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The Leases (Automatic Continuation etc.) (Scotland) Bill

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The Leases (Automatic Continuation etc.) (Scotland) Bill implements recommendations for reforming and updating aspects of the law on commercial leases which Scotland's law reform body, the Scottish Law Commission, made in its Report on Aspects of Leases: Termination.



6 March 2025
SB 25-11

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Summary

- [The Leases \(Automatic Continuation etc.\) \(Scotland\) Bill](#) ("The Bill") implements recommendations which Scotland's law reform body, the Scottish Law Commission ("SLC"), made in its [Report on Aspects of Leases: Termination \("the Report"\) in October 2022](#) . ¹
- According to [the Policy Memorandum](#), the aim of 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.
- The reforms are focused on [the common law](#) rules known as "tacit relocation" under which a commercial lease automatically continues after its termination date unless there is a valid notice to terminate.
- Part 1 of the Bill defines the leases which fall under the legislation. Residential leases, agricultural leases and crofting, small landholding and allotment leases are not covered.
- Part 2 of the Bill replaces the common law rules on tacit relocation with a new statutory code and modifies and updates the rules on giving notice of the termination of a lease.
- The maximum possible period which leases can automatically continue under the Bill is one year (section 7(2)).
- Certain commercial leases listed in Schedule 1 (including holiday and student lets) are not covered by the rules on tacit relocation and end on their termination date.
- Part 3 of the Bill reforms other elements of the law, including the law on the apportionment of rent paid in advance.
- The SLC reviewed other areas of the law but noted that further consultation is needed on reform in these areas. These are not covered in the Bill. For example, the Bill doesn't amend the rules in the Tenancy of Shops (Scotland) Act 1949 ("1949 Act").
- The SLC has, however, recently recommended repeal of the 1949 Act and indicated that the Scottish Government could amend the Bill to implement this recommendation.
- The Bill and this briefing refer to a number of technical legal terms. This briefing includes definitions in the text. However, a glossary of commonly used terms can also be found in the Bill's [Policy Memorandum](#).

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What are commercial leases?

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.

Commercial leases are important for business and the economy as they 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).

Commercial leases (and their rental income) are also an important element in commercial property investment. ²

The Scottish Law Commission characterises commercial leases as follows:

“ 1.7 A commercial lease is a contract between an owner of a property, known as the landlord, and an occupier of the property, known as the tenant governing a commercial property. Essentially commercial property is property which is neither agricultural nor residential. The contract regulates the occupancy of the property by the tenant. It gives the tenant exclusive possession of the property in exchange for which the tenant will pay to the landlord a rent, which is generally fixed at a market level. In addition to the rent the tenant will normally undertake other obligations, the extent of which will usually depend on the lease duration ...”

Scottish Law Commission, 2018³

All commercial leases have a contractual element (i.e. what is agreed on in the lease) which binds the parties to the agreement.

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.

Unlike agricultural and residential leases, there is very little statutory regulation of commercial leases. ⁴ Instead, most of the rules are based on [the common law](#) (i.e. general principles, and precedents from court cases). The focus of the Bill is on updating and reforming certain of these common law rules.

What is the background to the SLC's work on the Bill?

The SLC's work is based on [programmes of law reform](#) as well as individual references from the Scottish and UK Ministers. ⁵

The SLC's [Eighth Programme of Law Reform](#) (2010-2015) identified topics which the SLC was unable to take forward but which could be considered in its Ninth Programme of Law Reform. One of these topics was the law of leases of heritable property.

The SLC's [Ninth Programme of Law Reform](#) (2015-2017) subsequently included a project on the "proprietary aspects of leases" (i.e. the creation of leases as real rights).

The project was then carried forward into the SLC's [Tenth Programme of Law Reform](#) ⁶ (2018-2022) with its scope being widened to cover aspects of leases generally (i.e. not just their proprietary aspects).

The SLC's [Tenth Programme of Law Reform](#) explained the rationale for the project as follows:

“ 2.12 The project will take a focussed and selective approach as to where law reform is most needed. We have been advised by consultees that uncertainties in the current law lead to increased costs and act as a disincentive to investment particularly in the commercial leasing sector.”

The [Tenth Programme of Law Reform](#) noted that the project's focus would be on:

- the termination of commercial leases and the doctrine of tacit relocation (i.e. where a lease automatically continues after its expiry date because neither party has taken steps to terminate it)
- notices to quit (i.e. notices served to bring a lease to an end) and in particular provisions in the Sheriff Courts (Scotland) Act 1907
- rent apportionment at early termination of a lease
- The Tenancy of Shops (Scotland) Act 1949, which was introduced in the period after the Second World War to protect small businesses, such as local grocery shops, by allowing them to apply to the sheriff for an extension to their lease
- the Scots law doctrine of "confusio" (this is where the interests of tenant and landlord in the same property come to be owned by one person and are consequently merged/amalgamated).

The SLC subsequently published a [Discussion Paper](#) ("the Discussion Paper") in May 2018 ³. 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).

The Discussion Paper asked consultees a series of questions focused on reform of the common law rules of tacit relocation. 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](#) .⁷

In October 2022 the SLC published its [Report on Aspects of Leases: Termination](#) ("the Report").⁸ The Report recommended a number of reforms to the Scots law of leases based on an analysis of [responses to the Discussion Paper](#).⁹ 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.¹⁰

The SLC was assisted in its work by an advisory group made up of legal practitioners, surveyors and academics (the majority were solicitors - see the list of advisory group members at Appendix D to the Report).¹¹

What were the SLC's findings and recommendations?

A brief summary follows of the SLC's main findings and recommendations.

Tacit relocation

The norm in most commercial agreements is that the rules on termination are left to the parties. If a party to an agreement wants to end it, then they normally 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).

Leases are different. Over centuries a body of rules has built up in the common law known as "tacit relocation" which 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 ([see this section of the briefing for more details](#)); 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.

The Report summarises the effect of the law as follows:

" 2.7 The effect of tacit relocation is that 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."

Scottish Law Commission, 2022⁸

The default continuation period is therefore one year for leases of one year or more; or a period equal to the period of the lease for leases of less than a year. Under certain circumstances, these default continuation periods can be modified by an express term in the lease. The Report states that:

" 3.62 ... Parties may modify them through an express term in the lease itself specifying a longer period of notice for leases of over four months or longer or shorter periods for leases of up to four months."

Scottish Law Commission , 2022¹²

The Report explains that the rules have their background in protecting agricultural tenants and that they were subsequently extended to non agricultural leases. It also explains that the landlord's interests were also part of the doctrine noting that:

“ 2.16 This policy of protecting the tenant was accompanied by a policy that a landlord should have a similar opportunity of obtaining a fresh tenant. Accordingly, the common law came to require a tenant to provide a similar warning to a landlord, albeit that it could be given in any informal manner.”

Scottish Law Commission, 2022⁸

Although certain other countries also have rules on the continuation or renewal of leases, the Report stresses that Scots law is unusual:

“ 2.21 ... first, in having a rule of tacit relocation on the basis of parties’ inaction prior to the original termination date of a lease; and, second, in making no provision for parties to disapply the rules of tacit relocation.”

Scottish Law Commission, 2022⁸

Benefits and problems with tacit relocation

The Report states that there are certain benefits to tacit relocation noting that it can:

“ 2.29 ... suit both the landlord and the tenant to continue the lease for another year without the need to involve professional advisers with the resultant costs.”

Scottish Law Commission , 2022¹¹

However, it stresses that tacit relocation can cause problems. These include:

- **Lack of transparency** - As the doctrine is part of the common law, it usually isn't evident from the face of the lease, with the result that:

“ 2.25 ... Many tenants will be unaware that the law requires them to give notice some time before the termination date of their lease in order to prevent the landlord from tying them into that lease for a further period.”

Scottish Law Commission, 2022⁸

The Report also refers to evidence of tenants taking on a new lease of alternative premises without realising that "through their silence, they have already committed themselves to a further year of rent on their current premises".

- **Not clear if one can contract out of tacit relocation** - The Report explains that it also is not clear whether the current law allows people to contract out of tacit relocation (i.e. agree to opt out of the rules), and that:

“ 2.11 The consequence of all this uncertainty is that in practice notice to quit or of intention to quit is given and scrutinised when it might be totally unnecessary.”

Scottish Law Commission, 2022⁸

The Discussion Paper deals with these problems in more depth (see paras 2.40-43) arguing that the doctrine of tacit relocation causes "uncertainty, a lack of clarity and a lack of fairness".

It notes that large property-owning organisations need to expend resources to constantly monitor their leases to ensure that they serve accurate notices to quit. It also explains that the problem is even greater, and potentially more unfair, for smaller businesses who may not have the resources to pay for legal advice on the law.

The Discussion Paper concludes that:

“ 2.43 ... Leases bear to be fixed term on the face of them, but they are not. There is an implied term which is lurking there to catch out those with a lack of knowledge of the system.”

Scottish Law Commission, 2018³

Options for reform

When the Scottish Law Commission consulted on reforming tacit relocation in its Discussion Paper, it proposed two main options for reform.

Option 1

Under option 1, tacit relocation would be disapplied entirely from commercial leases (i.e. the default law would be abolished for situations where no notice is given), but with the additional options of:

1. allowing the parties to contract in to the 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.

The Report states that 12 of the 34 consultees who responded to this proposal were in favour of the abolition of tacit relocation. According to the Report, this included:

“ 2.33 ... the Senators of the College of Justice and the Faculty of Advocates, along with the Property Litigation Association. Also in favour of disapplication were CMS, DLA Piper, DWF, Anderson Strathern and the Scottish Property Federation, with Pinsent Masons declaring a majority of their commercial property solicitors, although not all, in favour of disapplication. The University of Glasgow were in favour of disapplying the need for notices to prevent tacit relocation.”

Scottish Law Commission, 2022⁸

One argument given in favour of this approach was that the parties to a lease would no longer be confronted with default law beyond the rules in the contract. It would also simplify the rules on giving notice and would be in line with the norm in commercial arrangements of focussing on the parties' express contractual terms.

A majority of consultees were, however, not in favour of abolition including:

“ 2.38 ... TSB, the Royal Institution of Chartered Surveyors and all responses from individual surveyors, the majority of large and medium-sized legal firms including Brodies, Burness Paull, Shepherd and Wedderburn, Dentons, MacRoberts, and Shoosmiths, and most of the academic contributors.”

Arguments made in favour of retaining tacit relocation included: reduction of costs, the added flexibility the rules allow for, and the reduction of the likelihood of commercial property being left vacant while a new tenant is found.

The Report notes that of the 32 responses to this option, 15 were of the view that parties should have the right to opt in. This included "the Senators of the College of Justice, the

Property Litigation Association and many solicitors and surveyors" as well as "most of the consultees who supported disapplying tacit relocation".

There were mixed views on the question as to whether there should be a statutory scheme to regulate what would happen if the parties acted as though the lease was continuing after it had ended (see para 2.45 of the Report for details)

Option 2

Under option 2, the law would be clarified to make it clear that the parties to a commercial lease 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.

The Report states that a clear majority of the consultees agreed that the parties to a commercial lease should have the right to contract out of tacit relocation. It also notes that:

“ Roughly two-thirds of respondents considered that tacit relocation should apply in some form where a lease made no provision for what should happen at the end of the lease and the parties acted as if the lease was continuing.”

Scottish Law Commission, 2022⁸

The SLC's recommendations

Main recommendation - tacit relocation should be retained but replaced with a statutory code with the right to contract out

The SLC concluded that, although strong arguments had been made for abolishing tacit relocation, it should be retained. The Report states that the majority of surveyors, solicitors and businesses favour its retention. It also argues that this is the "optimal route to follow" noting that:

“ 2.52 ... the giving of notice can provide a valuable warning (or safety net) to both tenants and landlords of the consequences of failing to negotiate an extension or a new lease prior to the termination date. Tenants are given a clear warning to find alternative premises. Landlords are given a warning that they cannot rely on the tenant remaining.”

Scottish Law Commission, 2022⁸

One option would have been for the common law rules on tacit relocation to be amended. The SLC Report argues, however, that this would simply add to the current complexity given that the existing rules are obscure, lacking in clarity and "contained within a number of mostly old, disparate and poorly accessible sources". It therefore recommends "the replacement of the common law of tacit relocation with a statutory code" which will:

“ 2.55 ... provide parties and their advisers with a comprehensive statement of the law incorporating both the unreformed parts of the common law of tacit relocation together with the reforms that we recommend.”

Scottish Law Commission, 2022⁸

The SLC also concludes that the parties should be allowed to contract out of these rules, but that, in order to ensure "clarity and transparency", this should be in writing. Where a lease is for more than one year, the writing required for contracting out should comply with sections 2 or 9B of the Requirements of Writing (Scotland) Act 1995 - in other words it should be in a signed paper document or an electronically authenticated electronic document.

Contracting out should not be permitted though where automatic continuation occurs due to conduct after the termination date. The Report argues that this would be unfair to the tenant (see para 2.53 of the Report for details).

Other recommendations for the new statutory code included:

- replacing the term "tacit relocation" with "automatic continuation"
- applying the code to all leases (including sub-leases) except residential, agricultural, crofting, small landholding and allotment leases
- ensuring that the rules do not cover leases to which tacit relocation does not currently apply, e.g. student and holiday lets, or lets of fishing/shooting rights of less than one year
- rules reflecting the existing law that if the tenant does not vacate the property at the

end of lease, and the landlord does not take reasonable steps to remove them, the lease will continue automatically

- retaining the default continuation period (one year for leases of one year or more; a period equal to the period of the lease for leases of less than a year), but allowing the parties to reduce these default periods subject to minimum periods (28 days for leases of more than 28 days or 7 days for leases of 28 days or less). In that regard the SLC Report argues that:

“ 2.68 ... an unrestricted ability to modify the period could result in parties agreeing continuations of one day, and the whole rationale of automatic continuation being undermined through the back door.”

Scottish Law Commission, 2022⁸

Notices terminating a lease

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". A notice to quit is also needed for an "action of removing", i.e. the court action which a landlord needs to take if the tenant refuses to leave at the end of a lease. ¹³

As outlined in detail in Chapter 3 of the Discussion Paper, the current law on giving notice is both very complex and unclear. 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 and [the section of this briefing on tacit relocation](#)). ¹²

There is, however, also legislation from more than a century ago for removing tenants (the Sheriff Courts (Scotland) Act 1907) which provides other (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.

[The Policy Memorandum](#) summarises the problems with the current law as follows:

“ 39. A notice to quit may be given to prevent tacit relocation but the practice in relation to giving notices is not clear. Under the common law a notice to quit does not need to be in writing unless otherwise provided for in the terms of the lease but writing is necessary if a special court procedure for removal is to be used. Currently, principal legislation dealing with notices is the Sheriff Courts (Scotland) Act 1907 (“the 1907 Act”), which sets out a procedure for removing tenants by serving a notice and does not involve applying to the court. It is often seen as the cause of confusion and uncertainty about notices in commercial leases. For example, section 34 of the 1907 Act begins with warrants to remove but is also about when a notice must be given and tacit relocation. 40. The current law is capable of different interpretations and altogether can lead to lack of clarity and increased costs for both landlords and tenants. The practical result is that solicitors tend to err on the side of caution. For example, the SLC were told that solicitors tend to comply with the terms of the 1907 Act as if they are compulsory in all situations, always giving notice in accordance with the 1907 Act.”

Scottish Parliament, 2024¹⁴

A recent example of the problems caused by the law is a Court of Session case in 2019 involving the termination of a 15 year lease at an Amazon warehouse at Gourock.ⁱ

In this case the landlord had followed the common law notice period, but the tenant (Amazon) argued that the rules in the 1907 Act should have been followed (i.e. one year's notice) as the site was larger than two acres.

The question ended up in court. The Court of Session ultimately found in favour of the landlord on the basis that the rules in the 1907 Act do not replace the “well-established common law on tacit relocation”. However, the case was never appealed thus potentially limiting its impact as a precedent. The view from the legal profession appears to be that, while welcome, the judgment has not fully addressed the uncertainty in the current law. See, for example, the following legal blog posts:

- [A Call for Clarity - The Two Acre Rule and Notices to Quit](#) ¹⁵
- [Notices in Commercial Leases – a welcome clarification for landlords and tenants](#) ¹⁶
- [Tacit relocation - a quick guide](#) ¹⁷
- [Amazon primed for eviction after notice to quit was found to be valid.](#) ¹⁸

Options for reform

Chapter 4 of the Discussion Paper outlined various options for reform and questions which need to be considered. Although not an exhaustive summary, some of the main questions included:

- **Whether notices to quit for commercial leases should always be in writing?**

ⁱ [M7 Real Estate Investments Partners VI Industrial Propco Limited v Amazon UK Services Limited](#) [2019] CSOH 73

As the common law rule is that notices to quit must be definite and unconditional, the Discussion Paper suggests that it makes sense that they should be in writing.

- **Whether the content of the notice should be the same for both landlords and tenants?**

The Discussion Paper notes that the rules in the 1907 Act include a distinction between landlords and tenants and asks whether this is merited in the new legislation.

- **Whether there should be a prescribed standard form of notice or instead simply legislation with the essential requirements?**

The Discussion Paper states that:

“ 4.7 ... initial feedback from our Advisory Group is that they do not wish a standard form of notice which must be used in all instances. Instead they have advised us that they would prefer legislation which sets out certain essential requirements, but does not prescribe the form itself.”

Scottish Law Commission, 2018³

- **Whether there should be a "one size fits all" notice option for all leases?**

The Discussion Paper notes:

“ 4.28 It may be that a more radical solution should be considered. Consultees may wish to consider whether one form of notice to quit should apply to all commercial leases in the same way, irrespective of size, or type of property, and irrespective of the length of lease. In such a situation there could be a minimum default period, say three months, but in the event that the lease was shorter than the default period then the period of notice would be one half of the length of the lease.”

Scottish Law Commission, 2018³

- **What the appropriate notice period should be?**

The Discussion Paper asks whether the standard 40 day notice period is sufficient as a minimum default notice period or whether other notice periods would be more appropriate, for example, shorter notice periods for leases with a term of less than one year.

- **Whether contracting out of the default notice rules should be permitted?**

On this question, the Discussion Paper states:

“ 4.32 Should parties be entitled to contract out of the provisions for notice which are discussed above? While it may seem straightforward that parties should be entitled to increase the periods of notice by agreement, the ability to shorten the period of notice requires closer consideration. There appears to be an element of public interest in notice periods. The requirement to give a minimum period is a safeguard for a tenant. A tenant is often in a weaker negotiating position prior to the outset of the lease ... Likewise a landlord on the other hand requires a reasonable period to arrange for a new tenant.”

Scottish Law Commission , 2018¹

- **What the rules on serving notice should be?**

The question raised in the Discussion Paper was whether the default rules on the service of documents in section 26 of the Legislative Reform (Scotland) Act 2010 ("2010 Act") should apply or whether other rules should be considered.

The methods of service specified by section 26 of the 2010 Act are: (a) delivery "personally to the person", (b) the sending by registered or recorded delivery post, and (c) the sending by electronic communications.

The SLC's main recommendations on notice

No notice needed for leases of less than three months

The Report notes that the present law recognises that leases of a short duration (up to 28 days) do not require notice to be terminated (para 2.61 of the Report).

The Report recommends that no notice should be required for leases of less than three months (for details see para 3.68 of the Report).

Written notice for landlords and oral notice for tenants where leases are less than one year

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" (para 3.3. of the Report).

Various arguments are given for this approach including the fact 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.

The Report therefore recommends that:

1. **Landlords should be required to give written notice to tenants.** The Report stresses that this was the overwhelming preference expressed in the consultation and that it would reduce uncertainty.
2. **Tenants may give oral notice where leases are less than one year in duration.** Written notice would only be needed for leases longer than one year.

The Report recommends that notice by landlords be referred to as "notice to quit" and notice by tenants as "notice of intention to quit". The reasoning is that this terminology reflects the different purposes of the notices and is used in legislation on agricultural leases.

Statutory list of essential requirements for notice

The Report notes that most consultees were against a prescribed statutory form of notice on the basis that it could be too prescriptive whilst not being able to cover all situations. There was, though, support for a "statutory model, or non-obligatory style" which it was thought "might assist landlords and tenants who do not wish to obtain legal advice".

The SLC was, however, not convinced that the advantages of a non-compulsory style would outweigh disadvantages and instead recommended that the legislation include a short list of essential requirements for notice to quit and notice of intention to quit.

Notice to quit would have to include: the name of the landlord, a description of the let property, the end date of the lease and the landlord's intention to terminate it.

Tenants would be subject to lesser requirements than landlords in line with the general approach taken by the SLC to notice. Notices of intention to quit would only have to include a description of the let property which is sufficient to identify it and indicate that the tenant intends to give up possession of the property at the end of the lease. Where written notice is needed (leases of more than one year), the name of the tenant or their agent should be included.

The Report notes that parties should not be allowed to contract out of or alter these requirements "given the few essential requirements involved and their importance."

The Report also states that any notice that does not contain each of the essential elements would be ineffective in preventing automatic continuation (but with specific rules to deal with potential errors in the notice given).

New default notice periods

There was consensus that the notice period should vary with the duration of the lease. However, there were differing views on the default notice period for leases of a year or more, with consultees divided into three groups favouring respectively: (1) a six-month period, (2) a three-month period, and (3) retention of the 40 day period (paras 3.65-6 of the Report).

The SLC's view was that:

“ 3.66 ... the default period of notice should give tenants sufficient time to find fresh premises, but at the same time should not oblige parties to decide whether they wish the lease to continue on its existing terms too far in advance of its agreed termination date.”

Scottish Law Commission, 2022⁸

The SLC therefore recommended a default three-month period as an appropriate balance, arguing that that 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 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 Report for details of the SLC's reasoning on this.

Contracting out of the default notice period should be allowed

The SLC recommended that the parties should be allowed to exclude or modify the default notice period as this reflects the existing common law rule and is also in line with the principle that it should be possible to contract out of tacit relocation altogether.

The Report states though that any contracting out will have to apply equally to both landlord and tenant noting that:

“ 3.98 ... an agreement which seeks to keep a three-month notice period for a tenant's notice but have a one-week notice period for a landlord's notice should be ineffective in modifying the statutory provisions.”

Scottish Law Commission, 2022⁸

Methods of giving written notice

The SLC's draft Bill proposed a comprehensive and exhaustive list of methods by which written notice could be served. The methods in the list were inspired by section 26 of the 2010 Act, but with the addition of delivery by sheriff officer.

However, a number of consultees thought that this approach was unduly restrictive and the SLC subsequently changed its position.

The approach taken is therefore one where, for traditional (non-electronic) documents, the parties can choose their method of notice but that "if service takes place by one of a number of specified methods, the serving party benefits from a presumption that service has taken place at a specified time." (para 3.82 of the Report)

In relation to electronic communications, the SLC accepts that most business is conducted by email but argues that consent (express or implied) should be needed, noting that this is the approach taken in certain other jurisdictions. The Report states:

“ 3.83. It is undoubtedly the case that at present most business correspondence is conducted by email or other electronic means. At the same time, we are conscious that not everyone has access to or the capability to access the same electronic means of communication. This is important. If a party does not consent to notice being given electronically, then notice by such means should not be forced upon them.”

Scottish Law Commission, 2022⁸

Other recommendations

Other recommendations included rules:

- allowing for notice to be withdrawn, but only if the recipient consents
- governing what happens if an error is made in the wording of a notice
- confirming that notice to quit or of intention to quit is binding on a tenant's successors
- requiring a tenant to provide any subtenants with a copy of the notice to quit or their notice of intention to quit (or to notify the sub-tenant of any oral notice): the general aim is to ensure that subtenants are aware that they will have to leave the let property
- disapplying the common law rules and current legislation on notice
- on the timing of when notice takes effect.

Other recommendations

The SLC considered a range of other matters linked to how leases end.

Recommendations included:

How to determine the date of entry and duration of a lease when it is not clear

Sometimes a landlord requires to give notice to quit but no written lease is available for establishing the termination date (e.g. because the lease has been lost or because the original lease was an oral one).

The Report explains that, under the present law, the court has a power to set the duration and termination date of such a lease, but that the rules on entry dates are unclear and that there is also reference to the antiquated terms [Whitsunday](#) and [Martinmas](#). The Report states:

“ 4.4 ... The termination date can be established through obtaining from the court a decree of declarator fixing the termination date. Where no duration has been agreed, there is a common law presumption that the lease is for one year from the date of entry. If the date of entry cannot be established, it is presumed to be the date of the Whitsunday or Martinmas immediately following the date of the lease. However, there is also case law that could be read as supporting a presumption that the date of entry is the date of the lease itself. The law is unclear ...”

Scottish Law Commission, 2022⁸

The proposal in the Discussion Paper was that, if a court cannot establish the duration of a lease, there should be an implied one year duration, in line with the current common law. Where the date of entry is unknown or can't be established by the court there would also be a statutory presumption e.g. 28 May (i.e. Whitsunday).

The Report follows these proposals, but also recommended the introduction of an expedited sheriff court procedure to establish the date of entry, noting that:

“ 4.13 The existing procedures for having a court fix the date of entry under a lease (and thus determine its termination date) are potentially lengthy, and of little assistance to a party wishing to serve notice in a few weeks' time.”

Scottish Law Commission, 2022⁸

That all parties to a lease must provide an address in the UK where certain documents can be sent to them

The Report notes that there can be difficulties serving written notice where parties have no address in the United Kingdom (para 4.21). Based on the consultation, it therefore recommended "a statutory duty on non-UK parties to provide a UK address for postal service" (para 4.24), with certain exceptions (e.g. for UK corporate bodies, leases of less than a year, and where a UK postal address is included in the lease). Unless something else was agreed in the lease, there would be a presumption that documents posted to this UK address have been delivered.

The Report also recommends various remedies if the parties are in breach of this obligation, including allowing the landlord to serve notice at the let premises if the party in breach is the tenant. This would also allow "irritancy notices" terminating the lease to be served by post to the let premises (para 5.23 of the Report).

Service of notice on change of landlord

The Report outlines that problems can arise with tenants giving notice to the wrong party where the landlord has changed and the tenant has not been made aware of this. The Report explains that legislation provides for such eventualities for agricultural tenancies (section 84(4) of the Agricultural Holdings (Scotland) Act 1991), but that an SLC recommendation to do the same for all leases from 1989 ¹⁹ (i.e. 36 years ago) was never taken forward due to "a lack of Parliamentary time" (para 4.40 of the Report).

The Report therefore recommends the introduction of a rule in line with agricultural tenancies whereby a termination document given to the former landlord will be considered as valid unless the tenant has been informed in writing by the new landlord of the name and postal address of the new landlord.

The Report notes at para 4.45 that a similar rule is not needed where the tenant changes as, in that situation, the landlord will have had to agree to the lease being assigned to a new tenant and is therefore likely to be aware of where to send notice terminating the lease.

Service of notice on death of landlord or tenant

Leases don't come to an end on the death of the landlord or tenant. They vest in the executor (i.e. [the person who gathers in and distributes the deceased's estate](#)).²⁰ The problem is that the vesting process only occurs when [confirmation](#) is granted by the court (i.e. the legal document giving executors their authority to act). This means that it can be unclear where to serve notice until confirmation is granted.

The recommendation for dealing with this also dates back to an unimplemented recommendation in the SLC's 1989 Report on Recovery of Possession of Heritable Property. It would permit landlords and tenants to serve notice of termination on the deceased party as if they were alive up until the point that the serving party has been informed:

1. by the executor that confirmation has been granted over the deceased's estate;
or
2. by a heritable creditor that they have taken possession of the deceased's interest in the tenancy or the let subjects.

Irritancy

"Irritancy" 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, e.g. non-payment of rent, but also due to other events such as the tenant becoming insolvent).

The Discussion Paper asked whether a full review of the law on irritancy was needed given that the SLC's recommendations in its ["Report on Irritancy in Leases of Land"](#) from 2003 were never implemented.

However, the majority of consultees responded that the law was generally working well and that, in practice, landlords tended not to use irritancy to end a lease as ending the lease in this way would mean that they would assume responsibility for all costs relating to it. Limited proposals for reform, were, however suggested.

The Report follows the approach of only proposing limited reforms; whilst also suggesting that more comprehensive reform would be desirable long term. Proposed reforms included:

- **Expanding the rules on "pre-irritancy warning notices" to include methods of service other than recorded delivery.** Under the current law (Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (1985 Act), sections 4(1) and (2)), a landlord cannot rely on irritancy to terminate a lease unless they have served a notice (known as a "pre-irritancy warning notice") on the tenant. The notice requires payment be made within a specified period and states that failure to comply may result in termination of the lease. Recorded delivery is currently the only option under the 1985 Act for serving a pre-irritancy warning notice (SLC Report para 5.14).
- **Introducing rules requiring the landlord to serve a copy of a pre-irritancy warning notice or irritancy notice on the secured creditor when there is a standard security (a mortgage) over the lease.** The aim here is to protect the position of lenders who may hold a standard security over the tenant's interest in the lease and who may not be able to exercise their rights to sell and transfer the tenant's interest before it is terminated through irritancy. At present the general law does not oblige landlords to notify a tenant's heritable creditors of their intention to irritate a lease (SLC Report para 5.9).

However, the SLC thought it was not necessary to legislate in relation to:

1. **Pre-termination notices and the duration of the remediation period** - currently a landlord's pre-termination notice must require tenants to make payment within a period of not less than 14 days following the service of the notice. There were suggestions that this period was too short. However, the SLC noted that there were also arguments that the use of electronic communications "meant that the 14-day period was not as challenging as it once was". The SLC therefore proposed "further consultation, possibly as part of a more general reform of the law of irritancy" (para 5.25 of the Report).
2. **Pre-termination notices to subtenants** - Irritancy of a head lease has the effect of terminating any sub-leases automatically and can ultimately lead to the subtenant's eviction. The SLC considered whether irritancy-related notices should be served on the subtenant as well as the head tenant, giving the subtenant an opportunity to remedy the head tenant's breach and save both tenancies. The SLC noted that such a proposal was "superficially attractive" but would lead to difficult legal questions, for example as regards claims between the head tenant and subtenant. As most consultees were satisfied with the current law, the SLC therefore did not recommend changing it (para 5.31 of the Report).

Apportionment of rent

During the SLC's consultation, consultees raised questions about what the legal position would be in Scotland in relation to the Supreme Court's judgment in the English case of [Marks and Spencer v BNP Paribas](#).ⁱⁱ

ii Marks and Spencer plc v BNP Paribas Securities Services Trust Company (Jersey) Limited and another [2015] UKSC 72

The case concerned a tenant which exercised a break clause to terminate the lease early but was unable to recover rent paid in advance of the break. The Supreme Court held that the tenant was not entitled to the repayment of rent as neither the English common law nor statute (the Apportionment Act 1870) allowed for rent paid to be apportioned based on the time of payment. In addition, a term allowing for repayment could also not be implied into the lease.²¹

The Discussion Paper's view was that Scots law would likely follow this approach and would not allow a tenant to recover overpaid rent in the event of early termination (para 5.26). The Discussion Paper also noted that the law of "unjust enrichment" would be unlikely to provide a remedy (para 5.22).

The Report states that the vast majority of consultees agreed with this view. The SLC therefore recommended 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

The Tenancy of Shops (Scotland) Act 1949 ("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).

The legislation provides a very limited security of tenure to shop tenants. The Discussion Paper explains that it:

“ 6.4 ... 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.”

Scottish Law Commission, 2018³

Section 1(3) of the Act provides six circumstances where the sheriff may dismiss the application. The sheriff has an overriding discretion to dismiss a tenant's application under section 1(3) if he or she thinks it reasonable to do so in all the circumstances (para 6.8 of the Discussion Paper).

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). In that regard, the Discussion Paper argued that post-war shop landlords were often in a stronger bargaining position than tenants but that "in modern business tenancies, these arguments do not bear the same weight." (paras 6.21-2 of the Discussion Paper)

The Report noted, however, that both the Federation of Small Businesses and Boots expressed opposition to simple repeal. The Report also argued that "since March 2020 the retail landscape had been transformed by the effects of the COVID-19 pandemic" (paras 7.14-5). Further consultation of the retail community was, therefore, carried out by the SLC. Consultees were asked whether the 1949 Act should be:

1. amended so that it only applies to a tenant for whom the premises are the sole shop (retail or warehouse outlet) of the business conducted from that shop;
2. amended in some other way; or
3. repealed.

The Report narrates that there was no support for wholesale repeal but that otherwise consensus was limited (see paras 7.17-7.21).

Although it considered the options in more detail, ultimately 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.

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](#).²²

The position taken by the SLC is that the 1949 Act should be repealed. The SLC's news release on its work explains the rationale for repeal as follow:

“ The 1949 Act was last reviewed in the 1960s. Outdated and rarely used, 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.”

Scottish Law Commission, 2025²³

The SLC also states that its wish is that the Scottish Government amends the Bill to implement this recommendation:

“ We hope that the Scottish Government will take forward this recommendation by means of the lodging of an amendment to the Leases (Automatic Continuation etc.) (Scotland) Bill.”

Scottish Law Commission, 2025²⁴

Confusio

"Confusio" is a legal doctrine in Scots law. In relation to contractual obligations, it means that when the creditor and debtor become the same entity the obligation is automatically discharged or extinguished (Discussion Paper paras 8.3 and 8.5). One situation where confusio comes into play for leases is when the rights of the landlord and the tenant under a lease come to be vested in the same person (Discussion Paper para 1.21).

The Discussion Paper highlighted that there is a lack of clarity on the application of confusio to leases, in part caused by the fact that, as well as being contracts, [leases can also create real rights](#), thus touching on an associated doctrine called "consolidation" which deals with the amalgamation of real rights. One problem is that confusio applies automatically whereas consolidation only occurs through a positive act, e.g. the

registration of a minute in relation to a lease (Discussion Paper para 8.59).

The Discussion Paper concluded that:

“ 8.60 Examples from stakeholders highlight that confusio does not work smoothly in a modern system of commercial leasing, and that it can prejudice transactions and deter investment. Further, the debate which surrounds the application of confusio contributes to the confusion over the doctrine in practice.”

The Report also found that the law was unclear and recommended a statutory restatement of the law. It noted though that there was significant controversy and disagreement among lawyers about the topic. The Report therefore made no recommendations at this stage and concluded instead that a full consultation was needed (para 8.23 of the Report).

The Bill does not, therefore, deal with the doctrine of confusio.

What does the Bill do?

In line with the conclusions of the Scottish Law Commission, the Bill's [Policy Memorandum](#) states that “the current law on tacit relocation is uncertain; inaccessible; and outdated” and is in need of reform. [The Bill](#) implements the SLC's recommendations with the aim of reforming the law.

Part 1 - Leases to which the legislation applies

Part 1 of the Bill (section 1) outlines the leases to which the legislation will apply.

The Bill does not contain a detailed definition of what a commercial lease is. Instead, the Bill 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.

These terms are further defined in sections 1(2), (3) and (4) of the Bill. The Explanatory Notes stress that the definitions of "residential lease" and "agricultural lease" mean that student lets, holiday lets and leases of agricultural land other than for agriculture are covered by the Bill:

“ 13. It should be noted that the definition of “residential lease” in subsection (2) does not include the types of lease set out in paragraphs 5 and 6 of schedule 1 of the Private Housing Tenancies (Scotland) Act 2016 (student lets by institutional landlords and holiday lets). Accordingly, the Bill applies to these leases (though the majority of the provisions of Part 2 do not apply to them, by virtue of sections 2(2) and 5(1) and schedule 1). 14. Similarly, the definition of “agricultural lease” in subsection (3) does not extend to leases of agricultural land other than for agriculture for the purposes of a trade or business (for example, for use of the land for recreational purposes), since these are not leases to which the Agricultural Holdings (Scotland) Act 1991 applies nor leases giving rise to a tenancy within the meaning of section 93 of the Agricultural Holdings (Scotland) Act 2003. The Bill therefore applies to such leases.”

However, as alluded to in the above quotation from [the Explanatory Notes](#), it is important to note that [certain leases in Schedule 1 of the Bill \(including student lets and holiday lets\) are not covered by the new rules on automatic continuation and will end on their termination dates.](#)

Part 2 - Automatic continuation of leases

Part 2 of the Bill replaces the common law rules of tacit relocation with a new statutory code.

The [Policy Memorandum](#) summarises the changes as follows:

“ 12 ... 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.”

Scottish Parliament, 2024²⁵

Sections 2-7: Automatic continuation and notice

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 disapples the existing common law rules).

Section 2

Section 2 provides the default rule that a commercial lease will automatically continue after its termination date unless:

1. the parties contract out of having to give notice (section 4); or
2. the parties give notice at the correct time and in the correct form (sections 3(1)(a) and (b)); or
3. the tenant gives up the let premises with the acquiescence of the landlord in circumstances where both parties intend the lease to end on that date (section 3(1)(c)).

As recommended by the SLC, no notice is required for leases of less than three months. Section 2(2)(a) therefore clarifies that such leases will end on their termination date without the need for notice to be given.

Section 2(2)(b) provides that the leases in Schedule 1 of the Bill will also not be covered by the new rules on automatic continuation and will end on their termination dates without the need for notice. 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, the Accountant of Court, or the Accountant in Bankruptcy
- 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.

Section 3

Section 3 provides rules on the termination of a commercial lease by notice or consensus.

Sections 3(1)(a) and (b) provide that a lease will end on its termination date if valid notice is given. As per the recommendations of the SLC, notice given by a landlord is referred to in the Bill as "notice to quit" whereas notice given by a tenant is referred to as "notice of intention to quit". Sections 3(2) and (3) define what valid notice is by reference to other sections of the Bill.

Section 4

Under the common law it is uncertain whether parties to a commercial lease can contract out of the rules on automatic continuation (i.e. what is currently known as "tacit relocation").

Section 4 of the Bill makes it clear that the parties to a commercial lease can contract out of automatic continuation with the result that the lease will end without notice having to be served.

Any contracting out must be in writing (section 4(3)). Where a lease is for more than one year, the writing required for contracting out will have to comply with the rules in sections 2 or 9B of the Requirements of Writing (Scotland) Act 1995 - in other words it should be in a signed paper document or an electronically authenticated electronic document.

Section 5

Section 5 is designed to deal with cases where, despite a lease being one which should end on its termination date as set out in section 2(1), the lease continues after that date because of the parties' conduct after that date.

It is aimed at reproducing the current common law (para 5 and footnote 12 of [the Policy Memorandum](#)) where 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.

[The Explanatory Notes to the Bill](#) summarise the provision as follows:

“ 40. Under section 5, a lease is continued automatically where the tenant remains in possession of the let subjects after the termination date and the landlord either fails to take steps to remove the tenant within a reasonable period, or otherwise acts inconsistently with the lease having ended (typically by accepting rent) (subsection (1)). What is or is not a reasonable period will depend on the specific circumstances under consideration.”

Scottish Parliament, 2024²⁶

Section 5 does not apply to a lease which falls within Schedule 1 (liferents, student and holiday lets, a lease granted with the authority of the court, and short-term grazing, mowing and sporting lets) (see section 2(3)).

It is not possible to contract out of or to otherwise alter the rules in section 5 (see section 23(1)). In line with the SLC Report, [the Policy Memorandum](#) states that this is because:

“ 26 ... If parties could decide that a lease would not continue beyond the termination date under any circumstances there could be significant consequences, for tenants in particular. For instance, a tenant who continued to occupy let premises would be liable to the landlord for violent profits even in circumstances where the landlord made no attempt to remove them, perhaps even months or years after the termination date.”

Scottish Parliament, 2024²⁵

Section 6

Section 6 lays down how the rule in section 5 operates where there are multiple landlords or tenants under a lease. In line with section 5, it is also not possible to contract out of or to otherwise alter the rules in section 6 (see section 23(1)).

Section 7

Section 7 sets out the length of time that a lease is automatically continued for under section 2(1) or 5(2), and the terms on which it continues.

Section 7(2) provides the following default periods:

- leases of more than one year will automatically continue for one year (this is the maximum continuation period possible under the legislation)
- leases of less than one year will automatically continue for a period equal to the original duration of the lease.

Section 7(2) allows the parties to specify in writing a period of continuation which differs from these default periods and which is shorter than the original period of the lease. This period may not be less than 28 days (for leases which were originally granted for a period of more than 28 days) or 7 days (for leases which were originally granted for a period of 28 days or less).

Section 7(4) provides that a lease which continues automatically beyond its termination date continues on the same terms as immediately before, except to the extent that those terms are inconsistent with the lease continuing by virtue of section 2(1) or (as the case may be) 5(2). As explained in the [the Explanatory Notes](#) (para 60) this means that a 10-year lease with an option to renew for a further 10 years would automatically continue on the same terms, but with the duration being limited to one year. The Policy Memorandum states in this regard:

“ 28 ... The Scottish Government’s view is that there should be limits to the ability of parties to adjust the period of automatic continuation - 28 days should be the minimum period (or 7 days for a lease of 28 days or less), while parties would not be able to automatically continue a lease for a period greater than the statutory default of one year.”

Scottish Parliament, 2024²⁵

It is not possible to contract out of or to otherwise alter section 7 (see section 23(1)).

Sections 8-18: Notices to prevent automatic continuation

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".

Section 8

Section 8 provides the essential features of a notice to quit, given by a landlord to a tenant. Paragraph 45 of [the Policy Memorandum](#) summarises these features as follows:

"45. What follows are the essential features of a notice to quit, given by a landlord to a tenant:

- The notice must be in writing (section 8(1)). This will reduce arguments about whether notice has been given.
- The name of the landlord (section 8(2)(c)(i)). Parties should be clear about who has given the notice.
- A sufficient description of the let property (section 8(2)(d)). A notice to quit should be capable of being drafted by a person who is not legally qualified, and so, for example, a postal address may be a sufficient description of let premises from which a tenant is to be removed. Some let premises may, however, not have an address, or may be an undeveloped plot of land: some other form of description would be required in these circumstances.
- That the tenant must leave the let premises on the termination date (section 8(2)(a)). It should be clear to the tenant that the lease is ending and they must leave the property on the termination date. This request cannot be subject to any conditions (section 8(3)).
- The termination date of the lease (section 8(2)(b)). A specific termination date provides certainty to the tenant, allowing them to act on such information without having to consult another document." ²⁵

Sections 8(5)-(7) provide rules in relation to errors in the content of a notice. In particular, under section 8(5) an error in the termination date will not invalidate the notice if the date specified falls within a seven day period starting the day after the actual termination date.

It is not possible to contract out or alter the essential content of a notice to quit (see section 23(1)). [The Policy Memorandum](#) notes, however, that additional information will not invalidate the notice:

" 46 ... So long as the notice to quit contains the information set out above, there is nothing to prevent the landlord, or their agent, including extra information. Including any additional information will not invalidate the notice."

Scottish Parliament, 2024²⁵

Section 9

Section 9 provides rules for what happens if a notice to quit includes an error in the termination date but, because of section 8(5), the notice is not invalid. In essence, section 9 provides rules protecting the position of the tenant during the seven day "post

termination period" under section 8(5). This includes allowing the tenant, in certain circumstances, to remain in possession of the property during the post-termination period. For more details on section 9 see paragraphs 76-82 of [the Explanatory Notes](#).

Section 10

Section 10 provides the essential features of a notice of intention to quit, given by a tenant to a landlord. Paragraph 47 of [the Policy Memorandum](#) summarises these features as follows:

"47. What follows are the essential features of a notice of intention to quit, given by a tenant to a landlord:

- Under the current law no writing is necessary for a tenant's notice. This will continue for leases with a duration of one year or less (section 10(1)(b)). Leases over one year, however, tend to involve a longer-term investment by the landlord and, just as leases over one year must be in writing, so should a notice of intention to quit (section 10(1)(a)).
- The name of the tenant if the notice is given in writing (section 10(3)(a)). The policy reasoning underpinning the requirement in relation to landlords' notices to quit also applies to tenants' written notices.
- A sufficient description of the let property, regardless of whether notice is given verbally or in writing (section 10(2)(b)).
- The tenant intends to leave the let premises at the end of the lease (section 10(2)(a)). This should be sufficient warning to the landlord that they might have to make arrangements to search for a new tenant and therefore it is important that the notice is clear and unconditional on this point. This is required whether notice is given verbally or in writing."²⁵

Section 10(7) provides that an error in the name of the person giving the notice or in the identification of the let subjects does not invalidate the notice if a reasonable recipient would, in all the circumstances, know both that the information provided was erroneous and the correct information that should have been provided.

With one exception, it is not possible to contract out or alter the essential content of a notice of intention to quit. The exception is that a written term of a lease for one year or less may provide that a notice of intention to quit must be in writing (see section 23(1)(a)). [The Policy Memorandum](#) argues that this flexibility is necessary whilst also stating, in line with the position for notices to quit, that additional information is acceptable:

" 48 ... For leases of up to one year, parties should have the flexibility to impose the need for writing if they wish to avoid the uncertainty of an oral notice. So long as the notice of intention to quit contains the information set out above, there is nothing to prevent the tenant, or their agent, including extra information."

Scottish Parliament, 2024²⁵

Section 11

Section 11 provides rules on the circumstances in which notice to quit, or notice of

intention to quit, may be given electronically.

In line with the SLC's recommendations, electronic service of a notice is only possible when the receiving party consents to accept it being delivered in this way and has not withdrawn their consent, either expressly or impliedly.

This is subject to an exception where the recipient acknowledges having received the notice at any time before the last day on which it may validly be received (Section 11(4)).

Section 12

Section 12(1) provides that a notice to quit, or a notice of intention to quit, does not need to include the name of, or be addressed by name to, the intended recipient.

Section 12(2) provides that an error in the name will not invalidate the notice if a reasonable recipient would, in all the circumstances, be aware that it was intended to be given to that person.

Section 12(3) provides that notice is given to a person when it is received by that person and that it does not matter whether the notice is received directly from the person giving it or from a third party

Section 13

Section 13 sets out default rules governing the day by which notice given under section 3(1) must be received.

In line with the SLC's recommendations, the current default notice periods are replaced as follows ([Policy Memorandum](#) para. 78).

- If the lease is for 6 months or longer, the notice must be received 3 months before the termination date of the lease.
- If the lease is for less than 6 months, the notice must be received one month before the termination date of the lease.
- If the lease is less than 3 months, then no notice need be received before the termination date of the lease (by virtue of section 2(2)(a)).

Section 14

Section 14 sets out rules about when notice to quit, or notice of intention to quit, which is given in writing, is taken to be received. These rules depend on how the notice is given.

Section 15

Section 15 sets out how notice in writing is to be delivered by a sheriff officer in order for the rule as to when it is delivered under section 14(1) to apply. The notice must be delivered in one of the ways set out in 15(2), and the sheriff officer must prepare a certificate of delivery under section 15 (4).

Section 16

Section 16 provides that for a notice to quit or of intention to quit to be withdrawn the recipient must consent, otherwise the lease will be brought to an end. If the notice has

been given in writing, then the withdrawal and the consent of the recipient to the withdrawal must be in writing. The parties to a lease are able to modify or disapply this provision.

Section 17

Section 17 includes provisions on the giving and withdrawal of notice to quit, or notice of intention to quit, where there is more than one landlord or tenant under a lease.

Section 18

Section 18 clarifies that, if there is a change in the identity of either party after notice to quit or notice of intention to quit is given (e.g. the tenant's interest is assigned to a third party), the validity of the notice is not affected by that change.

Sections 19-21: Head leases and sub-leases

Sections 19, 20 and 21 provide rules on how the Bill applies where there is a sub-lease over all or part of the subjects of another lease.

Sections 22-25: Cautionary obligations, contracting out, interpretation of Part 2, disapplication of tacit relocation

Section 22

Section 22 deals with "cautionary obligations" - this is a Scots law term which refers to a guarantee by a third party to perform an obligation owed by another person. Cautionary obligations can be relevant to leases as third parties can guarantee the performance of obligations under a lease.

Section 22 provides that, where there is a cautionary obligation in relation to a lease which continues after its termination date by virtue of section 2(1) or 5(2), the cautionary obligation does not continue after the termination date unless its terms provide otherwise.

Section 23

Section 23 lays down which sections of the Bill can be contracted out of or otherwise amended by the parties to a commercial lease, as well as providing other rules on contracting out.

Section 24

Section 24 contains provisions relating to the interpretation of Part 2 of the Bill.

Section 25

Section 25 disapplies the existing common law concerning the ending of leases on their termination dates and tacit relocation in relation to the leases to which the Bill applies.

Part 3 - Miscellaneous provisions relating to the start, end or length of a lease

Section 26

Section 26 makes provision for determining the period and date of entry under a lease in the absence of agreement.

In line with the SLC recommendations, section 26(2) restates the common law rule that, where the period of the lease cannot be established, it is implied to be one year beginning with the date of entry. Sections 6(3) and (4) provide rules for cases where the date of entry under a lease cannot be established. Section 6(5) allows the parties to a lease to apply to the sheriff to determine the date of entry.

Section 27

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

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. Remedies include allowing the landlord to serve notice at the let premises if the party in breach is the tenant (section 28(5)).

Section 29

Section 29 contains rules, implementing the SLC's recommendations, on what the effect is of a termination document given after the death of a party to the lease or another change in the parties to a lease.

Under sections 29(1) and (2) (other than on the death of the landlord), a termination document given to the former landlord will be considered as valid unless the tenant has been informed in writing by the new landlord of the name and postal address of the new landlord.

Sections 29(3) to (5) deal with the situation where a party to a lease has died, and the other party to the lease has not been notified that an executor has been confirmed over that person's estate or that the person's heritable creditor has entered into possession of the person's interest in the lease. In that case, if the other party to the lease sends a termination document to the deceased person at an address to which the document could have been sent when the person was alive, the document is to be treated as having been given to the executor or creditor.

Section 30

Section 30 implements the SLC's recommendations in relation to irritancy, amending the provisions of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 ("1985 Act") in this area.

Section 30(2) expands the manner in which a pre-irritancy warning notice may be given and includes service by sheriff officer or email insofar as provided for in the lease.

Section 30(3) inserts new sections 5A and 5B into the 1985 Act to deal with the issue raised by the SLC that the current law does not oblige landlords to notify a tenant's heritable creditors of their intention to irritate a lease.

The Explanatory Notes explain that:

“ 203 ... Section 5A is concerned with notice to be given to a heritable creditor in relation to the irritancy of a lease. Section 5B sets out how a pre-irritancy warning notice, or a copy of a notice to be given to a heritable creditor in connection with the irritancy of a lease, is to be delivered where it is served by a sheriff officer ... 205. If the landlord serves any irritancy-related notice on the tenant, the landlord must also serve a copy of the notice on the creditor in certain circumstances (section 5A(2)). Failure to do so prevents the landlord from relying on the irritancy clause in the lease, or the material breach of the lease, to which the notice relates (section 5A(6)).”

Scottish Parliament, 2024²⁶

Section 31

Section 31 provides rules on the apportionment of rent. It sets out, as a default, a term to be implied into commercial leases falling under the legislation which would 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.

This term can, however, be disapplied (section 31(5)(a)) or modified (section 31(5)(b)) by the parties.

Part 4 - Final provisions

Part 4 deals with the final provisions of the Bill, namely:

- making it clear that, unless the context requires otherwise, a reference to a lease in the Bill includes a reference to a sub-lease (section 32)
- giving the Scottish Ministers the power by regulations to make ancillary provision for the purposes of, in connection with or for giving full effect to the Bill (section 33)
- introducing schedule 2, which contains modifications to certain enactments and transitional and saving provisions connected with the coming into force of the Bill (section 34)
- setting out when the provisions of the Bill will come into force. Most provisions will be brought into force by regulations as determined by the Scottish Ministers. (section 35)
- the short title of the Bill (section 36).

Schedules to the Bill

Schedule 1

[As outlined elsewhere in this briefing](#), the leases in Schedule 1 of the Bill will not be

covered by the new rules on automatic continuation and will end on their termination dates without the need for notice.

Schedule 2

Schedule 2 contains modifications to certain enactments and transitional and saving provisions connected with the coming into force of the Bill.

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