

Leasehold Casualties (Scotland) Act 2001

2001 asp 5

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Leasehold Casualties (Scotland) Act 2001

2001 asp 5

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 8th March 2001 and received Royal Assent on 12th April 2001

An Act of the Scottish Parliament to provide for the extinction of leasehold casualties; for the payment of compensation on their extinction; for irritancy provisions in certain leases of land to be void; for the disapplication, in relation to certain leases, of the rule of law entitling a landlord in certain circumstances to terminate a lease; and for connected purposes.

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The Bill for this Act of the Scottish Parliament was passed by the Parliament on 8th March 2001 and received Royal Assent on 12th April 2001

An Act of the Scottish Parliament to provide for the extinction of leasehold casualties; for the payment of compensation on their extinction; for irritancy provisions in certain leases of land to be void; for the disapplication, in relation to certain leases, of the rule of law entitling a landlord in certain circumstances to terminate a lease; and for connected purposes.

(1) In a relevant lease (that is to say, in a lease of land granted before 1st September 1974 for a period of not less than one hundred and seventy-five years), any provision which stipulates for payment of a casualty is void; and, accordingly, any such payment which would, but for this subsection, have fallen due on or after the relevant day shall not be exigible.

(2) In subsection (1) above, any reference to a payment falling due shall be construed, in a case where the provision in the relevant lease stipulates for payment to be deferred until the death of the last person to pay a casualty, as a reference to its falling due on the date of death of that person.

(3) This section shall be deemed to have come into force on the relevant day.

2 Landlord's right to require compensation in respect of extinction of casualty

(1) Where a casualty is extinguished by virtue of section 1 of this Act, a landlord may, not later than one year after the day on which this Act received Royal Assent, give written notice to the tenant-

(a) requiring the tenant to pay to him compensation calculated in accordance with section 3 of this Act; and

(b) specifying the amount of compensation required as calculated by him;

and the tenant shall be liable to pay such compensation.

(2) Any error in a calculation under paragraph (b) of subsection (1) above shall not affect the validity of the notice under that subsection.

(3) For the purposes of this section, "tenant" means the person who, on the relevant day, has the interest of tenant in the relevant lease.

3 Calculation of compensation

(1) Subject to subsection (2) below, where by virtue of section 2(1) of this Act a tenant is liable to pay compensation, the amount payable shall be-

(a) in a case where-

(i) a period of eighty or more years of the relevant lease is unexpired on the relevant day; and

(ii) the lease stipulated for payment of a casualty of an unvarying amount at fixed and regularly recurring intervals of nineteen, twenty, twenty-one, twenty-five or, as the case may be, thirty years,

the product of the amount of the casualty and the multiplier obtained from the Table of Multipliers in schedule 1 to this Act (the reference in the first column of that table to the relevant period being a reference to the period (if any) between the relevant day and the date on which the casualty would, but for this Act, next be payable);

(b) in a case where-

(i) sub-paragraph (ii), but not sub-paragraph (i), of paragraph (a) above is satisfied; or

(ii) the relevant lease stipulated for payment of a casualty of an unvarying amount at fixed and regularly recurring intervals other than any interval mentioned in sub-paragraph (ii) of that paragraph,

the product of the amount of the casualty and the multiplier obtained in accordance with schedule 2 to this Act;

(c) in a case where the relevant lease stipulated for-

(i) payment of a casualty on, or by reference to, the entry of an assignee; and

(ii) the payment to be made at any time other than on the death of the person who last paid a casualty,

the product of the amount of the casualty and 0.75;

(d) in a case where the relevant lease stipulated for payment of a casualty on, or by reference to-

(i) the entry of an heir; or

(ii) the death of any person,

the product of the amount of the casualty and 0.03; and

(e) in any other case, the sum of the discounted values as at the relevant day of the amounts which would, but for this Act, have been payable in respect of the casualty; and any dispute as to the amount payable under this paragraph shall be referred to and determined by the Lands Tribunal for Scotland.

(2) Where compensation is payable in respect of the extinction of a casualty based on the rent (other than ground rent or tack duty), or rental value, of the land held under the relevant lease, subsection (1) above shall apply subject to the following modifications-

(a) in each of paragraphs (a) to (d) of that subsection, for the words "amount of the casualty" there shall be substituted the words "amount of the ground rent or, as the case may be, tack duty payable under the relevant lease"; and

(b) in paragraph (e) of that subsection, the amounts which would have been payable shall be taken to be amounts each of which is equal to the ground rent or, as the case may be, tack duty payable under the relevant lease; but no other modification of the terms of the

casualty (including any provision as to when the casualty is payable) shall be made for the purposes of this paragraph.

4 Prescriptive period for payment of compensation on extinction of casualty

In Schedule 1 to the Prescription and Limitation (Scotland) Act 1973 (c.52) (obligations affected by prescriptive periods of five years to which section 6 of that Act applies)-

(a) after paragraph 1(a) there shall be inserted-

"(aa) to any obligation to pay compensation by virtue of section 2 of the Leasehold Casualties (Scotland) Act 2001 (asp 5);"
and

(b) in paragraph 2(e), after the words "paragraph 1(a)" there shall be inserted "or (aa)".

5 Irritancy provisions in certain leases to be void

(1) This section applies to any relevant lease-

(a) granted before 10th August 1914; and

(b) stipulating for payment of a ground rent, or tack duty, of not more than £150 in respect of each year.

(2) In so far as any provision in a relevant lease to which this section applies-

(a) purports to terminate the lease, or to entitle the landlord to terminate it, in the event of a failure of the tenant to comply with any provision in the lease; or

(b) deems such a failure to be a material breach of contract,

that provision is void.

(3) This section shall be deemed to have come into force on the relevant day.

6 Irritancy: limited disapplication of common law

(1) The rule of law entitling a landlord to terminate a lease in the event of a failure of the tenant to pay the rent due under the lease for a continuous period of two years shall not apply in relation to a relevant lease to which section 5 of this Act applies.

(2) This section shall be deemed to have come into force on 12th February 2001.

7 Liability for casualty due by former tenant not to transmit on assignation, or other transfer, of lease

(1) Where-

(a) before, on or after the relevant day a relevant lease is assigned, or otherwise transferred, to a new tenant; and

(b) any casualty payable under the lease by a former tenant is, on such assignation or other transfer, due but unpaid,

the new tenant shall not be liable to pay it.

(2) Nothing in subsection (1) above shall-

(a) entitle a new tenant to recover any amount which he has paid to the landlord;

(b) affect any agreement concluded before the relevant day between a new tenant and the landlord; or

(c) prevent a landlord enforcing any decree obtained before the relevant day against a new tenant.

(3) Any reference in this section to a relevant lease being assigned, or otherwise transferred, includes a reference to the lease being partially assigned or, as the case may be, partially transferred.

(4) This section shall be deemed to have come into force on the relevant day.

8 Transitional application of sections 5 to 7

(1) Without prejudice to the generality of section 5 of this Act, that section shall apply for the purposes of any action commenced before the relevant day which concerns a provision such as is mentioned in subsection (2) of that section and in which final decree is not granted before that day.

(2) Without prejudice to the generality of section 6(1) of this Act, that section shall apply for the purposes of any action for irritancy founded on the rule of law mentioned in that section which is commenced before 12th February 2001 and in which final decree is not granted before that day.

(3) Without prejudice to the generality of section 7 of this Act, that section shall apply for the purposes of any action against a new tenant commenced before the relevant day for payment of a casualty such as is mentioned in subsection (1)(b) of that section and in which final decree is not granted before that day.

(4) For the purposes of this section "final decree" means any decree or interlocutor which-

(a) disposes of an action; and

(b) is not subject to appeal or review.

9 Saving: proceedings in respect of section 12 of Land Registration (Scotland) Act 1979

Nothing in this Act shall affect any proceedings in respect of a claim to indemnity under section 12 of the Land Registration (Scotland) Act 1979

(c.33) (circumstances in which person entitled to indemnification by Keeper) which have commenced, but have not been finally disposed of, before the relevant day.

10 Interpretation

(1) In this Act, unless the context otherwise requires-

"casualty" means any duplicand or other periodical or casual payment stipulated in a relevant lease to be payable by the tenant to the landlord in addition to the rent;

"lease" includes sublease;

"relevant day" means 10th May 2000; and

"relevant lease" shall be construed in accordance with section 1(1) of this Act.

(2) For the purposes of reckoning the periods mentioned in sections 1(1) and 3(1)(a)(i) of this Act-

(a) any provision in a lease (however expressed) enabling the lease to be terminated earlier than the date on which the lease would otherwise terminate shall be disregarded; and

(b) where a lease includes provision (however expressed) requiring the landlord to renew the lease, the duration of any such renewed lease shall be added to the duration of the original lease.

11 Short title and Crown application

(1) This Act may be cited as the Leasehold Casualties (Scotland) Act 2001.

(2) This Act binds the Crown.

SCHEDULE 1
(introduced by section 3(1)(a))

TABLE OF MULTIPLIERS (omitted)

SCHEDULE 2
(introduced by section 3(1)(b))

METHOD FOR CALCULATING MULTIPLIER

(1) As respects each date on which, but for this Act, a payment of the casualty would have fallen due, a value shall, subject to paragraphs 2 and 3 below, be calculated, rounded to three decimal places, in accordance with the formula-

$$\frac{1}{1.1n}$$

where n is the period, in years, between the relevant date and the date of the payment; and the sum of all the values so calculated shall be the multiplier for the purposes of section 3(1)(b) of this Act.

(2) For the purposes of paragraph 1 above, for any case where the period is-

(a) less than $\frac{1}{2}$ year (or is nil), the value shall be 1;

(b) $\frac{1}{2}$ but less than 1 year, the value shall be 0.953.

(3) For the purposes of reckoning n in paragraph 1 above, where the period is more than one year, n shall be the whole number of years in question (with any time in excess of that number being ignored).