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Delegated Powers and Law Reform Committee

Stage 1 Report on the Leases (Automatic Continuation etc.) (Scotland) Bill



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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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Membership changes

1. The following changes to the Committee's membership occurred during the Committee's scrutiny of the Leases (Automatic Continuation etc.) (Scotland) Bill:
 - on 15 January 2025, Katy Clark MSP replaced Daniel Johnson MSP.

Introduction

2. The Leases (Automatic Continuation etc.) (Scotland) Bill was introduced on 11 December 2024 by the Cabinet Secretary for Justice and Home Affairs, Angela Constance MSP. The Minister leading on the Bill is the Minister for Victims and Community Safety, Siobhian Brown MSP.
3. The Bill implements the Scottish Law Commission's ("SLC") recommendations for reform published in 2022 in its [Report on Aspects of Leases: Termination](#).
4. The SLC is Scotland's law reform body. It was established under the Law Commissions Act 1965 to make recommendations to the Government to simplify, modernise and improve Scots law. It has a rolling programme of projects looking at reforms to the law in particular areas.
5. A law reform project may be initiated independently by the SLC in collaboration with the Law Commission for England and Wales and the Northern Ireland Law Commission. Proposals can originate from organisations, individuals, or at the request of Scottish Ministers. Authority for undertaking such work is established through ongoing Programmes of Law Reform approved by Scottish Ministers or via a direct reference from them. The SLC's work focuses on reforming the law. It also works on consolidation of statutes and on statute law repeals, as well as giving advice and information to the Government. It has responsibilities in all areas of Scots law including those reserved to the legislative competence of the UK Parliament at Westminster.
6. It is up to the Scottish or UK governments to decide whether to take proposals made by the SLC forward. They may carry out further consultation before deciding what to do. This Bill was brought forward by the Scottish Government, based on the Scottish Law Commission's work.
7. 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.
8. In addition to carrying out the role of lead committee, 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.
9. The Bill confers two powers to make subordinate legislation on the Scottish Ministers. The Committee considered the delegated powers provisions at its meeting on 18 February 2025 and agreed it was content with the powers.
10. The Finance and Public Administration Committee ("FPAC") considered the [Financial Memorandum](#) to the Bill. Its call for views on the memorandum received [three responses](#). It took no further action on the financial memorandum.
11. A full Scottish Parliament Information Centre ("SPICe") [briefing on the Bill](#) was also published.
12. The Committee issued a wide call for views, which ran from 10 January to 7 March

2025. This was emailed to 106 recipients on 10 January 2025, with reminders sent out four times until the consultation ended.

13. The Committee [received 29 responses](#) to its call for views. SPICe produced an [analysis](#) of these responses.
14. The Committee held oral evidence sessions on 29 April, 6 and 20 May 2025. It heard from:
 - the Scottish Law Commission, legal practitioners, academics and representatives from the business sector; and
 - the Minister for Victims and Community Safety, Siobhian Brown MSP, and supporting officials.
15. Full details of the Committee's meetings, and those who gave oral evidence, are set out at Annexes A and B.
16. The Committee is grateful to all those who helped inform its consideration of the Bill.

Background and overview of the Bill

17. The Bill is based on work on reforming the law of commercial leases which the SLC carried out as part of its [Tenth Programme of Law Reform](#).

What are commercial leases?

18. Commercial leases are agreements where one party (the landlord) gives another party (the tenant) the right to use land or buildings for commercial purposes for a period of time in return for the payment of rent.
19. All commercial leases have a contractual element (i.e. what is agreed on in the lease) which binds the parties to the agreement.
20. However, in common with other leases, commercial leases can also create “real rights” which can bind the grantor of the right (i.e. the landlord) but also other parties (e.g. the landlord’s successors). Consequently, if a property is sold with a lease the purchaser may inherit the lease and the tenant is entitled to remain in the property.
21. Unlike agricultural and residential leases, there is very little statutory regulation of commercial leases. Instead, most of the rules are based on [the common law](#) (i.e. general principles, and precedents from court cases) in conjunction with what is agreed on in the lease. The focus of the Bill is on updating and reforming these common law rules (as well as the interaction with certain statutory rules on giving notice to terminate a lease).

What does the Bill seek to do?

22. One of the key aims of the Bill is to reform the law of “tacit relocation”. Tacit relocation means where a lease automatically continues after its expiry date because neither party has taken steps to terminate it in line with the rules on giving notice.
23. Another key aim is to reform the law on the giving of notices to terminate a commercial lease.
24. [The Scottish Government’s Policy Memorandum](#) notes that the policy aim behind the Bill is to improve, simplify and update aspects of the Scots law of commercial leases so that it meets the needs of a modern Scottish economy.
25. The potential impact on the economy is linked to the fact that commercial leases:
- cover almost all places where businesses operate, including small shops, shopping centres, restaurants, cinemas, offices, industrial facilities, factories etc. Voluntary organisations such as charities, and government and governmental bodies can also enter into them (either as tenant or landlord); and
 - are an important element in commercial property investment (property purchases/investment deals can involve the acquisition of underlying leases and hence the rent connected to such leases).

26. The Bill implements the SLC's recommendations that the common law on the tacit relocation of commercial leases should be codified with notice rules updated, the option to contract out of the law provided for, and the essential requirements for notice included in statute.

SLC consultation and recommendations

Consultation

27. The SLC published a [Discussion Paper](#) (“the Discussion Paper”) in May 2018. The Discussion Paper examined the topics on leases highlighted in the SLC’s Tenth Programme of Law Reform as well as an additional topic on the law of “irritancy” (i.e. the landlord’s right to terminate a lease early where a tenant has breached the contract).
28. The Discussion Paper asked consultees a series of questions focused on reform of the law. The consultation was open for comments until 14 September 2018, during which time the SLC delivered seminars on the Discussion Paper to Scottish law firms, surveyors and organisations with an interest in the law. [The SLC received 39 consultation responses](#).
29. In October 2022, the SLC published its [Report on Aspects of Leases: Termination](#) (“the Report”). The Report recommended a number of reforms to the Scots law of leases based on an analysis of [responses to the Discussion Paper](#). It was also accompanied by a final draft Bill on which the SLC also consulted. [The consultation responses can be found on the SLC’s website](#).
30. The SLC was assisted in its work by an advisory group made up of legal practitioners, surveyors and academics (see the list of advisory group members at Appendix D to the SLC’s Report).
31. The SLC also considered the working of the Tenancy of Shops (Scotland) Act 1949 (“1949 Act”). This was introduced after the Second World War with the aim of stimulating the post-war economy and protecting small shopkeepers (Discussion Paper para 6.2). Ultimately, the SLC did not make any recommendations in the Report on the basis that more consultation on the 1949 Act was needed.
32. The SLC has, however, now consulted on the 1949 Act and on 18 February 2025 published its [Report on the Tenancy of Shops \(Scotland\) Act 1949](#) which recommended repeal of the 1949 Act. The SLC states that its wish is that the Scottish Government amends the Bill to repeal the 1949 Act.

Recommendations

Tacit relocation

33. The norm in most commercial agreements is that, if a party to an agreement wants to end it, they only have to follow the procedures outlined in the contract (a contract might simply end at a set point in time for example, or there may be specific clauses for terminating or for extending the agreement).
34. Leases are different. Over centuries a body of rules has built up in the common law known as “tacit relocation”. This means that a commercial lease automatically continues on the same terms (“relocates”) after its termination date:

1. unless there is a valid notice to terminate; or
 2. in situations where notice has been given but the landlord has failed to take reasonable steps to remove the tenant. In that situation, the “silence” of the landlord in the face of the tenant’s continuing possession is seen as tacit acceptance of the continuation of the lease.
35. The SLC Report summarises the effect of the law as follows:
- ” 2.7 ... if the lease is for more than one year it continues for a further year and then from year to year until appropriate notice of termination is given or the tenant departs at the termination date with the landlord’s consent. If the lease is for less than one year, it continues for its original period and so on successively until appropriate notice is given or agreed departure takes place.¹
36. As outlined in [the SPICe Bill briefing](#), the SLC emphasises that tacit relocation can sometimes benefit the parties to a lease as it allows leases to roll over without the need for professional advice. However, the SLC also stresses that it can cause problems, namely:
- lack of transparency – As the doctrine is part of the common law, it usually isn’t evident from the face of the lease (people can therefore think that a lease has ended although it may not have if the correct notice has not been given).
 - uncertainty about whether one can contract out of tacit relocation – The SLC Report explains that it is not clear whether the law allows people to agree to opt out of the rules.
37. The SLC proposed two main options for reform in its Discussion Paper.
38. Under option 1, tacit relocation would be disapplied from commercial leases, but with the additional options of:
1. allowing the parties to contract in to the common law doctrine if they wished; and
 2. rules to cover the situation where the tenant remains in occupation at the end of the lease and the landlord acts in a manner consistent with the lease continuing.
39. Under option 2, the law would instead be clarified and the parties to a commercial lease would have the right to contract out of tacit relocation. Like option 1, there would also be rules to cover the situation where the tenant remains in occupation at the end of the lease and the landlord acts in a manner consistent with the lease continuing.
40. The SLC concluded that, although strong arguments had been made for abolishing tacit relocation, it should be retained but replaced with a statutory code together with an explicit right for the parties to contract out of these rules, i.e. option 2.²

Notices terminating a lease

41. Under the current law, to avoid tacit relocation, the parties to a lease have to give a

notice of termination or, as it is more often called, “a notice to quit”.

42. Chapter 3 of the Discussion Paper explains that the current law on giving notice is both very complex and unclear.
43. The general rule in the common law is that a notice to quit must be definite and unconditional and that 40 days’ notice should be given. This does not need to be in writing and can be modified, within certain limits, by an express term in the lease (see para 3.62 of the SLC Report).
44. There is, however, also legislation from more than a century ago for removing tenants (the Sheriff Courts (Scotland) Act 1907) which provides potentially conflicting rules. This legislation includes much longer notice periods than the 40-day common law period (one to two years’ notice for premises greater than two acres in size) and also requires written notice to quit.
45. To deal with this problem, the SLC recommended the following approach in the Bill:
 - Written notice for landlords and oral notice for tenants where leases are less than one year (no notice would be needed for leases of less than 3 months).

Although consultees generally thought there should be the same rules for notices by landlords and tenants, the SLC concluded that, “the obligatory form and content for tenants’ notices should differ from and be less demanding than those by landlords to tenants” (paragraph 3.3. of the Report). Various arguments were given by the SLC for this approach including that:

- the common law notice rules are already different for landlords and tenants
- the landlord’s notice can lay the foundation for court proceedings to remove the tenant
- a landlord’s notice may terminate the tenant’s business at the property
- the landlord is more likely than the tenant to have an adviser to assist in complying with formalities.
- A statutory list of essential requirements for notice (tenants would be subject to lesser requirements than landlords in line with the general approach taken by the SLC to notice).
- New default notice periods (with contracting out permitted):
 - the SLC recommended a default three-month period as an appropriate balance, arguing that that the current 40 days’ notice does not give tenants sufficient time to move to new premises or for landlords to find new tenants.
 - the three month notice period would apply to all leases of six months or longer.
 - the SLC also proposed a one-month default notice period for leases with a duration of three to six months and that no notice should be needed for leases of up to three months. See paragraph 3.68 of the SLC Report for details of the SLC’s reasoning.

- Rules on the giving of written notice – if notice is served by certain specified methods for written documents, the presumption is that service has taken place at a specified time. Consent is needed for notice using electronic communications.
- Disapplication of the common law rules and current legislation on notice.

Other recommendations

46. The SLC also considered a range of other matters linked to how commercial leases end. Recommendations included:
- Rules on how to determine the date of entry and duration of a lease when this is not clear from the lease (e.g. because the lease has been lost or because the original lease was an oral one).
 - That all parties to a lease must provide an address in the UK where certain documents can be sent to them (this is aimed at dealing with difficulties serving written notice where parties have no address in the United Kingdom).
 - Rules to deal with the situation where tenants give notice to the wrong party where the landlord has changed and the tenant has not been made aware of this.
 - Rules on the serving of notice on the death of the landlord or tenant.
 - Limited reforms on notices linked to the law on “irritancy” (this is a legal term for rules which allow a landlord to end a lease early, normally as a result of the tenant breaching the terms of the lease).
 - The inclusion of an implied statutory term to require the landlord to repay rent or any other payment made in advance by the tenant in relation to a period falling after the termination of the lease.

Tenancy of Shops (Scotland) Act 1949

47. The Tenancy of Shops (Scotland) Act 1949 (“the 1949 Act”) was introduced after the Second World War with the aim of stimulating the post-war economy and protecting small shopkeepers ([Discussion Paper](#) para 6.2).
48. The legislation provides a very limited security of tenure to shop tenants. The SLC’s Discussion Paper explains that it:
- ” ... allows for tenants of shops to apply to the sheriff for a renewal of their tenancy for a period of up to one year upon being served with a notice of termination of tenancy.”³
49. The Discussion Paper raised the question of whether the 1949 Act should be repealed on the basis that it is little used and that any use is primarily by parties not intended by the Act (i.e. large shopkeepers).
50. Although it considered the options in more detail, the SLC did not make any recommendations in the Report on the basis that “further consultation is required on

the possible routes forward.” (for details see para 7.34) The Bill therefore does not deal with this matter.

51. The SLC has, however, now consulted on the 1949 Act and on 18 February 2025 published its [Report on the Tenancy of Shops \(Scotland\) Act 1949](#).
52. The SLC’s current position on the 1949 Act is discussed under the ‘General issues’ section of the report.

Overall impact of the reforms proposed in the Bill

53. The Committee heard varied views from stakeholders on the proposed reforms in the Bill, and whether there was a need for reform. There was support for some reforms in the area of commercial leases, and making the law clearer, which the Bill aims to do. Shepherd and Wedderburn stated that:

” Leases generally make no (or little) reference to tacit relocation. It is not difficult to see why a party reading a lease with no broader understanding might assume that the lease terminated immediately on the expiry date provided for in the lease. We are supportive of the ambition that reforming tacit relocation will make the law clearer and more accessible in this area.”⁴

54. In its written evidence, Urquharts also argued that “the main reason for reform [was to] ...provide clarity and certainty for landlords, tenants and legal practitioners.” It went on to say that:

” [it] considered most, if not all, of the existing problems with tacit relocation in practice were capable of being addressed by a relatively short piece of new legislation which retains and consolidates the benefits of the existing Law, whilst making necessary improvements, resolving long-standing uncertainties and streamlining procedures within a substantially familiar framework.”⁵

55. Business representatives also welcomed the proposed reform and “the decision to provide additional certainty and clarity for both the tenant and the landlord under the new definition.”⁶

56. Stacey Dingwall of the Federation of Small Businesses Scotland told the Committee that, “small businesses ... welcomed its attempt to modernise some of the legislation in this area.”⁷ Alan Cook of the Scottish Property Federation also stated that its “membership has generally welcomed the Bill and the idea that the law should be modernised...our perspective on this is that we support codification”.⁸

57. However, there was disagreement from witnesses, especially from legal practitioners and academics, on the necessity of the Bill in its current form. Burges Salmon argued that the current law “is clear at present (particularly when viewed against proposed reform in statutory form by way of the Bill).”⁹

58. In its written evidence, the Faculty of Advocates asked fundamental questions about whether the SLC has taken the right approach in trying to codify the existing law. It stressed:

” We question the need for a thoroughgoing reform of the law on tacit relocation, though. It is a well-developed and relatively well-understood area of law. We note that whilst the Bill aims to codify much of the existing approach, the new statutory code will be broadly similar to existing practice.”¹⁰

59. Dr Brown of Strathclyde University argued that:
- ” there is probably no pressing need for reform. Indeed, some of the recommendations, particularly those about changing the language that is used, are slightly harmful rather than helpful.¹¹
60. Dr Brown also argued that:
- ” If this is what it [the Bill] is going to be, then, yes, throw it out and vote it down, but it is possible for the Bill to be reworked into something that is consistent with the position at the moment and which will allow for principles that exist, and have existed for hundreds of years, to be stated quite clearly in an easy-to-find place. It is worth doing that, but it will involve a significant rethink of what is in front of us.¹²
61. In addition to these overarching views, many stakeholders also raised concerns about specific details of the Bill and aspects of the proposed reform. These will be discussed in more detail later in the report, but include views that some aspects of the Bill are complex and potentially ambiguous.

62. The Committee thanks all those who engaged with it on the Bill. It acknowledges the views of those who consider that reform is needed, and that the Bill will make the law more accessible to those using and practising in this area of law. At the same time, the Committee acknowledges the concerns of those who view the Bill as an unnecessary complication and question its necessity.

63. The Committee calls on the Scottish Government to set out clearly in its response to this report its response to the fundamental concerns expressed by some witnesses about whether the Bill is needed in the first place, and the concerns that it may inadvertently make the law more complicated.

64. The Committee also asks the Scottish Government to set out, if it does consider the Bill necessary, whether it intends to address any of these concerns through Stage 2 amendments, and if so, how. The Committee asks that this response be made available well ahead of the Stage 1 debate, before the end of the Parliament’s summer recess.

Committee scrutiny of the Bill

General issues

Need for reform of tacit relocation and options for reform

65. David Bartos of the SLC told the Committee that while some law firms claim the law is clear, the SLC disagrees. He suggested that “what is perhaps clear is the practice rather than the underlying law”¹³. He added:

” One option would be to keep the status quo and to keep an unsatisfactory law, on the basis that there is a practice that effectively disregards it, but that did not seem to us to be acceptable, and indeed it is not acceptable to many other stakeholders.”¹⁴

66. A common view from responses to the Committee’s consultation, including from Pinsent Masons¹⁵, Burness Paull¹⁶, Dumfries and Galloway Council¹⁷ and Gillespie Macandrew¹⁸ was that there is a need for reform of tacit relocation largely on the basis that there is currently a lack of clarity for tenants and landlords, and that it will be useful to have all the law in one place, which would improve accessibility and understanding.

67. In its response to the Committee’s consultation Pinsent Masons stated:

” It is confusing for landlords and tenants having different notice periods for service of notices to quit depending on the size of the property and the length of the lease. The recent case law on service of notices of intention to quit has added to the confusion. It is unsatisfactory that it is not clear whether or not you can contract out of tacit relocation. The lack of clarity around the notice period to prevent tacit relocation occurring has resulted in the parties to the lease having to go to court which is expensive and time consuming. It would be preferable for the law to be clarified.”¹⁹

68. As detailed in the section on Part 2 of the Bill, the Committee received varied evidence from stakeholders regarding the option for reform taken by the Bill. As with the SLC’s work, most respondents seemed to support some form of statutory code for tacit relocation combined with the right to contract out.

69. The Federation of Small Businesses Scotland noted that the “largely unregulated market” heightens power disparities, causing “excessive cost, delays, uncertainty and unfairness.”²⁰ Stacey Dingwall of the Federation of Small Businesses also argued there was a “power imbalance” between small tenants and landlords.²¹

70. However, Alan Cook of the Scottish Property Federation noted that power imbalances vary. He told the Committee that in struggling high streets, tenants may have “the whip hand in negotiations”²² as landlords seek to fill vacancies, while national retailers can hold leverage over property owners eager for high-profile tenants.

71. The Federation of Small Businesses Scotland also pointed out that, “a recurring issue highlighted by our members is the complexity and ambiguity in commercial lease agreements” and as many small business owners may not pay close attention to lease contract terms or take legal advice, this could “leave them vulnerable in future negotiations.”²³
72. In evidence to the Committee, Carlyne Hair of the Law Society of Scotland agreed that some reform in this area would be useful and supported “creating legislation where the law is in one place”.²⁴
73. Carlyne Hair also told the Committee that the law is currently fragmented across common law and the Sheriff Courts (Scotland) Act 1907. She thought that consolidating it into a single, accessible statute would be beneficial. She also emphasised that, “this is certainly an area where there is sufficient litigation and confusion to justify reform.”²⁵
74. However, a number of responses to the Committee’s consultation were less convinced of the need for reform, or specific proposals in the Bill. Burges Salmon argued that the law on giving notice is clear due to the Rockford Trilogy case^{26 27}, the Court of Session case from 2021 of Rockford Trilogy Limited v NCR Limited where the Court of Session found that e-mails sent by the tenant to a landlord were sufficient notice of the desire to terminate the lease. The response states:
- ” Whilst, in practice, a formal notice to quit is often timeously served to bring a lease to an end, that is not the strict legal requirement under the present law to exclude tacit relocation and therefore to bring a lease to an end. All that is required is timeous, sufficient intimation, whether verbal, written (formal or informal) or by conduct, that the lease will not continue on its present terms. That analysis is acknowledged by the Scottish Law Commission in their Report, at paragraphs 3.41-3.42.²⁸
75. This was disputed by David Bartos of the SLC and the Minister who pointed out there were differing opinions on the Rockford Trilogy case within the legal profession.^{29 30 31}
76. Despite the general support outlined above, the Law Society of Scotland questioned whether the reform proposed through the current Bill “will provide the clarity and certainty required”³². They also questioned how the statutory code will operate alongside common law during the transitional period in Part 2 of Schedule 2, potentially causing confusion. The Society stressed in written evidence that given the common law has developed alongside society and commercial practice, “it is unlikely that a statutory code will offer the same degree of flexibility as the Scottish economy continues to evolve.”³³
77. Craig Connal KC argued that “Option 1 [abolishing tacit relocation] is by far the simplest it preserves the contract terms as the key.”³⁴
78. Both the Faculty of Advocates and the academics giving oral evidence, Dr Skilling of the University of Aberdeen and Dr Brown of the University of Strathclyde³⁵ also raised fundamental concerns about the reform. Fergus Colquhoun of the Faculty of

Advocates suggested a “rethink or a different approach might be preferable”.³⁶

79. Dr Brown thought the existing law is clear and provides flexibility for landlords and tenants.³⁷ Both academics also argued that the Bill's proposals may have downsides, such as removing Scots legal terminology³⁸.

80. Fergus Colquhoun of the Faculty of Advocates also raised concerns that the proposed reforms would create “two parallel statutory regimes”³⁹ [a regime for commercial leases under the Bill and agricultural and residential leases which have their own rules].

81. In her evidence to the Committee, the Minister confirmed she had considered the evidence from various stakeholders regarding the need for reform in commercial lease termination laws. Despite suggestions to rewrite the Bill, she disagreed, citing long-standing concerns from practitioners and solicitors about the law's uncertainty and its adverse effects on commercial property investment. The Minister told the Committee:

” As far back as 2010, the SLC was approached by practitioners and solicitors in the area who said that the law should be reformed because it was uncertain and was acting as a deterrent to commercial property investment. The SLC’s project sets out clearly that the law of termination of commercial leases is inaccessible, uncertain and outdated and why that is so. Representative bodies of Scottish small businesses and landlords have welcomed the Bill and are supportive of it.⁴⁰

82. The Minister further explained that the current common law rules cause unnecessary costs and court proceedings for tenants and landlords and in her view, the Bill aims to simplify and improve the situation, benefiting both parties. She also argued that the Bill will bring “some economic benefit”⁴¹ given that many businesses operate from leased premises, a major share of non-domestic properties.

83. Addressing why the Bill proposes codification rather than abolishing tacit relocation or making partial amendments, Michael Papparakis, the Policy and Bill Programme Manager in the Scottish Government, told the Committee that alternative approaches would add complexity, and that codification was the simplest solution.⁴²

84. In concluding, the Minister acknowledged “a number of technical issues have come up during Stage 1 evidence”⁴³, and she committed to working with the Committee to address these.

85. The Committee recognises the views of those who support reform, including some legal practitioners, to improve the accessibility of the law in this area. However, the strength of the criticisms it heard from legal practitioners such as Burges Salmon and the Faculty of Advocates was striking, and many of the concerns and outstanding questions appear

legitimate.

86. **The Committee asks the Scottish Government to set out its response to those stakeholders who consider that a rethink or different approach to reform of tacit relocation is required and in particular, concerns about the risks associated with having two parallel statutory regimes, i.e. a regime for commercial leases under the Bill and agricultural and residential leases which have their own rules.**

Tenancy of Shops (Scotland) Act 1949

87. As set out earlier in the report, the 1949 Act was introduced after the Second World War with the aim of stimulating the post-war economy and protecting small shopkeepers. It provides a very limited security of tenure to shop tenants. It allows for tenants of shops to apply to the sheriff for a renewal of their tenancy for a period of up to one year upon being served with a notice of termination of tenancy.
88. Since the introduction of the Bill, the SLC published published its [Report on the Tenancy of Shops \(Scotland\) Act 1949](#) on 18 February 2025.
89. The position taken by the SLC is that the 1949 Act should be repealed. The SLC's rationale for repeal is that the 1949 Act was last reviewed in the 1960s, it is outdated, rarely used and it is unnecessary for modern commercial conditions. Vague in its terms, the Act causes unpredictable outcomes and its use is unaffordable for the small business tenants it was meant to protect. If used at all, it can be deployed by large retailers as a negotiating tactic to pressurize their landlords.⁴⁴
90. The SLC is therefore proposing that the Scottish Government amends this Bill to implement its recommendation that the 1949 Act be repealed.
91. The majority of witnesses including the legal representatives⁴⁵ who spoke to the Committee, and those that responded to the Committee's consultation, such as the Senators of the College of Justice⁴⁶ and Shepherd and Wedderburn⁴⁷ were in favour of the Bill being amended to deal with the 1949 Act.
92. David Bartos of the SLC expressed that "the proposal, which is for straightforward repeal, can be brought into the Bill technically without undue drafting."⁴⁸
93. There was also a general consensus from witnesses that the 1949 Act is outdated, with many highlighting that it does not reflect current commercial realities. Fergus Colquhoun of the Faculty of Advocates stressed:
- ” It appears that it is largely taken advantage of by Tesco and Sainsbury's and not by the small shopkeepers whom it was intended to benefit.⁴⁹

94. Alan Cook of the Scottish Property Federation also expressed concern that the 1949 Act, initially meant to protect small shopkeepers, now benefits larger retailers. He told the Committee that:
- ” The 1949 Act tends to be used more by well-represented national retailer tenants as a negotiating chip against their landlord, rather than it being something that protects the rights of shop owners and retailers.⁵⁰
95. However, some respondents to the Committee’s consultation, including the Scottish Grocers’ Federation⁵¹ and Professor Brymer⁵² also favoured using separate legislation to reform the law in the 1949 Act. The Scottish Grocers’ Federation stated that:
- ” ...it is SGF’s preference that the Tenancy of Shops (Scotland) Act 1949 be discussed and reformed separately. In order to allow for specific engagement with businesses and retailers on the different reforms being proposed.⁵³
96. On this point, Dr Brown of the University of Strathclyde told the Committee that he had changed his stance on how to deal with the 1949 Act. Despite the view expressed in his (joint Strathclyde University) response to the Committee’s consultation (which had supported a standalone Bill to look at the 1949 Act), he now supported its repeal through this Bill. He acknowledged that the world has changed since 1949 and that “the mischief that the 1949 Act was designed to remedy is not necessarily there anymore.”⁵⁴
97. The Federation of Small Businesses Scotland raised a concern that, due to power imbalances, repeal alone is insufficient. Stacey Dingwall of the Federation stressed that:
- ” We have been reticent about repealing the 1949 Act altogether without something being in place to deal with the issues that it might leave behind. It might be thought by some that we have completely dealt with some of the issues that we had in the past, such as the power imbalance between landlords and tenants. As I have said, we are finding that issues still exist, so we are reticent about repealing the 1949 Act completely without something else acting as a backstop.⁵⁵
98. Stacey Dingwall also questioned:
- ” In the worst-case scenario, could repealing the act make some landlords withdraw from offering premises to small businesses, meaning that those businesses would have to move out?⁵⁶
99. Similar concerns were also raised by Dr Skilling of the University of Aberdeen, who told the Committee that he does “not want the repeal of it to come with a lacuna in the discussion of what, if anything, should replace it”.⁵⁷
100. In her evidence to the Committee, the Minister welcomed the positive responses to the SLC’s recommendation that a Stage 2 amendment be lodged to repeal the 1949 Act. She also welcomed the scrutiny that the Committee had undertaken on the matter.⁵⁷

101. In concluding, the Minister confirmed she will consider stakeholder responses and potential consequential amendments and will write to the Committee ahead of the Stage 1 debate to set out the Scottish Government's views on a repeal of the 1949 Act, and the lodging of amendments. Acknowledging the concerns of the Federation of Small Businesses Scotland, she also confirmed these will also be addressed in that communication.⁵⁸

102. **The Committee supports the repeal of the Tenancy of Shops (Scotland) Act 1949, and this Bill being used as a legislative vehicle for doing so. However, the Committee considers it important that the Scottish Government has further dialogue with the Federation of Small Businesses Scotland before the end of Parliament's summer recess, to seek to address the Federation's concerns, and to set out the outcome of this dialogue in its response to this report.**

Part 1 and Schedule 1 of the Bill

Definition of leases in the Bill

103. Part 1 of the Bill specifies the leases to which the legislation will apply. The Bill does not contain a detailed definition of what a commercial lease is. Instead, it takes the approach of excluding certain leases from the application of the Bill. It does this in section 1(1) which states that the legislation only applies to a lease which is not one (or more than one) of:
- a residential lease
 - an agricultural lease
 - a lease of:
 - a croft,
 - a small landholding, or
 - an allotment.
104. Certain leases in schedule 1 of the Bill (including student lets and holiday lets) fall within the scope of the Bill but are not covered by the new rules on automatic continuation and will end on their termination dates. [The Explanatory Notes to the Bill](#) (paragraph 23) explains this provision as follows:
- ” A number of types of lease are presently excluded from tacit relocation. These are a lease granted for the lifetime of the tenant, a student let, a holiday let, a lease granted with the authority of the court, a short-term grazing or mowing lease and a lease (of less than a year) of a right to fish or hunt where there is a close season (see paragraph 2.60 of the Report). Under the Bill, these leases, which are listed in schedule 1, end on their termination dates by virtue of subsection (2)(b) ...

105. Generally, responses to the Committee’s consultation and from witnesses who spoke to the Committee were largely content with the approach taken in Part 1 of the Bill, appreciating its focus on exclusions rather than attempting to cover everything.
106. Notwithstanding that general support, there was also a range of critical comments and concerns raised on the scope of leases covered by the Bill, including in relation to grazing or mowing leases, mixed-use rural land, sub-stations, windfarms, seasonal fishing or hunting rights, charity accommodation for veterans, and non-primary residence leases.
107. Some stakeholders, including Gillespie Macandrew⁵⁹, Turcan Connel⁶⁰, the Law Society of Scotland⁶¹ and Pinsent Masons⁶² suggested the definitions needed to be tightened up to avoid ambiguity and to improve understanding as there were concerns about the potential for confusion if the definitions are not well-defined.
108. Some stakeholders also emphasised the need to ensure that the provisions in schedule 1 do not conflict with existing legislation, especially in areas like agricultural and residential leases. Responses to the Committee’s consultation, including from David Campbell, Gillian Clark, Gillespie Macandrew and Turcan Connel⁶³ raised concerns regarding the definitions in relation to grazing and mowing leases whereby a lease of less than a year is considered an ‘agricultural lease’ under section 1(3)(v) of the Bill and therefore is not covered by the legislation. However, they highlighted that schedule 1 also refers to "land which is let for the purpose of its being used only for grazing or mowing during some specified period of the year".⁶⁴
109. Gillespie Macandrew stated:
- ” There may be some situations in which the applicable legislation is unclear, for example in the case of mixed uses of land. For example, a tree nursery falls within the definition of ‘agriculture’ applied by the Agricultural Holdings legislation but commercial forestry falls within the scope of the Bill. What if a single lease were granted in respect of both uses?
- A grazing or mowing lease of less than a year is an ‘agricultural lease’ in terms of S.1(3)(v) of the Bill. Such leases are excluded from scope yet have also been included in Schedule 1(1)(d) (leases which terminate automatically under s.2(2)(b)). Presumably this is seeking to catch non-agricultural leases (e.g. horse grazings or non-commercial enterprises) – clarification on this would be helpful as it appears to be contradictory at present.⁶⁵
110. Similarly, Turcan Connell considered the exclusion of grazing and mowing leases of one year or less from automatic continuation in schedule 1 to be “confusing and needs review and amendment.”⁶⁶
111. Schedule 1 of the Bill also excludes leases of fishing or hunting rights during close seasons from automatic continuation rules. Gillespie Macandrew argued that defining ‘close seasons’ based on whether hunting or fishing is an offence at the time is overly complicated. They contended that, “it would be simpler for any lease

of less than a year to fish or hunt to terminate at its termination date.”⁶⁷

112. Dr Skilling of the University of Aberdeen told the Committee that charity accommodation for veterans is an ambiguous area in the Bill. He explained that it does not appear to be exempt under section 1, as it is not classified as a private residential lease according to the Private Housing (Tenancies) (Scotland) Act 2016. He therefore argued that it should be exempted because it involves a “more long-term, charity-based housing scenario in which it is more likely than not to relate to a person’s principal home”⁶⁸ and therefore differs from holiday lets or student lets which are covered by the Bill but not the rules on automatic continuation due to Schedule 1.
113. Dr Skilling also questioned whether it was clear if the Bill would apply to residential leases where the property isn’t the tenant’s principal home, for example because they stay there for work, and as such, they would be covered by the Bill as they wouldn’t be residential leases exempted from the new rules by section 1.⁶⁹
114. Dr Skilling went on to explain that the issue is that these leases may not be classified as residential leases. He indicated that:
- ” case law has established that a person’s main family residence may still be held as their principal home because that is the area to which they have the biggest ties, thus denying them the protections of a residential tenancy, even in cases in which they spend the majority of their time in another place of accommodation.”⁷⁰
115. The Law Society of Scotland also proposed the Bill “should be amended to clarify that leases of movables are excluded”⁷¹ as it was unclear whether the Bill is intended to apply exclusively to leases of land and heritable property, thereby excluding leases of movable property.
116. Addressing these concerns, David Bartos of the SLC told the Committee that amending the Bill to explicitly exclude movable property should be straightforward. Regarding the mixed use of rural land, he suggested that the key is to determine whether the agricultural statutes referenced in the Bill apply to each type of lease.⁷²
117. Concerns were also raised about the interaction between the Electronic Communications Code and the Digital Economy Act 2017, and the proposed statutory rules in the Bill, particularly regarding notice periods for termination. Responding to the Committee’s consultation, the Law Society of Scotland suggested that the Scottish Government should re-engage with stakeholders in this area and include it in any awareness-raising campaign.⁷³
118. Steven Blane of Pinsent Masons was “broadly supportive”⁷⁴ of the definitions, but also highlighted the need to consider specific exclusions like telecommunications apparatus. He told the Committee that:

” Mobile phone masts on the roof of a building or in a field are governed by the code that is set out in the Digital Economy Act 2017, as it has been updated. In Scotland, the “code agreement”—as it is referred to in the electronic communications code—is often a lease.

The fact that some of those arrangements are leases could add extra complexity to the existing rules, which require the Lands Tribunal for Scotland’s involvement in order to manage the renewal or termination of what might be referred to as “code leases.”⁷⁵

119. Carlyne Hair of the Law Society of Scotland also raised the issue of wind farms. She questioned whether it would be, “appropriate for the Bill to apply to those.”⁷⁶

120. In its Report on Aspects of Leases; Termination, the SLC states at paragraph 1.11 that its recommendations cover windfarm and telecommunications leases and includes a footnote (footnote 22) on telecommunications leases which states:

” While leases for the keeping of electronic communications apparatus are regulated by the Electronic Communications Code ... the Code does not modify or exclude the common law under which such leases are terminated on their ish. Rather, Pt 5 of the most recent version of the Code provides for security of tenure for the tenant after the lease has been terminated on its ish following the exclusion of tacit relocation under the common law. Our recommendations do not affect such security of tenure and therefore telecommunications leases are covered by them.”⁷⁷

121. However, the SLC’s report does not indicate in more detail how the two regimes, the Electronic Communications Code and provisions in the Bill, will interact.

122. Fergus Colquhoun of the Faculty of Advocates⁷⁸ and Doctors Brown and Skilling⁷⁹ expressed concern that having a statutory regime for tacit relocation for commercial leases and a common law one for agricultural, residential leases, and crofts could increase complexity and cause legal divergence. They contended that listing excluded leases, rather than basing rules on the presumed intention of the parties as in current law, would reduce flexibility.

123. In her evidence to the Committee, the Minister pointed out that most respondents to the Committee’s consultation were content with the general approach but had questions about specific lease types.⁸⁰

124. The Minister went on to explain that extending automatic continuation beyond commercial leases requires “careful consideration”⁸¹ and was not raised during SLC consultations or responses to its discussion paper. She pointed out that the Bill is designed exclusively for commercial leases; she argued that expanding it to cover agricultural or residential leases would require significant legislative effort.

125. Responding to concerns about lease definitions, the Minister emphasised that mixed-use leases are already possible, noting that “the Bill does not create that issue.”⁸² She also stated that parties will continue managing them as they do now and that prohibiting such leases would limit commercial flexibility, which she does

“not think that it would be necessary to do so.”⁸³

126. Regarding grazing and mowing leases, she confirmed the Bill will “reflect the existing law,”⁸⁴ excluding agricultural leases under a year. These are listed in schedule 1 as non-continuing, while non-agricultural grazing leases remain under common law tacit relocation.
127. Turning to issues raised relating to telecoms infrastructure, such as wind farms and electricity substations, the Minister explained that:
- ” There are already two parallel processes for the termination of telecoms leases under the current legal framework. Currently, parties have to satisfy themselves as to whether the electronic communications code applies. If not, common law will apply. If any provisions of the Bill come into force, those will apply rather than common law.⁸⁵
128. Michael Paparakis, the Policy and Bill Programme Manager in the Scottish Government, confirmed there had been no contact with the UK Government on the telecommunications code, as affected leases fall outside the Bill and remain under common law.⁸⁶
129. In concluding, the Minister acknowledged concerns from the Law Society of Scotland in relation to moveable property, confirming officials will investigate whether the Bill applies to such leases, and consult the Law Society of Scotland. She committed to providing “information on that issue and on anything that we intend to take further”⁸⁷ before the Stage 1 debate.
130. The Minister also committed to reviewing concerns from the Centre for Scots Law about charity leases for veterans, confirming she would write to the Committee ahead of the Stage 1 debate.⁸⁸

131. The Committee supports the Bill’s drafting in Part 1, which defines the leases to which the Bill will apply, using a definition by exclusion.

132. However, the Committee wants to ensure that definitions are as clear as possible. It asks the Scottish Government to engage with suggestions from stakeholders that the definitions be tightened up in relation to leases in the following areas:

- grazing or mowing leases;
- mixed uses of land in rural areas;
- a right to fish or hunt where there is a close season;
- charity accommodation for veterans;
- residential leases where the property is not the tenant’s principal

home;

- sub-stations and windfarms; and
- telecommunications.

133. The Committee therefore asks the Scottish Government to reflect on how this may be achieved, and to set out its thinking in each area in its response to the Stage 1 report.

134. The Committee also calls on the Scottish Government to work with legal practitioners and academics regarding their concerns, and how they might be addressed, and to also set this out in its response to the Stage 1 report.

135. The Committee also agrees that the Bill should only apply to heritable property and seeks assurance from the Scottish Government on what steps it is taking to ensure that this is clearly the case.

Part 2 of the Bill: New statutory code

136. Part 2 of the Bill replaces the common law rules of tacit relocation with a new statutory code, including a right to contract out of tacit relocation (which the Bill renames to automatic continuation).

137. The [Policy Memorandum](#) (paragraph 12) summarises the changes as follows:

” ... If a landlord or tenant enter into a commercial lease and, at the end of the term of lease, the parties have not agreed that the lease will end and neither party has given notice to quit in the proper form and at the right time then the lease continues by tacit relocation. The Bill also modifies the form and content of notices to quit and notices of intention to quit, laying out the manner in which they may be communicated and the persons to whom they must be given.

Automatic continuation and notice (sections 2 to 7)

138. Sections 2 to 7 of the Bill lay out the new statutory code, referred to as “automatic continuation” which replaces the common law of tacit relocation (section 25 expressly disapplies the existing common law rules).

139. In particular:

- Section 4 makes it clear that the parties to a commercial lease can contract out of automatic continuation.

- Section 5 lays down rules which mean that a lease can continue after its termination date because of the parties' conduct after that date.
140. In practice, if neither party formally ends a commercial lease at the agreed time, it continues by automatic continuation. The Bill also revises the format, content, and delivery of notices to quit and notices of intention to quit, by tenants and landlords.
141. David Bartos of the SLC explained that the SLC could have left strands of the law as they are, “coming as they do from 16th-century to 18th-century case law and then tried to bolt on to that some changes”⁸⁹, they believed it was better to consolidate the law into one place to deal with accessibility issues. He also explained that many texts are not available online, making it challenging to locate relevant passages.⁹⁰
142. He went on to elaborate on other issues with the current law: stating that the 40-day notice period in common law seems outdated, and aspects seem, “...to come from the depths of the 16th century”⁹¹ and provide insufficient notice time; further, David Bartos suggested the notice provisions in the Sheriff Courts (Scotland) Act 1907 are followed in practice, but are “unnecessary and outdated”.⁹²
143. Regarding sections 5 and 6, David Bartos contended that these sections align with existing common law principles. He noted that while some countries have a rule for automatic continuation if the landlord does not initiate court procedures within 30 days, adopting such a rule in Scotland would impose rigidity on the legal system.⁹³
144. In written evidence, the Federation of Small Businesses Scotland supported the reform in sections 2 to 7 in relation to the automatic continuation of leases. They highlighted that the imbalance in power between small businesses and landlords is another reason for reform. They stated that:
- ” A recurring issue highlighted by our members is the complexity and ambiguity in commercial lease agreements. Small business owners often lack the legal expertise to navigate complicated terms and conditions, which can lead to unintended consequences. We have heard from members that it is sometimes the case, in amongst everything they need to do to secure a space from which to run their operations, that a small business owner may not look as closely as they should at things like lease terms and conditions, which may leave them vulnerable in future negotiations.”⁹⁴
145. The Federation of Small Businesses Scotland also highlighted that the new code, “...can be an important tool for small businesses seeking stability”⁹⁵, but stressed, there are risks of businesses being locked into terms which do not suit their needs.
146. The Scottish Grocers' Federation supported rules which permit contracting out but emphasised that, regardless of the approach taken, there should be, “a significant awareness raising campaign to ensure that both tenants and landlords fully understand their rights and obligations.”⁹⁶
147. While some stakeholders welcomed the proposed reforms, especially the

consolidation of relevant laws, others raised concerns about its drafting, particularly what some saw as ambiguous drafting, and suggested improvements.

148. In relation to section 3, business representatives expressed concern that the Bill is a “bit rigid”⁹⁷, that it restricts the flexibility for parties to negotiate a longer notice period for landlords compared to tenants. Although such negotiations may be uncommon, Stacey Dingwall of the Federation of Small Businesses Scotland noted that:

” given our understanding that the Bill is geared towards providing greater protection for tenants, our recommendation is that the Bill be amended to offer that flexibility and, therefore, protection for small business owners.”⁹⁸

149. Legal practitioners, including the Faculty of Advocates⁹⁹, Burges Salmon¹⁰⁰, Pinsent Masons¹⁰¹, and the Law Society of Scotland^[13], expressed concern that the Bill may increase uncertainty due to ambiguous drafting in sections 4 and 5, potentially leading to more litigation. On section 4, Carlyne Hair of the Law Society of Scotland noted that it:

” creates a situation in which a pre commencement lease may purport to include wording excluding tacit relocation—the parties’ intention being that the lease should not continue beyond the contractual expiry date—but find itself caught by automatic continuation because of the wording of section 4.

We wonder whether it would be helpful to clarify in the Bill that it is valid to contract out of tacit relocation and that, in turn, if that is something that parties have done, that lease should not be subject to automatic continuation.”¹⁰²

150. Section 5 allows a lease to continue if the tenant remains in possession and the landlord does not act ‘within a reasonable period’. Fergus Colquhoun of the Faculty of Advocates argued that: “...whenever a Bill contains a term such as ‘within a reasonable period’, litigation will follow, as sure as night follows day.”¹⁰³

151. Similarly, the Scottish Property Federation questioned the workability of section 5 based on its current drafting.¹⁰⁴ Fergus Colquhoun also argued that the current common law is clearer than the wording in section 5 of the Bill¹⁰⁵

152. Carlyne Hair of the Law Society of Scotland stated that, “Section 5 simply restates much of the common-law position, which, in turn, requires interpretation by solicitors.”¹⁰⁶

153. Stakeholders proposed several suggestions for amendment in relation to section 5. Steven Blane of Pinsent Masons and Kieran Buxton of Burges Salmon suggested replacing “reasonable period” with a set period of days and mooted 28 or 30 days to take action to remove a tenant.”¹⁰⁷

154. Similarly, Dr Skilling of the University of Aberdeen agreed that replacing “reasonable period” with a specific number of days is preferable, but suggested “it may be useful to have two periods, depending on the length of the lease.”¹⁰⁸

155. In contrast, Dr Brown of Strathclyde University argued that the term “reasonable” in this section provides more flexibility for commercial parties.¹⁰⁹
156. Kieran Buxton and Fergus Colquhoun also expressed concern that the term “steps to remove the tenant” will likely be interpreted as “the raising of proceedings in the sheriff court for removal.”¹¹⁰ Fergus Colquhoun warned that this could lead to increased litigation, which is undesirable. He also added that the Faculty of Advocates prefers the inclusion of “objective criteria”¹¹¹ in the Bill.
157. Kieran Buxton suggested incorporating examples in the law where landlords have not acted to remove tenants, such as accepting rent. He referenced the “statutory analogy”¹¹² used in sections 52 and 53 of the Title Conditions (Scotland) Act 2003, which provides examples of a “common scheme.” He explained that:
- ” To help someone to figure out what a common scheme is, it gives examples of what factors they might look for to determine whether the test is met. I suggest that as an alternative that might balance the competing suggestions.¹¹³
158. Stacey Dingwall of the Federation of Small Businesses Scotland and Allan Cook of the Scottish Property Federation also suggested amending the Bill to offer flexibility and protection for small business owners. They told the Committee that there would need to be more guidance as to what “reasonable period” meant in practice.¹¹⁴
159. Furthermore, legal practitioners, including Steven Blane from Pinsent Masons¹¹⁵ and Burges Salmon,^{116 117} argued that the law on giving notice in commercial leases does not require significant changes, as the law on giving notice is clear due to the ‘Rockford Trilogy case’¹¹⁸. As noted earlier in the report (paragraph 75), this was disputed by the SLC and the Minister.
160. In addition to these drafting suggestions and concerns, some stakeholders raised fundamental issues which opposed the Bill’s approach in sections 2 to 7, as also mentioned earlier in the report.
161. R Craig Connal KC argued that “Option 1 [abolishing tacit relocation] is by far the simplest it preserves the contract terms as the key.”¹¹⁹ He suggested that “it may become standard for a compliant clause [to disapply tacit relocation] to be included in all commercial leases in the future so the law as amended will gradually fade away.”¹²⁰
162. While Fergus Colquhoun of the Faculty of Advocates¹²¹, with the agreement of the academics, Doctors Skilling and Brown¹²², acknowledged that tacit relocation is likely beneficial, he also expressed concern on whether codifying it is the appropriate approach. Fergus Colquhoun stressed that:
- ” ...although a reform of tacit relocation is probably welcome, a codification of it might not be the right way to go about it.¹²³
163. In her evidence to the Committee, the Minister shared the SLC’s views that there

were differing views on the Rockford Trilogy case. She stated that:

” Some legal professionals have welcomed the decision, whereas others have not. For some, the decision brings certainty but, for others, it means that the negotiations between the tenant and the landlord at the end of the lease are fraught with difficulties and uncertainties.¹²⁴

164. The Minister also argued that “the law of termination of commercial leases needs reform”.¹²⁵

165. Michael Papparakis, the Policy and Bill Programme Manager in the Scottish Government, also highlighted that consolidating the provisions makes the law more accessible, especially for small businesses without access to legal advice. He warned that partial codification could lead to complications and unintended consequences, making it harder for stakeholders to navigate, concluding that “to put sticking plasters on it will not work”.¹²⁶

166. The Minister disagreed that the Bill's notice sections are too complex. She pointed out that the current law lacks clarity and certainty, which the Bill aims to resolve. She told the Committee that the Bill:

” provides a short list of essential requirements for a notice to quit and a notice of intention to quit, which offers the flexibility to deal with the wide set of circumstances that are likely to be encountered by the landlords and the tenants in practice.¹²⁷

167. The Minister also highlighted the Scottish Property Federation's evidence where they stated that these provisions are not “any more difficult to follow”¹²⁸ than current rules. Nonetheless, she told the Committee she was open to considering any suggestions on how things could be simplified.

168. Addressing criticisms on the phrase “within a reasonable period” in section 5, the Minister disagreed with the views of stakeholders; she argued it offers necessary flexibility and aligns with common law. She also opposed setting a specific timeframe, such as 28 or 30 days, arguing that the current wording is unlikely to increase litigation. She argued that “such a rigid rule cannot take into account all circumstances that parties to a lease might find themselves in.”¹²⁹

169. Michael Papparakis clarified that the provision reflects existing law rather than current practice. He stated that its enactment will not change how matters are handled, and since there is no ongoing litigation, he does not anticipate an increase in legal disputes.¹³⁰

170. The Committee acknowledges that while some stakeholders highlighted the advantages of the consolidation of relevant law, others expressed reservations.

171. The Committee asks the Scottish Government to set out in its response to the Stage 1 report its views on ways the potentially ambiguous terminology

in this section could be improved upon, and any other drafting improvements which it considers could be made to these sections.

Rules on giving notice (sections 8 and 10)

172. Sections 8 to 18 provide rules on giving notice to prevent automatic continuation of the lease. In line with the SLC's recommendations, notice given by a landlord to a tenant is referred to in the Bill as "notice to quit" whereas notice given by a tenant to a landlord is referred to as "notice of intention to quit".
173. In relation to section 8, a notice to quit from a landlord to a tenant must be in writing, clearly state the landlord's name, provide a sufficient description of the property, specify the termination date, and require the tenant to vacate without conditions.
174. Section 10 sets out that a tenant's notice of intention to quit does not require to be in writing for leases of one year or less but must be written for longer leases. If written, it must include the tenant's name and a sufficient property description. The notice must clearly and unconditionally state the tenant's intent to vacate at the lease's end, ensuring the landlord can plan accordingly.
175. David Bartos of the SLC disagreed with the concerns raised about the Bill's complexity in this area, particularly the notice rules. His view was that codifying the law would enhance certainty and facilitate better planning for landlords, tenants, and commercial property owners, ultimately benefiting the economy.¹³¹
176. He went on to explain that having different notice rules for landlords and tenants is logical, as landlords may need to initiate an "action for removing"¹³² to terminate a tenancy, whereas tenants can simply leave. He also noted that most businesses are small and often lack legal representation. While requiring tenants to give written notice for leases under one year might offer more clarity, he contended that it would not align with current law and would not account for the differing purposes of notices for tenants and landlords.¹³³
177. As noted earlier in the report (paragraphs 69 and 70), Stacey Dingwall of the Federation of Small Businesses Scotland also welcomed addressing the power imbalances between small tenants and large landlords.¹³⁴ Whereas Alan Cook of the Scottish Property Federation highlighted that power varies by circumstance, stating that in struggling high streets with empty units, "the tenant has the whip hand in negotiations."¹³⁵
178. However, a number of respondents to the Committee's consultation, including the Faculty of Advocates¹³⁶ and Burness Paull¹³⁷, argued that the Bill's notice sections are too complex.
179. Some respondents, including Gillespie Macandrew¹³⁸, the Faculty of Advocates

- ¹³⁹, and the Law Society of Scotland ¹⁴⁰, argued that the rules for giving notice should be the same for both tenants and landlords, contrary to the Bill's approach.
180. The academics were also sceptical of the need for the notice rules to be different for landlords and tenants. Dr Brown of the University of Strathclyde argued that “the landlord is not necessarily in a stronger position than the tenant in all cases.” ¹⁴¹
181. The Scottish Property Federation stated “we agree that the approach to the content in the notices should differ depending on whether it is the landlord or tenant that gives it.” ¹⁴²
182. Allan Cook of the Scottish Property Federation and Stacey Dingwall of the Federation of Small Businesses Scotland suggested that the Bill should allow parties to negotiate a clause requiring the landlord to provide a longer notice period than the tenant. ¹⁴³
183. Both written and oral evidence highlighted significant concerns about certain tenants providing oral evidence for leases with terms under one year. The Law Society of Scotland noted that “the evidential issues surrounding oral evidence are obvious and create difficulties under the common law at present.” ¹⁴⁴
184. Steven Blane of Pinsent Masons also pointed out that there might have been good reasons to allow for this in the past but questioned whether it was now necessary given the surfeit of written communication methods today and the risk of litigation. ¹⁴⁵
185. Dr Skilling of the University of Aberdeen argued oral notice risked opening “a floodgate of litigation”. ¹⁴⁶ Stacey Dingwall of the Federation of Small Businesses Scotland stated that “it is reasonable to expect an e-mail as a minimum.” ¹⁴⁷
186. The Scottish Property Federation noted that, “as the stated aim of the Bill is to make the leasing system simpler, clearer, and more predictable, allowing oral notice even if for short leases introduces uncertainty and chance for potential disputes.” ¹⁴⁸
187. Pinsent Masons questioned the decision not to include statutory styles in the Bill, which they argued would “simplify the Bill considerably” ¹⁴⁹ and remove the need for most of sections 8, 10, and 12. They also disagreed with section 12's provision that a notice to quit or notice of intention to quit does not need to include or be addressed by name to the tenant or landlord. ¹⁵⁰
188. Steven Blane of Pinsent Masons also pointed out that the provisions on notice and notices of intention to quit are “inconsistent with the common law” ¹⁵¹. He highlighted that faxes would be treated as electronic communications in this Bill but writing in common law. ¹⁵²
189. Fergus Colquhoun of the Faculty of Advocates and Steven Blane of Pinsent Masons ¹⁵³ also raised concerns over having two regimes in relation to giving notice. They argued that it does not make sense to have a statutory code for one

type of lease given that there are rules in case law which apply to various areas of the law, not just commercial leases. Fergus Colquhoun stressed:

” If you have two regimes, you have the potential for a notice to quit to be served validly under one regime but not the other, which would then lead to arguments as to what applies.¹⁵⁴

190. Fergus Colquhoun also argued that it wasn't clear that “hiving off the termination of leases from that general law would be a sensible way to legislate”¹⁵⁵, as there was a risk that the law on giving notice in Scotland would be less coherent.

191. Dr Brown of the University of Strathclyde acknowledged the clarity of the law on notice but emphasized the need for greater flexibility. He stated:

” To rigidify the requirements for giving notice would be wrong-headed and would go against the law at the moment. As I said, I think that the law is quite clear and, certainly since the Rockford Trilogy case of 2021, quite settled.

The law that has been built up around tacit relocation is quite well understood. The comments about it being unclear and the like do not strike me as correct. If anything, it is more a case of the law being flexible because it is uncodified.¹⁵⁶

192. In her evidence to the Committee, responding to the concerns raised in relation to the complexity of notice provisions, the Minister explained that the Bill includes a concise list of notice requirements. She also highlighted the Scottish Property Federation as an example of an organisation that does not view these requirements as overly complex.¹⁵⁷

193. Responding to criticism in relation to giving oral notice, the Minister told the Committee that she is “satisfied that oral notice is workable”.¹⁵⁸ She confirmed that the Bill allows tenants to give oral notice for leases under a year, reflecting current law. Oral notice can also be contracted out of, as written notice can be agreed upon in the lease. She told the Committee that this flexibility benefits businesses needing short-term arrangements.¹⁵⁹

194. In concluding, the Minister stated that:

” Requiring tenants to give written notice in all circumstances would be a significant change in the current law, and the Scottish Law Commission did not consult on it. It could also create a trap for small business people, who might think that, because they have entered into a lease by way of an oral agreement, they can terminate the lease in the same way, but they might find themselves having to continue to let the premises.¹⁶⁰

195. **The Committee acknowledges that while this section received some criticism, there was support for the principle of rules on notices being clearly set out in statute, not least to help accessibility of the law in this area.**

196. **Notwithstanding this support, the Committee recommends that the Scottish**

Government gives further consideration to amendments in these sections of the Bill. In particular, it notes the variety of views in relation to the evidential and practical difficulties associated with giving oral notice, while also noting that oral notice can provide helpful flexibility for short leases, and it is possible to contract out of oral notice.

197. **The Committee therefore asks the Scottish Government to set out what amendments it considers necessary in these sections in its response to the Stage 1 report. In particular, the Committee asks what, if anything, can be done to make the rules less complex.**

Terminology in the Bill

198. The academics, Dr Skilling of the University of Aberdeen and Dr Brown of the University of Strathclyde¹⁶¹ strongly opposed the changes in terminology in the Bill relating to the law on tacit relocation (which the Bill updates to automatic continuation in Part 2). Dr Brown reiterated his view, as expressed in his written evidence, that:

” We are opposed to the introduction of new terminology into what is already a complex area of law. The terminology of ‘tacit relocation’ – though obviously disliked by those who wish to see legal language ‘modernised’ – has formed part of the law of Scotland for centuries now and, crucially, will continue to be relevant to other kinds of leases. Introducing novel terminology to denote an already existent concept will introduce redundancy and additional complexity to the law.¹⁶²

199. Dr Skilling also highlighted that there is a tension between modernizing language to plain English and retaining old Scots terms, which have historical and legal significance. He therefore conceded that:

” There are cases in which we are happy to maintain existing terminology while still improving accessibility, which is one of the largest themes that comes across in the discussion around the Bill.¹⁶³

200. In contrast, Alan Cook of the Scottish Property Federation supported the “idea that the terminology should be updated to something more modern.”¹⁶⁴ He told the Committee that:

” I happen to be a solicitor, and I have great respect for the traditions and terminology of Scots law, but I am here on behalf of the Scottish Property Federation, which generally represents investors in property—owners and landlords—and wants to see a set of rules that are clear and understood. We think that [the Bill]...will be a good step towards achieving that, and we are supportive of that.¹⁶⁵

201. Similarly, the City of Edinburgh Council supported the use of plain English, noting it

“will be particularly useful for parties who are not legally represented.”¹⁶⁶

202. In her evidence to the Committee, the Minister explained that the SLC’s aim was to make the legislation more accessible and modern. She argued that it should not be necessary to use a google search to understand key terminology in the Bill.¹⁶⁷

203. Michael Paparakis, the Policy and Bill Programme Manager in the Scottish Government, acknowledged Dr Brown’s arguments but stressed that “the phrase ‘tacit relocation’ does not really describe what is going on in the way that ‘automatic continuation’ does...the benefits of changing that language outweigh the disadvantages of keeping it.”¹⁶⁸

204. The Committee understands the concerns it heard in relation to updating terminology, but ultimately supports efforts to ensure the law in this area is accessible to as wide a cross-section of society as possible, including laypeople. As such, it supports the change from tacit relocation to automatic continuation.

Contracting-out rules (section 23)

205. Section 23 makes provision for those sections of the Bill that can be contracted out of or otherwise amended by the parties to a commercial lease (including automatic continuation), as well as providing other rules on contracting out.

206. Section 23(1) prohibits altering the essential content of notices to quit or intention to quit. However, the exception is that parties can opt out of section 10(1)(b), which permits tenants to give oral notice for leases shorter than one year, thereby necessitating written notice.

207. Under Section 23(2)(b) it is a requirement that, if parties contract out of the rules in the Bill, landlords and tenants have to provide for the same day to apply to notice to quit and to notice of intention to quit.

208. The general rule in the common law is that a notice to quit must be definite and unconditional and that 40 days’ notice should be given. This does not need to be in writing and can be modified, within certain limits, by an express term in the lease (see para 3.62 of the SLC Report).

209. In its report¹⁶⁹, the SLC recommended a default three-month period as an appropriate balance, arguing that that the current 40 days’ notice does not give tenants sufficient time to move to new premises or for landlords to find new tenants. The three month notice period would apply to all leases of six months or longer.

210. In his evidence to the Committee, David Bartos of the SLC explained that the SLC’s initial basis for drafting section 23 was to prevent landlords from knowing tenants’ intentions before declaring their own. He stated:

” The genesis of that provision was first a concern that tenants should not be required to give notice of their intentions before landlords have to give notice of their intentions at the end of the lease. In other words, a landlord should not have an advantage in knowing what the tenant is going to be doing before they decide whether to keep the tenant on.¹⁷⁰

211. He also pointed out that “until now, the law has had the same date applying for both [40 clear days], and that influenced the provision in the Bill.”¹⁷¹ He also argued that:

” the period of 40 days seems to come from the depths of the 16th century. Perhaps it was suitable then, but few would say that it gives sufficient time in this day and age.¹⁷²

212. David Bartos further explained that since consultation on the 1949 Act, a number of stakeholders supported allowing landlords to give notice before tenants, particularly when tenants like pharmacies or pubs need extra time to secure licences. Some favoured contracts with six months’ notice to quit and three months’ notice of intention to quit, or a longer quit notice with a shorter tenant notice period.^[5]

213. The changes in this section were seen as necessary by some. In their written evidence, the Faculty of Advocates argued that the ‘40 clear days’ notice is an “inadequate notice for either party to organise their commercial affairs”.¹⁷³

214. Similarly, Alan Cook of the Scottish Property Federation told the Committee that a 40 days’ notice period is insufficient for landlords and tenants to adequately prepare for the end of a lease. He argued that “extending that period would be a positive thing, and it would reflect the more complex nature of business both for landlords and for tenants”¹⁷⁴

215. Alan Cook also echoed the point about making changes to allow landlords to give notice before tenants. He suggested that there should be more flexibility in the notice period length, allowing parties to adjust it from the standard three months, if needed. He also cited the example of business tenants, such as pharmacies, that need additional licenses to operate, noting that they would benefit from being able to stipulate longer notice periods in their leases. He argued that this flexibility would also “be helpful from an economic perspective.”¹⁷⁵

216. The Federation of Small Businesses Scotland also proposed that section 23(2) be amended to permit landlords to give notice before tenants while maintaining flexibility and requiring a minimum notice period of three months. They thought that it should allow the flexibility to vary the last day for notice while ensuring a landlord's notice deadline is never later than the tenant's.¹⁷⁶

217. Responding to the Committee’s consultation, the Federation of Small Businesses Scotland stated:

” ...section 23(2)(b) and (4) of the Bill prevents parties having the flexibility of negotiating for a clause where the landlord would be required to provide a longer notice period than the tenant. While it may be the case that scenarios in which this would be negotiated may be currently few and far between, given that the Bill is geared towards greater protection for tenants, it is our recommendation that the legislation is amended to offer this flexibility, and protection for small business owners.

Aside from ensuring parity with protections afforded in other UK nations, this flexibility is especially vital for licence-bearing tenants, such as pharmacies and pubs, where moving out of a premises can take an extended period of time. A sufficient notice period is essential here, in order to protect the operation and viability of the business as it transitions to another location, including the application for a new premises licence if required.¹⁷⁷

218. However, some respondents to the Committee’s consultation, including Gillespie Macandrew and the Law Society of Scotland¹⁷⁸] suggested that any agreed variation to the last day for notice must apply equally to the landlord and tenant. They argued that having the same notice period for both parties ensures certainty and minimises the risk of misinterpretation, preventing unintended lease extensions. Gillespie Macandrew stressed that:

” Notice to quit by the landlord must specify the termination date (s.8(2)(b)) but notice of intention to quit by the tenant ‘need not specify when the period of the lease will end’ (s.10(6)). Notice provided by either party should specify the termination date. Consideration should be given to a single set of rules on notices applicable to either party.¹⁷⁹

219. In their responses to the Committee’s consultation, the City of Edinburgh Council and West Lothian Council¹⁸⁰ argued that the 3 months’ notice period for notices to quit for leases longer than 6 months is too long. West Lothian Council argued that moving to a 3-month notice period would:

” result in an increased onus and resource burden on those areas within the public sector who manager property interests. Similarly, the extended notice period could prove detrimental to unwitting tenants who might miss the 3 month notice period deadline.¹⁸¹

220. The Scottish Grocers’ Federation supported contracting-out rules, but emphasised the need for a strong awareness campaign for both tenants and landlords “to ensure that they understand their obligations when giving notice.”¹⁸²

221. Addressing questions about flexibility versus rigidity, Michael Papparakis, the Policy and Bill Programme Manager in the Scottish Government, described the arguments for increased flexibility as “interesting.”¹⁸³ He committed to writing to the Committee before either the Stage 1 debate or Stage 2 to outline the Scottish Government’s plans in this area.¹⁸⁴

222. The Minister also confirmed that section 23 allows parties to exclude oral notice

provisions, commonly used for food stands and concessions. However, she stated this could create issues for tenants who enter oral leases but must terminate them in writing, and that requiring written notice in all circumstances would be a significant change from the current law.¹⁸⁵

223. In concluding, the Minister acknowledged the Scottish Property Federation and Federation of Small Businesses Scotland' arguments for amending section 23(2)(b) to allow landlords to provide longer notice periods than tenants. She confirmed the Scottish Government is “looking at how we can move forward on it.”¹⁸⁶

224. The Committee supports the principle that parties to a contract can contract out of parts of the Bill, including automatic continuation.

225. The Committee also supports the Bill being amended in line with the recommendation made by the Federation of Small Businesses Scotland and the Scottish Property Federation to permit landlords to give notice before tenants while maintaining flexibility, and to require a minimum notice period of three months.

226. The Committee asks that the Scottish Government engages with the Federation of Small Businesses Scotland and the Scottish Property Federation to address their concerns, and that it sets out how it plans to achieve this in its response to the Stage 1 Report.

227. The Committee draws the Scottish Government’s attention to its recommendations, as set out at paragraphs 196 and 197, relating to oral notice, and the associated arguments.

Part 3 of the Bill

228. Part 3 of the Bill includes miscellaneous provisions relating to the start, end or length of a lease:

- Section 27 places a requirement on a party to a lease, in certain circumstances, to provide the other party with a UK postal address to which termination documents may be sent.
- Section 28 lays down what the effect is of a party failing to notify a United Kingdom address under section 27 of the Bill, and what the remedies are in such a case.
- Section 30 implements the SLC's recommendations in relation to irritancy.

229. In response to the Committee’s consultation, some stakeholders simply stated that they had no comment or that they support the proposals in the Bill. However, various stakeholders, criticised sections 27, 28 and 30 of the Bill. This is discussed in more detail below.

Sections 27 and 28

230. One of the main criticisms in relation to Section 28 was that tenants can withhold payment if a party to a lease fails to notify the other party what its United Kingdom address is as required by section 27(1) of the Bill.
231. Addressing criticisms in relation to the obligation on a landlord to provide a UK address as set out in sections 27 and 28, David Bartos of the SLC confirmed that section 27 only applies to leases “over a year”.¹⁸⁷ He explained that written leases will normally include UK addresses for both parties and that the provision is only aimed at foreign companies. He concluded that allowing rent to be retained was therefore proportionate.¹⁸⁸
232. Stacey Dingwall of the Federation of Small Businesses Scotland acknowledged that a major issue for tenants was “not being able to get a hold of a landlord”.¹⁸⁹
233. However, some stakeholders, including Urquharts¹⁹⁰, Allan Cook of the Scottish Property Federation¹⁹¹ and Steven Blane of Pinsent Masons¹⁹² argued that it was disproportionate for rent to be suspended if the landlord did not provide a UK address, especially as the issue could likely be more of an administrative failure, rather than a serious contractual one which should allow for rent to be withheld seems likely to be in practice a fairly common administrative oversight.¹⁹³ This view was shared by Dr Skilling of the University of Aberdeen who thought that that the sanction “seem[s] a bit much”.¹⁹⁴
234. Steven Blane of Pinsent Masons was concerned it could have implications further up the line. For example, landlords defaulting on their loans.¹⁹⁵ Kieran Buxton of Burges Salmon also argued that the right to withhold rent could lead to wrongful diligence, i.e., debt enforcement, being carried out for unpaid rent, creating further legal complications, as the Bill is not clear enough on this point. He stressed, “the diligence might be wrongful, because the tenant would have had a right to withhold the rent.”¹⁹⁶
235. Kieran Buxton also argued that section 27(5) and the words “is not invalid only by reason of any such enactment, ...” doesn’t make it clear enough that tenants only have to send notice to a UK address even if the lease provides otherwise.¹⁹⁷
236. To mitigate costly overseas notice requirements on tenants, Steven Blane proposed that the Bill could be amended to allow notice through the Edinburgh Gazette.¹⁹⁸ This proposal was not supported by the SLC.¹⁹⁹
237. In her evidence to the Committee, the Minister explained that retention of rent is “not the sole remedy”²⁰⁰, and that the majority responding to the SLC’s consultation were content with this proposal.²⁰¹ She also suggested that the provision will “come into force for a very small minority of people who do not have a UK address”²⁰² She set out a number of circumstances in which it would not apply:

- ” it cannot be applied if a UK postal address for the party is included in the lease or in certain documents that are registered in the land register or recorded in the register of sasines, where the other party to the lease has been given a copy of the document. Further, the provision does not apply to a body corporate or other legal person with a registered office in the UK, and it does not apply where the duration of the lease is less than a year.²⁰³

238. **The Committee recommends that section 27 be amended to clarify the provisions and asks the Scottish Government to consider whether there might be a more proportionate sanction that would give tenants some leverage over a landlord not complying with their legal requirements, and to set out its view on this in response to the Stage 1 report.**
239. **When responding, the Committee also asks the Scottish Government to set out its view on allowing notice to be given through the Edinburgh Gazette in certain cases.**

Section 30

240. Section 30(3) of the Bill requires landlords to serve irritancy notices to a tenant's heritable creditor (i.e. where there is a “standard security” over a lease²⁰⁴). Irritancy notices are notices a landlord serves on a tenant to indicate their intention to terminate the lease due to a breach of the tenancy agreement.
241. Section 30(3) adds sections 5A and 5B to the into the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, addressing the SLC's concern that landlords are not required to notify tenants' heritable creditors of their intention to irritate a lease. Section 5A requires landlords to notify heritable creditors of irritancy-related lease notices, and failure to do so prevents enforcement. Section 5B outlines how such notices must be delivered when served by a sheriff officer.
242. In his evidence to the Committee, David Bartos of the SLC clarified that section 30(3) relates to the termination of leases prematurely, such as insolvency/non-payment of rent. He explained that submissions to the SLC had highlighted concerns that as long leases can have mortgages over a lease to provide the tenant with a loan:
- ” ...the lender bears a risk that the tenant might miss some rent payments, and the lender may not be aware of it and not be made aware of the tenant's breaches and the landlord's irritating terminating the lease, in which case the landlord would lose their security.²⁰⁵
243. He further explained that no-one has raised the issue before of it being an undue burden on the landlord to serve irritancy notices on a tenant's heritable creditor. He confirmed that all that would happen is that the landlord would have to do a search of the land register which would not be disproportionate in terms of costs.²⁰⁶

244. Allan Cook of the Scottish Property Federation argued that as the current law stands, long leases typically require tenants to notify creditors if a standard security is in place. Landlords ensure proper notice, verifying if security exists. Banks and security holders should be informed, as the lease is their secured asset. He explained that:
- ” It does not feel that much different from the reality of how most leases work these days whereby, if the lease is a long one on which the tenant is able to grant a standard security over its lease interest, and a creditor might therefore be in place, it is normal for there to be provisions in the lease that require such notice. Landlords are comfortable with that scenario. A landlord or a solicitor goes through careful steps to make sure that the notice that they are serving is the correct one. One step would winkle out whether there was a standard security over the tenant’s interest—and therefore somebody to whom notice needed to be given.²⁰⁷
245. However, various stakeholders, including Burness Paull, Gillespie Macandrew and the City of Edinburgh Council²⁰⁸ criticised section 30(3) as they see it as unworkable on the basis that there is no guarantee that a landlord would know of the existence of a tenant’s heritable creditor.
246. The City of Edinburgh Council argued that such an obligation “will place an additional burden on landlords.”²⁰⁹ Gillespie Macandrew suggested that, “it should properly fall on the tenant to inform their own creditor of the position.”²¹⁰ A view shared by Burness Paull which noted, “this could only be workable to the extent any creditor was notified to the landlord.”²¹¹
247. The Law Society of Scotland suggested that, if the landlord was not required to consent to the giving of a security by the tenant, “it may be helpful” if there was an obligation included “for the tenant to provide information regarding heritable creditors to the landlord.”²¹²
248. Dr Skilling of the University of Aberdeen suggested that there may be situations where it is beneficial for a tenant to withhold information about a creditor, either because they do not perceive it being a major, long-running issue or because they do not want it to be connected to the lease in some way.²¹³
249. In her evidence to the Committee, the Minister concurred with the Scottish Property Federation’s perspective, deeming it “workable”²¹⁴ for landlords to serve irritancy notices to a tenant’s heritable creditor, and emphasized its “wider public importance”.²¹⁵ She stated that it is not an undue burden for landlords to search the Register, as “any prudent landlord would normally undertake to that before entering into a lease.”²¹⁶

250. The Committee asks the Scottish Government to consider in more depth whether the Bill should be amended to require an obligation on tenants to notify the landlord of any heritable securities, and to set out its view in the

response to the Committee's Stage 1 report.

Schedule 2 of the Bill: transitional provisions

251. Schedule 2 of the Bill contains modifications to certain enactments and transitional and saving provisions connected with the coming into force of the Bill.
252. The transitional provisions allow pre-existing leases (i.e. entered into prior to the Bill's commencement date) to continue by tacit relocation based on the current law and to be terminated based on the current notice rules, but with a six-month cut-off from when the Bill comes into force.
253. The key issues identified by the Committee regarding the transitional provisions in the Bill included concerns about potential confusion due to the statutory code operating alongside common law, as highlighted by the Law Society of Scotland in its written evidence.²¹⁷
254. David Bartos of the SLC explained that despite their apparent complexity, the transitional provisions revolve around a six-month period. He went on to explain that:
- ” Where a lease is in existence at the time when the Bill comes into force, the existing law is saved for six months...the existing law in relation to contracting out, notice to quit periods, service and so on is saved for those leases that have a termination date within that six months.
- Where the termination date is beyond the six months, the new law will apply fully. If, for example, there is a termination date within the six months and there is tacit relocation under the existing law to a date beyond the six months, the new law will apply to that new date beyond the six months. That is the key strand...if there are express provisions in any pre-existing lease, those will remain undisturbed.²¹⁸
255. Alan Cook of the Scottish Property Federation acknowledged that applying the new regime to existing leases (as opposed to only new leases entered into after the Bill's enactment) provides clarity.²¹⁹
256. Kieran Buxton of Burges Salmon also reflected that there would be difficulties which arose as a result of only applying the Bill's provisions to new leases, rather than following the approach taken by the transitional provisions as drafted.
- ” Pre-Act leases could still be within their contractual period for many more years, before even turning to consider how e.g. contractual variations to extend the lease period after the Act comes into force might fall to be treated. Tacit relocation would therefore linger for a lot longer for commercial-type leases than under the Bill's present proposals.²²⁰
257. However, Fergus Colquhoun of the Faculty of Advocates stressed that “transitional

provisions are always complex. They are frequently a source of litigation...”²²¹ He supported following the alternative option, that is to only apply the Bill to leases entered after commencement.²²² A view shared by Pinsent Masons and the Law Society of Scotland.²²³

258. Dr Brown of the University of Strathclyde told the Committee that changing the law with retrospective effect is a “bad idea”²²⁴ and that it will lead to uncertainty. Dr Skilling of the University of Aberdeen suggested that:

” Worked examples would be particularly helpful for understanding how the transitional provisions work.²²⁵

259. In their response to the Committee’s consultation, Shepherd and Wedderburn questioned how elements of the transitional provisions will work in practice where a lease is already continuing by tacit relocation under the common law rules when the legislation comes into force. They stated:

” We recognise that such a lease (one which is continuing by tacit relocation on the day before the commencement date) will not be affected by the Bill and the current law will apply (e.g. 40 days notice to terminate). However, if such a lease does not come to an end on expiry of the current period for which it is continuing by tacit relocation and automatically continues for a further period, will it continue to do so by tacit relocation and not automatic continuation (such that the current law will continue to apply until the lease is eventually terminated)?

For example, a lease is continuing year to year from January 2025 to December 2025 by tacit relocation and the Act comes into force during this time. If the lease then continues for a further year January 2026 to December 2026, is it the intention that it will be doing so by tacit relocation, and therefore the current law would apply (ie 40 days notice, rather than 3 months would apply as default), and not the new regime?²²⁶

260. Kieran Buxton also raised a separate concern that the way “notice” is defined in paragraph 8 of part 2 of Schedule 2 is problematic. His concern was that using “notice” in relation to pre-commencement law (with the aim of tying the term into section 3 of the Bill) doesn’t really make sense as it does not reflect how the existing law works.²²⁷ Instead, as set out in Burges Salmon’s written evidence, it is proposed changing the term notice to “intimation”.²²⁸

261. Stakeholders such as Pinsent Masons²²⁹, the Law Society of Scotland²³⁰ and Gillespie Macandrew²³¹ also emphasised the need for the Scottish Government to undertake an awareness raising campaign to ensure affected parties understand the legislation’s impact. Gillespie Macandrew argued that “the transitional provisions in particular are likely to be a source of considerable difficulty in interpretation and application.”²³² This view was shared by Burges Salmon.²³³

262. In her evidence to the Committee, the Minister confirmed she was in agreement with the proposals in the Bill regarding transitional provisions; she considered they

allow sufficient lead-in time for stakeholders. She emphasised that the new law:

” is intended to replace the pre-commencement law underlying a lease, including any implied terms. It is not intended to validate or invalidate the arrangements that the parties have expressed in their lease, as paragraphs 8 and 10 of schedule 2 make clear. Any express lease terms that are carefully negotiated by the parties will be unaffected by any provisions in the Bill coming into force.

For example, if a lease has an express term providing for a three-week period of notice for a lease that is longer than six months, that period will continue to be valid, notwithstanding the fact that the Bill provides for a minimum period of 28 days.²³⁴

263. The Minister argued that applying the new law only to future leases could replace one complexity with another, as old leases would still follow current common law. This could cause confusion for landlords and tenants about which legal regime applies. She stressed that:

” The provisions of the Bill will be commenced by regulations, and I will ensure that there is sufficient lead-in time for legal professionals and interested stakeholders to make sure that they have all their affairs in order with regard to this issue.²³⁵

264. Michael Papparakis, the Policy and Bill Programme Manager in the Scottish Government, pointed out that applying automatic continuation only to new leases could be “worse”, as the old law would persist longer alongside the new law – and there could be instances where a lease was lost and it was unclear when it was entered into. He stressed that this could confuse tenants and landlords about which rules apply. In his view, a six-month period offers a “short and clean break that will allow legal professionals and tenants and landlords to get their affairs in order before the new provisions come into force.”²³⁶

265. In concluding, Michael Papparakis confirmed that the Scottish Government would write to the Committee in relation to the issues highlighted in relation to issues raised on transitional provisions in written evidence. He also confirmed that the Scottish Government would also write to the Committee with the Scottish Government’s view on Burges Salmon’s argument around the way “notice” is defined in paragraph 8 of part 2 of Schedule 2, as being problematic and that the term “intimation” should be used instead.²³⁷

266. The Committee acknowledges the differing views heard as to whether it would be clearer for the law to apply to only new leases, or for there to be a six-month cut off. It therefore asks the Scottish Government to set out in its response to the Committee’s Stage 1 report its view on the criticisms made, and to consider whether amendments made at Stage 2 may lead to any better outcome.

Other issues

Awareness raising campaign

267. Many stakeholders raised the need for the Scottish Government to carry out some form of awareness raising campaign on the impact of the Bill, both in general and also in relation to the Bill's transitional provisions. The aim would be to ensure that people who do not necessarily have legal representation (e.g. small businesses) have more of an understanding of how the Bill will affect them.
268. Various suggestions for awareness raising were proposed, including by the Law Society of Scotland, which suggested that “awareness-raising and public education regarding the impact of the Bill will be important to avoid unintended consequences for parties.”²³⁸
269. Similarly, if the legislation is to have “retrospective effect”, Pinsent Masons urged the Scottish Government to “undertake an awareness raising campaign to ensure that the impact of the legislation is understood by those affected.”²³⁹
270. The Scottish Grocers’ Federation also encouraged a “significant awareness raising campaign to ensure that both tenants and landlords fully understand their rights and obligations.”²⁴⁰
271. Dr Brown of the University of Aberdeen stressed the need for an awareness-raising campaign. He told the Committee that, “the issue is that people do not know what it [the law] is.”²⁴¹
272. Various suggestions were also proposed by stakeholders on the form the awareness raising campaign could take. Dr Skilling of the University of Strathclyde suggested that as many people who want to start a business go to organisations such as the Business Gateway, a package could be produced:
- ” If it is installed at a foundational level, some kind of educational framework, working with organisations such as those, and giving people that toolkit when they are starting their business career and starting to think about leasing premises, will be of far greater effectiveness.”²⁴²
273. Stacey Dingwall of the Federation of Small Businesses Scotland was supportive of this proposal.²⁴³
274. Legal practitioners, including Burges Salmon, Pinsent Mason and the Law Society of Scotland emphasised the need for business development initiatives and effective communication, including articles and leaflets. Coordination with trade organizations was also suggested as being crucial to disseminate information widely.²⁴⁴
275. The Minister recognised the importance of the provisions in the Bill “for small businesses and landlords across the country.”²⁴⁵ She confirmed she was happy to discuss raising awareness going forward.
276. The Minister also expressed her willingness to work with the Federation of Small

Businesses Scotland and the Scottish Property Federation to “consider what the Scottish Government can do to ensure that tenants and landlords know that they might be bringing their lease to an end.”²⁴⁶ She confirmed it was her understanding that for those in the legal profession, training costs will be covered by their respective firms.²⁴⁷

277. The Committee supports an awareness raising campaign which is targeted at tenants and landlords.

Drafting issues

278. As outlined in part elsewhere in the report, the Committee received a range of detailed drafting suggestions in the call for views and in oral evidence by the legal profession and others.
279. Some examples of drafting suggestions include those made by Gillespie Macandrew, Burness Paull and Pinsent Masons²⁴⁸ who believed that while reform is needed, the drafting in the Bill could be improved and simplified. Gillespie Macandrew argued that the main source of uncertainty and dispute is the rules on notice periods and that aspects of the drafting of the Bill are “overly complicated and certain provisions could be expressed more clearly and succinctly”. They also argued that the transitional provisions are “likely to be a source of considerable difficulty in interpretation and application.”²⁴⁹
280. Burness Paull suggested the drafting of section 3(1) could be improved noting that:
- ” ...in particular 3(1) (c)(ii) what does “in circumstances which indicate that both parties intended the lease to end” mean? How do we advise clients on what indications would qualify to invoke this option regarding termination This type of language and drafting in the Bill feels like a new uncertainty and should be avoided in this and other sections of the draft Bill.”²⁵⁰
281. In relation to sections 2 to 7, the Committee heard that there is too much ambiguity in the drafting of the Bill. Legal practitioners, including the Faculty of Advocates, Gillespie Macandrew, and Pinsent Masons²⁵¹, criticised whether section 5 is workable based on its current drafting.
282. The Faculty of Advocates argued that there is a lack of clarity in certain aspects of the drafting of Section 5 which deals with the continuation of leases where the tenant remains in possession and the landlord does not take steps to remove them ‘within a reasonable period’.²⁵² The Faculty considers the phrase within a reasonable period’ in section 5(1)(b)(i) is “loaded with ambiguity”²⁵³ and that the relationship between section 5(3) and the opt-out rules in section 4 is also unclear.²⁵⁴
283. Burges Salmon proposed that section 27 should have an equivalent provision to section 14 of the Bill which outlines when notification is deemed to have been given.

It states, referring to “diligence” that:

” This is important because one of the potential remedies for non-compliance with Clause 27 is withholding of rent under the lease. As such, understanding how and when notification can be given or is deemed to be given by the landlord to the tenant could be the difference between a landlord carrying out wrongful diligence or lawful diligence against a tenant.²⁵⁵

284. The City of Edinburgh City Council also queried whether the 10-working day period is sufficient within Section 31(3) which requires the landlord to repay the tenant for rent or any other advance payment made by the tenant in relation to a period falling after the termination of the lease no later than 10 working days after the lease ends.²⁵⁶

285. In her evidence to the Committee, the Minister acknowledged there had been a range of detailed drafting suggestions made on the Bill, which she agreed to consider.²⁵⁷

286. The Committee asks the Scottish Government, to set out in its response to the Stage 1 report, its assessment of the various drafting concerns raised in the responses to the Committee’s consultation on the Bill, and whether any clarifications or reassurances have otherwise been given.

Other comments on the Bill

Potential repeal of the Sheriff Courts (Scotland) Act 1907

287. In their response to the Committee’s consultation, Gillespie Macandrew advocated for a broader repeal of provisions in the Sheriff Courts (Scotland) Act 1907 (“the 1907 Act”) rather than merely excluding them for leases covered by the Bill, citing litigation and uncertainty in lease terminations. They noted that the provisions in the 1907 Act:

” ...prescribe different notice periods for different types of lease with different remedies. They have been a source of litigation and have been widely criticised across the profession for introducing uncertainty and complexity in relation to termination of leases. Rather than simply limit the application of the provisions, consideration should be given to their repeal.²⁵⁸

288. In contrast, other respondents proposed reviewing rather than repealing these rules. The Law Society of Scotland considered that:

” this Act could benefit from a wider review and greater clarity- the 1907 Act generates significant litigation at present and would benefit from being updated to better service modern commercial practices.²⁵⁹

289. Similarly, Professor Stewart Brymer OBE supported the 1907 Act be reviewed as it

is “outdated” in relation to Schedule H to the style of a Notice to Quit.²⁶⁰

290. Michael Papparakis, the Policy and Bill Programme Manager in the Scottish Government, pointed out that “it [the 1907 Act] does not just deal with termination of leases; it deals with a host of other issues. We have heard that the act can cause problems.”²⁶¹ He also explained that this is not currently a Scottish Government priority, but that the SLC would soon be consulting on its next programme of law reform.²⁶²

291. The Committee notes the evidence from the Scottish Government and suggests that anyone concerned more generally with the Sheriff Courts (Scotland) Act 1907 considers making their case to the Scottish Law Commission, asking that it looks at this as an issue for its next programme of law reform.

Delegated Powers Memorandum

292. 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 18 February 2025.
293. The Bill confers two powers to make subordinate legislation on the Scottish Ministers. The Scottish Government has prepared a [Delegated Powers Memorandum](#) which sets out the reasoning for taking the delegated powers in the Bill and the parliamentary scrutiny procedure that has been chosen.
294. The Committee was content with the delegated powers provisions in the Bill.

295. The Committee is therefore content with the delegated powers contained in sections 33 and 35(2) to (4), and with the Parliamentary scrutiny procedures which are applied to these powers.

Financial Memorandum

296. As noted earlier in this report, the Finance and Public Administration Committee issued a call for evidence on the Bill and received three responses. It passed the submissions to the Committee to take into account in its evidence sessions and also in its Stage 1 report.²⁶³

297. The Committee notes the responses.

General Principles of the Bill

298. The Committee highlights to the Scottish Government the wide range of concerns – some fundamental – raised by some stakeholders during the course of the Committee’s scrutiny of the Bill. It asks that these be fully addressed in the Scottish Government’s response to this report.
299. Some members of the Committee support the general principles of the Bill. However, for other members, questions remain as to whether this Bill is the right approach.
300. As a consequence, the Committee is not making a recommendation on the General Principles at this time and will reserve its position until it has received the Scottish Government’s response.

Annexe A: Extracts from minutes

[1st Meeting, 2025, Tuesday, 7 January 2025](#)

Leases (Automatic Continuation etc.) (Scotland) Bill (in private): The Committee considered and agreed its approach to the scrutiny of the Bill at Stage 1.

[6th Meeting, 2025, Tuesday, 18 February 2025](#)

Leases (Automatic Continuation etc.) (Scotland) Bill (in private): The Committee considered the delegated powers in this Bill at Stage 1. It agreed to report to the lead committee on the Bill, the Delegated Powers and Law Reform Committee.

[11th Meeting, 2025, Tuesday, 25 March 2025](#)

Leases (Automatic Continuation etc.) (Scotland) Bill (in private): The Committee considered and agreed an update to its approach to the scrutiny of the Bill at Stage 1.

[14th Meeting, 2025, Tuesday, 29 April 2025](#)

Leases (Automatic Continuation etc.) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

- David Bartos, former lead Commissioner and Rachel Rayner, Chief Executive, Scottish Law Commission

And then from—

- Steven Blane, Senior Associate, Pinsent Masons;
- Kieran Buxton, Associate, Burges Salmon LLP;
- Fergus Colquhoun, Member, Faculty of Advocates;
- Carlyne Hair, Member of sub-committee on Property and Land Law Reform, Law Society of Scotland.

Leases (Automatic Continuation etc.) (Scotland) Bill: The Committee considered the evidence it heard earlier in the meeting.

[15th Meeting, 2025, Tuesday, 6 May 2025](#)

Leases (Automatic Continuation etc.) (Scotland) Bill: The Committee took evidence from—

- Dr Jonathan Brown, Lecturer in Scots Private Law, University of Strathclyde;
- Dr Mitchell Skilling, Teaching Fellow, University of Aberdeen

And then from—

- Alan Cook, Chair, Commercial Real Estate Committee, Scottish Property Federation;
- Stacey Dingwall, Head of Policy and External Affairs (Scotland), Federation of Small

Businesses Scotland.

Leases (Automatic Continuation etc.) (Scotland) Bill (in private): The Committee considered the evidence it heard earlier in the meeting.

[17th Meeting, 2025, Tuesday, 20 May 2025](#)

Leases (Automatic Scotland etc.) (Scotland) Bill: The Committee took evidence from—

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

Accompanied by—

- Lori Pidgeon, Constitutional and Civil Law. Scottish Government.

Leases (Automatic Continuation etc.) (Scotland) Bill (in private): The Committee considered the evidence it heard earlier under agenda item 5.

[18th Meeting, 2025, Tuesday, 27 May 2025](#)

Leases (Automatic Continuation etc.) (Scotland) Bill (in private): The Committee considered the themes arising from evidence received during its scrutiny of the Bill at Stage 1.

[20th Meeting, 2025, Tuesday, 10 June 2025](#)

Leases (Automatic Continuation etc.) (Scotland) Bill (in private): The Committee considered and agreed, subject to signing-off final changes via correspondence, a draft Stage 1 report for the Bill. It also delegated responsibility to the Convener for finalising its publication.

Annexe B: Evidence

Oral Evidence

[Meeting on Tuesday, 29 April 2025](#)

- David Bartos, former lead Commissioner and Rachel Rayner, Chief Executive, Scottish Law Commission;
- Steven Blane, Senior Associate, Pinsent Masons;
- Kieran Buxton, Associate, Burges Salmon LLP;
- Fergus Colquhoun, Member, Faculty of Advocates;
- Carlyne Hair, Member of sub-committee on Property and Land Law Reform, Law Society of Scotland.

[Meeting on Tuesday, 6 May 2025](#)

- Dr Jonathan Brown, Lecturer in Scots Private Law, University of Strathclyde;
- Dr Mitchell Skilling, Teaching Fellow, University of Aberdeen;
- Alan Cook, Chair, Commercial Real Estate Committee, Scottish Property Federation;
- Stacey Dingwall, Head of Policy and External Affairs (Scotland), Federation of Small Businesses Scotland.

[Meeting on Tuesday, 20 May 2025](#)

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

Written Evidence

- Burges Salmon LLP
- Burges Salmon LLP, supplementary submission
- Burness Paull LLP
- Centre for Scots Law
- City of Edinburgh Council
- CMS Cameron McKenna Nabarro Olswang LLP
- David Campbell
- Dumfries and Galloway Council

- Faculty of Advocates
- Federation of Small Businesses Scotland
- Fife Council
- Gillespie Macandrew LLP
- Gillian Clark
- Glasgow City Council
- Law Society of Scotland
- Mahri Tawse
- Neil
- NFU Scotland
- Pinsent Masons LLP
- Professor Stewart Brymer OBE
- R Craig Connal KC
- Scottish Grocers' Federation
- Scottish Property Federation
- Senators of the College of Justice
- Shepherd and Wedderburn LLP
- Shoosmiths LLP
- Strathclyde Law School
- Turcan Connell
- Urquharts
- West Lothian Council

Correspondence

- Letter from the Minister for Victims and Community Safety to Lady Paton, 12 December 2024
- Letter from the Minister for Parliamentary Business to the Convener, 28 January 2025

- 1 Scottish Law Commission. [Report on the Tenancy of Shops \(Scotland\) Act 1949](#) . February 2025.
- 2 Scottish Law Commission. [Discussion Paper](#) (paragraphs 2.33 and 2.38). May 2018.
- 3 Scottish Law Commission. [Discussion Paper](#) (paragraph 6.4). May 2018.
- 4 Written evidence, [Shepherd and Wedderburn](#)
- 5 Written evidence, [Urquharts](#)
- 6 Written evidence, [Scottish Grocers' Federation](#)
- 7 Delegated Powers and Law Reform Committee. *Official Report*, 6 May 2025. Col 25
- 8 Delegated Powers and Law Reform Committee. *Official Report*, 6 May 2025. Col 25
- 9 Written evidence, [Burgess Salmon](#)
- 10 Written evidence, [Faculty of Advocates](#)
- 11 Delegated Powers and Law Reform Committee. *Official Report*, 6 May 2025. Col 6
- 12 Delegated Powers and Law Reform Committee. *Official Report*, 6 May 2025. Col 21
- 13 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 6
- 14 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 6
- 15 Written evidence [Pinsent Masons](#)
- 16 Written evidence. [Burness Paull](#)
- 17 Written evidence. [Dumfries and Galloway Council](#)
- 18 Written evidence. [Gillespie Macandrew](#)
- 19 Written evidence. [Pinsent Masons](#)
- 20 Written evidence. [Federation of Small Businesses Scotland](#)
- 21 Delegated Powers and Law Reform Committee. *Official Report*, 6 May 2025. Col 27
- 22 Delegated Powers and Law Reform Committee. *Official Report*, 6 May 2025. Col 27
- 23 Written evidence. [Federation of Small Businesses Scotland](#)
- 24 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 19
- 25 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 19
- 26 Written evidence. [Burgess Salmon](#)
- 27 [Rockford Trilogy Limited v NCR Limited](#)
- 28 Written evidence. [Burgess Salmon](#)

- 29 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 6
- 30 Scottish Law Commission. [Report on Aspects of Leases: Termination](#) [3.43-3.44 refers]. October 2022.
- 31 Delegated Powers and Law Reform Committee. *Official Report*, 20 May 2025. Col 12
- 32 Written evidence. [Law Society of Scotland](#)
- 33 Written evidence. [Law Society of Scotland](#)
- 34 Written evidence. [R Craig Connal KC](#)
- 35 Delegated Powers and Law Reform Committee. *Official Report*, 6 May 2025. Cols 6-8
- 36 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 37
- 37 Delegated Powers and Law Reform Committee. *Official Report*, 6 May 2025. Col 7
- 38 Delegated Powers and Law Reform Committee. *Official Report*, 6 May 2025. Cols 7-9
- 39 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 24
- 40 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Cols 7-8
- 41 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 8
- 42 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 9
- 43 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 8
- 44 The Scottish Law Commission. [Report on the Tenancy of Shops \(Scotland\) Act 1949](#)[4.41 - 4.46 refers]. 18 February 2025.
- 45 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025 Col 37
- 46 Written evidence. [Senators of the College of Justice](#)
- 47 Written evidence. [Shepherd and Weddeburn](#)
- 48 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025 Col 15
- 49 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025 Col 33
- 50 Delegated Powers and Law Reform Committee. *Official Report*, 6 May 2025 Col 37
- 51 Written evidence. [Scottish Grocers' Federation](#)
- 52 Written evidence. [Professor S Brymer OBE](#)
- 53 Written evidence. [Scottish Grocers' Federation](#)
- 54 Delegated Powers and Law Reform Committee. *Official Report*, 6 May 2025 Col 22
- 55 Delegated Powers and Law Reform Committee. *Official Report*, 6 May 2025 Col 37

Delegated Powers and Law Reform Committee

Stage 1 Report on the Leases (Automatic Continuation etc.) (Scotland) Bill, 49th Report, 2025 (Session 6)

- 56 Delegated Powers and Law Reform Committee. *Official Report*, 6 May 2025 Col 38
- 57 Delegated Powers and Law Reform Committee. *Official Report*, 6 May 2025 Col 23
- 58 Delegated Powers and Law Reform Committee. *Official Report*, 6 May 2025 Cols 23 and 24
- 59 Written evidence. [Gillespie Macandrew](#)
- 60 Written evidence. [Turcan Connell](#)
- 61 Written evidence, [Law Society of Scotland](#)
- 62 Written evidence. [Pinsent Masons](#)
- 63 Written evidence. [David Campbell](#), [Gillian Clark](#), [Gillespie Macandrew](#) and [Turcan Connell](#)
- 64 Schedule 1, 1(d)(ii), page 27, [Leases \(Automatic Continuation etc.\) \(Scotland\) Bill](#).
- 65 Written evidence. [Gillespie Macandrew](#)
- 66 Written evidence. [Turcan Connell](#)
- 67 Written evidence. [Gillespie Macandrew](#)
- 68 Delegated Powers and Law Reform Committee. *Official Report*, 6 May 2025. Col 11
- 69 Delegated Powers and Law Reform Committee. *Official Report*, 6 May 2025. Col 11
- 70 Delegated Powers and Law Reform Committee. *Official Report*, 6 May 2025. Col 11
- 71 Written evidence. [Law Society of Scotland](#)
- 72 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Cols 7 and 8
- 73 Written evidence. [Law Society of Scotland](#)
- 74 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 22
- 75 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Cols 24 and 25
- 76 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 22
- 77 Scottish Law Commission. [Report on Aspects of Leases: Termination](#). October 2022.
- 78 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Cols 23-24
- 79 Delegated Powers and Law Reform Committee. *Official Report*, 6 May 2025. Cols 11-12
- 80 Delegated Powers and Law Reform Committee. *Official Report*, 20 May 2025. Col 9

- 81 Delegated Powers and Law Reform Committee. *Official Report*, 20 May 2025. Col 9
- 82 Delegated Powers and Law Reform Committee. *Official Report*, 20 May 2025. Col 10
- 83 Delegated Powers and Law Reform Committee. *Official Report*, 20 May 2025. Col 10
- 84 Delegated Powers and Law Reform Committee. *Official Report*, 20 May 2025. Col 11
- 85 Delegated Powers and Law Reform Committee. *Official Report*, 20 May 2025. Col 11
- 86 Delegated Powers and Law Reform Committee. *Official Report*, 20 May 2025. Col 12
- 87 Delegated Powers and Law Reform Committee. *Official Report*, 20 May 2025. Col 11
- 88 Delegated Powers and Law Reform Committee. *Official Report*, 20 May 2025. Col 10
- 89 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 6
- 90 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 6
- 91 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 5
- 92 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 5
- 93 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Cols 8-9
- 94 Written evidence. [Federation of Small Businesses Scotland](#)
- 95 Written evidence. [Federation of Small Businesses Scotland](#)
- 96 Written evidence. [Scottish Grocers' Federation](#)
- 97 Delegated Powers and Law Reform Committee. *Official Report*, 6 May 2025. Col 33
- 98 Delegated Powers and Law Reform Committee. *Official Report*, 6 May 2025. Col 32
- 99 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 26
- 100 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Cols 26-27
- 101 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Cols 26-27
- 102 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Cols 26-27
- 103 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 26
- 104 Written evidence. [Scottish Property Federation](#)
- 105 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 25
- 106 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 25

Delegated Powers and Law Reform Committee

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- 107 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Cols 27-28
- 108 Delegated Powers and Law Reform Committee. *Official Report*, 6 May 2025. Col 13
- 109 Delegated Powers and Law Reform Committee. *Official Report*, 6 May 2025. Col 13
- 110 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 28
- 111 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 28
- 112 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 26
- 113 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 27
- 114 Delegated Powers and Law Reform Committee. *Official Report*, 6 May 2025. Col 31
- 115 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 21
- 116 Written evidence. [Burgess Salmon](#)
- 117 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 21
- 118 [Rockford Trilogy Limited v NCR Limited](#)
- 119 Written evidence. [R Craig Connal KC](#)
- 120 Written evidence. [R Craig Connal KC](#)
- 121 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 24
- 122 Delegated Powers and Law Reform Committee. *Official Report*, 6 May 2025. Cols 20-21
- 123 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 24
- 124 Delegated Powers and Law Reform Committee. *Official Report*, 20 May 2025. Col 12
- 125 Delegated Powers and Law Reform Committee. *Official Report*, 20 May 2025. Col 13
- 126 Delegated Powers and Law Reform Committee. *Official Report*, 20 May 2025. Col 13
- 127 Delegated Powers and Law Reform Committee. *Official Report*, 20 May 2025. Col 14
- 128 Delegated Powers and Law Reform Committee. *Official Report*, 20 May 2025. Col 14
- 129 Delegated Powers and Law Reform Committee. *Official Report*, 20 May 2025. Col 18
- 130 Delegated Powers and Law Reform Committee. *Official Report*, 20 May 2025. Cols 18-19
- 131 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 10
- 132 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 11
- 133 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 11

- 134 Delegated Powers and Law Reform Committee. *Official Report*, 6 May 2025. Col 27
- 135 Delegated Powers and Law Reform Committee. *Official Report*, 6 May 2025. Col 27
- 136 Written evidence. [Faculty of Advocates](#)
- 137 Written evidence. [Burness Paull](#)
- 138 Written evidence. [Gillespie Macandrew](#)
- 139 Written evidence. [Faculty of Advocates](#)
- 140 Written evidence. [Law Society of Scotland](#)
- 141 Delegated Powers and Law Reform Committee. *Official Report*, 6 May 2025. Col 14
- 142 Written evidence. [Scottish Property Federation](#)
- 143 Delegated Powers and Law Reform Committee. *Official Report*, 6 May 2025. Cols 32-33
- 144 Written evidence. [Law Society of Scotland](#)
- 145 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 32
- 146 Delegated Powers and Law Reform Committee. *Official Report*, 6 May 2025. Col 14
- 147 Delegated Powers and Law Reform Committee. *Official Report*, 6 May 2025. Col 33
- 148 Written evidence. [Scottish Property Federation](#)
- 149 Written evidence. [Pinsent Masons](#)
- 150 Written evidence. [Pinsent Masons](#)
- 151 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 29
- 152 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 29
- 153 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 2 and 24
- 154 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 24
- 155 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 30
- 156 Delegated Powers and Law Reform Committee. *Official Report*, 6 May 2025. Col 14
- 157 Delegated Powers and Law Reform Committee. *Official Report*, 20 May 2025. Col 14
- 158 Delegated Powers and Law Reform Committee. *Official Report*, 20 May 2025. Col 17
- 159 Delegated Powers and Law Reform Committee. *Official Report*, 20 May 2025. Cols 16-17
- 160 Delegated Powers and Law Reform Committee. *Official Report*, 20 May 2025. Col 17

Delegated Powers and Law Reform Committee

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- 161 Delegated Powers and Law Reform Committee. *Official Report*, 6 May 2025. Cols 6-8
- 162 Written evidence. [Strathclyde Law School](#)
- 163 Delegated Powers and Law Reform Committee. *Official Report*, 6 May 2025. Cols 8-9
- 164 Delegated Powers and Law Reform Committee. *Official Report*, 6 May 2025. Col 26
- 165 Delegated Powers and Law Reform Committee. *Official Report*, 6 May 2025. Col 26
- 166 Written evidence. [City of Edinburgh Council](#)
- 167 Delegated Powers and Law Reform Committee. *Official Report*, 20 May 2025. Col 17
- 168 Delegated Powers and Law Reform Committee. *Official Report*, 20 May 2025. Col 17
- 169 Scottish Law Commission. [Report on Aspects of Leases: Termination](#). October 2022
- 170 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 16
- 171 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 16
- 172 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 5
- 173 Written evidence. [Faculty of Advocates](#)
- 174 Delegated Powers and Law Reform Committee. *Official Report*, 6 May 2025. Col 29
- 175 Delegated Powers and Law Reform Committee. *Official Report*, 6 May 2025. Col 29
- 176 Written evidence. [Federation of Small Businesses Scotland](#)
- 177 Written evidence. [Federation of Small Businesses Scotland](#)
- 178 Written evidence. [Gillespie Macandrew](#) and [Law Society of Scotland](#)
- 179 Written evidence. [Gillespie Macandrew](#)
- 180 Written evidence. [City of Edinburgh Council](#) and [Glasgow City Council](#)
- 181 Written evidence. [Glasgow City Council](#)
- 182 Written evidence. [Scottish Grocers' Federation](#)
- 183 Delegated Powers and Law Reform Committee. *Official Report*, 20 May 2025. Col 15
- 184 Delegated Powers and Law Reform Committee. *Official Report*, 20 May 2025. Col 15
- 185 Delegated Powers and Law Reform Committee. *Official Report*, 20 May 2025. Cols 16-17
- 186 Delegated Powers and Law Reform Committee. *Official Report*, 20 May 2025. Col 19
- 187 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 12
- 188 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Cols 12-13

- 189 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 34
- 190 Written evidence. [Urquharts](#)
- 191 Delegated Powers and Law Reform Committee. *Official Report*, 6 May 2025. Col 34
- 192 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 34
- 193 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 34
- 194 Delegated Powers and Law Reform Committee. *Official Report*, 6 May 2025. Col 18
- 195 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 34
- 196 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 35
- 197 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 35
- 198 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 34
- 199 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 13
- 200 Delegated Powers and Law Reform Committee. *Official Report*, 20 May 2025. Col 19
- 201 Delegated Powers and Law Reform Committee. *Official Report*, 20 May 2025. Col 19
- 202 Delegated Powers and Law Reform Committee. *Official Report*, 20 May 2025. Col 20
- 203 Delegated Powers and Law Reform Committee. *Official Report*, 20 May 2025. Col 19
- 204 A standard security is created by registration in the Land Register of Scotland and, to a degree, is similar to the English term “mortgage”. If the debtor (tenant) defaults on the loan, the security holder can exercise certain remedies to try to recoup the amount outstanding.
- 205 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 13
- 206 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 14
- 207 Delegated Powers and Law Reform Committee. *Official Report*, 6 May 2025. Cols 34-35
- 208 Written evidence. [Burness Paull](#), [Gillespie Macandrew](#) and [City of Edinburgh Council](#)
- 209 Written evidence. [City of Edinburgh Council](#)
- 210 Written evidence. [Gillespie Macandrew](#)
- 211 Written evidence. [Burness Paull](#)
- 212 Written evidence. [Law Society of Scotland](#)
- 213 Delegated Powers and Law Reform Committee. *Official Report*, 6 May 2025. Col 19
- 214 Delegated Powers and Law Reform Committee. *Official Report*, 20 May 2025. Col 20

Delegated Powers and Law Reform Committee

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- 215 Delegated Powers and Law Reform Committee. *Official Report*, 20 May 2025. Col 20
- 216 Delegated Powers and Law Reform Committee. *Official Report*, 20 May 2025. Col 21
- 217 Written evidence. [Law Society of Scotland](#)
- 218 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Cols 14-15
- 219 Delegated Powers and Law Reform Committee. *Official Report*, 6 May 2025. Col 35
- 220 Supplementary written evidence. [Burgess Salmon](#)
- 221 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 36
- 222 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 36
- 223 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Cols 36-37
- 224 Delegated Powers and Law Reform Committee. *Official Report*, 6 May 2025. Col 20
- 225 Delegated Powers and Law Reform Committee. *Official Report*, 6 May 2025. Col 20
- 226 Written evidence. [Shepherd and Wedderburn](#)
- 227 Delegated Powers and Law Reform Committee. *Official Report*, 29 April 2025. Col 36
- 228 Written evidence. [Burgess Salmon](#)
- 229 Written evidence. [Pinsent Masons](#)
- 230 Written evidence. [Law Society of Scotland](#)
- 231 Written evidence. [Gillespie Macandrew](#)
- 232 Written evidence. [Gillespie Macandrew](#)
- 233 Written evidence. [Burgess Salmon](#)
- 234 Delegated Powers and Law Reform Committee. *Official Report*, 20 May 2025. Col 21
- 235 Delegated Powers and Law Reform Committee. *Official Report*, 20 May 2025. Col 21
- 236 Delegated Powers and Law Reform Committee. *Official Report*, 20 May 2025. Col 22
- 237 Delegated Powers and Law Reform Committee. *Official Report*, 20 May 2025. Cols 22-23
- 238 Written evidence. [Law Society of Scotland](#)
- 239 Written evidence. [Pinsent Masons](#)
- 240 Written evidence. [Scottish Grocers' Federation](#)
- 241 Delegated Powers and Law Reform Committee. *Official Report*, 6 May 2025. Col 23

- 242 Delegated Powers and Law Reform Committee. *Official Report*, 6 May 2025. Col 23
- 243 Delegated Powers and Law Reform Committee. *Official Report*, 6 May 2025. Col 39
- 244 Written evidence. [Burgess Salmon](#), [Pinsent Masons](#) and the [Law Society of Scotland](#)
- 245 Delegated Powers and Law Reform Committee. *Official Report*, 20 May 2025. Col 24
- 246 Delegated Powers and Law Reform Committee. *Official Report*, 20 May 2025. Col 24
- 247 Delegated Powers and Law Reform Committee. *Official Report*, 20 May 2025. Col 24
- 248 Written evidence. [Gillespie Macandrew](#), [Burness Paull](#) and [Pinsent Masons](#)
- 249 Written evidence. [Gillespie Macandrew](#)
- 250 Written evidence. [Burness Paull](#)
- 251 Written evidence. [Faculty of Advocates](#), [Gillespie Macandrew](#), and [Pinsent Masons](#)
- 252 Written evidence. [Faculty of Advocates](#)
- 253 Written evidence. [Faculty of Advocates](#)
- 254 Written evidence. [Faculty of Advocates](#)
- 255 written evidence. [Burgess Salmon](#)
- 256 Written evidence. [City of Edinburgh City Council](#)
- 257 Delegated Powers and Law Reform Committee. *Official Report*, 20 May 2025. Col 25
- 258 Written evidence. [Gillespie Macandrew](#)
- 259 Written evidence. [Law Society of Scotland](#)
- 260 Written evidence. [Professor S Brymer OBE](#)
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