

## **POLICY NOTE**

### **THE LONG LEASES (APPEAL PERIOD) (SCOTLAND) ORDER 2014**

#### **SSI 2014/ 8**

The powers to make this Order are conferred by section 78(5)(b) of the Long Leases (Scotland) Act 2012. It is subject to the negative parliamentary procedure.

#### **Policy Objective**

The Long Leases (Scotland) Act 2012 converts ultra-long leases (over 175 years long meeting certain conditions) into ownership with appropriate compensatory and additional payments payable by tenants to their landlords. It implements a Scottish Law Commission report (SLC) – the last in their series which also covered feudal abolition, title conditions and tenements

Key provisions of the Act are:

- Converts to ownership ultra-long leases let for more than 175 years which have at the appointed day, more than 175 years left to run (non-residential leases) or more than 100 years left to run (residential leases). (There are some exclusions such as mineral leases; leases where the annual rental is over £100; leases which include a harbour; and leases relating to pipes and cables).
- Allows some leasehold conditions to become real burdens in the title deeds.
- Compensatory and additional payments may be payable by tenants to landlords.
- Allows landlords to preserve sporting rights in relation to game and fishing.
- Allows tenants to opt out of converting to ownership, if they wish.

Section 78(5)(b) of the Act confers power on the Scottish Ministers to make orders specifying the period during which applications to the Court of Session, sheriff court, or Lands Tribunal have to be made for notices to be registrable following a rejection by the Keeper.

Section 78 is modelled on section 45 of the Abolition of Feudal Tenure etc. (Scotland) Act 2000. The effect of section 78(5)(b) is that registrations of notices or agreements determined registrable by the court or the Lands Tribunal, following rejection of the notice or agreement by the Keeper, may only take place if the application to the court or the Lands Tribunal is made during a period specified by order made by the Scottish Ministers.

The Government concluded that a period of 8 weeks should be prescribed. It is of the view that this gives sufficient time for a person who has had a notice or agreement rejected by the Keeper to consider if he or she wishes to challenge that decision in the Court of Session, sheriff court or Lands Tribunal and, if so, to take the necessary steps.

A period of 8 weeks is in line with the approach taken in relation to section 45 of the 2000 Act. The Abolition of Feudal Tenure etc. (Scotland) Act 2000 (Prescribed Periods) Order 2004 (SSI 2004/478) made provision on prescribed periods. That Order provides that where a notice or agreement was rejected on or before the appointed day (28 November 2004 for the abolition of feudal tenure), an application could be made to the courts or Lands Tribunal on

or before 21 January 2005. Where a notice or agreement was rejected after the appointed day, the application had to be made within 8 weeks of the date of rejection.

## **Consultation**

A commitment was given to Parliament during the passage of the Bill that a consultation would be held on the prescribed form of notices as well as the time periods for applying to the Lands Tribunal or court to register a notice rejected by the Keeper. The consultation ran from 12 August to 4 November 2013. The consultation paper contained the draft Scottish Statutory Instrument (SSI) on the appeal period in respect of notices registered under section 78(2) of the Act. Consultees were asked if they agreed with Government's proposed approach to the draft SSI and the decision not to specify a date or period under section 78(5)(a) after which notices and agreements could not be registered. No responses to the consultation were received. The consultation was issued to corporate bodies with an interest in the legislation. We also issued it to academics who had given evidence (oral and/ or written) to the Rural Affairs, Climate Change and Environment Committee during the process of the Bill through Parliament.

## **Equality Impact Assessment**

An equality impact assessment was completed on 25 January 2010. No equality impact issues were identified. The Act is aimed at tenants holding ultra-long leases and their landlords. There was 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.

<http://www.scotland.gov.uk/Publications/2010/03/26131302/19>

## **Financial effects**

Impact Assessments (Partial regulatory, equality and a strategic environmental assessment pre-screening report) were carried out for the Bill. In addition, further information on costs was contained in the Financial Memorandum prepared for the Bill. Therefore no further impact assessments were carried out for the additional consultation or for the SSIs.

As indicated previously in paragraph 5.24 of the Regulatory Impact Assessment and paragraph 319 of the Financial Memorandum, there will be fees in respect of any Lands Tribunal cases relating to long leases. The Government does not expect many such cases to arise. The fees charged would be along similar lines to fees charged in cases relating to the abolition of feudal tenure cases.

The partial Regulatory Impact Assessment is at

<http://www.scotland.gov.uk/Publications/2010/03/26131302/18>