

# **LONG LEASES (SCOTLAND) BILL**

---

## **POLICY MEMORANDUM**

### **INTRODUCTION**

1. This document relates to the Long Leases (Scotland) Bill introduced in the Scottish Parliament on 12 January 2012. It has been prepared by the Scottish Government to satisfy Rule 9.3.3(c) of the Parliament's Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 7 EN.

### **POLICY OBJECTIVES OF THE BILL**

2. The Bill converts ultra-long leases into ownership. An ultra-long lease qualifies if it has been granted for more than 175 years and has more than 100 years left to run immediately before the appointed day laid down in the Bill. On the appointed day, all qualifying ultra-long leases will convert automatically into ownership, unless the tenant chooses to opt out. In some cases, compensatory and additional payments will be payable to the landlord by the tenant and some leasehold conditions will be preserved as real burdens in the title deeds.

3. There are exceptions from the Bill for some leases, as outlined in paragraphs 31 to 51 below.

4. The key rationale behind this Bill is that the granting of a lease of more than 175 years effectively amounts to a transfer of ownership.

5. The Government estimates there could be around 9,000 ultra-long leases in Scotland. These leases were generally granted by large estates from about 1750 to around 1930. Ultra-long leases were often granted to encourage the industrialisation of Scotland. Most ultra-long leases are for 999 years and tend to be concentrated in particular parts of the country.

6. The Government introduced a Long Leases (Scotland) Bill in the last session of the Parliament<sup>1</sup>. This Bill fell when the Parliament was dissolved for the Scottish elections in May 2011. This current Bill is along similar lines to the Bill introduced in the last session of the Parliament with a number of amendments, as outlined below, to reflect the evidence taken during the Stage 1 inquiry and the Stage 1 report produced by the Justice Committee on that Bill.

---

<sup>1</sup> This previous Bill can be found on the Scottish Parliament's website at <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/22395.aspx>

## **THE WORK OF THE SCOTTISH LAW COMMISSION**

7. The Bill is based on the draft Bill produced by the Scottish Law Commission (SLC) and published within its Report on Conversion of Long Leases (Scot Law Com No 204) in December 2006<sup>2</sup>.

8. The SLC carried out a major review of the structure of land law in Scotland resulting in the Abolition of Feudal Tenure etc. (Scotland) Act 2000, the Title Conditions (Scotland) Act 2003 and the Tenements (Scotland) Act 2004. The report on conversion of long leases marked the final stage of this review.

9. The SLC report sought to apply to ultra-long leases the principle of conversion already applied to feus by the Abolition of Feudal Tenure etc. (Scotland) Act 2000. Under that Act, all feus were converted into ownership, on a day known as the “appointed day”. On that day feudal vassals became outright owners. The SLC report extended that approach to tenants holding ultra-long leases.

## **CURRENT LAW**

10. 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.

## **ALTERNATIVE APPROACHES**

11. Two alternative approaches to this Long Leases (Scotland) Bill were considered.

12. First of all, the SLC noted, in paragraph 2.12 of its report, an alternative approach put forward by the Royal Institution of Chartered Surveyors in Scotland (RICS). The SLC noted that the RICS argued 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”. The SLC went on to note that the RICS indicated this would do away with the need for notices and exemptions and that compensation would not be required as the difference in value between 175 years and 999 years would be negligible.

13. The SLC stated that “we doubt whether a tenant who holds on a 999-year lease with an unexpired duration of 893 years would regard it as acceptable for the duration to be reduced to 175 years, with or without compensation”. The Government agreed with the SLC. Ultra-long leases are akin to ownership. Reducing their length would reduce the value of the lease to the tenant and increase the value of the lease to the landlord. There does not seem to be any good reason for taking this step.

14. Secondly, another alternative considered was to take no action. Landlords and tenants of ultra-long leases have, in some cases, reached private agreements under which the tenant buys out the landlord’s interest and the property converts to full ownership. Given that, as indicated at

---

<sup>2</sup> The report by the Scottish Law Commission can be found at [http://www.scotlawcom.gov.uk/download\\_file/view/251/](http://www.scotlawcom.gov.uk/download_file/view/251/)

paragraph 10, ultra-long leases (over 175 years long) can no longer be created, private agreements may well, in time, eliminate all ultra-long leases.

15. The obvious difficulty with this approach is that there is no guarantee how quickly private agreements would be reached and how many ultra-long leases would remain. Without legislation, there would continue to be a significant incidence of ultra-long leases for the foreseeable future and the benefits of the Bill outlined at paragraph 63 would not accrue or would accrue more slowly.

## **INCIDENCE OF ULTRA-LONG LEASES**

16. The SLC Report and the Report of the Scottish Leases Committee published in 1952 and chaired by Lord Guthrie (“the Guthrie Report”)<sup>3</sup> contained information on the incidence of long leases in Scotland and why long leases were granted in the first place.

17. Paragraph 43 of the Guthrie Report said the following in relation to the reasons for granting leases:

“The use of ground leases, so far as it became general in certain parts of Scotland in the eighteenth and nineteenth centuries, can be attributed primarily to some prohibition in the titles under which the land was held...These prohibitions were in force when the industrial development of Scotland was taking place and houses for the workers were required in the vicinity of the new mines and mills, and those landowners who could not grant feus found in ground leases an expedient whereby building development in their districts could take place in much the same way as if they had been free to grant feu rights of their land”.

18. Appendix C to the SLC report recorded the results of a survey of long leases carried out by the SLC in the year 2000.

19. Key results of this survey, which was based on information from the Land Register of Scotland for the counties of Ayr, Clackmannan, Lanark and Renfrew were:

- The most popular length of lease was 999 years (table 2 at paragraph 12 of Annex C).
- 999 year leases were popular from around 1750 until about 1930 (paragraph 16 of Annex C).
- Rent in the vast majority of ultra-long leases was very low, with 68% having a rent of £5 or less per year (paragraph 17 of Annex C).

20. The Scottish Government consulted on a draft Long Leases (Scotland) Bill in 2010<sup>4</sup>. This included a partial Regulatory Impact Assessment (RIA). Paragraphs 2.4 to 2.14 of this partial RIA included calculations, based on the previous work, on how many ultra-long leases

---

<sup>3</sup> The full title of the Guthrie Report is: Report of the Scottish Leases Committee. Command 8656. Scottish Home Department. September 1952.

<sup>4</sup> This consultation can be found at <http://www.scotland.gov.uk/Publications/2010/03/26131302/0>

might be extant in Scotland and suggested that there might still be around 9,000 left. These calculations are shown again in the Financial Memorandum attached to the Explanatory Notes for this Bill.

21. When the previous Long Leases (Scotland) Bill introduced in the last Parliament was considered by the Justice Committee, evidence was taken about long leases held on the Common Good<sup>5</sup>. A short survey of local authorities by the Scottish Government suggested that there were five leases of common good property which would be covered by the Bill.

## **CONSULTATION**

22. The SLC consulted widely on its Discussion Paper on Conversion of Long Leases (Scot Law Com DP No 112), which was published in 2001. Twenty eight organisations and individuals responded to the discussion paper. Views were also obtained at two separate meetings of the SLC's advisory group on leasehold conversion. A survey of long leases was carried out by the SLC to investigate the incidence and use of long leases in Scotland. All of this fed into the SLC's final report and draft Bill on the Conversion of Long Leases.

23. The Scottish Government issued a consultation paper and a draft Bill in March 2010<sup>6</sup>. This sought views on the Government's proposed approach to implementing the SLC Report. There were 17 responses to the consultation.

24. During the consultation, the Government held a seminar to discuss the legislative proposals with the following organisations and individuals: the Royal Institution of Chartered Surveyors, Registers of Scotland, the Clerk to the Lands Tribunal for Scotland and Professor Robert Rennie.

25. A copy of the responses to the consultation (other than those given in confidence) has been made available on the Scottish Government's website<sup>7</sup>.

26. As already indicated, a Long Leases (Scotland) Bill was introduced in the last Parliament and fell when the Parliament was dissolved for the Scottish elections in May 2011. The Bill was considered at Stage 1 and the Justice Committee produced a Stage 1 report. However, there was no Stage 1 debate at a meeting of the Parliament.

---

<sup>5</sup> This document has contextual information on the Common Good:

[http://www.cipfa.org/scotland/download/Accounting\\_For\\_The\\_Common\\_Good\\_Final\\_Version.pdf](http://www.cipfa.org/scotland/download/Accounting_For_The_Common_Good_Final_Version.pdf)

<sup>6</sup> The consultation paper can be found on the Scottish Government's website at <http://www.scotland.gov.uk/Publications/2010/03/26131302/0>

<sup>7</sup> The non-confidential consultation responses can be found on the Scottish Government's website at <http://scotland.gov.uk/Publications/2010/07/15143717/0>

## **THE BILL**

### **General**

27. The Bill is in six parts. It closely follows the recommendations in the SLC report. A table showing sections in this Bill and their equivalents in the previous Bill and in the SLC Bill is attached at Annex A to this Policy Memorandum.

### **Part 1**

#### Conversion

28. Part 1 of the Bill contains provisions on converting long leases to ownership. In particular, section 1 lays down which leases can be regarded as ultra-long leases qualifying for conversion.

29. Leases must be registered in the Register of Sasines or the Land Register to be eligible for conversion.

30. Paragraph 8.14 of the SLC report noted that “the statutory facility to register leases dates only from 1857; and while most leases granted before that year have found their way on to the register there may be some cases in which an ultra-long lease remains unregistered. If so, the numbers are likely to be very small”. However, Part 5 of the Bill makes provision for unregistered ultra-long leases to be registered and then converted to ownership, if the tenant so wishes.

#### Exemptions

31. Section 1 also excludes a number of leases from the Bill.

32. Section 1(4)(a) exempts leases where the annual rent is over £100. An exemption along these lines was first introduced following the Scottish Government consultation. Consultees suggested that the policy behind the Bill was not to convert to ownership leases where the landlord retains a significant interest. The intention is to convert to ownership ultra-long leases where the tenant is in a very similar position to an owner and the landlord has little real interest. The rent in these types of leases is very low: paragraph 18 of Appendix C to the SLC report indicated that the rent in over two thirds of ultra-long leases is under £5 a year.

33. In leases where the landlord retains a significant interest, the rent can be expected to be at a higher level. Excluding leases with a rental of over £100 will exclude very few leases (as shown by paragraph 18 of Appendix C to the SLC report) but will exclude leases where the rent is at a higher, more commercial level.

34. The Government considered two alternatives to the £100 cut-off. One option was to have a cut-off based on the date a lease was granted. This option was rejected as a date may have been arbitrary and could have excluded leases where the landlord had little remaining interest.

35. Another option was to exclude from the Bill all leases relating to commercial property. This was rejected. Paragraph 2.33 of the SLC report argued against the exclusion of commercial property from the Bill. The SLC noted that this could lead to shops on a ground floor being treated differently from the flats above. The SLC also noted that commercial property could be the subject of an ultra-long lease in much the same way as residential property.

36. The Government agreed with the points made by the SLC and also noted that property might have changed its use since the lease was first let and so it might not always be clear whether a lease was of residential property or of commercial property. There might also be leases of mixed property.

37. Section 2 of the Bill makes provision about annual rental for the purposes of section 1(4)(a). Section 2(5) provides that any variable rental is to be excluded.

38. However, the Bill makes provision subsequently to reflect the evidence taken by the Justice Committee that some leases where the landlords retains a significant interest may have a low base rental (not exceeding £100 a year) but will have a variable rental of some importance. Section 64 of the Bill allows a landlord to register an agreement with the tenant, or an order made by the Lands Tribunal under section 69, that the annual rent paid under the lease, including any variable rental, was over £100 at any point in the 5 years before Royal Assent. If such an agreement or order is registered, the lease does not convert to ownership under the Bill.

39. No exemption has been added for cases where a significant grassum or premium was paid up front and the annual rental is then very low and below £100 a year. It appears to the Government that in these cases the on-going interest of the land is low and there is no case for exemption: such leases look closer to traditional ultra-long leases, which are akin to ownership. Provision is made in the Bill for certain leasehold conditions to convert to real burdens.

40. This Bill clarifies the position in relation to leases subject to *cumulo* rent. *Cumulo* rent is defined in section 38 and means a single rent payable in relation to two or more leases.

41. Section 2(3) of the Bill has the effect of providing that leases subject to *cumulo* rent are not covered by the exemption at section 1(4)(a). However, section 39 contains provisions allowing the landlord to allocate *cumulo* rent to individual leases before the appointed day. If the rental allocated to an individual lease is over £100, the landlord may again use section 64 to register an agreement with the tenant or a Lands Tribunal order to exempt the lease from conversion. Section 64(2)(c)(i) refers specifically to the annual rent payable under the lease immediately before the appointed day being over £100: the scenario if *cumulo* rent has been allocated and one or more of the leases then has an individual annual rental of more than £100.

42. The new provisions relating to *cumulo* rent have been added to make the position clear. In practice, *cumulo* rent is a feature of traditional ultra-long leases where rental is normally very low. Therefore, the Government does not expect there to be many cases of leases subject to *cumulo* rent being exempted from the Bill because once the rent is allocated to individual leases the individual annual rental is over £100.

43. Section 1(4)(b) exempts leases which include a harbour, either wholly or partly, where there is a statutory harbour authority. This follows evidence in the Justice Committee on the last Bill on behalf of Peterhead Port Authority. This evidence suggested the Bill could impact adversely on the operation of Peterhead harbour. The Government accepts the point made. The Government wrote to other bodies with an interest in harbours. No other specific examples of potential problems were found although one body noted that there could be other similar issues in other harbours.

44. Section 1(4)(c) exempts leases granted solely to allow the installation and maintenance of pipes and cables. This exclusion was added after some consultees responding to the Government consultation indicated that they were aware of ultra-long leases granted in favour of utility and telecom companies for strips of land for cables and pipes. The specific examples mentioned were granted for exactly 175 years (and so would not be covered by the Bill, which only covers leases which exceed 175 years).

45. However, it was suggested there could be examples of such leases which are longer than 175 years. Consultees argued, and the Government agreed, that the policy behind the Bill was not to convert to ownership leases which just relate to pipes and cables. Evidence was taken on pipes and cables during Stage 1 on the previous Bill. There was some discussion about whether leases just for pipes and cables were leases which would be caught by the Bill in any event, or were simply arrangements rather than leases.

46. The Government considers it best to include the exemption to put the matter beyond doubt. The wording of the exemption has been clarified. It remains the intention that ultra-long leases of other property which happened to include pipes or cables would not be excluded.

47. Section 1(4)(d) exempts mineral leases, as rental payments in this area tend to be on a different basis to most leases and relate to the extraction of the minerals. This exemption was included in the original report by the SLC.

48. The previous Stage 1 inquiry also considered non-exclusive “leases” over private access roads. No exemption has been added to the Bill for this. The Government considers that arrangements of this nature are not covered by the Bill in the first place as there has to be some degree of exclusivity for an arrangement to be regarded formally as a “lease”.

49. One consultee also suggested that leases of substations and other public facilities should be specifically excluded. However, the Government did not follow this suggestion as no compelling evidence was put forward for the proposed exclusion.

50. Evidence was taken in the Justice Committee on long leases held on the Common Good. The Committee did not recommend that leases of common good property should be excluded from the Bill but said that any compensation received by local authorities where such leases are converted to ownership should be paid into the local authority’s common good fund.

51. The Scottish Government has written to local authorities on this point. We indicated that if the Bill should be passed by Parliament, the Scottish Government would intend to write

again to local authorities. In this further letter, we would suggest that any compensatory or additional payments paid to local authorities as a result of ultra-long leases of common good land converting to ownership should be allocated to common good funds or accounts.

### Other matters in Part 1

52. By virtue of section 3, conversion to ownership of a qualifying ultra-long lease is automatic. Registers of Scotland will not be automatically updating title sheets when conversion takes place under the Bill. Instead, title sheets will be updated when a property transaction happens. If they wish, former tenants who become owners under the Bill will be able to apply to Registers of Scotland for the title sheets to be amended to reflect their change of status, without a property transaction taking place. A charge will be made for dealing with any such applications.

53. Section 8 allows landlords to preserve rights to game or fishing. This follows similar provisions in the legislation abolishing feudal tenure<sup>8</sup>.

### **Part 2**

54. Part 2 of the Bill provides for the conversion of certain leasehold conditions into real burdens in the title deeds. “Real burdens” are defined in section 1 of the Title Conditions (Scotland) Act 2003 and, in essence, are an encumbrance on land.

### **Part 3**

55. Part 3 of the Bill makes provision in respect of the allocation of *cumulo* rent and *cumulo* renewal premium and the allocation of rent and renewal premium where there is a partially continuing lease.

### **Part 4**

56. Part 4 of the Bill contains provisions on compensation for loss of landlords’ rights. Compensatory and additional payments may be payable by tenants. The compensatory payments are based on the rent paid and are calculated by reference to 2.5% Consolidated Stock. This follows the system established when feu duty was abolished by the Abolition of Feudal Tenure etc. (Scotland) Act 2000. The aim is that the landlord should be entitled to claim a sum which, if invested in 2.5% Consolidated Stock, would produce an annual sum equal to the rent. In the vast majority of cases, the compensatory payments payable in respect of each lease will be low, given that the rent is low.

57. Part 4 also makes provision for additional payments, on top of the compensatory payments, in areas such as:

- non-monetary rents (e.g. six fat hens);
- rent reviews;

---

<sup>8</sup> Footnote 22 of the SLC report, on page 64, notes that “Section 65A of the 2000 Act allows sporting rights to be preserved as a separate tenement. According to the Registers of Scotland 65 notices were registered under s 65A”

- rent increases;
- rights to rent where the amount payable is variable (e.g. when rent is based on the turnover of a business);
- renewal premiums exceeding £100 (renewal premiums under £100 are covered in the provisions relating to compensatory payments);
- residual value of reversionary interest;
- early termination; and
- right to development value.

58. Paragraph 6.28 of the SLC report noted 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”.

## **Part 5**

59. Part 5 of the Bill covers exempt leases. A tenant (but not a landlord) may choose to opt out of converting to ownership. A tenant may choose to do so, for example, if the tenant decides the compensation payable outweighs the benefits of converting the lease to ownership. An exemption notice may be recalled at any time. Part 5 also now contains the provisions on landlords being able to register an agreement with the tenant or an order from the Lands Tribunal to exempt the lease if the annual rental is over £100.

## **Part 6**

60. Part 6 of the Bill covers miscellaneous matters. In particular, section 71 contains provisions on how the duration of leases is to be calculated. Renewals that the landlord is obliged to grant are included. Section 72 contains specific provision relating to renewals which the landlord was obliged to grant but which failed to take place (e.g. because the parties to the lease forgot about the need to renew)<sup>9</sup>. This provision was added following the Government consultation.

## **Interaction with the Land Registration etc. (Scotland) Bill**

61. Finally, this Bill will interact with the Land Registration etc. (Scotland) Bill which has recently been introduced<sup>10</sup>. In line with the usual approach it is not considered appropriate to refer in the Long Leases (Scotland) Bill to detailed provisions of the Land Registration etc. (Scotland) Bill pending approval of its general principles by the Parliament at Stage 1.

62. Accordingly, some consequential and transitional provision will need to be amended into the Long Leases (Scotland) Bill at a later stage, or put in place by ancillary order under the Bill.

---

<sup>9</sup> This has been an issue in Blairgowrie and Rattray where leases were let for 99 years, perpetually renewable.

<sup>10</sup> <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/44469.aspx>

In the meantime, the references to the Land Registration (Scotland) Act 1979 which were in the Schedule to the previous Long Leases (Scotland) Bill have been removed.

## **BENEFITS OF THE BILL**

63. The Government considers that the benefits of the Bill are:

- 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 (i.e. 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. This is not appropriate in a lease which amounts to virtual ownership by the tenant.
- The conditions in an ultra-long lease may verge on the unacceptable, given that the land is in virtual ownership.
- The conditions in an 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 may 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.

## **EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT**

### **Equal Opportunities**

64. The provisions of the Bill are not discriminatory on the basis of gender, race, age, disability, religion or sexual orientation. The Scottish Government included an Equalities Impact Assessment in its consultation and received no comments on it.

### **Human Rights**

65. The provisions of the Bill are not prejudicial to human rights.

66. Article 1 of Protocol 1 (A1P1) of the European Convention of Human Rights provides:

*“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law...”*

*“The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”*

67. The Government considered the compatibility of the Bill with A1P1. In particular:

- The Bill extinguishes landlords’ rights of ownership. However, landlords may claim compensatory payments and additional payments for the loss of their rights. (Part 4 of the Bill refers). In addition, landlords can preserve rights to game and fishing (section 8 of the Bill refers).
- Leasehold conditions are also being extinguished. However, the Bill makes provision for some conditions to be converted automatically to real burdens in the title deeds (e.g. see section 29 of the Bill on conversion to facility or service burden) and for other conditions to be converted to real burdens after a process is followed.

68. Given the provisions in place in relation to compensation and converting leasehold conditions to real burdens, the Government considered that the Bill is compatible with A1P1.

69. The Government also considered the compatibility of the Bill with other aspects of the European Convention on Human Rights, particularly Article 14. Article 14 provides:

*“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”*

70. Key issues in relation to Article 14 are outlined below.

71. To qualify for conversion under the Bill, leases must be over 175 years long and have over 100 years left to run. These periods were chosen for good reasons. Work carried out by the SLC (see the discussion in their report at paragraphs 2.13 to 2.15 and Appendix C paragraphs 11 and 12 and charts 2 and 3) indicated that most leases have been granted for around 999 years or for 125 years or less, with little in between. On the basis of those figures, the dividing line between the two types of leases would seem to be 125 years.

72. However, using 125 years as the criteria would be inconsistent with section 67 of the Abolition of Feudal Tenure etc. (Scotland) Act 2000, which prohibited the grant of new leases with a duration in excess of 175 years: this would have meant leases allowed by a recent Act of the Scottish Parliament would have been eligible to convert to ownership. (In any event, the survey carried out by the SLC suggested that there would be little difference in practice between a limit of 125 years and 175).

73. The Justice Committee took some evidence on whether the over 175 year requirement in the Bill should be changed to a different period. The Committee's Stage 1 report did not recommend any changes to this period.

74. On the requirement that the lease has more than 100 years left to run, the SLC obtained advice from the Royal Institution of Chartered Surveyors in Scotland (RICS) on when 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 refers).

75. Therefore, the Government considered there was a justification for choosing the periods of 175 years and 100 years and that Article 14 was complied with.

76. The Government also considered the position in relation to the cut-off of a rental of over £100 to exclude leases let on commercial terms. The reasons for choosing this figure are outlined at paragraphs 32 to 42 above. Given these reasons, the Government considered that Article 14 was complied with.

77. Finally, the Government considered the terms of section 72 of the Bill. This provides that renewal obligations in leases continuing on tacit relocation should be included for the purposes of calculating the duration of the lease even if the renewal did not actually happen. This provision is aimed at perpetually renewable leases where the landlord and tenant have forgotten about the renewal. The aim of the provision is to provide clarity and certainty: to do otherwise could lead to undue problems for the tenant. Given this, the Government considered that Article 14 was complied with.

### **Island Communities**

78. The provisions of the Bill have no specific effect on island communities. Any ultra-long leases on the islands will be eligible to convert to ownership in the usual way. However, there has been no evidence presented to suggest that ultra-long leases are a significant feature of land tenure in island communities.

### **Local Government**

79. The Bill does not introduce any new functions for local authorities. Local authorities may be tenants of ultra-long leases or landlords and will be covered by the Bill in the same way as other tenants or landlords. As indicated above, evidence was taken at Stage 1 in the last Parliament on leases of common good property. As stated above, we have written to local authorities about the Committee's recommendation that any compensation received by local authorities in respect of leases of common good property should be paid into the common good fund.

### **Sustainable development**

80. The Bill has no negative impact on sustainable development. The Scottish Government consultation included a Strategic Environmental Assessment pre-screening report. No comments were received on this pre-screening report.

## Annex A

### Long Leases (Scotland) Bill Table of equivalence

Section name	Section no. in current Bill	Section no. in previous Bill	Section no. in SLC Bill	Comments
<b>Part 1 CONVERSION OF LONG LEASE TO OWNERSHIP</b>				
<i>Determination of “qualifying lease”</i>				
Meaning of “qualifying lease”	1	1	1	<p>Section 1(4)(a) of the Bill exempts leases where the annual rental is over £100. This was not in the Scottish Law Commission Bill but was in the Bill in the last Parliament, following comments from consultees responding to the Scottish Government consultation.</p> <p>Section 1(4)(b) on harbours has been added following evidence at the previous Stage 1.</p> <p>Section 1(4)(c), on pipes and cables, has been clarified following evidence at the previous Stage 1.</p>
Further provision about annual rent	2	None	None	<p>New section containing provision on annual rent.</p> <p>Subsection (3) provides that where there is <i>cumulo</i> rent, this shall be treated as NIL for the purposes of section 1(4)(a). However, section 39 now provides that the landlord may allocate <i>cumulo</i> rent before the appointed day. If, after this allocation has taken place, the annual rental in an individual lease is over £100, the landlord may then register an exemption under section 64 (following an agreement with the tenant or an order by the Lands Tribunal).</p>

				Subsections (4) and (5) were previously part of section 1 in the Bill in the last Parliament. Subsection (5) provides that for the purposes of section 1(4)(a), variable rental is to be left out of account. However, section 64 now provides that a landlord may register an exemption (following an agreement with the tenant or an order by the Lands Tribunal) where the annual rental was over £100 at any point in the 5 years before Royal Assent.
Only one lease is qualifying lease	3	2	2	
<i>Conversion of right of lease to ownership</i>				
Conversion of right of lease to ownership	4	3	3	
<i>Consequences of conversion</i>				
Extinction of certain rights and obligations	5	4	4	
Subordinate real rights, reservations and pertinents	6	5	5	
Creation of servitudes on conversion	7	6	6	
Creation of reserved sporting rights	8	7	7	
Further provision for section 8	9	8	8	
<b>Part 2 CONVERSION OF CERTAIN LEASEHOLD CONDITIONS TO REAL BURDENS</b>				
<i>Determination of “qualifying conditions”</i>				
Qualifying conditions	10	9	9	
Restriction of conversion of qualifying conditions	11	10	10	
<i>Meaning of “qualifying land”</i>				
Meaning of “qualifying land”	12	11	11	
<i>Entitlement to enforce qualifying conditions</i>				
Determination of who may enforce conditions	13	12	12	

<i>Conversion of conditions to burdens</i>				
Conversion by nomination of benefited property	14	13	13(1) to (5)	
Conversion by nomination: registration	15	14	13 (6) to (9) and (11)	
Conversion by nomination: effect	16	15	13(10)	
Conversion by agreement	17	16	14(1) to (6) and (11)	
Conversion by agreement: registration	18	17	14 (7) and (8)	
Conversion by agreement: effect	19	18	14(9)	
Conversion by agreement: title not completed	20	19	14(10)	
<i>Applications relating to section 14</i>				
Lands Tribunal order	21	20	15	
Dealing with application under section 21	22	21	16	Section 22(3) of the current Bill has been amended when compared with section 21(4) of the Bill in the last Parliament. Section 22(3) does not now contain provision allowing Ministers to prescribe a time for opposing an application or making representations. If needed, rules for the Lands Tribunal may already be made by Ministers under the Lands Tribunal Act 1949.
				Section 22 of the Bill in the last Parliament (the section heading was “Amendment of Tribunals and Inquiries Act 1992”) now forms part of paragraph 2 of the Schedule to the current Bill. (The section number in the Scottish Law Commission Bill was 17).  Paragraph 2 of the Schedule to the current Bill also takes account of the new section 69.

<i>Personal real burdens</i>				
Conversion to personal pre-emption or redemption burden	23	23	18	
Conversion to economic development burden	24	24	19	
Conversion to health care burden	25	25	20	
Conversion to climate change burden	26	26	None	Climate change burdens were introduced by section 68 of the Climate Change (Scotland) Act 2009, after the Scottish Law Commission reported.
Conversion to conservation burden: rule one	27	27	21	
Conversion to conservation burden: rule two	28	28	22	
<i>Other real burdens</i>				
Conversion to facility or service burden	29	29	23	
Conversion to manager burden	30	30	24	
Conversion where common scheme affects related properties	31	31	25	
Conversion where expressly enforceable by certain third parties	32	32	26	
<i>Exclusions from conversion</i>				
Qualifying condition where obligation assumed by public authority	33	33	27	
<i>Effect of conversion on counter-obligations</i>				
Counter-obligations on conversion	34	34	28	
<i>Prescription</i>				
Prescriptive period for converted conditions	35	35	29	
<i>Notices and agreements under this Part</i>				
Further provision for notices and agreements	36	36	30	

Part 3. ALLOCATION OF RENTS AND RENEWAL PREMIUMS ETC				
<i>Key terms</i>				
Partially continuing leases and renewal obligations etc.	37	39	35(1) and 33(1)	
<i>Cumulo</i> rent and <i>cumulo</i> renewal premium	38	59	51	
<i>Allocation of rent</i>				
Allocation of <i>cumulo</i> rent before appointed day	39	None	None	This provision has been introduced to clarify that the landlord can allocate <i>cumulo</i> rent before the appointed day. When such allocation takes place and the annual rental for an individual lease is over £100, the landlord can then register an exemption under section 64 of the current Bill.
Allocation of <i>cumulo</i> rent after appointed day	40	42	36	Section title in the previous Bill was “Allocation of <i>cumulo</i> rent”
Partially continuing leases: allocation of rent	41	43	35	
<i>Allocation of renewal premium</i>				
Allocation of <i>cumulo</i> renewal premium	42	45	38	
Partially continuing leases: allocation of renewal premium	43	46	38	
<i>Allocation disputed or not made</i>				
Allocation disputed or not made: reference to Lands Tribunal	44	47	37	Section 44(1)(a) of the current Bill has been added to reflect the addition of section 39.
Part 4. COMPENSATION FOR LOSS OF LANDLORD’S RIGHTS				
<i>Compensatory payment</i>				
Requiring compensatory payment	45	37	31	
Making compensatory payment	46	38	34	
<i>Calculation of compensatory payment</i>				
Calculation of the compensatory payment	47	40	32	

<i>Annual rent</i>				
Determination of the annual rent	48	41	31(3)	
<i>Renewal premiums</i>				
Calculation of notional annual renewal premium	49	44	33	
<i>Additional payment</i>				
Claiming additional payment	50	48	39	
Extinguished rights	51	49	40	
Calculating additional payment	52	50	41	
Additional payment: former tenant agrees	53	51	42	
Additional payment: amount mutually agreed	54	52	43	
Claim for additional payment: reference to Lands Tribunal	55	53	44	
<i>Supplementary</i>				
Claims in excess of £500: preliminary notice	56	54	45	
Making payments by instalments	57	55	46	
Collecting third party to disclose information	58	56	48	
Duty to disclose identity etc. of former tenant	59	57	49	
Prescription of requirement to make payment	60	58	50	
Interpretation of Part 4	61	60	52	
<b>Part 5. EXEMPTION FROM CONVERSION AND CONTINUING LEASES</b>				
<i>Exempt leases</i>				
Exempt leases	62	61	53	
<i>Types of exempt lease</i>				
Exemption of qualifying lease by registration of notice	63	62	54	

Exemption of qualifying lease by registration of agreement or order	64	None	None	<p>This is a new provision, reflecting evidence at Stage 1 last time round.</p> <p>The provision allows the landlord to register an exemption where the annual rental payable under the lease immediately before the appointed day will be over £100 or where the annual rental paid under the lease was over £100 at any point in the 5 years immediately before the Bill received receives Royal Assent.</p> <p>The provision relating to any point in the 5 years before Royal Assent reflects the evidence at Stage 1 that some rentals may be variable (eg may be based on turnover).</p> <p>The provision allowing an exemption to be registered immediately before the appointed day reflects that once the landlord has allocated <i>cumulo</i> rental under section 39, it is possible that the annual rental in an individual lease may be over £100.</p> <p>An exemption may be registered by the landlord under section 64 after reaching an agreement with the tenant or after obtaining an order from the Lands Tribunal under section 69.</p>
Certain leases registered near or after the appointed day	65	63	55	
Subleases of exempt leases	66	64	56	
<i>Recall of exemption</i>				
Recall of exemption	67	65	57	
<i>Supplementary</i>				
Exemption and recall notices: supplementary	68	66	58	
Application to Lands Tribunal for order confirming rent	69	None	None	<p>This is a new provision allowing applications to the Lands Tribunal for an order that the annual rental immediately before the appointed day will be over £100 or that the annual rental at any point in the 5 years before Royal Assent was over £100. An application may only be made to the Tribunal after an attempt has been made by the</p>

				landlord to reach agreement with the tenant.
<b>Part 6. GENERAL AND MISCELLANEOUS</b>				
<i>The appointed day</i>				
The appointed day	70	67	59	The definition now just refers to Martinmas only (rather than Whitsunday as well).
<i>Duration of lease etc.</i>				
Determining duration of lease	71	68	60	
Leases continuing on tacit relocation	72	69	None	Provision was added to the previous Bill and is included again in this Bill to reflect the fact that some renewable leases may not have been renewed formally and, instead, may be continuing on tacit relocation.
<i>Extinction of right of irritancy in certain leases</i>				
Extinction of right of irritancy in certain leases	73	70	61	No longer commences on Royal Assent.
<i>Notices etc.</i>				
Service of notices	74	71	47	
Notices: pre-registration requirements	75	72	62	
Keeper's duty as regards documents	76	73	63	Minor amendments have been made to section 76 to reflect that some of the provisions of the Bill relate to notices and some to agreements. Consequential changes have also been made (see section 76(5)) to reflect new sections 64 and 69.
Disputed notices: reference to Lands Tribunal	77	74	64	
Certain documents registrable despite initial rejection	78	75	65	Provision has been added to reflect the new section 64.
<i>Miscellaneous</i>				
Amendments to enactments	79	76	67	
Interpretation	80	77	68	
Ancillary provision	81	78	None	
Subordinate legislation	82	79	69	
Commencement	83	80	70	
Short title	84	80	70	

<p>Minor and consequential amendments</p>	<p>SCHE DULE</p>	<p>SCHED ULE</p>	<p>SCHED ULE 21</p>	<p>The Scottish Law Commission Bill had schedules of forms and a table of life expectancy. The Government considers it preferable to prescribe the forms and the table of life expectancy by SSI.</p> <p>Amendments to the Land Registration (Scotland) Act 1979 have been removed. A Land Registration (Scotland) Bill has recently been introduced and, as a result, the Government expects to have to make consequential amendments to the Long Leases (Scotland) Bill at Stage 2.</p> <p>What was section 23 in the Bill introduced into the last Parliament now forms part of paragraph 2 of the Schedule.</p>
---	----------------------	----------------------	-------------------------	---



*This document relates to the Long Leases (Scotland) Bill (SP Bill 7) as introduced in the Scottish Parliament on 12 January 2012*

# **LONG LEASES (SCOTLAND) BILL**

## **POLICY MEMORANDUM**

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2012.

Applications for reproduction should be made in writing to the Information Policy Team, Office of the Queen's Printer for Scotland, Admail ADM4058, Edinburgh, EH1 1NG, or by e-mail to: [licensing@oqps.gov.uk](mailto:licensing@oqps.gov.uk).

OQPS administers the copyright on behalf of the Scottish Parliamentary Corporate Body.

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by APS Group Scotland.

ISBN: 978-1-4061-8147-0