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Delegated Powers and Law Reform Committee

Contract (Formation and Remedies) (Scotland) Bill at Stage 1



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Delegated Powers and Law Reform Committee

To consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1;

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule; and

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



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Introduction

Background to the Bill

1. The Bill was introduced by Angela Constance MSP, Cabinet Secretary for Justice and Home Affairs, in the Scottish Parliament on 2 October 2025.
2. It implements recommendations made by the Scottish Law Commission (“SLC”) in 2018 in its *Review of Contract Law: Formation, Interpretation, Remedies for Breach, and Penalty Clauses* report, which concluded that some parts of contract law are unclear, difficult to find and in need of modernisation.¹
3. The SLC has been looking at issues related to contract law since it was first established in 1965. A proposal for a comprehensive review of contract law was part of the SLC’s first programme of law reform, with much work being carried out over the years since.
4. This work is fully narrated in the Scottish Parliament Information Centre (“SPICe”) briefing on the Bill², and was discussed in the oral evidence of Professor Hector MacQueen from the SLC, setting out the detail of the initial ambitious project which never came to pass, and how this present Bill came into being.³
5. The Bill was determined as a ‘Scottish Law Commission Bill’ under Rule 9.17A of the Scottish Parliament’s Standing Orders. The Delegated Powers and Law Reform Committee was subsequently designated as lead committee for Stage 1 consideration of the Bill.
6. The Committee issued a wide call for views on the Bill, which ran from 10 October to 2 November 2025. This was emailed to 262 recipients, and followed up on 24 and 31 October. Additionally, efforts were made on social media to seek views from the general public, from those following the Parliament and Committee’s channels.
7. 12 responses to the call for views were received⁴.
8. The Committee held oral evidence sessions on 18 and 25 November, and on 2 December 2025. It heard from:
 - the Scottish Law Commission,
 - academics,
 - the Law Society of Scotland,
 - industry representative bodies and a practicing lawyer, and
 - the Minister for Victims and Community Safety, Siobhian Brown MSP, (“the Minister”) and Scottish Government officials.
9. Full details of the Committee’s meetings, and those who gave oral evidence, are set out at Annexes A and B.

10. The Committee is grateful to all those who helped inform its consideration of the Bill.

Overview of the Bill

11. Part 1 of the Bill makes provision for about the formation of contracts. Part 2 makes provision on remedies for breach of contract. With the exception of the provisions regarding contributory negligence, Part 2 is concerned with "defensive" or "self-help" remedies (i.e. remedies exercised by parties themselves which do not require court proceedings to be raised.)
12. Part 3 of the Bill contains general provisions (saving, ancillary and commencement provisions), as well as making provision for the short title of the Act.
13. The provisions on formation and remedies in the Bill are generally a starting point or default provisions, with parties having the option to contract out of almost all of that provision. They can, therefore, provide their own, different, rules by reciprocal agreement.
14. The substantive exceptions to the ability to contract out of the Bill's provisions are the Bill's abolition of the postal acceptance rule (discussed in greater detail in the section of this report on Part 1 of the Bill); and the Bill's amendment of the Law Reform (Contributory Negligence) Act 1945, which aims to make it clear that the defence of contributory negligence under the Act applies to all claims of damages for breach of contract.
15. Unusually, in addition to the provisions contained in the Bill at introduction, the Scottish Government wrote to the Committee⁵ at that point indicating that it plans to amend the Bill at Stage 2 to include provisions in relation to the law of retention, which were not included in the original Bill proposed by the SLC. This proposal is discussed in detail in the section on Part 2 of the Bill.

Committee scrutiny of the Bill

General issues

Need for reform

16. At present, the majority of the rules governing contract law in Scotland are still based on the common law (i.e. general principles, and precedents from court cases). That said, over the years, various statutes have reformed some of the principles underlying Scots contract law. Legislation in other fields (for example, consumer law, employment law, housing law, competition law etc.) has also had an impact on contracts in certain areas.
17. The SLC's work concluded that some parts of contract law are unclear, difficult to find and in need of modernisation⁶. The Scottish Government's Policy Memorandum states "The overall policy aim is to produce rules that are as clear, certain and accessible as possible."⁷
18. The Bill seeks to achieve this by producing default rules relating to the creation (formation) of contracts and certain aspects of the law on remedies for breach of contract.
19. The response to the Committee's call for views suggests that there appears to be support for the approach taken. Only one respondent, Dr Jonathan Brown from the University of Strathclyde, was clearly against the proposals.
20. Professor Hector MacQueen, former lead commissioner at the SLC, stated that the "main advantage" of reform was to reduce the "considerable uncertainty" that a lack of cases coming up in court can mean when statute law does not exist.⁸
21. Professor Bogle and Tom Johnson, from the University of Glasgow, echoed the point made by Professor MacQueen. They argued that the present situation relying on case law is not sufficient. They noted:
 - ” Considering the landscape of contemporary litigation in Scotland, it is increasingly evident that reform is needed – particularly due to the limited body of case law and a discernible hesitancy within the Scottish judiciary to articulate general principles beyond the specific factual matrix of individual cases. This cautious, case-by-case approach has contributed to a degree of legal uncertainty, especially in commercial contexts where predictability and clarity are paramount.⁹
22. Lorna Richardson from the University of Edinburgh also explained her support for the Bill, and why she considered it an appropriate, positive step. She said:

” the law will certainly be much clearer with the bill than it is at the moment.

At the moment, if you need to understand how a contract is formed, you need, at the very least, to be able to buy a textbook, to know which textbook to buy and what the terminology means. There are problems not just in getting people to understand those materials but to be able to access them. Together with the explanatory notes, the bill will go some way to helping someone who seeks to understand, at least at a basic level, what their rights are, whether a contract has been formed, and so on.¹⁰

23. The Federation of Small Businesses (FSB) also supported the Bill’s overall aims stating that “the provisions seem sensible and practical”.¹¹ In oral evidence, Colin Borland of the FSB stated:

” It is quite sensible to have the bill to provide clear backstops where they have not been agreed in other terms by the parties. That makes perfect sense. As a general principle, anything that is done to codify, simplify or clarify the law and to make it easier for us as laypeople to understand has to be a good thing.¹²

24. Dr Hamish Patrick, a Partner at the law firm Shepherd and Wedderburn, and who appeared on behalf of the Law Society of Scotland (“the Law Society”), submitted written evidence in a personal capacity. He stated:

” While the existing law works reasonably well in most circumstances there are some advantages, particularly for personal and small business contracts, in clarifying or changing some of the rules as suggested in the Bill and making them more predictable and accessible for private individuals and small businesses.¹³

25. Similarly, the Law Society suggested that, although it may be “overstating matters” to argue that Scots contract law “needs” reformed,

” ... it is clear that a new statutory regime has the potential to offer benefits to certain parties by offering users a means to form agreements without a detailed understanding of case law or wider academic and institutional writings.¹⁴

26. However, Dr Jonathan Brown from the University of Strathclyde was not convinced that reform was needed. He argued that “the law relating to formation of contract more generally is not currently causing any major difficulties in practice” and that legislative reform “may prove actively harmful to the coherence of the Scots law of obligations more widely and indeed Scots private law more generally”. He takes the view that one should not try to reform the law of contract on its own as:

” By separating the rules relating to the formation of contract from those of the other legal instruments and relations created by the will and intention of legal persons, the proposed legislation will make it more difficult for the common law to develop in a rational and consistent manner.¹⁵

27. The Minister told the Committee that the Bill will make the law clearer and more accessible, as well as address uncertainty on a number of specific points around

contract law. She also argued that the “overwhelming majority of consultees...agreed that law reform is needed in this area.”¹⁶

28. **The Committee agrees that a law which sets out default rules relating to the formation of contracts and certain aspects of the law on remedies for breach of contract is an appropriate way to produce rules that are as clear, certain and accessible as possible.**

How the Bill operates and whether it achieves its aims

What is in the Bill

29. The Bill is not a complete statutory codification of the Scots common law on contract, and is silent on various aspects of contract law.
30. This is in line with the SLC's recommendations, which reflected input it received during the consultation process. For example, Part 2 is not a full statutory statement of the law on remedies for breach of contract, but is focused on three areas which it was felt merited clarification.
31. Further information about areas not included in the Bill, and why decisions were made to this effect, are set out in detail in the SLC's report¹⁷ and SPICe briefing on the Bill¹⁸.
32. As a result, many aspects of contract law will still be governed by the common law rather than legislation. In some cases, there will also be an interplay between the new statutory rules and the existing common law rules.
33. Professor MacQueen outlined that in the 1960s, when the Scottish Law Commission and the Law Commission (of England and Wales) were set up, there was a project to have a UK contract code, but that that project had failed. As such, since then “both Law Commissions have been wary of overly ambitious codes in general.”¹⁹ Professor MacQueen suggested that the Bill is:
- ” simply intervening in areas where there has definitely been difficulty. It is quite clear that uncertainty and problems exist for advisers, as much as for anyone else. Beyond that, yes, we reviewed the whole area in my exercise, but it was never the intent that the exercise should lead to a comprehensive statutory statement in that particular area. Even the formation is not a comprehensive statement. We were trying to solve real problems that we had identified.”²⁰
34. Professor MacQueen also confirmed that other areas, including the so-called battle of the forms, were considered for reform when the SLC's project began, but that there either did not seem to be a satisfactory statutory solution or there was not as much consensus. He further noted that, in relation to “the battle of the forms” the courts are developing the common law in this area in a “commonsense way”.²¹

35. Professor MacQueen acknowledged that there could be a case for the SLC to undertake more work in other areas of contract law not covered by the Bill, and noted that it will consult on its next programme of work in 2026.²²
36. Again, the approach taken by the Bill found general support from respondents to the Committee's call for views and witnesses.
37. Professor Stephen Bogle from the University of Glasgow supported the content of the Bill. He suggested reforming the law in "a strategic way allows us to look at every individual reform in a clear way and build up slowly."²³ Lorna Richardson agreed with this, making the point that time pressures mean it is "sensible" to focus on "fixing areas where there are problems." She contended that most other areas considered by the SLC are being "developed appropriately by the court"²⁴ (with the exception of retention, covered under the section of this Report looking at Part 2), while Dr Hamish Patrick confirmed he also supported this "incremental" approach.²⁵
38. The limited focus of the Bill also found support from Andrew Agapiou from the Royal Incorporation of Architects in Scotland (RIAS). He told the Committee that:
- ” issues such as interpretation, penalty clauses and the battle of the forms have deliberately been left out of the bill. I think that that is positive, because we have a settled body of case law that we can rely on.”²⁶
39. The approach taken by the Bill was generally supported by other witnesses who discussed it, with Dr David Christie from Robert Gordon University stating that the SLC "is correct, and [other issues] should stay out of the bill".²⁷
40. Dr Jonathan Brown from the University of Strathclyde took a different view. Dr Brown questioned the need for any legislation, but suggested that, if proceeding in this area "such codification should take place as a part of a wider codification of the general principles of Scots law relating to the creation of legal instruments by acts of the will" rather than the narrower focus in the scope of this Bill.²⁸
41. The Minister told the Committee that in the Scottish Government's consultation in 2024 on the SLC proposals from 2018, respondents indicated continued support for the suggested approach of "a very focused bill".²⁹

Contracting out of the Bill

42. The Bill is drafted to be flexible, providing only for default rules, which in almost all cases, can be contracted out of. This is based on the principle of "freedom of contract". This means that the parties to a contract are normally allowed to make binding agreements as they wish, with the general law acting as default law only when the parties have not contracted out of it or varied it in some way by agreement.
43. There was a general view from those submitting evidence to the Committee that the flexibility permitted by contracting out was a positive aspect. It was also

acknowledged by witnesses including Professor MacQueen from the SLC, Dr Hamish Patrick from the Law Society, and David Woods from Pinsent Masons that “sophisticated” parties would usually contract out of the default rules.³⁰

44. It was anticipated by witnesses the Committee heard from that the default law would apply most frequently to parties contracting without legal advice, which it was expected would often include small businesses. Evidence received by the Committee broadly held that the Bill would be helpful in these circumstances.
45. Professor Bogle from the University of Glasgow stated “the default provisions will help small and medium-sized companies.”³¹ Dr David Christie from Robert Gordon University agreed that SMEs contracting with laypeople (such as is often the case in residential construction contracts) would prove to be the “fulcrum” for the reforms³², and Colin Borland from the FSB described the bill as sensibly providing clear backstops³³.
46. The RIAS stated that allowing for contracting out:
- ” is the correct technique. Construction and architectural appointments in Scotland already rely on detailed standard forms; it would be unhelpful if the Bill overrode those negotiated positions. A default regime gives smaller/one-off clients a clear safety net, while allowing sophisticated contracting parties to keep their existing...drafting.”³⁴
47. While recognising that this issue was probably beyond that of the provision in the Bill, the FSB described as a “fiction” that two parties negotiating a contract are always doing so from a position of equal strength, and made the point that it considers that small businesses should be treated more like individual consumers when entering into contracts with larger businesses who are significantly more powerful. Therefore, it argued:
- ” there may be a case for some curtailment on how terms can be amended by contract when the one party is significantly larger and more powerful than the other.”³⁵
48. Michael Paparakis, Policy and Bill Programme Manager, Private Law, Scottish Government told the Committee that flexibility to agree contracts was a “fundamental tenet of contract law”, and to mandate otherwise, and to make default rules mandatory would be a “significant departure from the current law”, which he suggested would both be a surprise and against the wishes of stakeholders. Michael Paparakis also suggested that any such change would create an inflexible system, which would not serve parties well in many scenarios. By providing default rules in statute, parties can use them should they choose for clarity, but equally these can be departed from, if preferred.³⁶

Does the Bill meet its aim: Are the rules clear, certain and accessible as possible?

49. Respondents to the call for views and witnesses discussed whether, overall, the Bill achieves its aim of making the law generally clearer, more certain and more

accessible.

50. Professor Bogle from the University of Glasgow supported the Bill's ability to make the law clearer, more certain and more accessible. He argued that a statute would give much greater certainty about the law to businesses, which did not exist at present under the common law system, and that the proposals were "based on solid principles of Scots contract law and on common sense", meaning that legal outcomes should not surprise anyone, and be in line with international expectations. He concluded:
- ” The proposal that is on the table will be really beneficial for the Scottish economy, and it will send out a clear signal that we are modernising ... The bill will, I hope, give certainty and will not surprise anyone.³⁷
51. Lorna Richardson from the University of Edinburgh also argued that the Bill sets out the law "as accessibly as it is possible to make it"³⁸. Dr Hamish Patrick from the Law Society of Scotland also agreed it added clarity and predictability, particularly for small businesses and individuals.³⁹
52. However, Dr Jonathan Brown from the University of Strathclyde was of the view that the reforms did not help in this regard. In his written submission, he contended that:
- ” reform may prove actively harmful to the coherence of the Scots law of obligations more widely and indeed Scots private law more generally...presently, the law relating to formation of contract is based on logical principles which anyone, with relatively little reading, can find out.⁴⁰
53. The Scottish Motor Trade Association similarly did not agree that the provisions in the Bill made the law clearer, more certain or more accessible. It commented that:
- ” the bill and the way that law is written, is always complex and confusing. Even for experienced people there is a necessity to confirm with legal experts. The man/ women on the street is always going to struggle with complex legal wording, which may or may not be the necessary language.⁴¹
54. In oral evidence, Professor MacQueen from the SLC addressed these concerns from the Scottish Motor Trade Association's, accepting that "laypersons without legal advice might find legislation difficult in general." However, he noted that "drafters of the bill seek precision so that it is crystal clear to a court what the answer should be."⁴² Professor MacQueen suggested that the provisions in the Bill should make the law clearer than at present.
55. The Minister was clear that she thinks the Bill achieves its aim of producing "legal rules that are clear, certain and accessible".⁴³

- 56. The Committee broadly supports the scope of what is included in the Bill, and agrees that the approach followed by the Scottish Law Commission to introduce an incremental reform which found broad support was appropriate.**

57. **The Committee supports the flexible approach followed by the Bill, which allows for parties to contract out of most default rules by mutual agreement.**
58. **The Committee emphasises the importance of making legislation accessible and easy to understand for laypeople and welcomes any efforts to do so.**
59. **The Committee also highlights that anyone who considers that further consideration needs to be given to reform of other aspects of contract law may wish to make their views known to the SLC through their consultation on their next programme of law reform, which will be carried out in 2026, as a possible vehicle for other reform in this area.**

Part 1 of the Bill: Formation

Overview / general views and issues

Overview

60. Part 1 of the Bill is the statutory statement of the law on formation of contract. A detailed summary of the provisions in Part 1 is set out at Annexe C.

General views and issues

61. Most respondents to the Committee’s call for views were supportive of Part 1 of the Bill.
62. The Law Society stated that “the express terminology referring to the parties’ intention that their communications have legal effect is clearer and more readily understandable than the common law concepts of will, desire, and engagement.”⁴⁴
63. Dumfries and Galloway Council shared this view. It stated that the rules are “a positive step toward clarity and accessibility, especially for public bodies and small businesses.”⁴⁵
64. The RIAS similarly welcomed the provisions on formation of contracts, noting that:
 - ” For architects, disputes at the low-value end often arise around: “was this letter of intent enough?”, “did the client accept the fee proposal?”, or “was the tender acceptance effective once emailed?”. A statutory statement helps reduce that friction, especially where design services start before a formal building contract is signed. Clarity on electronic communications and on revocation/expiry is welcome.”⁴⁶
65. Dr Jonathan Brown from the University of Strathclyde is the exception to this general support. In a detailed response, Dr Brown indicated that he thought the new legislation:

” will render the law less clear and less certain (as principles relating to ‘formation of contract’ in Scotland have significance beyond determining the enforceability of agreements) and will in fact render the law less accessible than it is now.⁴⁷

66. Discussions specific to Part 1 of the Bill focused on electronic communications and abolition of the postal acceptance rule, set out in more detail below.

Electronic communications and future proofing

67. Section 13(4)(d) provides that notification by electronic means reaches a person when it becomes available to be accessed by the person.

68. The Law Society suggested in its written evidence that this provision creates uncertainty as it is not clear how it would apply where someone has an “out of office” message on, or where “email or instant messaging servers are down and thus communications are not received in a timely manner.”⁴⁸

69. Dr Jonathan Brown of the University of Strathclyde set out his own concerns in relation to how this rule might impact contract formation – highlighting that a “person who attempts to send notification might be under the misapprehension that the message has, in fact, been sent”, but which, in fact, could not have been received if, for example, “the AMS [Amazon Web Services] is down”.⁴⁹

70. The Committee raised this point with Professor MacQueen, who pointed to section 13(3) of the Bill which provides that “a notification reaches a person when it is made available to the person in such circumstances as make it reasonable to expect the person to be able to obtain access to it without undue delay.” Professor MacQueen considered that use of the word reasonable was key – noting his wariness to include in legislation explicit references to very specific circumstances. Professor MacQueen reflected that there were some circumstances in which it might be reasonable to expect an out of office message to mean a person could not obtain access to a notification (e.g. within a period stated when they were on holiday), and other circumstances when this might not hold (e.g. an out of date out of office message).⁵⁰

71. Lorna Richardson from the University of Edinburgh and Dr David Christie from Robert Gordon University also agreed that the Bill makes provision at the correct general level for issues such as electronic communications. Dr Christie suggested that the legislation would “help to future proof the law”⁵¹. Lorna Richardson argued that it is not possible to go into absolutely every situation, and that, as drafted, the rules could be adaptable to (for example) platforms and apps used to enter into contracts. She contended that “if the rules are very specific, they might become outdated very quickly”.⁵²

72. David Woods from Pinsent Masons, Andrew Agapiou from the RIAS and Colin Borland from the FSB were also all in agreement that the current drafting of section 13 provides the most appropriate level of detail, and that (as far as possible) the Bill

was general enough so as to be considered ‘future proof’ for multiple ways of contracting, including digital methods.⁵³ Andrew Agapiou made the point that “we should not be going into too much detail, because there could be various situations in various sectors, and there would be too much to put into the bill”.⁵⁴

73. In a supplementary written submission focused on the abolition of the postal acceptance rule, Dr Christie argued that parties accepting offers are better placed to manage the risk of acceptances not arriving (by, for example, re-sending emails or checking documents have been received).⁵⁵
74. In relation to these issues, the Minister referred to paragraph 67 of the Explanatory Notes to the Bill, which cover IT outages and out of office messages. The Minister told the Committee:

” We think that that covers things, guidance-wise. That is how we are future proofing the legislation, instead of being too specific in the bill itself, because who knows what the mode of communication could be in five to 10 years?⁵⁶

75. **The Committee agrees that section 13 of the Bill provides a reasonable, general rule for when notification takes effect. It agrees that it is not possible to legislate for all outcomes, and that the proposed wording is sufficient.**

Abolition of the postal acceptance rule

76. The postal acceptance rule acts as an exception to the general principle in Scots contract law that notifications need to reach the other party for communication to be established.
77. Under the postal acceptance rule an unqualified acceptance takes effect in Scotland when the acceptance is posted by the offeree (person accepting an offer), rather than when it reaches the offeror (person making an offer).
78. While this section of the Bill cannot be contracted out of, the Explanatory Notes state:
- ” 60. ... By virtue of section 1’s application to section 7, however, parties can agree that a postal acceptance will conclude a contract upon the former’s dispatch.⁵⁷
79. As a result, it would be open to parties to agree a version of the postal acceptance rule, should they so wish.
80. The SLC first recommended the postal acceptance rule be abolished in the 1970s. Professor MacQueen suggested to the Committee that the rule was not intuitive, and causes a number of problems.⁵⁸
81. There was almost complete support amongst respondents to the Committee’s call

for views for the postal acceptance rule being repealed.

82. The Law Society stated that:

” With the increasing use of digital technologies, we believe there remains little justification for retaining specific protections for acceptances sent by post. This represents a deviation from parties’ general expectations of legal communications ...

Furthermore in corporate transactions, the widespread use and ability for parties to hold contracts as “undelivered” allows users the flexibility to conclude agreements without being subject to the risks of outdated (or unreliable) forms of document transfer.⁵⁹

83. The FSB agreed that it makes sense to abolish the postal acceptance rule on the basis that business owners are unlikely to be aware of the rule and would not “expect to be bound by an acceptance they had yet to receive”.⁶⁰ And David Woods from Pinsent Masons told the Committee “if the bill does nothing else, it should abolish the postal acceptance rule.”⁶¹

84. On the other hand, Dr Jonathan Brown argued that repealing the postal acceptance rule will lead to less certainty for those accepting offers. He noted that at present a person will know that a contract has been formed once an acceptance has been posted (or message sent), whereas in future they will have to show that an acceptance has reached the offeror. Dr Brown argued that the law currently has an equitable approach (favouring certainty for offerees). He contended that, although commercial parties normally contract out of the postal acceptance rule, this is not a reason to repeal the rule as most contracts are not commercial ones where contracting out is feasible.⁶²

85. In response to Dr Brown’s points above, Professor Bogle from the University of Glasgow, suggested that accepting this view and keeping the postal acceptance rule “would be quite a startling outcome”. Professor Bogle continued:

” Let us consider the Vienna sales convention—that is, the United Nations Convention on Contracts for the International Sale of Goods. Goods are sold internationally using either English law or that convention...which does not have a postal acceptance rule.⁶³

86. The Minister confirmed that the Scottish Government remains in support of abolishing the rule, as:

” The postal acceptance rule means that contracts can be formed without one party ever knowing that their offer has been accepted, and I agree with the majority of stakeholders that that is at odds with common-sense expectations. The law causes uncertainty and confusion for anyone who is not aware of the postal acceptance rule, and I understand that, in practice, it is commonly excluded by well-informed parties. Abolishing the rule will mean that the law will align better with reasonable expectations of most people, including small and micro businesses.⁶⁴

87. **The Committee agrees with the proposal set out in section 14 of the Bill to abolish any rule of law as to when notification of postal acceptance takes effect.**

Part 2 of the Bill: Remedies

Overview / general views and issues

Overview

88. Part 2 of the Bill makes provision for remedies for breach of contract. A detailed summary of the provisions in Part 2 is set out at Annexe C.
89. The Bill does not contain a full statutory statement of the law on remedies for breach of contract, but is focused on three main areas: mutuality of contract; a new remedy of return of benefits received after rescission (termination) of a contract for material breach, and contributory negligence.

General views and issues

90. The call for views included a general question on whether Part 2 of the Bill will achieve its aims of making the law clearer, more certain and more accessible. Again, this Part of the Bill found general support.
91. Dr Hamish Patrick stated that “the rules are relatively predictable and are accessible by being in statute and contracting out ensures that sophisticated contracting parties and contracts are not prejudiced”.⁶⁵ Similarly, the RIAS was also of the view that Part 2 of the Bill will achieve its aims.⁶⁶
92. Academics from whom the Committee heard were generally in favour of provision in Part 2. Lorna Richardson from the University of Edinburgh stated that Part 2 “clarifies a number of issues about which there is significant doubt currently in Scots law”⁶⁷. In oral evidence, Lorna Richardson explained:
- ” In relation to mutuality, we have had a number of cases in Scotland that have indicated that, if you are in breach of contract you cannot sue on that contract. That can cause windfall benefits. If party A breaches a contract and the consequence is £100 and party B breaches a contract and the contract is £1,000, then the person who breaches and causes the loss of £1,000 gets a gain from the other party not being able to sue. That creates some difficulties, so what is proposed in section 17 of the bill would make clear that the fact that you have breached a contract does not mean that you are out of that contract, but that you can still rely on, and sue on, that contract. That provides clarification in relation to a number of cases that may have taken us down the wrong route in Scots law, creating some difficulty in practice.⁶⁸
93. Professor Bogle and Tom Johnson from the University of Glasgow stated that:

” The positions taken in Part 2 of the Bill reflect a commonsense approach to rescission and return of benefits; something which is easily grasped by commercial actors ... Although the amendments to contributory negligence are relatively new, they rest on sound reasoning and address a notable gap in the current legal framework. By re-establishing a symmetry between the law of delict and contract, they provide courts and litigants with an alternative mechanism for resolving disputes over liability for losses. Similar to the default provisions set out in clauses 17 to 21, there is an inherent commonsense to the notion that a creditor’s own contribution to breach should be considered when assessing damages.⁶⁹

94. Andrew Agapiou from the RIAS also supported Part 2 of the Bill. He felt its “modest” proposals were “welcome”, rather than trying to codify everything. He stated:

” I see three benefits of that. The first two are that there will be clearer rules on withholding and suspension and that there will be more clarity on keeping a contract alive after breach. Those are important, because we saw what happened after the Carillion issue. It is important in the construction environment, because breaches of contract do happen there. The third benefit is that there will also be a reduced need for litigation and adjudication on minor cash flow disputes.⁷⁰

95. However, Dr Jonathan Brown from the University of Strathclyde told the Committee that he fears “a statutory statement of the law will render the law less clear, less certain and less accessible to non-lawyers”. His view is that the common law rules do not need updating. He also argues that “the statutory statement here wanders into the realm of the law relating to unjustified enrichment and thus has the potential to undermine this heading of obligations.”⁷¹

96. The issue relating to Part 2 of the Bill that was most discussed was the law of retention. Retention is not covered in the Bill as introduced. However, the Scottish Government wrote to the Committee⁷² once the Bill had been introduced indicating its intention to make provision for retention by way of amendments at Stage 2 of the Bill. This is discussed more fully below.

Retention

97. The law of retention is a remedy for breach of contract which involves the temporary withholding or suspending of performance of contractual obligations that are due to be performed until the other party performs its obligations.

98. The SLC Report stated that the law of retention did not need statutory reform. The SLC stated in its report that:

” 11.32 Given our decision not to recommend a general statutory restatement of the law of remedies for breach of contract, we have thought it best to leave further clarification of the law of mutuality and retention to the courts and to practitioners. Accordingly we make no other recommendation for legislative reform on these matters.⁷³

99. However, responses to the Scottish Government's consultation on the SLC Report in 2024⁷⁴ indicated that, as a result of subsequent case law, the law of retention is now less clear than when the SLC published its Report and that the law would benefit from clarification.
100. At the Bill's introduction, the Minister wrote to the Committee setting out the Scottish Government's plans to lodge amendments to the Bill at Stage 2 to reform the Scots law of contractual retention. This letter included a copy of the draft provisions, together with an Explanatory Note and a Policy Note.⁷⁵
101. The Committee heard a range of views on the plan to amend the law of retention at Stage 2.
102. Professor MacQueen from the SLC described himself as "a fairly unqualified supporter" of the change proposed to be made at Stage 2, to remedy a situation which he described as "a mess". He also supported a right to contract out of rules on the law of retention.⁷⁶
103. Professor Bogle gave strong support to making the changes via Stage 2 amendments. He stated that Parliament needs to be agile in adopting a change not proposed in the original SLC report in light of the courts' views and decisions since its publication. He argued that:
- 🗨 It is rare that one gets an opportunity to make such a meaningful and yet uncontroversial change to the law, and the opportunity is here right now.⁷⁷
104. Referring to recent case law, Lorna Richardson, who Professor MacQueen suggested was the "principal inspiration" behind this proposed change, argued that there are "cogent reasons for now making changes to the law of retention given judicial developments and difficulties with this remedy since the date of the SLC's Report."⁷⁸ In oral evidence, Lorna Richardson confirmed that she supported contracting out of these provisions.⁷⁹
105. The FSB⁸⁰ and Dumfries and Galloway Council⁸¹ both stated that they support the proposals. In oral evidence, Colin Borland from the FSB stated that "if the intention of the amendments is, basically, to restate, clear up and clarify the law and to make it easier for us to understand, that seems sensible."⁸²
106. Dr David Christie from Robert Gordon University was similarly in favour, but also made specific points in relation to how the amendments will apply in construction law. He stated that "a balance should be made between ensuring both parties can use the self-help remedy of retention to incentivise completion rather than as a weapon to enforce their will."⁸³
107. The Law Society noted that in the past it had welcomed attempts to clarify the law of retention but indicated that:

- ” ... [The Law Society is] uncertain that the current proposals that are to be introduced by way of an amendment to the Bill at Stage 2 adequately address more complex transactions and contractual arrangements.⁸⁴
108. The Law Society argued that it was crucial that parties should be able to contract out of the proposed rules, and made a number of drafting suggestions in relation to the proposed draft amendment.⁸⁵ Ensuring contracting out is allowed and making changes to drafting was also supported by Dr Hamish Patrick in his written submission.⁸⁶
109. The RIAS asked the Committee “to ensure those provisions are tested specifically against construction use-cases before they are finalised.” It stated that:
- ” Retention of performance is used frequently in our sector to secure completion, snagging, and information release; over-broad drafting could either (a) undermine legitimate security for performance, or (b) entrench poor payment practice. We would support Stage-2 amendments that:
- A) Clarify the circumstances in which retention/suspension is proportionate.
 - B) Preserve the parties’ ability to agree clearer retention mechanisms in standard forms; and
 - C) Do not cut across wider policies in Scotland to improve payment flow in construction.⁸⁷
110. In a supplementary written submission, Dr Andrew Agapiou from the RIAS also suggested that amendments might not be appropriate as they would:
- ”
1. distort the Bill’s otherwise clean, cross-sector focus,
 2. introduce construction-specific rules into a general contract statute, and
 3. risk incoherence with existing frameworks (e.g., the Construction Act).⁸⁸
111. The RIAS suggested that a standalone Scottish Retentions Act or amendments to construction-specific regulations would be more appropriate.⁸⁹
112. Professor Stewart Brymer argued that the proposal should be avoided on the basis that the SLC already carried out a thorough analysis and concluded reform was not needed. He also questioned whether “the Holyrood Committee Stage is in any way more thorough than the extensive investigations and debate within the SLC ...”⁹⁰. In relation to this question, Dr Jonathan Brown stated that the Bill as a whole is “fundamentally flawed” and “should ideally not make it to stage 2”, instead any reform of the law of retention should be part of wider work on Scots law in this area.⁹¹
113. The Minister told the Committee:

” The law of retention is unclear, and we have in the bill an opportunity to introduce some much-needed clarity.⁹²

114. The Minister also suggested that the concerns of the RIAS may be based on a misunderstanding that the law of retention is sector-specific, which it is not, and pointed out that any construction-specific legislation would “take precedence over these more general provisions.” The Minister also confirmed “to my mind...there is no risk of incoherence.”⁹³
115. Colin Gilchrist, Solicitor from the Scottish Government also confirmed that there would “certainly be a right to contract out” of provisions on retention.⁹⁴

116. **The Committee notes the support for the Bill being extended to include provision on retention, on condition that the provisions can be contracted out of.**
117. **The Committee invites the Scottish Government to consider the comments and drafting suggestions made to the Committee by the RIAS, the Law Society and others including academics, and to engage with stakeholders in advance of Stage 2 in relation to these suggestions. The Committee asks the Scottish Government to provide an update on the outcome of these discussions before the deadline for lodging amendments at Stage 2.**

Part 3 of the Bill

118. Part 3 of the Bill makes savings provision and other ancillary provision. A detailed summary of the provisions in Part 2 is set out at Annexe C.
119. Most of the discussion on Part 3 of the Bill focused on transitional provisions, and what happens to existing contracts when the Bill is enacted and this is discussed below.
120. However, respondents to the written call for views also indicated their support for savings provisions contained in section 23. Sirko Harder of the University of Sussex expressly supported section 23(e) of the Bill on the basis that this protects the existing rules on unfair contract terms in Part 2 of the Consumer Rights Act 2015⁹⁵. Dr Hamish Patrick and the Law Society similarly voiced support of provisions “preserv[ing] relevant protections against unfairness and for vulnerable persons” in section 23.⁹⁶

Transitional provisions / interaction with pre-existing contracts

121. A range of responses raised the need for more clarity on how the legislation will apply to existing contracts.
122. The RIAS stated for example that:

- ” Our only request is that commencement and transitional provisions make it plain that existing building contracts, consultant appointments, and framework agreements continue to be governed by the law in force when they were made — many of those run for several years.⁹⁷
123. Andrew Agapiou from the RIAS elaborated on this point, calling for “unambiguous” provision on this question, stating that it is “an important issue that...needs to be clarified”.⁹⁸ Colin Borland from the FSB supported this request, indicating that “it needs to be very clearly communicated in the sort of simple, refreshing language used in the bill to ensure that people who enter into contracts know exactly what rules will govern them.”⁹⁹
124. Lorna Richardson from the University of Edinburgh made a similar point in her written submission. She stated:
- ” Perhaps useful (although this may be done via the Regulations to bring the Act into force) to specify what contracts the provisions are to apply to. For Part 1 that is fairly obvious but less so for Part 2 – are the new rules to apply to contracts in existence on the day the Act comes into force as well as contracts entered into after that date, or only the latter?¹⁰⁰
125. The consensus from witnesses who attended the Committee’s evidence sessions was that the Bill should only apply to contracts entered into after the Bill comes into force.
126. Professor MacQueen stated his understanding that such provision would be set out in the statutory instrument bringing provisions into force after the Bill is passed, and that the Bill “should apply only to contracts that are in process of formation after whatever date is chosen, and likewise with the breach of contract provisions.”¹⁰¹
127. The Minister confirmed to the Committee that the “provisional view is that the bill’s provisions will apply for contracts entered into after coming into force.” However, this will not be confirmed until after the Bill is passed at Stage 3, and that it is possible that the Bills provisions, or some of them, might apply to existing contracts. The Minister suggested that transitional and other ancillary provisions are better to be in regulations, allowing for engagement with stakeholders.”¹⁰²

128. The Committee considers that the Bill should only apply to contracts entered into after it comes into force.

129. The Committee considers that setting this out in regulations is sufficient to make this clear.

General issues

Need for guidance and information / awareness raising

130. A number of respondents to the Committee’s call for views suggested that some guidance or awareness raising would be necessary if the Bill becomes law.
131. Dumfries and Galloway Council argued that “the effectiveness of Part 1 will depend on how well it is integrated with existing legal practice and whether guidance is issued to support interpretation.” It raised a specific example of areas within Part 1 which may need guidance:
- ” sections 5 and 10 contain provisions that appear to overlap... This similarity may lead to confusion for laypersons, especially in distinguishing between the concepts of revocation and withdrawal. Further clarification or explanatory notes would be beneficial to ensure that the distinctions between these provisions are clearly understood by both legal professionals and the general public.¹⁰³
132. The RIAS suggested that there should be guidance which “should make it explicit, for end-users, that many commercial contracts will disapply parts of the statutory scheme”¹⁰⁴, the aim of which would be to make it clear to people not legally represented that the rules in legislation are default ones and that commercial parties will often contract out of them.
133. The Law Society suggested that guidance is needed on how the new rules interact with other areas of contract law which will remain governed by the common law. It stated:
- ” ... we would urge that caution is taken as to how these new statutory provisions will interact with existing precedent, particularly in the early stages of implementation should the Bill pass. We consider this to be a complex process and, in the absence of a considered approach, we believe that the reforms could lead to a period of legal uncertainty in certain areas.
- As a result, we believe it is important that the Scottish Government assist in this process by providing clear guidance on the final provisions of the Bill (if passed). We also suggest that an appropriate awareness campaign is used to assist individuals, wider business and practitioners on how these provisions will impact already established principles in contract law.¹⁰⁵
134. In oral evidence, Dr Hamish Patrick from the Law Society was clear, however, that “we do not need much guidance”.¹⁰⁶ A similar view was offered by David Woods from Pinsent Masons, who said “I do not think significant guidance is necessary, but it might be of assistance for some parts of the bill.”¹⁰⁷
135. Others suggested that there was no need for any guidance or awareness raising. Professor MacQueen argued that the Bill is not any radical change and though he accepted a need for “training and familiarisation”, he suggested this could be provided by universities.¹⁰⁸

136. Academic witnesses seemed, in general, to consider that guidance would not be necessary. Professor Bogle suggested that it is a solicitor’s job to update themselves on developments.¹⁰⁹
137. The Minister told the Committee that her view was that guidance will not be needed. Instead, the Minister suggested that the Explanatory Notes “provide a clear and accessible explanation about what the provisions do.”¹¹⁰
- 138. The Committee asks the Scottish Government to engage further with the organisations calling for guidance on the Bill and, if it considers it necessary, prepare targeted guidance which seeks to make the law as clear and usable as possible.**

Drafting suggestions

139. A number of those responding to the Committee’s call for views made drafting suggestions which they considered could improve the Bill.
140. For example, the Law Society’s response raised drafting issues in relation to section 2(3) of the Bill which allows the parties to specify in advance matters on which there needs to be agreement before any contract is concluded. The Law Society thought that there is a risk that this section could apply to situations where one party subjectively intends not to contract prior to agreement on a certain point. It suggests amending section 2(3) to include the need for some form of express communication/agreement¹¹¹. Lorna Richardson’s response includes a similar proposal¹¹².
141. Professor Bogle and Tom Johnson suggested that section 2(2) is overly verbose and should be redrafted¹¹³.
142. Dumfries and Galloway Council stated that in section 2 “the terms “Formation” and “Conclusion” appear to be used interchangeably” and argue that formation should be used rather than conclusion¹¹⁴.
143. Lorna Richardson also made a number of suggestions in relation to changing terminology used Part 2 of the Bill to make the wording clearer.¹¹⁵
144. Sirko Harder of the University of Sussex argued that the term rescission in the Bill should be replaced by termination as this would make Scots contract law more accessible to the international business community as well as limiting confusion with the term “rescission ab initio” for a vitiating factor (e.g. fraud). Dumfries and Galloway Council recommend that the term should be defined to enhance its accessibility, particularly for non-specialist users¹¹⁶.
145. In oral evidence, Professor MacQueen confirmed he has reviewed the suggestions and “some are certainly worth considering”. Professor MacQueen also addressed the comments from Sirko Harder directly, stating:

” I would favour using “termination” instead of “rescission”. Rescission is used in the bill because that is a term that lawyers are familiar with. However, in the more ambitious moments of the project, we talked about trying to change the terminology. Had we dealt with rescission, we might have used “termination” in its place. In the end, however, what we have is a bill that will reform certain areas. It was not really possible to tack on to that a comprehensive reform that would bring the terminology up to date. It is the sort of thing that might well be done if there were to be a further exercise on the review of contract law. However, at the moment, it is not really possible to do that with the particular type of bill that we have in front of us.¹¹⁷

146. The Minister confirmed she would be happy to consider any suggestions which the Committee considers may make the Bill stronger.¹¹⁸

147. The Committee asks the Scottish Government to consider the drafting points raised in the submissions in response to the Committee’s call for views on the Bill.

148. The Committee asks the Scottish Government to confirm whether it plans on bringing forward any amendments to the Bill to address these points, and whether any clarifications or reassurances have otherwise been given.

Delegated Powers Memorandum

149. Under Rule 9.6.2 of Standing Orders the Committee is required to consider and report upon any provisions in the Bill that confer power to make subordinate legislation. The Committee considered the delegated powers in the Bill at its meeting on 28 October 2025.
150. The Bill confers three powers to make subordinate legislation on the Scottish Ministers. The Scottish Government has prepared a Delegated Powers Memorandum ¹¹⁹ which sets out the reasoning for taking the delegated powers in the Bill and the parliamentary scrutiny procedure that has been chosen.
151. The Committee was content with the delegated powers provisions in the Bill.

152. The Committee is therefore content with the delegated powers contained in sections 6(6), 24 and 25(2) to (3), and with the Parliamentary scrutiny procedures which are applied to these powers.

Financial Memorandum

153. The Finance and Public Administration Committee issued a call for evidence on the Bill and received two responses¹²⁰. It agreed to pass these the submissions to the Committee, and agreed take no further action.
154. The Committee notes that Angus Council seems broadly content with the Bill. Dumfries and Galloway Council however suggest that “at a time of budget cuts” the Bill may be an “additional strain”. It should be noted that Dumfries and Galloway Council also responded to this Committee’s call for views, giving its general support to the Bill.
- 155. The Committee asks the Scottish Government to set out its response to these comments on the financial implications for local authorities in its response to the Committee’s Stage 1 report.**

General Principles of the Bill

156. **The Committee recommends to the Parliament that the general principles of the Bill be agreed to.**

Annexe A: Extracts from minutes

29th Meeting, 2025, Tuesday 28 October

Contract (Formation and Remedies) (Scotland) Bill (in private): The Committee considered the delegated powers provisions in this Bill at Stage 1. It agreed to report to the lead committee on the Bill, the Delegated Powers and Law Reform Committee.

Contract (Formation and Remedies) (Scotland) Bill (in private): The Committee considered its approach to the scrutiny of the Bill at Stage 1. It agreed to delegate to the Convener the initial responsibility for agreeing witnesses ahead of the oral evidence sessions.

32nd Meeting, 2025, Tuesday 18 November

Contract (Formation and Remedies) (Scotland) Bill: The Committee took evidence from—

- Lady Ann Paton, Chair, Scottish Law Commission
- Professor Hector MacQueen, Former Lead Commissioner, Scottish Law Commission
- Rachel Rayner, Chief Executive, Scottish Law Commission

and then from—

- Lorna Richardson, Senior Lecturer, Commercial Law, University of Edinburgh
- Dr David Christie, Associate Dean for Academic Development and Student Experience, Robert Gordon University
- Dr Jonathan Brown, Lecturer in Scots Private Law, University of Strathclyde
- Professor Stephen Bogle, Professor of Law and Interpersonal Justice, University of Glasgow
- Dr Hamish Patrick, Member of the Banking, Company and Insolvency Sub-Committee, Law Society of Scotland.

Evidence Session (in private): The Committee considered the evidence it heard earlier under agenda item 5.

33rd Meeting, 2025, Tuesday 25 November

Contract (Formation and Remedies) (Scotland) Bill: The Committee took evidence from—

- Dr Andrew Agapiou, Chair of the Contracts Committee, Royal Incorporation of Architects in Scotland
- Colin Borland, Scotland Director, Federation of Small Businesses
- David Woods, Partner in the Litigation, Regulatory and Tax Team, Pinsent Masons

Contract (Formation and Remedies) (Scotland) Bill (in private): The Committee considered the evidence it heard earlier under agenda item 5.

34th Meeting, 2025, Tuesday 2 December

Contract (Formation and Remedies) (Scotland) Bill: The Committee took evidence from—

- Siobhian Brown, Minister for Victims and Community Safety, Scottish Government
- Michael Paparakis, Policy and Bill Programme Manager, Private Law, Scottish Government
- Colin Gilchrist, Solicitor, Scottish Government

Contract (Formation and Remedies) (Scotland) Bill (in private): The Committee considered the themes arising from evidence heard during its scrutiny of the Bill at Stage 1.

35th Meeting, 2025, Tuesday 9 December

Contract (Formation and Remedies) (Scotland) Bill: The Committee will consider a draft Stage 1 report.

Annexe B: Evidence

Oral Evidence

Meeting on Tuesday, 18 November 2025

- Lady Ann Paton, Chair, Scottish Law Commission
- Professor Hector MacQueen, Former Lead Commissioner, Scottish Law Commission
- Rachel Rayner, Chief Executive, Scottish Law Commission
- Lorna Richardson, Senior Lecturer, Commercial Law, University of Edinburgh
- Dr David Christie, Associate Dean for Academic Development and Student Experience, Robert Gordon University
- Dr Jonathan Brown, Lecturer in Scots Private Law, University of Strathclyde
- Professor Stephen Bogle, Professor of Law and Interpersonal Justice, University of Glasgow
- Dr Hamish Patrick, Member of the Banking, Company and Insolvency Sub-Committee, Law Society of Scotland.

Meeting on Tuesday, 25 November 2025

- Dr Andrew Agapiou, Chair of the Contracts Committee, Royal Incorporation of Architects in Scotland
- Colin Borland, Scotland Director, Federation of Small Businesses
- David Woods, Partner in the Litigation, Regulatory and Tax Team, Pinsent Masons

Meeting on Tuesday, 2 December 2025

- Siobhian Brown, Minister for Victims and Community Safety, Scottish Government
- Michael Papparakis, Policy and Bill Programme Manager, Private Law, Scottish Government
- Colin Gilchrist, Solicitor, Scottish Government

Written Evidence

- Professor Stewart Brymer OBE, WS, Solicitor
- Scottish Motor Trade Association, Alan Gall
- Jonathan Brown
- Dumfries and Galloway Council
- Lorna Richardson

- Sirko Harder
- Dr David Christie
- Dr David Christie, supplementary submission
- Royal Incorporation of Architects in Scotland
- Royal Incorporation of Architects in Scotland, Dr Andrew Agapiou, supplementary submission
- Law Society of Scotland
- Dr Hamish Patrick
- Professor Stephen Bogle and Mr. Tom Johnson
- Federation of Small Businesses in Scotland

Correspondence

- Letter from the Minister for Victims and Community Safety, 3 October 2025
- Letter to the Convener from the Scottish Law Commission, 20 November 2025

Delegated Powers and Law Reform Committee

Contract (Formation and Remedies) (Scotland) Bill at Stage 1, 90th Report, 2025 (Session 6)

- 1 Scottish Law Commission (2018) [Report on Review of Contract Law: Formation, Interpretation, Remedies for Breach, and Penalty Clauses](#) (Scot Law Com 252)
- 2 Scottish Parliament Information Centre (2025). [Contract \(Formation and Remedies\) \(Scotland\) Bill](#). SPICe Briefing SB 25/50
- 3 Delegated Powers and Law Reform Committee. *Official Report*, 18 November 2025. Col 15
- 4 Delegated Powers and Law Reform Committee. [Written evidence](#)
- 5 [Correspondence from the Scottish Government to the Delegated Powers and Law Reform Committee](#). 3 October 2025
- 6 Scottish Law Commission (2018) [Report on Review of Contract Law: Formation, Interpretation, Remedies for Breach, and Penalty Clauses](#) (Scot Law Com 252)
- 7 Contract (Formation and Remedies) (Scotland) Bill. [Policy Memorandum](#). SP Bill 76-PM, Session 6 (2025).
- 8 Delegated Powers and Law Reform Committee. *Official Report*, 18 November 2025. Col 6
- 9 Written evidence. [Professor Bogle and Tom Johnson](#)
- 10 Delegated Powers and Law Reform Committee. *Official Report*, 18 November 2025. Cols 26-27
- 11 Written evidence. [Federation of Small Businesses in Scotland](#)
- 12 Delegated Powers and Law Reform Committee. *Official Report*, 25 November 2025. Col 7
- 13 Written evidence. [Dr Hamish Patrick](#)
- 14 Written evidence. [Law Society of Scotland](#)
- 15 Written evidence. [Jonathan Brown](#)
- 16 Delegated Powers and Law Reform Committee. *Official Report*, 2 December 2025. Col 6
- 17 Scottish Law Commission (2018) [Report on Review of Contract Law: Formation, Interpretation, Remedies for Breach, and Penalty Clauses](#) (Scot Law Com 252)
- 18 Scottish Parliament Information Centre (2025). [Contract \(Formation and Remedies\) \(Scotland\) Bill](#). SPICe Briefing SB 25/50
- 19 Delegated Powers and Law Reform Committee. *Official Report*, 18 November 2025. Col 15
- 20 Delegated Powers and Law Reform Committee. *Official Report*, 18 November 2025. Col 15

- 21 Delegated Powers and Law Reform Committee. *Official Report*, 18 November 2025. Col 7
- 22 Delegated Powers and Law Reform Committee. *Official Report*, 18 November 2025. Col 16
- 23 Delegated Powers and Law Reform Committee. *Official Report*, 18 November 2025. Col 34
- 24 Delegated Powers and Law Reform Committee. *Official Report*, 18 November 2025. Col 34
- 25 Delegated Powers and Law Reform Committee. *Official Report*, 18 November 2025. Col 35
- 26 Delegated Powers and Law Reform Committee. *Official Report*, 25 November 2025. Col 10
- 27 Delegated Powers and Law Reform Committee. *Official Report*, 18 November 2025. Col 33
- 28 Written evidence. [Jonathan Brown](#)
- 29 Delegated Powers and Law Reform Committee. *Official Report*, 2 December 2025. Col 6
- 30 Delegated Powers and Law Reform Committee. *Official Reports*, 18 November 2025. Cols 10 and 22 and 25 November 2025. Cols 9-10
- 31 Delegated Powers and Law Reform Committee. *Official Report*, 18 November 2025. Col 23
- 32 Delegated Powers and Law Reform Committee. *Official Report*, 18 November 2025. Col 24
- 33 Delegated Powers and Law Reform Committee. *Official Report*, 25 November 2025. Col 8
- 34 Written evidence. [Royal Incorporation of Architects in Scotland](#)
- 35 Written evidence. [Federation of Small Businesses in Scotland](#)
- 36 Delegated Powers and Law Reform Committee. *Official Report*, 2 December 2025. Col 7
- 37 Delegated Powers and Law Reform Committee. *Official Report*, 18 November 2025. Cols 23-24
- 38 Delegated Powers and Law Reform Committee. *Official Report*, 18 November 2025. Col 27
- 39 Delegated Powers and Law Reform Committee. *Official Report*, 18 November 2025. Col 22
- 40 Written evidence. [Jonathan Brown](#)

- 41 Written evidence. [Scottish Motor Trade Association](#)
- 42 Delegated Powers and Law Reform Committee. *Official Report*, 18 November 2025. Cols 10-11
- 43 Delegated Powers and Law Reform Committee. *Official Report*, 2 December 2025. Col 5
- 44 Written evidence. [Law Society of Scotland](#)
- 45 Written evidence. [Dumfries and Galloway Council](#)
- 46 Written evidence. [Royal Incorporation of Architects in Scotland](#)
- 47 Written evidence. [Jonathan Brown](#)
- 48 Written evidence. [Law Society of Scotland](#)
- 49 Delegated Powers and Law Reform Committee. *Official Report*, 18 November 2025. Col 30
- 50 Delegated Powers and Law Reform Committee. *Official Report*, 18 November 2025. Cols 16-17
- 51 Delegated Powers and Law Reform Committee. *Official Report*, 18 November 2025. Col 28
- 52 Delegated Powers and Law Reform Committee. *Official Report*, 18 November 2025. Col 28
- 53 Delegated Powers and Law Reform Committee. *Official Report*, 25 November 2025. Cols 8, 13-14
- 54 Delegated Powers and Law Reform Committee. *Official Report*, 25 November 2025. Col 14
- 55 Supplementary written evidence. [Dr David Christie](#)
- 56 Delegated Powers and Law Reform Committee. *Official Report*, 2 December 2025. Col 8
- 57 Contract (Formation and Remedies) (Scotland) Bill. [Explanatory Notes](#). SP Bill 76-PM, Session 6 (2025).
- 58 Delegated Powers and Law Reform Committee. *Official Report*, 18 November 2025. Col 12
- 59 Written evidence. [Law Society of Scotland](#)
- 60 Written evidence. [Federation of Small Businesses in Scotland](#)
- 61 Delegated Powers and Law Reform Committee. *Official Report*, 25 November 2025. Col 11
- 62 Written evidence. [Jonathan Brown](#) and Delegated Powers and Law Reform Committee. *Official Report*, 18 November 2025. Cols 29-31

- 63 Delegated Powers and Law Reform Committee. *Official Report*, 25 November 2025. Cols 31-32
- 64 Delegated Powers and Law Reform Committee. *Official Report*, 2 December 2025. Col 8
- 65 Written evidence. [Dr Hamish Patrick](#)
- 66 Written evidence. [Royal Incorporation of Architects in Scotland](#)
- 67 Written evidence. [Lorna Richardson](#)
- 68 Delegated Powers and Law Reform Committee. *Official Report*, 18 November 2025. Col 38
- 69 Written evidence. [Professor Bogle and Tom Johnson](#)
- 70 Delegated Powers and Law Reform Committee. *Official Report*, 25 November 2025. Col 14
- 71 Written evidence. [Jonathan Brown](#)
- 72 [Correspondence from the Scottish Government to the Delegated Powers and Law Reform Committee](#). 3 October 2025
- 73 Scottish Law Commission (2018) [Report on Review of Contract Law: Formation, Interpretation, Remedies for Breach, and Penalty Clauses](#) (Scot Law Com 252)
- 74 [Scottish Government's 2024 consultation on the Scottish Law Commission's 2018 Report on Review of Contract Law: Formation, Interpretation, Remedies for Breach, and Penalty Clauses](#)
- 75 [Correspondence from the Scottish Government to the Delegated Powers and Law Reform Committee](#). 3 October 2025
- 76 Delegated Powers and Law Reform Committee. *Official Report*, 18 November 2025. Col 19
- 77 Delegated Powers and Law Reform Committee. *Official Report*, 18 November 2025. Cols 40 and 44
- 78 Written evidence. [Lorna Richardson](#)
- 79 Delegated Powers and Law Reform Committee. *Official Report*, 18 November 2025. Col 45
- 80 Written evidence. [Federation of Small Businesses in Scotland](#)
- 81 Written evidence. [Dumfries and Galloway Council](#)
- 82 Delegated Powers and Law Reform Committee. *Official Report*, 25 November 2025. Col 18
- 83 Written evidence. [Dr David Christie](#)
- 84 Written evidence. [Law Society of Scotland](#)

- 85 Written evidence. [Law Society of Scotland](#)
- 86 Written evidence. [Dr Hamish Patrick](#)
- 87 Written evidence. [Royal Incorporation of Architects in Scotland](#)
- 88 Supplementary written evidence. [Royal Incorporation of Architects in Scotland](#)
- 89 Supplementary written evidence. [Royal Incorporation of Architects in Scotland](#)
- 90 Written evidence. [Professor Stewart Brymer OBE](#)
- 91 Written evidence. [Jonathan Brown](#)
- 92 Delegated Powers and Law Reform Committee. *Official Report*, 2 December 2025. Col 6
- 93 Delegated Powers and Law Reform Committee. *Official Report*, 2 December 2025. Col 11
- 94 Delegated Powers and Law Reform Committee. *Official Report*, 2 December 2025. Col 13
- 95 Written evidence. [Sirko Harder](#)
- 96 Written evidence. [Law Society of Scotland](#) and [Dr Hamish Patrick](#)
- 97 Written evidence. [Royal Incorporation of Architects in Scotland](#)
- 98 Delegated Powers and Law Reform Committee. *Official Report*, 25 November 2025. Cols 16-17
- 99 Delegated Powers and Law Reform Committee. *Official Report*, 25 November 2025. Cols 16-17
- 100 Written evidence. [Lorna Richardson](#)
- 101 Delegated Powers and Law Reform Committee. *Official Report*, 18 November 2025. Col 18
- 102 Delegated Powers and Law Reform Committee. *Official Report*, 2 December 2025. Col 12
- 103 Written evidence. [Dumfries and Galloway Council](#)
- 104 Written evidence. [Royal Incorporation of Architects in Scotland](#)
- 105 Written evidence. [Law Society of Scotland](#)
- 106 Delegated Powers and Law Reform Committee. *Official Report*, 18 November 2025. Col 42
- 107 Delegated Powers and Law Reform Committee. *Official Report*, 25 November 2025. Col 16

- 108 Delegated Powers and Law Reform Committee. *Official Report*, 18 November 2025.
Col 18
- 109 Delegated Powers and Law Reform Committee. *Official Report*, 18 November 2025.
Cols 41-42
- 110 Delegated Powers and Law Reform Committee. *Official Report*, 2 December 2025.
Col 13
- 111 Written evidence. [Law Society of Scotland](#)
- 112 Written evidence. [Lorna Richardson](#)
- 113 Written evidence. [Professor Bogle and Tom Johnson](#)
- 114 Written evidence. [Dumfries and Galloway Council](#)
- 115 Written evidence. [Lorna Richardson](#)
- 116 Written evidence. [Sirko Harder](#)
- 117 Delegated Powers and Law Reform Committee. *Official Report*, 18 November 2025.
Cols 19-20
- 118 Delegated Powers and Law Reform Committee. *Official Report*, 2 December 2025.
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