

LONG LEASES (SCOTLAND) ACT 2012

EXPLANATORY NOTES

PART 3: ALLOCATION OF RENTS AND RENEWAL PREMIUMS ETC.

Allocation of rent

Section 40: Allocation of cumulo rent after appointed day

164. Where the annual rent payable under the lease is a *cumulo* rent, as defined in section 38, that rent requires to be allocated before the compensatory payment can be calculated under Part 4. This section sets out the rules for doing so.
165. Subsection (2) directs the landlord to allocate the *cumulo* rent between the leases within 2 years of the appointed day. The rent is to be allocated between all of the leases in respect of which *cumulo* rent was payable. The allocation must be in such proportions as are reasonable in the circumstances (subsection (3)).
166. Subsection (4) creates a presumption that the landlord's allocation is reasonable if it accords with an apportionment made before the appointed day. This presumption is relevant only in cases where an apportionment was made without the consent of the landlord. For example, where the rent is collected by a property manager or other third party and remitted to the landlord in a single sum. To assist the landlord, section 58 requires any third party collector to disclose to the landlord information about the tenants from whom the rent has been collected and the amount collected.
167. Under subsection (5), the sum allocated to a lease that continues after the appointed day is the annual rent payable under that lease from the appointed day, subject to any allocation under section 41 in relation to partially continuing leases.