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

## SPF Consultation Response

Submitted on 7 March 2025

## SCOTTISH PROPERTY FEDERATION

The Scottish Property Federation (SPF) is the voice for the real estate industry in Scotland. As a part of the wider British Property Federation, we include among our members: property investors, including major institutional pension and life funds; developers; landlords of commercial and residential property; and professional property consultants and advisers. Our members build Scotland's workplaces, homes, shops, schools and other facilities and the infrastructure that serves them. Our industry is therefore a core component of the Scottish economy.

## CONSULTATION SUMMARY

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

The *Leases (Automatic Continuation etc.) (Scotland) Bill* is a piece of legislation focused on clarifying and modernising aspects of commercial lease continuation and termination in Scotland.

Key Provisions of the Bill:

- The Bill seeks to standardise how leases continue beyond their initial term if neither party actively terminates them.
- The Bill outlines how notices to quit should be issued, specifying timeframes and formalities.
- The Bill addresses how commercial leases are handled upon expiry.
- It ensures tenants and landlords have clear obligations and rights concerning lease renewal or termination.
- The Bill promotes the use of straightforward language, making lease agreements more accessible to non-legal audiences.

## GENERAL COMMENTS

### SPF Response

Overall, we welcome the Bill's direction and support reform to modernise the leasing system so that greater clarity and certainty can be given to both tenants and landlords. We agree with retaining tacit relocation as a default but allow parties to contract out.

A few areas of the Bill where we suggested refinement was to propose an amendment to Section 23(2)(b) to allow parties the freedom to negotiate the terms that suit their specific requirements particularly applicable for more specialised tenants. We also advocate for clearer guidance on what constitutes a 'reasonable period' for landlords to remove tenants' post-termination, to avoid unintended lease continuation.

**QUESTION 1**

**Part 1 of the Bill defines the leases to which the legislation will apply, excluding certain residential and agricultural leases from the Bill's scope. What are your views on the definitions as set out in Part 1 of the Bill?**

We believe the legislation clearly states the leases to which this act applies and agree the Bill is clear that it does not include residential and agricultural leases.

**QUESTION 2**

**Do you consider that the law on tacit relocation needs reforming? If so, for what reasons?**

Our members generally agree for tacit relocation to be reformed to give both the tenant and landlord more certainty. The rules were developed decades ago and rely on knowledge of the common law and case law, and are not evident from the face of a lease agreement, resulting in a section of law which is opaque to many commercial players, and would benefit from modernisation and codification. Our members have underscored the importance of a simplified leasing system especially when attracting international investors or those unfamiliar with Scots Law. However, some of our members believe that the system already functions with tacit relocation, and it will ultimately have minimal impact on landlord-tenant dynamics if enforced, especially as automatic continuation will still exist.

**QUESTION 3**

Tacit Relocation – options for reform

**When the Scottish Law Commission consulted on reforming “tacit relocation”, it proposed two main options, with option 2 now appearing in the Bill:**

- **Under option 1 tacit relocation would be disappplied from commercial leases (with the potential option of allowing the parties to contract in to the doctrine).**
- **Under option 2 the law would be clarified and it would be made clear that the parties to a commercial lease have the right to contract out of tacit relocation.**

**What are your views on each option? Is the approach taken by the Bill the best way to reform the law?**

We agree with option 2 which allows parties to contract out but retains tacit relocation as the default. This is to avoid a potential scenario where a lease comes to an end, the tenant remains in occupation without a new lease, and the landlord is unable to claim rent.

It is interesting that there appears to be a move for the England & Wales security of tenure provisions to move more towards a contracting in position rather than automatically assuming all leases work under their '54 Act. Scotland must avoid adopting commercial lease law that is as unwieldy as the '54 Act.

#### QUESTION 4 Tacit Relocation – Statutory Code

**Sections 2 to 7 of the Bill make provision for a statutory code to replace the common law rules on tacit relocation by which a lease continues automatically beyond its termination date. The code applies by default unless the parties contract out of it or give valid notice to terminate the lease prior to its end date.**

**What are your views on the statutory code in the Bill which replaces tacit relocation?**

We broadly agree that providing parties do not contract out of the rules for automatic continuation, then either tenant or landlord must give good notice prior to the termination date. If notice is not given by either parties, then we agree that the commercial lease will automatically continue for a period of time.

#### QUESTION 5 Tacit Relocation – Notices to Quit and Notices of Intention to Quit

**Sections 8 to 18 of the Bill make provision for a new statutory code to replace the existing rules on giving notice that a lease is to come to an end. This includes different rules for notice given by tenants and notice given by landlords.**

**What are your views on these sections of the Bill and the approach they take to giving notice?**

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. However, we also advocate for a degree of flexibility for parties who **both** may want to mutually agree to make reasonable changes to the notice period. This is likely to apply to more specialised tenants such as pharmacies (and who are likely to benefit from professional advice) who would benefit from knowing the landlords' intentions earlier than 3 months. We therefore suggest an amendment to Section 23(2)(b) to allow parties the freedom to negotiate the terms that suit their specific requirements. To ensure fairness and remove any unfair advantage for landlords, we suggest that the deadline for service of a landlord's NTQ is never later than the deadline for service of a Tenant's NITQ (ie a more flexible approach than that currently set out in section 23(2)(b) of the Bill which currently requires the notice periods to be the same and is therefore unnecessarily restrictive of potential commercial agreement to reflect parties' matter-specific requirements).

In section 10 - Notice of Intention to quit by tenant, the Bill states that notice can be given orally if the period of the lease is one year or less. To increase consistency and transparency across the commercial leasing system, we suggest removing the oral notice provision entirely so that written notice for all lease terminations is required, regardless of lease length. 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.

We agree with the principle that notices should be served to all parties when multiple landlords or tenants are involved, in accordance with Section 17. However, clarification is needed in this section if sending notice to quit via post to a lead landlord or tenant is sufficient, or if the notice must be sent to all parties individually to their respective postal addresses.

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

#### QUESTION 6 Tacit relocation – Leases excluded from the rules in schedule 1

**A number of types of commercial lease are presently excluded from tacit relocation, and will end on their termination dates. 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.**

**What is your view on schedule 1 of the Bill which excludes certain leases from the new rules on automatic continuation?**

We agree these exclusions should continue to apply from the new rules on automatic continuation. These lease types typically serve specific, time-limited purposes where automatic continuation would not be appropriate or practical.

#### QUESTION 7 Miscellaneous provisions relating to start, end or length of lease

**Part 3 of the Bill makes miscellaneous provisions relating to the start, end or length of a lease with the aim of clarifying the law and making it more straightforward to apply.**

**What is your view on the provisions in Part 3 of the Bill?**

We agree with the provisions which stipulate giving notice to quit when the termination date is unknown and that notices to quit should be valid if a change in identity or death of landlord or tenant. We also agree with the Bill's obligation to require a designated UK postal address for an overseas landlord and that that parties cannot contract out of this. However, we do not think it is a

proportionate penalty for the landlord to be unable to collect rent for failing to provide a UK address.

#### QUESTION 8 Terminology in the Bill

**The Bill substitutes the terms “tacit relocation” with the terms “automatic continuation” and the term “ish” with “termination date” with the aim of using plain English terms to better reflect the meaning behind these doctrines.**

**What is your view on this new terminology? Are there any other areas in the Bill where the terminology could be improved or changed?**

We support the use of plain English terminology as this provides a clearer and more understandable language particularly beneficial for a non-legal audience.

#### QUESTION 9 Tenancy of Shops (Scotland) Act 1949

**The Bill does not include reforms to the Tenancy of Shops (Scotland) Act 1949. The Scottish Law Commission’s draft Bill also did not include reforms to the Tenancy of Shops (Scotland) Act 1949 on the basis that further consultation was needed in this area. The Scottish Law Commission has, however, now consulted on this topic and aims to publish its report in the first quarter of 2025.**

**What is your view on the fact that the Bill does not include reforms to the Tenancy of Shops (Scotland) Act 1949? Is this something which should be added to the Bill?**

We support the recent report from the SLC which recommends repealing the Tenancy of Shops (Scotland) Act 1949. However, should the Act remain in place, even if amended, we strongly urge that it is streamlined into the current Bill to maintain simplicity which is the one of the Bill’s key overarching aims, and to ensure that the rules which apply to the expiry and potential continuation of all leases (including shops) are all in one place from the start.

#### QUESTION 10 **Is there anything else you think should or should not have been included in the Bill? If so, please provide details.**

We would like to highlight concerns regarding clause 5(1)(b). This provision states that a landlord must take steps to remove the tenant within a ‘reasonable period’ following the termination date to prevent the lease from automatically continuing, even if a valid notice to quit has been served or the parties have contracted out.

While the explanatory notes suggest this is an attempt to codify an aspect of common law, greater clarity is needed in the statute on what constitutes ‘reasonable steps’ by the landlord. Specifically, it would be helpful to confirm whether the landlord must initiate court proceedings within this period

or whether issuing formal letters to the tenant would suffice (with court action only becoming necessary if the tenant refuses to vacate). The same issue also arises in section 20. We believe the Bill should provide clearer guidance to avoid uncertainty and potential disputes over lease termination procedures.

**QUESTION 11** **Do you have any other comments on the Bill, or the approach taken by the Bill to reforming the law in this area?**

No comments.

End of questions