the section in question,
 - (ii) section 16, those specified in the agreement,
 - (iii) section 30, those enforceable against the person on whom power is conferred,
 - (iv) section 32, those enforceable against the owner or, as the case may be, tenant of the other land, and
 - (b) in any other case, those enforceable against any person who immediately before the appointed day was entitled to enforce the qualifying condition which was converted into the burden.

Prescription

35 Prescriptive period for converted conditions

- (1) This section applies where a qualifying condition becomes, by virtue of any of sections 13 to 32, a real burden.
- (2) Section 18(5) of the 2003 Act (prescription where breach of burden occurs before the appointed day) applies to any breach of the qualifying condition as it applies to a breach of a real burden.

Notices and agreements under this Part

36 Further provision in respect of notices and agreements under this Part

- (1) Subsections (2) and (3) apply in relation to a qualifying lease where—
 - (a) an agreement relating to a qualifying condition has been registered under section 16, or

- (b) a notice relating to a qualifying condition has been registered under section 13 or 23 to 28.
- (2) It is not competent for the person who registered the agreement or notice (or that person's successor) to register under any of those sections in relation to the qualifying lease another such agreement or notice relating to the same qualifying condition.
- (3) Nothing in subsection (2) prevents registration of an agreement or notice where—
 - (a) the discharge of any earlier such agreement has been registered, jointly, by the parties to that agreement (or by their successors), or
 - (b) as the case may be, the discharge of any earlier such notice has been registered by the person who registered that notice (or by that person's successor).
- (4) Where more than one qualifying lease is affected by the same qualifying condition enforceable by the same person, that person must, if that person wishes to execute and register a notice under this Part in relation to those qualifying leases in respect of that qualifying condition, do so in relation to each separately.
- (5) Where a qualifying lease is affected by more than one qualifying condition enforceable by the same person, that person may—
 - (a) enter into and register a single agreement under section 16 in relation to that qualifying lease in respect of those qualifying conditions, or
 - (b) execute and register a single notice under section 13 or 23 to 28 in relation to that qualifying lease in respect of those qualifying conditions.
- (6) Nothing in this Part requires registration against land prospectively nominated as a benefited property but outwith Scotland.

PART 3

COMPENSATION FOR LOSS OF LANDLORD'S RIGHTS

Compensatory payment

37 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 40, 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 54.
- (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 55(2).

38 Making compensatory payment

- (1) This section applies where the former landlord has served notice in accordance with section 37.
- (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.

Calculation of compensatory payment

39 Key terms for purposes of calculation

In this Part—

“partially continuing lease” means a lease which, on the appointed day—

- (a) is extinguished by virtue of Part 1, in respect of part of the subjects of the lease (such subjects being referred to in this Part as the “converted subjects”), and
- (b) whether by exemption under Part 4 or otherwise, continues in respect of any other subjects (such subjects being referred to in this Part as the “continuing subjects”),

“renewal obligation” means an obligation on the landlord under a lease to renew it after a fixed period on payment by the tenant of a premium,

“renewal period” means, in relation to a renewal obligation, the fixed period after which the landlord must renew the lease,

“renewal premium” means, in relation to a renewal obligation, the premium payable.

40 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 41.

Step 2

Calculate the notional annual renewal premium (NARP) (if any) in accordance with section 44.

Step 3

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

$$AI = AR + NARP.$$

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

41 Determination of the annual rent

- (1) For the purposes of section 40, 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 42,
 - (b) where the lease is a partially continuing lease, the annual rent allocated to the converted subjects under section 43,
 - (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.

42 Allocation of *cumulo* rent

- (1) This section applies where—
 - (a) immediately before the appointed day, a *cumulo* rent was payable in relation to two or more leases, and
 - (b) on that day, one or more of the leases is extinguished by virtue of Part 1 in respect of any subjects of the leases.
- (2) The landlord must, before the expiry of the period of 2 years beginning with the appointed day, allocate the *cumulo* rent between the leases.
- (3) The allocation under subsection (2) must be in such proportions as are reasonable in all the circumstances.
- (4) For the purposes of subsection (3), the proportions are presumed to be reasonable in so far as they accord with any apportionment of the *cumulo* rent that was effective immediately before the appointed day.
- (5) The annual rent payable from the appointed day under a lease which is not wholly extinguished by virtue of Part 1 is (subject to section 43) the annual rent allocated to the lease under subsection (2).
- (6) In this section and sections 43, 45 and 46, “landlord” includes former landlord.

43 Partially continuing leases: allocation of rent

- (1) The landlord in relation to a partially continuing lease must, before the expiry of the period of 2 years beginning with the appointed day, allocate the annual rent between the converted subjects and continuing subjects.
- (2) In subsection (1), the annual rent is—
 - (a) the annual rent payable under the lease immediately before the appointed day, or
 - (b) where a *cumulo* rent is allocated to the lease under section 42(2), the annual rent so allocated.
- (3) The allocation under subsection (1) must be in such proportions as are reasonable in all the circumstances.
- (4) The annual rent payable from the appointed day under the partially continuing lease is the annual rent allocated to the continuing subjects under subsection (1).

Renewal premiums

44 Calculation of notional annual renewal premium

- (1) This section applies where—
 - (a) a lease contains a renewal obligation,
 - (b) the renewal premium (determined 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 69(1)(b).
- (2) For the purpose of section 40, 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 45,
 - (b) where the lease is a partially continuing lease, the renewal premium allocated to the converted subjects under section 46,
 - (c) in any other case, the renewal premium payable under the lease.

45 Allocation of *cumulo* renewal premium

- (1) This section applies where—

- (a) immediately before the appointed day, the renewal premium payable in relation to two or more leases containing a renewal obligation was a *cumulo* renewal premium,
 - (b) on that day, one or more of the leases is extinguished by virtue of Part 1 in respect of any subjects of the leases, and
 - (c) a lease mentioned in paragraph (b) complies with section 1(3)(b) and (c) by virtue of section 69(1)(b).
- (2) The landlord must, before the expiry of the period of 2 years beginning with the appointed day, allocate the *cumulo* renewal premium between the leases mentioned in subsection (1)(a).
 - (3) The allocation under subsection (2) must be in such proportions as are reasonable in all the circumstances.
 - (4) For the purposes of subsection (3)—
 - (a) the proportions are presumed to be reasonable in so far as they accord with any apportionment of the *cumulo* renewal premium that was effective immediately before the appointed day,
 - (b) where there is no such apportionment, the proportions are presumed to be reasonable in so far as they accord with any allocation of rent under section 42.
 - (5) The renewal premium payable from the appointed day under a lease which is not wholly extinguished by virtue of Part 1 is (subject to section 46) the renewal premium allocated to the lease under subsection (2).

46 Partially continuing leases: allocation of renewal premium

- (1) This section applies to a lease which—
 - (a) contains a renewal obligation,
 - (b) complies with section 1(3)(b) and (c) by virtue of section 69(1)(b), and
 - (c) is a partially continuing lease.
- (2) The landlord must, before the expiry of the period of 2 years beginning with the appointed day, allocate the renewal premium between the converted subjects and continuing subjects.
- (3) For the purposes of subsection (2), the renewal premium is—
 - (a) the renewal premium payable under the lease immediately before the appointed day, or
 - (b) where a *cumulo* renewal premium is allocated to the lease under section 45(2), the premium so allocated.
- (4) The allocation under subsection (2) must be in such proportions as are reasonable in all the circumstances.
- (5) For the purposes of subsection (4), the proportions are presumed to be reasonable in so far as they accord with any allocation of rent under section 43.
- (6) The renewal premium payable from the appointed day under the partially continuing lease is the renewal premium allocated to the continuing subjects under subsection (2).

Allocation disputed or not made

47 Allocation disputed or not made: right to refer matter to Lands Tribunal

- (1) This section applies where—
 - (a) a tenant under a lease referred to in section 42(5) disputes the allocation made under subsection (2) of that section,
 - (b) a tenant under a lease referred to in section 45(5) disputes the allocation made under subsection (2) of that section,
 - (c) a tenant under a partially continuing lease disputes the allocation made under section 43(1) or section 46(2),
 - (d) a landlord under a lease referred to in section 42(5) or 45(5) does not, within the period of 2 years beginning with the appointed day, give notice to a tenant of an allocation under section 42(2) or 45(2), or
 - (e) a landlord under a partially continuing lease does not, within the period of 2 years beginning with the appointed day, give notice to a tenant of—
 - (i) an allocation under section 43(1), or
 - (ii) where section 46 applies to the lease, an allocation under subsection (2) of that section.
- (2) The tenant may apply to the Lands Tribunal for an order fixing the annual rent or, as the case may be, the renewal premium payable under the lease from the appointed day.
- (3) Where this section applies by virtue of subsection (1)(a) to (c), an application under subsection (2) must be made before the expiry of the period of 56 days beginning with the day on which the landlord gives notice to the tenant of the allocation.

Additional payment

48 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 49(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 50, 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) A notice under subsection (2) may be served only before the expiry of the period of 2 years beginning with the appointed day.
- (4) Where—
 - (a) the lease mentioned in subsection (1) is a superior lease, and
 - (b) the extinguished right is a right referred to in section 49(1)(d) to (f),references to the “former tenant” in subsection (2) and sections 50 to 53, 55, 56 and 58 are to be construed as references to the former tenant under the qualifying lease.
- (5) The notice served under subsection (2) must—
 - (a) be in the prescribed form,
 - (b) be accompanied by a copy of the prescribed explanatory note,

- (c) set out the right which has been extinguished and in respect of which the claim is made,
 - (d) specify the amount of additional payment claimed and the basis on which the amount is calculated, and
 - (e) 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.
- (6) 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 an instalment document on the former tenant.
- (7) This section is subject to section 54.

49 Extinguished rights in respect of which additional payment may be claimed

- (1) The rights referred to in section 48(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 receive a premium (other than a renewal premium which satisfies the condition in section 44(1)(b)) in return for renewing the lease after a fixed period, where, by virtue of section 69(1)(b) such a renewal is required in order for the lease to comply with section 1(3)(b) and (c),
 - (d) 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,
 - (e) 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 15, 18 or 23, and
 - (f) any right to development value, providing that such right does not become a real burden by virtue of section 15 or 18.
- (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.

50 Basis of calculation of additional payment

- (1) This section applies for the purpose of calculating the amount of an additional payment.
- (2) The extinguished right mentioned in section 49(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 49(1)(d), 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.

51 Additional payment: former tenant agrees to payment claimed

- (1) This section applies where—
 - (a) a former landlord has served on the former tenant a notice in accordance with section 48, and

- (b) the former tenant agrees to make the additional payment specified in the notice to the former landlord.
- (2) The former tenant must, subject to section 55, 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.

52 Additional payment: amount agreed between former landlord and former tenant

- (1) This section applies where—
 - (a) a former landlord has served on the former tenant a notice in accordance with section 48(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, subject to section 55, 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.

53 Reference to Lands Tribunal in relation to claim for additional payment

- (1) If no agreement has been reached under section 51 or 52, the—
 - (a) former landlord, or
 - (b) former tenant,may refer any matter arising in relation to a claim for an additional payment under section 48 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 55 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

54 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, the amount of—
 - (a) compensatory payment required under section 37(2),
 - (b) additional payment claimed under section 48(2), or
 - (c) where two or more additional payments are claimed, the total amount of such payments,may not exceed £500.

55 Making payment by instalments

- (1) This section applies where an instalment document under section 37(5), 48(6) or 52(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 if (and only if)—
- (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 38, or
 - (ii) in the case of an additional payment, under section 51(2) or, as the case may be, 52(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 38, or
 - (ii) in the case of an additional payment, section 51(2) or, as the case may be, 52(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.

56 Service of notices under this Part

- (1) Service of a notice under any provision of this Part must be effected by—

- (a) delivering it to the former tenant or, as the case may be, the tenant,
 - (b) sending it by—
 - (i) registered post, or
 - (ii) the recorded delivery service,
 to that person at a place mentioned in subsection (2), or
 - (c) in a case where a notice, sent under paragraph (b), is returned to the former landlord or, as the case may be, landlord with an intimation that it could not be delivered—
 - (i) delivering, or
 - (ii) sending it by post,
 with that intimation to the Extractor of the Court of Session.
- (2) The place referred to in subsection (1)(b) is—
- (a) the former tenant's or, as the case may be, the tenant's place of residence,
 - (b) that person's place of business,
 - (c) a postal address which that person ordinarily uses, or
 - (d) if none of those places or that address is known at the time of delivery or posting, whatever place is at that time that person's most recently known—
 - (i) place of residence,
 - (ii) place of business, or
 - (iii) postal address which that person ordinarily used.
- (3) For the purposes of this Act—
- (a) an acknowledgement signed by the former tenant or, as the case may be, tenant, in the prescribed form,
 - (b) in the case of a notice sent under subsection (1)(b), a certificate signed by the former landlord or, as the case may be, landlord in the prescribed form which is accompanied by the postal receipt, or
 - (c) in the case of a notice delivered or sent under subsection (1)(c), an acknowledgement of receipt by the Extractor on a copy of the notice,
- is sufficient evidence of service of the notice.
- (4) The date on which a notice is served on a former tenant or, as the case may be, tenant is the date of delivery or, as the case may be, posting of the notice.
- (5) In this section, “notice” includes an instalment document.

57 Duty of 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 37(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.

58 Duty to disclose identity etc. of former tenant

- (1) This section applies where—
 - (a) a former landlord purports to serve notice under section 37(2) or 48(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.

59 Extinction by prescription of requirement to make compensatory payment or additional 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—
 - “(ad) to any obligation to make a payment under section 38, 51(2) or 52(5) of the Long Leases (Scotland) Act 2010 (asp 00),”, and
- (b) in paragraph 2(e), for the words “, (aa), (ab) or (ac)” substitute “to (ad)”.

60 Cumulo rent and cumulo renewal premium

- (1) In this Part—
 - “*cumulo* rent” means, subject to subsection (2), a single rent payable in relation to two or more leases, and
 - “*cumulo* renewal premium” means, subject to subsections (2) to (4), a single renewal premium payable in relation to two or more leases.

- (2) Where such rent or renewal premium—
 - (a) has been apportioned between—
 - (i) those leases, or
 - (ii) some of those leases, and
 - (b) the parties to those leases consented (whether expressly or by implication) to the apportionment,

any rent or renewal premium so apportioned is not *cumulo* rent or, as the case may be, not a *cumulo* renewal premium and is the rent or renewal premium payable under the lease for the purposes of this Part.
- (3) Subsection (4) applies if—
 - (a) subsection (2) applies to rent payable under two or more leases, and
 - (b) a single renewal premium is payable under the leases.
- (4) Where this subsection applies, for the purposes of this Part—
 - (a) the renewal premium is to be treated as if it were apportioned between the leases in the same proportion as the apportionment of rent, and
 - (b) that apportioned renewal premium is the renewal premium payable under the lease.

61 Interpretation of Part 3

- (1) In this Part—

“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 severally liable to make any compensatory or, as the case may be, additional payment (but as between themselves they are liable in the proportions in which they hold the right as tenant), and
 - (b) subject to section 56 they are together to be treated for the purposes of this Part as being a single tenant.

PART 4

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 65.

Types of exempt lease

63 Exemption of qualifying lease by registration of exemption 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 Certain long leases registered close to 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 3(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).

65 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 3(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

66 Recall of exemption

- (1) This section applies in relation to a lease where—
 - (a) the lease is an exempt lease, and
 - (b) the tenant under the lease executes and registers a prescribed notice (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, or

- (b) is or 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 54 does not apply in relation to the lease.

Supplementary

67 Exemption notice and recall notice: 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.

PART 5

GENERAL AND MISCELLANEOUS

68 The appointed day

In this Act, the “appointed day” means the first Whitsunday or, as the case may be, Martinmas occurring on or after the day 2 years after the day on which this section comes into force.

69 Determination of duration of lease

- (1) In calculating the period for which a lease is granted for the purposes of any provision of this Act—
- (a) any provision of a lease (however expressed) enabling the lease to be terminated earlier than the date on which it would otherwise terminate must be disregarded,
 - (b) where a lease includes provision (however expressed) requiring the landlord to renew the lease, the period for which any such renewed lease would, were that provision complied with, be granted must be added to the period for which the original lease is granted,

- (c) where the period for which a lease is granted is expressed (in whole or in part) by reference to the lifetime of a person, the period expressed by reference to that lifetime is—
 - (i) in a case where such person is deceased and the period beginning on the first day of the period for which the lease was granted and ending on the day that person died can be ascertained, that period,
 - (ii) in a case where such person is identifiable and is not deceased, deemed to be the period of life expectancy as calculated in accordance with the table of life expectancy set out in regulations made by the Scottish Ministers, or
 - (iii) in any other case, deemed to be a period of 35 years, and
- (d) where, before the end of the period for which a lease is granted, the parties to that lease enter into a subsequent lease—
 - (i) of the same subjects as the original lease, and
 - (ii) for a period beginning immediately after the end of the period for which such lease is granted,

the period for which the subsequent lease is granted must be added to the period for which the original lease is granted.
- (2) Subsection (1)(b) to (d) is subject to section 67 of the Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5) (prohibition of leases of more than 175 years).

70 Extinction of right of irritancy in certain leases

- (1) On and after the day on which this section comes into force, it is not competent for a lease to which subsection (2) applies to be terminated by irritancy.
- (2) This subsection applies to a lease which, immediately before the day on which this section comes into force, is a right of lease in land which complies with section 1(3)(b) to (d).
- (3) Any proceedings already commenced to enforce any right of irritancy in relation to such a lease are deemed to be abandoned on the day which this section comes into force and may, without further process and without any requirement that full judicial expenses be paid by the pursuer, be dismissed accordingly.
- (4) Subsection (3) does not affect any cause in which final decree (that is to say, any decree or interlocutor which disposes of the cause and is not subject to appeal or review) is granted before the coming into force of this section.

Notices

71 Notices: pre-registration requirements

- (1) This section applies in relation to any notice which is to be submitted for registration under section 7 or Part 2.
- (2) Except where it is not reasonably practicable to do so, the person who intends to execute the notice must, before so doing, send by post to the tenant under the qualifying lease (addressed to “The Tenant” where the name of that person is not known) a copy of—
 - (a) the notice, and
 - (b) the prescribed explanatory note relating to the notice.

- (3) The person who executes the notice must, in the notice, state 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).

72 Notices and agreements: extent of Keeper's duty

- (1) In relation to any notice submitted for registration under this Act, the Keeper of the Registers of Scotland is not required to determine whether the terms of section 67(2) or, as the case may be, 71(2) have been complied with.
- (2) In relation to any notice, or as the case may be agreement, submitted for registration under—
 - (a) section 13, 16 or 23 to 28, the Keeper is not required to determine whether, for the purposes of subsection (1) of the section in question, a qualifying condition is enforceable by the person submitting the notice for registration,
 - (b) section 13, the Keeper is not required to determine—
 - (i) in pursuance of subsection (3)(e) of that section, that an attempt to reach agreement has been made in accordance with section 20(3), or
 - (ii) where the condition specified under subsection (3)(f) of that section is the condition mentioned in subsection (4)(a) of that section, whether the terms of that condition are satisfied,
 - (c) section 24 to 26, the Keeper is not required to determine whether—
 - (i) for the purposes of subsection (1) of the section in question, a qualifying condition is imposed for the reasons mentioned in that subsection, or
 - (ii) the statement made in pursuance of section 24(2)(g), 25(2)(f) or, as the case may be, 26(2)(g) is correct, or
 - (d) section 16, the Keeper is not required to determine whether the requirements of section 16(1)(a) are satisfied.
- (3) The Keeper is not required to determine for the purposes of section 7(7), whether immediately before the appointed day a sporting right is still enforceable.
- (4) The Keeper is not required to determine for the purposes of section 15, 18, 23(7), 24(4), 25(4), 26(4), 27(5) or 28(5), whether immediately before the appointed day a qualifying condition is, or is still, enforceable, or by whom.

73 Referral to Lands Tribunal of notice dispute

- (1) A dispute arising in relation to a notice registered under this Act may be referred to the Lands Tribunal.
- (2) In determining the dispute, the Lands Tribunal may make such order as it thinks fit discharging or, to such extent as may be specified in the order, restricting the notice in question.
- (3) An order under subsection (2) has effect in respect of a third party when an extract of the order is registered.

74 Circumstances where certain notices may be registered where initial submission for registration rejected

- (1) This section applies where one of the following is rejected by the Keeper of the Registers of Scotland—
 - (a) a notice submitted before the appointed day for registration under section 7(2) or Part 2,
 - (b) an agreement submitted before the appointed day for registration under section 16(1)(c), or
 - (c) an exemption notice submitted before the day falling 2 months before the appointed day for registration under section 63.
- (2) Where a court or the Lands Tribunal determines the notice or agreement is registrable, it may be registered not later than the day falling 2 months after the day on which the court or the Lands Tribunal made the determination.
- (3) An exemption notice registered under subsection (2) on or after the day falling 2 months before the appointed day is to be treated as if it had been registered before that day.
- (4) Any other notice or agreement registered under subsection (2) on or after the appointed day is to be treated as if it had been registered before the appointed day.
- (5) The Scottish Ministers may by order—
 - (a) specify a date after which notices and agreements cannot be registered under subsection (2),
 - (b) provide that subsection (2) applies only where the application to the court or to the Lands Tribunal which resulted in the determination is made within such period as the order may specify.
- (6) In this section, “court” means Court of Session or sheriff.

Miscellaneous

75 Consequential and minor amendments

Schedule 1, which contains minor and consequential amendments, has effect.

76 Interpretation

- (1) In this Act, unless the context otherwise requires—
 - “the 2003 Act” means the Title Conditions (Scotland) Act 2003 (asp 9),
 - “additional payment” has the meaning given by section 48,
 - “appointed day” has the meaning given by section 68,
 - “compensatory payment” has the meaning given by section 37,
 - “*cumulo* renewal premium” has the meaning given by section 60(1),
 - “*cumulo* rent” has the meaning given by section 60(1),
 - “exempt lease” has the meaning given by section 62,
 - “freshwater fish” means any fish living in fresh water, including trout and eels and the fry of eels but exclusive of salmon and of any kind of fish which migrate between the open sea and tidal waters,

“land” includes anything held or which, by its nature, may be held as a separate tenement,

“landlord”, in relation to a lease, means the person who has right as landlord under the lease, whether or not such person has completed title (and where more than one person comes within that description, the person who most recently acquired that right),

“Lands Tribunal” means Lands Tribunal for Scotland,

“lease” includes a sublease,

“owner”, in relation to any land, means the person who has right to the land, whether or not such person has completed title (and where more than one person comes within that description, the person who most recently acquired that right),

“prescribed” means prescribed by the Scottish Ministers in regulations,

“qualifying lease” has the meaning given by section 1(1),

“qualifying condition” means a condition which qualifies under section 9,

“registering”, in relation to any document, means registering an interest in land or information relating to an interest in land (being an interest or information for which that document provides) in the Land Register of Scotland or, as the case may be, recording the document in the Register of Sasines; and cognate expressions are to be construed accordingly,

“sporting right” has the meaning given by section 7(1),

“superior lease” has the meaning given by section 3, and

“tenant”, in relation to a lease, means the person who has right as tenant under the lease, whether or not such person has completed title (and where more than one person comes within that description, the person who most recently acquired that right).

- (2) References in this Act to a notice or other document in the prescribed form include references to such notice or document in a form as close to the prescribed form as circumstances permit.
- (3) Subject to the provisions of this Act, expressions used in this Act and in the 2003 Act have the same meaning in this Act as they do in that Act.

77 Subordinate legislation

- (1) Any power of the Scottish Ministers to make orders or regulations under this Act is exercisable by statutory instrument.
- (2) Any such power includes power to make—
 - (a) such incidental, consequential, supplementary, transitional, transitory or saving provision as the Scottish Ministers think necessary or expedient, and
 - (b) different provision for different purposes.
- (3) A statutory instrument containing an order or regulations under this Act (other than an order under section 78(2)) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

78 Short title and commencement

- (1) This Act may be cited as the Long Leases (Scotland) Act 2010.
- (2) This Act (apart from sections 70 and 77 and this section) comes into force on such day as the Scottish Ministers may by order appoint.
- (3) An order under subsection (2) may appoint different days for different purposes.

SCHEDULE 1
(introduced by section 75)

MINOR AND CONSEQUENTIAL AMENDMENTS

PARTIAL REGULATORY IMPACT ASSESSMENT THE LONG LEASES (SCOTLAND) BILL

1. Title of proposal

The Long Leases (Scotland) Bill. This Bill would implement recommendations contained in Report Number 204 by the Scottish Law Commission (SLC) on the Conversion of Long Leases¹.

2. Purpose and intended effect

Objectives

2.1 The Bill would convert ultra-long leases into ownership. An ultra-long lease would qualify if it had been granted for more than 175 years and had more than 100 years left to run. On the appointed day laid down in the Bill, all qualifying ultra-long leases would convert into ownership, unless the tenant should choose to opt out. In some cases, compensation and additional payments would be payable to the landlord.

Background – other legislation

2.2 In recent years, the Scottish Parliament has enacted significant legislation to reform and modernise the structure of land law in Scotland, implementing reports by the SLC. Recent legislation includes:

- The Abolition of Feudal Tenure etc. (Scotland) Act 2000 (implementing the SLC Report on Abolition of the Feudal System).
- The Leasehold Casualties (Scotland) Act 2001 (implementing the SLC Report on Leasehold Casualties).
- The Title Conditions (Scotland) Act 2003 (implementing the SLC Report on Real Burdens).
- The Tenements (Scotland) Act 2004 (implementing the SLC Report on the Law of the Tenement)

2.3 Implementing the SLC report on ultra-long leases would help to complete the reform of property law in Scotland.

Background – incidence of long leases

2.4 The SLC Report, and a previous study on the incidence of long leases carried out in 1951 for the Scottish Leases Committee chaired by Lord Guthrie. Appendix II to the Guthrie report noted that in 1951 there were 13,151 long leases recorded in the Register of Sasines, of which 8,744 still had over 100 years left to run.

2.5. The SLC, working with the Registers of Scotland, carried out a survey on leases in 2000, for the counties of Ayr, Clackmannan, Lanark and

¹ <http://www.scotlawcom.gov.uk/downloads/rep204.pdf>

Renfrew². The table below, based on paragraph 4 of Appendix C to the SLC Report, shows the number of long leases examined in each county together with a comparison of the numbers which existed in 1951:

	Number of long leases examined in 2000	Number of long leases in 1951
Ayr	303	1988
Clackmannan	193	305
Lanark	1,220	4,153
Renfrew	963	655
Totals for the four counties	2,679	7,101

2.6 However, the SLC indicate that they only examined 25% of the leasehold titles in Lanark and 50% of the leasehold titles in Renfrew. This means that the number of long leases in the counties is as outlined below:

	Number of long leases in 2000	Number of long leases in 1951
Ayr	303	1988
Clackmannan	193	305
Lanark	4,880	4,153
Renfrew	1,926	655
Totals for the four counties	7,302	7,101

2.7 This means that in 2000, in the four counties, the number of long leases was 102.8% of the figure in 1951. Extrapolating this to Scotland as a whole would suggest that there are now 13,519 long leases (102.8% of 13,151).

2.8 There may be a variety of reasons for this apparent increase in registered long leases:

- section 2(1)(a)(v) of the Land Registration (Scotland) Act 1979 introduced a requirement to register in the Land Register any transfer of the tenant's interest following commencement of the Act in the relevant county.
- when the Guthrie report carried out its survey, a lease could only be registered if it had been granted for more than 31 years but this figure was reduced to 20 years in 1974 (this would tend to increase the number of registered long leases that will not be eligible for conversion) and, as a result, the survey carried out for the Guthrie Committee was restricted to leases of over 31 years. (Footnote 15 on page 3 of the SLC Report refers).

² Leases are only registrable if they last longer than 20 years so this survey excluded leases of 20 years or less.

2.9. However, some ultra-long leases which would be eligible for conversion under the scheme now contained in the proposed Bill would not be covered by all of the figures above:

- The SLC survey did not include the Register of Sasines and so did not pick up any pre-existing leases which saw no activity which would induce first registration in the Land Register (paragraph 4 of Annex C to the SLC Report).
- There may be unregistered ultra-long leases which would qualify for conversion under the scheme and which may be registered should the proposed Bill be enacted.

2.10 Therefore, the Scottish Government recognises that the figure of 13,519 given in paragraph 2.7 above could be questioned: and there may have been further changes since the SLC carried out their survey in the year 2000. However, the figure of 13,519 appears the best available and will be used in subsequent calculations below.

2.11 Paragraph 11 of Appendix C to the SLC report notes that of the long leases they examined in the year 2000, 1,786 had an initial duration of more than 175 years, whilst the remaining 813 had a duration of 175 years or less. (Paragraph 6 of Appendix C notes that the duration of 80 leases was unknown). In percentage terms, therefore, (and excluding the leases of unknown duration), 68.7% of long leases had an initial duration of more than 175 years and 31.2% of leases had an initial duration of less than 175 years.

2.12 Using these percentages would suggest that there are 9,287 long leases in Scotland with an initial duration of more than 175 years (68.7% of 13,519).

2.13 To qualify for conversion under the Bill, ultra-long leases must have at least 100 years left to run. Table 3 at paragraph 14 of Appendix C to the SLC report shows that at least 97.6% of long leases with an initial duration of more than 175 years still have more than 100 years to run. This suggests that there are 9,064 ultra-long leases (97.6% of 9,287) in Scotland eligible for conversion under the Bill. This partial RIA will use a round number and, therefore, **the rest of this partial RIA assumes that 9,000 ultra-long leases in Scotland will be eligible for conversion to ownership under this Bill.** The Scottish Government recognises this figure is approximate.

2.14 Paragraph 9 of Appendix B to the SLC Report indicates that in the year 2000 only 2.3% of property titles in the counties of Ayr, Clackmannan, Lanark and Renfrew were held on leasehold tenure. The paragraph goes on to note that as the 1951 survey found that the average incidence of long leases throughout the country was considerably less than the incidence of leasehold titles in the four counties, it seems likely that 2.3% over-states the incidence of leasehold titles in Scotland today.

Background – current framework for addressing the issue

2.15 Paragraphs 1.8 and 1.9 of the SLC Report outlines other schemes to convert ultra-long leases into ownership. In brief:

- A temporary scheme for the conversion of long leases was introduced by the Long Leases (Scotland) Act 1954 and was in operation between 1954 and 1959³.
- A special scheme for tenancies-at-will was introduced by sections 20 to 22 of the Land Registration (Scotland) Act 1979⁴.
- The Land Reform (Scotland) Act 2003 introduced community right to buy and contains provisions on crofting⁵.
- Tenants of social housing have certain rights to buy. (The Government has consulted on potential changes in this area and a Bill has now been introduced⁶).

2.16. Ultra-long leases may come to an end on a voluntary basis.

Rationale for Government intervention

2.17 As can be seen from paragraph 2.15, there is no general statutory scheme to convert ultra-long leases into ownership. Therefore, without primary legislation Scotland would not complete its programme of land reform and an unsatisfactory method of land tenure would continue. More information on the benefits of converting ultra-long leases can be found in paragraph 5.3 of this RIA.

Consultation – within Government

3.1 The Scottish Government has consulted:

- Her Majesty’s Treasury (for points relating to Stamp Duty Land Tax – see paragraphs 5.31 to 5.34 below).
- Registers of Scotland (to receive expert advice on issues relating to the registration of land and property in Scotland).

Consultation – public

3.2 This RIA forms part of a Scottish Government consultation.

3.3 The Scottish Law Commission consulted publicly before it published its report, by issuing a discussion paper: http://www.scotlawcom.gov.uk/downloads/dp112_long_leases.pdf.

Paragraph 2.12 of its report noted that the arguments put forward in its discussion paper “amount to a strong case for conversion of ultra-long leases. Almost all consultees agreed. Only the Royal Institution of Chartered

³ http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1954/cukpga_19540049_en_1

⁴ http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1979/cukpga_19790033_en_5#pt4-11g20

⁵ <http://www.scotland.gov.uk/Topics/farmingrural/Rural/rural-land/right-to-buy>

⁶ <http://www.scotland.gov.uk/Topics/Built-Environment/Housing/16342/rtb>

Surveyors in Scotland opposed the principle of conversion". The RICS put forward an alternative, which is considered in more detail in paragraphs 4.2 and 4.3 below.

Options

4.1. *Option 1.* Do nothing. Under this option, the Bill would not proceed. Ultra-long leases would continue in place. In time, there would be fewer of them as some would be ended on a voluntary basis. However, this would happen very slowly, and to an unpredictable timetable. The risk here is that Scotland's land tenure system would continue to include an unsatisfactory method of tenure, which could hinder economic development. This risk is very likely if a statutory conversion scheme is not introduced. The risk could be mitigated by encouraging tenants and landlords to convert on a voluntary basis (eg by running a publicity campaign). However, it is uncertain how successful any publicity campaign of this nature would be.

4.2 *Option 2.* Convert ultra-long leases to 175 years. Paragraph 2.12 of the SLC report notes that " the Royal Institution of Chartered Surveyors in Scotland opposed the principle of conversion, arguing that consistency with the 175-year limit on new leases contained in the 2000 Act was better achieved by reducing the length of all existing leases to 175 years. There would also be practical advantages:

"Such a proposal will obviate the need for the complex notice procedures, exemption clauses, etc, and, importantly, converting ultra-long leases to 175 years would, in our view, not require compensation, as the difference in value between 175 years and 999 years would be negligible".

4.3 The Government considers that there are difficulties with this option:

- As the SLC say in paragraph 2.12 of their report, it is doubtful that a tenant who holds an ultra-long lease "would regard it as acceptable for the duration to be reduced to 175 years, with or without compensation. A quasi owner will not wish to be downgraded to mere tenant".
- There is at least an argument that some compensation should be payable to the tenant, to compensate for the reduction in the length of the ultra-long lease. This could then require landlords to pay compensation in relation to land in which they may have little practical interest, given that the ultra-long leases would still have 175 years to run.

4.4 *Option 3.* This option is to adopt the SLC recommendation and promote a Bill to convert ultra-long leases (those granted for more than 175 years and with 100 years left to run into ownership). The benefits of this option, which is the Government's intended course of action, are outlined in paragraph 5.3 below.

4.5 Potential risks in this option are:

- Tenants will be given the option of opting out of conversion, if they wish. In practice, we expect that few will choose to opt out, given that any compensation and additional payments to landlords will be very low in most cases.
- There may be a lack of knowledge amongst landlords and tenants of the scheme for conversion. The Scottish Government, working with other bodies (eg Registers of Scotland) will provide information on the new legislation on its website and elsewhere, so that as many interested parties as possible know what changes are being made. (Paragraphs 5.38 to 5.41 of this partial RIA discuss a potential publicity campaign).
- Registers of Scotland will face an additional workload. Registers of Scotland are setting up an internal working group to discuss how best to deal with the additional work the Bill will bring. (Paragraphs 5.35 to 5.37 discuss the workload and costs for Registers of Scotland in relation to ultra-long leases).

Costs and Benefits

5.1 Sectors and groups affected. The Bill will impact on landlords and tenants holding qualifying ultra-long leases.

5.2. In particular, long leases appear to be concentrated in certain parts of the country. Appendix C to the SLC report has more information. In particular:

- The greatest concentration of leasehold titles appears to be in Lanarkshire. (Paragraph 3 to Appendix C to the SLC report).
- It appears that long leases were used only by certain landed estates, with the result that it is a normal form of land tenure only in certain distinct geographical areas. (Paragraph 10 to Appendix C to the SLC report).
- This is supported by the evidence received by the SLC from practitioners with experience of long leases. They referred to pockets of leases in Alva, Ardrossan, Saltcoats, Stevenson and Wishaw. (Paragraph 10 to Appendix C to the SLC report).

5.3 Benefits. Paragraphs 2.1 to 2.12 of Scottish Law Commission Report 204 (referred to above) outlines the benefits of a Bill to convert ultra-long leases into ownership. In the light of these paragraphs, the Scottish Government considers that potential benefits from legislation on ultra-long leases would be:

- Ultra-long leases amount to virtual ownership. It will simplify property law in Scotland to convert them to ownership.
- There is an argument that ultra-long leases are feus in disguise (eg where feus could not be granted because of entails in the land).

Therefore, converting ultra-long leases to ownership is in line with the earlier conversion of feus into ownership.

- The hierarchical structure of ultra-long leases and subleases is needlessly complex in circumstances where the only real value is that held by the ultimate tenant.
- Some ultra-long leases may be vulnerable to irritancy (ie unilateral termination by the landlord, without compensation) in the event of non-payment of rent or a failure to observe one of the conditions of the lease.
- The conditions in the ultra-long lease may verge on the unacceptable.
- The conditions in the ultra-long lease may allow an inappropriate degree of control by a person who, unless a close neighbour, has little or no interest in the land.
- The conditions may also provide an opportunity for the landlord to charge the tenant for the conditions to be waived – this may make the landlord’s interest attractive to title raiders.
- Because ultra-long leases are relatively rare, and are concentrated within small geographical areas, they are unfamiliar to many legal practitioners. This may cause problems when a transaction involving a property with an ultra-long lease takes place and may increase the costs of the transaction. Pro-forma missives may not provide for the title being held on an ultra-long lease and if they are not appropriately adjusted can lead in extreme cases to property transactions falling through.
- A tenant with an ultra-long lease may encounter difficulties in relation to secured financing. A small number of lenders will not advance money on the security of an ultra-long lease. Others are wary of potential problems, such as premature termination as a result of irritancy or of confusion (“confusion” in this context occurs where the same person is both landlord and tenant). There may be particular problems in relation to renewable ultra-long leases.
- The law on tenements assumes ownership but some flats in tenements may be held on ultra-long leases.
- Not to convert ultra-long leases now would be to store up problems in the long term, when such leases come to an end and the tenant loses the property without compensation, including compensation for any improvements.

5.4 Costs – compensation and other payments due by the landlord to the tenant. Compensation and other payments may be due by the tenant to the landlord.

5.5 Compensation. Compensation payments will be based on the rent paid. Paragraph 17 of Appendix C to the SLC Report indicates that of the ultra-long leases the SLC examined, the rent was known for around 95% (1,705) of the leases granted for an initial period of more than 175 years. The table below, based on information in paragraph 17 of Appendix C to the SLC Report, shows the following rents being paid:

Rent paid	Number of leases	% of leases examined
£5 a year, or less	1,160	68.03%
£5.01 to £30 a year	505	29.62%
£30.01 to £50 a year	14	0.82%
£50.01 to £100 a year	19	1.11%
Over £100 a year	7	0.41%
Totals	1,705	100% (rounded)

5.6 The SLC recommend in paragraph 6.16 recommend that the compensatory payment for the extinction of the rights of landlord under a lease should be such sum as, if invested in two and a half per cent Consolidated Stock on the day before the appointed day, would produce an annual sum equal to the annual rent due under the lease.

5.7 The price of £100 nominal amount of 2.5% Consolidated Stock is £50.74 [checked on 1 March 2010]. Therefore, to redeem a rent of £2.50 you will need to spend £50.74. This suggests a "multiplier" of 20.3 [£50.74 divided by £2.50].

5.8 The table below shows the amount of compensation which could be payable. This is based on the estimated number of qualifying long leases (9,000 - see paragraph 2.13) and the information in the table at 5.5 on level of rents.

Rent paid ⁷	Number of leases	Compensation payable ⁸
£2.50	6,122	£310,692
£17.50	2,666	£947,097
£40	74	£60,088
£75	100	£152,250
£200	37	£150,220
Totals	9,000 (rounded)	£1,620,347

This figure will be rounded in the remainder of this partial RIA to £1.6 million.

⁷ Midpoint of ranges at table in paragraph 5.5, except that a rent of £200 has been assumed for the top tier.

⁸ Assumes 100% of landlords claim compensation – which is unlikely. Under the Bill, compensation will only be due if the former landlord serves a notice in the prescribed form on the former tenant.

5.9 Compensation – renewal premiums. The SLC have recommended that any “renewal premiums” (or “grassum”) payable when ultra-long leases are renewed should be taken into account when amounts due to landlords by tenants are calculated (see paragraphs 6.22 to 6.27 of the report). The SLC recommended that where the renewal premium is £100 or less, then, for the purposes of compensation, the rent should be augmented by the amount of the premium divided by the number of years occurring between each renewal. (So if the premium is £100 and the renewal period is 99 years, the rent would be deemed to be augmented by £1.01. Where the renewal premium is over £100, the figure is taken account of in relation to additional payments (see paragraphs 5.16 to 5.17 below).

5.10 The approach taken in this RIA is to treat as *de minimis* any deemed augmentations of rent where the premium is £100 or less, given that the augmentation is so small.

5.11 Additional payments – general. As well as compensation payments, the SLC have also recommended that some additional payments should be payable in certain circumstances. This section goes through the various heads.

5.12 Additional payments – non-monetary rents. The SLC noted in paragraph 6.29 of their report that non-monetary rents were found in around 1% of the long leases in their survey: these non-monetary payments often supplemented the monetary rent. Examples quoted by the SLC are six fat hens; four bolls⁹ of good and sufficient oat farm meal and the services of a labourer to work on the roads of a particular town.

5.13 The additional payment due would either be based on an agreed monetary equivalent (in which case the formula for monetary rents based on the price of 2.5% Consolidated Stock would apply) or an amount fixed by order of the Lands Tribunal. Either way, as only 1% of long leases are affected, the approach taken in this RIA is to treat any sums involved as *de minimis*.

5.14 Additional payments – rent review. Paragraph 6.30 of the SLC Report notes that in “ultra-long leases provision for rent review is rare but probably not unknown”. Given that additional payments for rent review will be rare, the approach taken in this RIA is to treat any sums involved as *de minimis*.

5.15 Additional payments – rent increase. Paragraph 6.31 of the SLC report notes that rent might increase by way of a fixed formula rather than by way of rent reviews. Again, the approach taken in this RIA is to treat any sums involved as *de minimis*.

5.16 Additional payments – renewal premiums exceeding £100. Paragraph 6.32 of the SLC Report suggests that additional payments should

⁹ A “boll” is defined in Chambers Twentieth Century Dictionary as “ a measure of capacity for grain, etc., used in Scotland and the north of England – in Scotland usually = 6 imperial bushels..... also a measure of weight, containing, for flour 140lb”.

be payable where renewable premiums over £100 would be payable in order to make the long lease a qualifying lease.

5.17 The specific example quoted in the SLC Report is of a renewable premium of £1,000 payable in 30 years time after the appointed day. However, paragraph 6.23 of the SLC report notes that “where, as usually, the renewal premium (*grassum*) is tied to the ground rent, it is likely to be very small – less than £1 in the example quoted above [Blairgowrie leases]. Occasionally the amount due is larger”. Given that the number of cases is likely to be small, the approach taken in this RIA is to treat any sums involved as *de minimis*.

5.18 Residual value of reversionary interest. Paragraph 6.33 of the SLC Report suggests that additional payments might be paid to reflect the value a landlord might attach to land which is due to revert to the landlord no later than 200 years from the appointed day. The SLC Report notes that “the numbers involved are small. Our survey found only 50 leases granted for more than 175 years and with an unexpired duration of less than 200 years – less than 3% of the total of ultra-long leases. And of these small numbers there will be many instances in which the residual interest is valueless.” Given this, the approach taken in this RIA is to treat any sums involved as *de minimis*.

5.19 Early termination. Paragraph 6.34 notes that a landlord’s right to terminate an ultra-long lease early may be of value and in principle should be capable of founding a claim for an additional payment. However, the SLC then add a number of caveats:

- The value may turn out to be negligible if, as often, the right to terminate early can only be exercised against payment.
- An additional payment should be available only for rights within the full control of the landlord.
- A right to terminate on breach should not be included, nor should a right of pre-emption.

5.20 Given these caveats, the approach taken in this RIA is to treat any sums involved as *de minimis*.

5.21. Right to development value. Paragraphs 6.36 and 6.37 of the SLC report note that additional payments should be payable if land was leased cheaply because of restrictions on the use of the property and the possibility remained that the restrictions could have been discharged in the Lands Tribunal, with money being paid by the tenant to the landlord.

5.22 The SLC go on to suggest, in paragraph 6.45, that there should be ceiling on payments under this head so that compensation would be limited to “a sum to make up for any effect which the title condition produced, at the time it was created, in reducing the consideration then paid or payable for the burdened property”. The SLC also propose that inflation be disregarded. SLC figures indicate (see paragraph 16 of Appendix C) that few long leases

have been granted in recent times. Given that, and given that development value payments are based on the original value of the property, with no account taken of inflation, the approach taken in this RIA is to treat any sums involved as *de minimis*.

5.23. Applications to the Lands Tribunal. In some cases, applications may be made to the Lands Tribunal for Scotland following the enactment of legislation on long leases. For example, applications to the Lands Tribunal may be made:

- By landlords seeking to convert a qualifying condition in a lease into a real burden even though the benefited property does not have a permanent building used as a place of human habitation and resort lying within 100 metres of the burdened property; the condition is not a right of pre-emption or redemption and the land is not a separate tenement in land (such as minerals or salmon fishings) and the condition was conceived for the benefit of that land. [Paragraphs 4.42 to 4.48 of the SLC Report]. Applications to the Lands Tribunal can only be made after an attempt by the landlord to reach agreement with the tenant.
- To challenge notices on the grounds of validity. [Paragraph 4.66 to 4.68 of the SLC Report].
- To challenge a real burden (converted from a qualifying condition in a lease) or to seek to vary or discharge a real burden. [Paragraph 4.70 of the SLC Report]. The procedure here is laid down in the Title Conditions (Scotland) Act 2003.
- To fix the amount of additional payment that might be due to the landlord for extinction of rights over the land, if the landlord and tenant cannot agree the amount.

5.24 If applications are made to the Lands Tribunal, there will be fees payable to the Tribunal and legal expenses. More information on fees payable to the Tribunal can be found on their website at <http://www.lands-tribunal-scotland.org.uk/fees.html>

5.25. Given the small number of ultra-long leases, we expect the number of additional cases for the Lands Tribunal in relation to this proposed legislation to be few in number. The SLC note in paragraph 4.45 of their Report that “the relatively small number of leases eligible for conversion means that applications to the Lands Tribunal should occur in small and manageable numbers”.

5.26 Given this, we are proposing to treat as *de minimis* for the purposes of this RIA any costs arising from applications to the Lands Tribunal following this proposed legislation.

5.27 Applications to the Registers of Scotland. Conversion of registered qualifying ultra-long leases to ownership will happen automatically (unless leases are exempted by the tenant). There will be a number of cases where

applications will be made to Registers of Scotland, following the enactment of this proposed legislation. These include:

- To register a qualifying lease condition as a real burden. [Paragraph 4.64 of the SLC Report].
- To preserve landlord's rights to take game or fish for freshwater fish. [Paragraph 5.16 of the SLC Report].
- To exempt an ultra-long lease from converting into ownership, if the tenant so wishes. [Paragraphs 7.1 to 7.9 of the SLC report].
- To recall an exemption notice. [Paragraphs 7.10 to 7.15 of the SLC Report].
- To register an unregistered ultra-long lease, in order to invoke the procedures so that the ultra-long lease could be converted to ownership. [Paragraphs 8.14 to 8.18 of the SLC Report].

5.28 Registers of Scotland will charge fees in relation to the applications listed above. It is anticipated that registration fees will be charged in terms of the current Fees in the Registers of Scotland Order 1995 (SI 1995/1945), as amended.

5.29 Broadly, in respect of the notices listed above, the fees in terms of the 1995 Order would be charged at £30 per Land Register title sheet and/or per deed recorded in the Sasines. We expect the number of applications to the Registers of Scotland to be low. Paragraph 8.7 of the SLC report says "it is true that a small number of those [leasehold] conditions may be converted into real burdens". Paragraph 8.14 of the SLC Report says that the "numbers [of unregistered ultra-long leases] are likely to be very small". If 1,000 applications are made to Registers of Scotland, this would suggest a total cost to applicants of £30,000 at current fee levels.

5.30 Landlords and tenants seeking to register preservation or exemption notices may also incur costs when obtaining their legal advice. For the purpose of this RIA, we are treating the costs of legal advice as *de minimis*.

5.31 Stamp Duty Land Tax. The SLC considered Stamp Duty Land Tax in paragraphs 8.19 to 8.26 of their report. They noted that there could be some debate as whether conversion of a lease to ownership was a chargeable consideration but concluded that it was. The SLC went on to recommend that long leases which convert to ownership should be treated as a land transaction which is exempt from Stamp Duty Land Tax.

5.32 However, there have been changes to UK legislation since the SLC wrote its report. The current versions of sections 77 and 77A of the Finance Act 2003 were inserted by section 94(2) of the Finance Act 2008. Among other matters, sections 77 and 77A provide that an acquisition of ownership where the chargeable consideration is less than £40,000 does not have to be notified for Stamp Duty Land Tax purposes. (Any obligation to pay Stamp Duty Land Tax would fall at a higher figure).

5.33 As indicated elsewhere in this RIA, the number of qualifying ultra-long leases is low and the number of cases where notification will be required will be very low and we doubt if any would actually have to pay SDLT. In the light of this, we are not proposing any specific exemption from SDLT for ultra-long leases which convert to ownership and any SDLT obligations which do arise are likely to be so small they can be regarded as *de minimis* for the purposes of this partial RIA.

5.34 More information on SDLT can be found on Her Majesty Revenue and Customs' website at <http://www.hmrc.gov.uk/sdlt/basics.htm>

5.35 Costs to Registers of Scotland of the legislation. As paragraph 8.1 of the SLC Report says, "automatic conversion has obvious implications for the Land Register". Paragraph 8.2 then goes on to list some of the areas of work the Keeper of the Registers will need to carry out.

5.36 The work the Keeper will need to carry out includes:

- Altering the status of the title sheet from leasehold to ownership.
- Deleting from the burdens section the conditions of the ultra-long lease other than those converted into real burdens by registered notice or by statute.
- Adding to the burdens section any real burdens or servitudes which area registered (or recorded) under the title of the landlord and affect the land.
- Deleting the title sheet (if there is one) of the current owner (ie the head landlord).
- Deleting the title sheet of any intermediate tenants.
- Registering the preservation of landlord's rights to take game or fish for freshwater fish.
- Registering the exemption of an ultra-long lease from converting into ownership, if the tenant so wishes.
- Registering the recall of an exemption notice.
- Registering an unregistered lease, so that the tenant may invoke the procedures so that the lease could be converted to ownership.

5.37 There will be administrative costs to Registers of Scotland. The provisional estimate of these costs is £100,000 to £150,000. These costs will need to be recovered by registration fees in the Land and Sasine Registers and so costs will be met by all customers and not just those benefiting from the conversion of ultra-long leases to ownership. The administrative costs incurred by Registers of Scotland will relate to:

- the need to consider and create new practices;
- possible amendments to application forms;
- training costs for staff;
- potential re-allocation of some application types to higher graded staff;
- the possibility that there will be some loss of productivity as a result of training and implementation of new procedures as well as the potential

need to reallocate staff resource to an updating exercise to ensure that existing title sheets in the Land Register are accurate;

- changes to IT systems (for instance, unless Registers of Scotland can create 'shadow' title sheets in advance of the appointed day and rectify the register as at the start of that day, Registers of Scotland will have to consider how to identify and flag affected Land Register titles and also carry out system changes to its automated registration system (ARTL) to ensure that applications submitted through that system relating to those titles are examined manually by a registration officer and the title sheet appropriately updated).

5.38 Costs of a publicity campaign. Although the number of ultra-long leases affected by conversion will be small, there will be a need for a modest publicity campaign. This campaign would ensure that landlords knew of:

- Their potential rights to compensation and additional payments.
- The potential for them to convert qualifying leasehold conditions into real burdens.
- The potential for them to preserve rights to game and to fish for freshwater fish.

5.39 The campaign would also ensure that tenants knew of their right to exempt ultra-long leases from conversion to ownership, if they so wish (although, in practice, we expect that most decisions by tenants to seek exemption from conversion would be triggered by an indication from landlords of the amount sought by way of compensation and additional payments).

5.40 The campaign would also ensure that legal practitioners and financial institutions were aware of the changes.

5.41 The Scottish Government would propose to work with key partners (such as Registers of Scotland) to produce web-based information.

6. Small/Micro Firms Impact Test

6.1 Given the small number of long leases involved, the Government does not consider that this proposed legislation would have a significant impact on small or micro firms.

7 Legal Aid Impact Test.

7.1 The Government considers that this proposed legislation would only have a de minimis impact on the legal aid budget. The Government's reasons for this are:

- The number of qualifying ultra-long leases is expected to be small.
- Conversion will happen automatically (unless the tenant seeks exemption).
- The number of cases taken to the Lands Tribunal for Scotland is expected to be small.

- The notices which tenants and landlords may need to complete (see next section) are straightforward, and any legal advice required should not be time-consuming.

8. "Test Run" of business forms

8.1 The Scottish Government asked the Federation of Small Business (FSB) to consider the version of the forms in the Bill attached to the Scottish Law Commission report. The FSB had no comments on the forms. The Government is proposing that forms should be prescribed by a Scottish Statutory Instrument made after Royal Assent. Potential forms likely to be prescribed are listed at paragraph 1.15 of the consultation paper.

9. Competition assessment

9.1 Given the low number of qualifying ultra-long leases, the Government does not consider that legislation on ultra-long leases will have a major impact on competition. There might be a minor benefit to competition, as clarifying the status of the land might make financial institutions more willing to lend, which could help business start-ups and expansion.

10. Enforcement, sanctions and monitoring

10.1 Conversion is automatic, unless the tenant seeks exemption. There is no need for enforcement although Registers of Scotland will, of course, continue to fulfil their obligations in relation to land and property registration. The Bill does not introduce sanctions. Registers of Scotland will maintain statistical information on the impact of the Bill.

11. Summary of costs

Nature of cost	£
Compensation payable by tenants to landlords	£1,600,000
Additional payments payable by tenants to landlords	<i>De minimis</i>
Cost to applicants of cases taken to the Lands Tribunal	<i>De minimis</i>
Costs to Lands Tribunal of cases	<i>De minimis</i>
Cost to applicants of Registers of Scotland processes	£30,000
Costs to applicants of legal advice when registering preservation or exemption notices	<i>De minimis</i>
Costs to Registers of Scotland	£100,000 to £150,000
Costs to Scottish Government of publicity campaign	<i>Low</i>
Stamp Duty Land Tax	<i>De minimis</i>

Scottish Government
March 2010

LONG LEASES (SCOTLAND) BILL: EQUALITIES IMPACT ASSESSMENT

Step 1: Define the aims of your policy

Policy Title	Long Leases (Scotland) Bill
Strategic Outcome	Wealthier & Fairer
Directorate or Agency	DIRECTOR-GENERAL JUSTICE AND COMMUNITIES
Group	JUSTICE DIRECTORATE
Division	Civil Law Division
Branch	Family and Property Law
What is the purpose of the proposed policy (or changes to be made to the policy)?	The Bill would implement the Scottish Law Commission (SLC) Report on Long Leases (Report 204 - http://www.scotlawcom.gov.uk/downloads/rep204.pdf). The Bill would convert ultra-long leases (over 175 years long and with more than 100 years to run) into ownership.
Who is affected by the policy or who is intended to benefit from the proposed policy and how?	The policy will impact on tenants and landlords holding ultra-long leases. The benefits are outlined in paragraphs 2.1 to 2.12 of the SLC report. The benefits include reducing complexity; removing unacceptable lease conditions; decreasing opportunities for "title raiders"; increasing financial opportunity (ie secured loans) for tenants with long leases; improving property law in relation to tenements.
How have you, or will you, put the policy into practice, and who is or will be delivering it?	The Government plans to consult in 2010. Any Bill will depend on the outcome of this consultation and on the availability of Parliamentary time.
How does the policy fit into our wider or related policy initiatives?	The Government is committed to ensuring that property law in Scotland is up to date and relevant, to increase investor certainty.
Have the resources for your policy been allocated?	Yes

Step 2: What do you already know about the diverse needs and/or experiences of your target audience?

Age	No
Evidence	
Consultation	
Disability	No
Evidence	
Consultation	
Gender	No
Evidence	
Consultation	
Lesbian, Gay, Bisexual & Transgender	No
Evidence	
Consultation	
Race	No
Evidence	
Consultation	

Religion & Belief No
Evidence
Consultation

Step 3: What else do you need to know to help you understand the diverse needs and/or experiences of your target audience?

Age Yes
Evidence The Bill is aimed at tenants holding ultra-long leases and their landlords. There is no need to obtain information on different societal groups as the policy is aimed at a specific situation rather than at specific societal groups. The Government does not consider that the overall policy - which is about improving Scots property law - can be changed to help equality and diversity in Scotland.

Disability Yes
Evidence The Bill is aimed at tenants holding ultra-long leases and their landlords. There is no need to obtain information on different societal groups as the policy is aimed at a specific situation rather than at specific societal groups. The Government does not consider that the overall policy - which is about improving Scots property law - can be changed to help equality and diversity in Scotland.

Gender Yes
Evidence The Bill is aimed at tenants holding ultra-long leases and their landlords. There is no need to obtain information on different societal groups as the policy is aimed at a specific situation rather than at specific societal groups. The Government does not consider that the overall policy - which is about improving Scots property law - can be changed to help equality and diversity in Scotland.

Lesbian, Gay, Bisexual & Transgender Yes
Evidence The Bill is aimed at tenants holding ultra-long leases and their landlords. There is no need to obtain information on different societal groups as the policy is aimed at a specific situation rather than at specific societal groups. The Government does not consider that the overall policy - which is about improving Scots property law - can be changed to help equality and diversity in Scotland.

Race Yes
Evidence The Bill is aimed at tenants holding ultra-long leases and their landlords. There is no need to obtain information on different societal groups as the policy is aimed at a specific situation rather than at specific societal groups. The Government does not consider that the overall policy - which is about improving Scots property law - can be changed to help equality and diversity in Scotland.

Religion & Belief Yes
Evidence The Bill is aimed at tenants holding ultra-long leases and their landlords. There is no need to obtain information on different societal groups as the policy is aimed at a specific situation rather than at specific societal groups. The Government does not consider that the overall policy - which is about improving Scots property law - can be changed to help equality and diversity in Scotland.

Step 4: What does the information you have tell you about how this policy might impact positively or negatively on the different groups within the target audience?

Age
 Disability
 Gender
 Lesbian, Gay, Bisexual & Transgender
 Race
 Religion & Belief

Step 5: Will you be making any changes to your policy?

Age	No
Disability	No
Gender	No
Lesbian, Gay, Bisexual & Transgender	No
Race	No
Religion & Belief	No
Comments	Under our policy, tenants may opt out of converting their ultra-long leases into ownership. Landlords will receive compensation for the loss of their rights and, in certain circumstances, will receive additional payments.

Step 6: Does your policy provide the opportunity to promote equality of opportunity or good relations?

Age	No
Evidence	
Disability	No
Evidence	
Gender	No
Evidence	
Lesbian, Gay, Bisexual & Transgender	No
Evidence	
Race	No
Evidence	
Religion & Belief	No
Evidence	

Step 7: Based on the work you have done – rate the level of relevance of your policy

Age	Low
Disability	Low
Gender	Low
Lesbian, Gay, Bisexual & Transgender	Low
Race	Low

Religion & Belief Low

Step 8: Do you need to carry out a further impact assessment?

Age No
Disability No
Gender No
Lesbian, Gay, Bisexual & Transgender No
Race No
Religion & Belief No
Comments - Yes
Comments - No The policy is aimed at a specific situation (ultra-long leases) rather than specific societal groups.

Step 9: Please explain how you will monitor and evaluate this policy to measure progress

Comments Conversion of ultra-long leases to ownership will happen automatically. Some conditions in the leases will convert into real burdens contained in title conditions: these will be registered at the Registers of Scotland.

Step 10: Sign off and publish impact assessment Long Leases (Scotland) Bill

Policy Title
Strategic Outcome Wealthier & Fairer
Directorate or Agency DIRECTOR-GENERAL JUSTICE AND COMMUNITIES
Group CONSTITUTION, LAW AND COURTS DIRECTORATE
Division Civil Law Division
Branch Family and Property Law
Name Stockwell SW (Simon)
Position Head of Family and Property Law
Sign off date 25 January 2010

Authorisation

Authorised By Stockwell SW (Simon)
Date Authorised 25 January 2010

Scottish Government

The Long Leases (Scotland) Bill

Environmental Assessment (Scotland) Act 2005

Pre-screening report

February 2010

SEA PRE-SCREENING REPORT (COVER NOTE)

PART 1

To: SEA.gateway@scotland.gsi.gov.uk
or
SEA Gateway
The Scottish Government
Area 1 H (Bridge)
Victoria Quay
Edinburgh EH6 6QQ

PART 2

An SEA Pre-Screening Report is attached for the plan, programme or strategy (PPS) entitled: The Long Leases (Scotland) Bill

The Responsible Authority is: the Scottish Ministers

Contact name Simon Stockwell

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Signature: SIMON STOCKWELL

Date: 8 February 2010

SEA PRE-SCREENING REPORT - KEY FACTS

Responsible Authority The Scottish Ministers

Title of PPS Long Leases (Scotland) Bill

Purpose of PPS: The aim of the Bill would be to convert ultra-long leases (over 175 years) to ownership, so long as the lease has an unexpired duration of more than 100 years and so long as the tenant has not registered a notice of exemption. Compensation and other payments would be payable to landlords who lose their rights.

What prompted the PPS: The Scottish Law Commission (SLC), as part of its programme of law reform, submitted a report (number 204) to Ministers on the conversion of long leases in December 2006. This report can be found on the Scottish Law Commission's website at <http://www.scotlawcom.gov.uk/downloads/rep204.pdf>

Subject: Property law

Period covered by PPS: This is about a proposed permanent change to property law in Scotland.

Frequency of updates: Not applicable. This is a proposed permanent change.

Area covered by PPS: Scotland.

Summary of nature/ content of PPS: The Scottish Government intends to consult on a proposed Bill to implement the Scottish Law Commission's recommendation. Subject to comments from consultees, and the availability of Parliamentary time, the Government is considering the introduction of a Bill to convert ultra-long leases into ownership.

Subject to comments from consultees, the Bill would:

- Convert ultra-long leases to ownership. (To qualify, a lease must have been granted for more than 175 years and have an unexpired duration of more than 100 years).
- Allow tenants to opt out of conversion, if they wish.
- Allow some leasehold conditions to survive by continuing as "real burdens" (an encumbrance on land contained in the title to the land).
- Contain provisions on potential compensation and additional payments to be made to landlords.

**Are there any proposed
PPS objectives?**

YES

Copy of objectives attached:

YES

Paragraphs 2.1 to 2.12 of Scottish Law Commission Report 204 (referred to above) outlines the benefits of a Bill to convert ultra-long leases into ownership.

In the context of these comments by the Scottish Law Commission, the benefits the Scottish Government considers that legislation would bring are in Annex A to this document.

Date: February 2010

Our determination regarding the likely significance of effects on the environment of the Bill to convert ultra-long leases (Plan) is set out in Table 1.

TABLE 1 – LIKELY SIGNIFICANCE OF EFFECTS ON THE ENVIRONMENT

<p>TITLE OF PPS</p> <p>The Long Leases (Scotland) Bill</p> <p>RESPONSIBLE AUTHORITY</p> <p>The Scottish Ministers</p>		
<p>Criteria for determining the likely significance of effects on the environment ¹</p>		<p>Summary</p>
<p>1(a) the degree to which the PPS sets a framework for projects and other activities, either with regard to the location, nature, size and operating conditions or by allocating resources</p>	<p>No Environmental Effect</p>	<p>The Long Leases (Scotland) Bill would not set a framework for projects and other activities. It would clarify the law on property in Scotland and so may increase investment certainty in a small number of projects. However, any projects of this nature would be subject to environmental and planning controls in the normal way.</p> <p>Leases of mineral rights would not be converted to ownership under the proposed legislation as the financial arrangements in leases of mineral rights are different to financial arrangements in other leases.</p>

¹ (1(d) etc. refer to paras in Schedule 2 of the Environmental Assessment (Scotland) Act 2005)

Criteria for determining the likely significance of effects on the environment ¹		Summary
1(b) the degree to which the PPS influences other PPS including those in a hierarchy	No Environmental Effect	Nil. This would be a free-standing Bill with no implications for other plans, programmes or strategies.
1(c) the relevance of the PPS for the integration of environmental considerations in particular with a view to promoting sustainable development	Minimal Environmental Effect	<p>It is possible – though unlikely – that ultra-long leases may contain environmental conditions.</p> <p>In these cases, it is Government policy that appropriate environmental conditions could be converted into a climate change burden in the title deeds.</p> <p>(Section 46A of the Title Conditions (Scotland) Act 2009, as inserted by section 68 of the Climate Change (Scotland) Act 2009, will allow, from 1 April 2010, personal real burdens in title deeds to be created to reduce greenhouse gas emissions. The Government is currently preparing a guidance note on section 46A of the 2003 Act).</p> <p>In addition, appropriate conditions in ultra-long leases could be converted into conservation burdens (paragraph 4.37 of the SLC report refers).</p> <p>In certain circumstances, landlords' existing rights to take and kill some forms of game and to fish for freshwater fish could be preserved. (Part 5 of the SLC report refers).</p>

Criteria for determining the likely significance of effects on the environment ¹		Summary
1(d) environmental problems relevant to the PPS	No Environmental Effect	Nil.
1(e) the relevance of the PPS for the implementation of Community legislation on the environment	No Environmental Effect	Nil
2 (a) the probability, duration, frequency and reversibility of the effects	No Environmental Effect	The Bill would convert ultra-long leases into ownership permanently (unless the tenant opts out).
2 (b) the cumulative nature of the effects	No Environmental Effect	Nil. This would be a free-standing Bill.
2 (c) transboundary nature of the effects (i.e. environmental effects on other EU Member States)	No Environmental Effect	The conversion of ultra-long leases would not impact on other EU Member States.
2 (d) the risks to human health or the environment (for example, due to accidents)	No Environmental Effect	The Bill would not give rise to such risks.
2 (e) the magnitude and spatial extent of the effects (geographical area and size of the population likely to be affected)	No Environmental Effect	<p>The Bill would extend to Scotland.</p> <p>The number of ultra-long leases in Scotland is relatively small (we expect that around 9,000 ultra-long leases would be eligible for conversion to ownership under the scheme).</p> <p>There are concentrations of long leases in certain parts of Scotland. The SLC report (footnote 14 to paragraph 10 of Appendix C) refers to pockets of leases in Alva, Ardrrossan, Saltcoats, Stevenson and Wishaw. As indicated elsewhere, the Bill would have minimal impact on the environment.</p>

Criteria for determining the likely significance of effects on the environment ¹		Summary
2 (f) the value and vulnerability of the area likely to be affected due to- (i) special natural characteristics or cultural heritage; (ii) exceeded environmental quality standards or limit values; or (iii) intensive land-use.	No Environmental Effect	Given the nature of the Bill (conversion of ultra-long leases into ownership), there would be no environmental impact on specific areas.
2 (g) the effects on areas or landscapes which have a recognised national, Community or international protection status	No Environmental Effect	Nil.

A summary of our considerations of the significant environmental effects of the Long Leases (Scotland) Bill is given below.

TABLE 2 – SUMMARY OF ENVIRONMENTAL EFFECTS

The Bill would have no measurable environmental impact.

Annex A: Benefits of legislation on ultra-long leases.

- Ultra-long leases amount to virtual ownership. It would simplify property law in Scotland to convert them to ownership.
- There is an argument that ultra-long leases are feus in disguise (e.g. where feus could not be granted, mainly because the land was entailed). Therefore, converting ultra-long leases to ownership would be in line with the earlier conversion of feus into ownership.
- The hierarchical structure of ultra-long leases and subleases is needlessly complex in circumstances where the only real value is that held by the ultimate tenant.
- Some ultra-long leases may be vulnerable to irritancy (ie unilateral termination by the landlord, without compensation) in the event of non-payment of rent or a failure to observe one of the conditions of the lease.
- The conditions in the ultra-long lease may verge on the unacceptable, given that the land is in virtual ownership.
- The conditions in the ultra-long lease may allow an inappropriate degree of control by a person who, unless a close neighbour, has little or no interest in the land.
- The conditions may also provide an opportunity for the landlord to charge the tenant for the conditions to be waived – this may make the landlord’s interest attractive to title raiders.
- Because ultra-long leases are relatively rare, are concentrated within small geographical areas, and can no longer be granted they are unfamiliar to many legal practitioners. This may cause problems when a transaction involving a property with an ultra-long lease takes place and may increase the costs of the transaction. Pro-forma missives may not provide for the title being held on an ultra-long lease and if they are not appropriately adjusted can lead in extreme cases to property transactions falling through.
- A tenant with an ultra-long lease may encounter difficulties in relation to secured financing. A small number of lenders will not advance money on the security of an ultra-long lease. Others are wary of potential problems, such as premature termination as a result of irritancy or of confusion (“confusion” in this context occurs where the same person is both landlord and tenant). There may be particular problems in relation to renewable ultra-long leases.
- The law on tenements assumes ownership but some flats in tenements may be held on ultra-long leases.
- Not to convert ultra-long leases now would be to store up problems in the long term, when such ultra-long leases come to an end and the tenant loses

the property without compensation, including compensation for any improvements.

**Civil Law Division
Justice Directorate
Scottish Government**

0131 244 3322

February 2010