

Scottish Law Commission

.....*News Release*.....*News Release*.....*News Release*....

ISSUED ON BEHALF OF THE SCOTTISH LAW COMMISSION

NOT FOR PUBLICATION OR BROADCAST

BEFORE 0001 HOURS

TUESDAY 17 APRIL 2001

CONVERSION OF LONG LEASES

The conversion of ultra-long leases to ownership is proposed in a discussion paper published today by the Scottish Law Commission.

A relatively small number of properties in Scotland are held on leases for 999 years or other similar periods. A person holding under such a lease resembles an owner. Yet in strict law he is not the owner, and can be dispossessed for failure to comply with the terms of the lease. In its Discussion Paper on *Conversion of Long Leases* (No 112) the Commission proposes that such ultra-long leases should be converted into ownership. The Commission's scheme, on which views are invited, is modelled on the scheme contained in the Abolition of Feudal Tenure etc. (Scotland) Act 2000 for the conversion of feus into ownership. No compensation would be payable to the landlord other than for loss of rent.

The Commission also seeks views on whether conversion should be available for leases of much shorter duration if a house has been built on the land. Under a provisional scheme contained in the discussion paper, a right to buy could be conferred on tenants of residential leases granted for 50 years or more. A possible alternative to such a scheme might be the introduction of some form of security of tenure.

ULTRA-LONG LEASES

A lease is not “ultra-long” in the sense meant here unless it was granted for more than 175 years and has more than 100 years to run. In fact research carried out by the Commission suggests that almost all ultra-long leases were granted for much longer periods – such as 760 or 999 years – and still have many hundreds of years to run. The Commission proposes that ultra-long leases should be converted into ownership, in much the same way as feus are to be converted into ownership under the Abolition of Feudal Tenure etc. (Scotland) Act 2000. This would complete the reform of land tenure begun by the 2000 Act. It would also follow logically from the prohibition on new leases of more than 175 years contained in that Act.

The Commission’s provisional scheme is modelled on the scheme for feus in the 2000 Act. On a fixed day, known as the “appointed day”, all ultra-long leases would automatically be upgraded to ownership. The landlord would be entitled to compensation for loss of rent. In most cases rents are small; but a tenant who was not willing to pay compensation could opt out of the conversion scheme by registration of a notice before the appointed day. On conversion, the tenant would become owner. All conditions contained in the lease would be extinguished, other than those concerned with maintenance and use of common facilities or the provision of services, or those preserved by the landlord for the benefit of neighbouring land. Special provision is made for rights of way and other servitudes.

RESIDENTIAL GROUND LEASES

Most residential ground leases would fall under the scheme just described. If a lease did not qualify, this would usually be because it was too close to expiry. Research carried out by the Commission suggests that there are a small number of residential ground leases – perhaps fewer than 1000 – that were granted for initially quite long periods but are now in their final years. Such leases occupy a difficult middle ground. They are excluded from the automatic conversion of the earlier scheme because the landlord’s interest is often of considerable value and would require to be bought out. But they are excluded also from the statutory security of tenure which applies to many standard residential leases at higher rents. The result is that the tenant must leave at the end of the lease, and is not entitled to compensation for loss of the house or other improvements.

For a period of 5 years in the 1950s it was possible to convert leases of this kind which had been granted for 50 years or more into ownership on payment of compensation to the landlord. In effect, this was a right-to-buy scheme. The relevant legislation, the Long Leases (Scotland) Act 1954, has now lapsed. The Commission invites views as to whether a new scheme should be introduced modelled on the 1954 Act but with certain changes, largely of a technical nature. Alternatively, the Commission asks whether tenants of such leases would be better served by a form of security of tenure – such as an extension of the lease for a fixed period.

NOTES TO EDITORS

1. The Scottish Law Commission was set up in 1965 to promote the reform of the law of Scotland. The Chairman is the Hon Lord Gill. The other Commissioners are currently Mr Patrick S Hodge QC, Professor Gerard Maher, Professor Kenneth G C Reid and Professor Joseph M Thomson.

2. Further information can be obtained by contacting Mr John Dods, Scottish Law Commission, 140 Causewayside, Edinburgh EH9 1PR (Tel: 0131 668 2131, Fax: 0131 662 4900, e-mail: info@scotlawcom.gov.uk, website: www.scotlawcom.gov.uk).