

RESPONSE FORM

CONSULTATION ON THE DRAFT LEASES (AUTOMATIC CONTINUATION ETC) (SCOTLAND) BILL

We hope that by using this form it will be easier for you to respond to the questions set out in the consultation paper. Respondents who wish to address only some of the questions may do so. The form reproduces the questions contained in the paper and allows you to enter comments in a box after each one. At the end of the form, there is also space for any general comments you may have.

Please note that information about this consultation, including copies of responses, may be made available in terms of the Freedom of Information (Scotland) Act 2002. Any confidential response will be dealt with in accordance with the 2002 Act.

We may also (i) publish responses on our website (either in full or in some other way such as re-formatted or summarised); and (ii) attribute comments and publish a list of respondents' names.

In order to access any box for comments, press the shortcut key F11 and it will take you to the next box you wish to enter text into. If you are responding to / commenting on only a few of the questions, continue using F11 until you arrive at the box you wish to access. To return to a previous box press Ctrl+Page Up or press Ctrl+Home to return to the beginning of the form.

Please save the completed response form to your own system as a Word document and send it as an email attachment to info@scotlawcom.gov.uk. Comments not on the response form may be submitted via said email address or by using the [general comments form](#) on our website. If you prefer you can send comments by post to the Scottish Law Commission, 140 Causewayside, Edinburgh EH9 1PR.

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Summary of Questions

1. Do you agree with these proposed requirements for the contents of notices to prevent automatic continuation of a lease (notices to quit and notices of intention to quit)? If not, why not?

(Paragraphs 11-14)

Comments on Question 1

Given the ability to contract out of automatic continuation, overall our members agree with the more formal approach to notices to prevent automatic continuation, and the proposed requirements for these notices to give everyone more certainty. However, we question the need for the sender of the notice (landlord, tenant or their agent) being required to give their address, which seems irrelevant and unnecessary.

2. Do you agree with these provisions for relief from errors (a) in relation to the termination date in a notice to quit; (b) in relation to errors in the description of property in a notice to quit or of intention to quit; (c) in the name and address of the giver of a notice? If not, why not?

(Paragraphs 15-18)

Comments on Question 2

Our members agree with these provisions

3. Do you agree with the proposed default periods of notice for the prevention of automatic continuation? If not, why not?

(Paragraphs 19-20)

Comments on Question 3

Our members agree with the proposed default periods of notice for the prevention of automatic continuation, which could reduce the risk of error. While 3 months is significantly longer than the current 40 days, time will be required to make other arrangements to either find a new tenant or find new premises. Some of our members have suggested that it would be helpful if the explanatory notes contained some worked examples of when notice would require to be given, especially under sections 12(2)(b) and 12 (4) of the draft Bill.

4. Do you agree with these methods for delivery of (a) notices in traditional documents and (b) notices in electronic form? If not, why not?

(Paragraphs 21-25)

Comments on Question 4

Our members generally agree with the methods of delivery. However, we think that there needs to be provision for service in the rest of the UK by Process Server, as sheriff officers cannot operate outside Scotland. In addition, we do not agree that delivery by hand should be restricted to individuals via s.13(2)(c). We would also welcome confirmation that delivery by hand includes delivery by courier.

5. Do you agree with (a) these addresses being available for service of all termination documents, (b) the proposed statutory duty to provide a UK postal address, and (c) the remedies for breach of the statutory duty? If not, why not?

(Paragraph 28)

Comments on Question 5

Our members agree with the proposal that a UK address is provided for service of notices. We are of the view that a more recent residential or business address of which the sender is aware is subjective. There is a risk that the sender has been given the wrong information and the recipient does not receive the notice. Our members have also suggested that it would be helpful to have guidance in the explanatory notes on what is deemed the most recent address where there are multiple addresses for a party.

Our members are firmly of the view that the retention of rent by the tenant, if the landlord fails to give a UK address for service, is not a proportionate commercial remedy for what could be simply an administrative error.

6. Do you agree with the proposal that notices be valid despite a change in the identity of landlord or tenant? If not, why not?

(Paragraph 29)

Comments on Question 6

Our members agree that notices should be valid despite a change in identity of the landlord or tenant.

7. Do you agree with the proposal that a notice may be sent to a party who has died where no notice has been given to the sender of the name and address of the deceased party's executor or of a heritable creditor in possession? If not, why not?

(Paragraph 30)

Comments on Question 7

Our members agree with this proposal

8. Do you agree with (a) the proposed changes to methods of service of pre-irritancy warning notices and (b) the proposed new rights for heritable creditors of registered leases in relation to irritancy? If not, why not?

(Paragraphs 31-34)

Comments on Question 8

Some of our members do not agree with (b), on the basis that it is for the parties to amend the lease to provide for service of notice on any heritable creditors rather than for the law to be changed, and (b) provides legislative protection for a third party who is not a party to the lease and this is not appropriate.

9. Do you have any other comments to make in relation to the draft Bill or the project more generally?

(Paragraph 4.73)

Comments on Question 9

No comment.

Thank you for taking the time to respond to this consultation. Your comments are appreciated and will be taken into consideration when preparing a report containing our final recommendations.