

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

We agree with the proposed requirements. The requirements set out in section 9(2) appear largely consistent with our comments (proposal 11) from 2018 with the exception of section 9(2)(a)(ii), for which see our previous comments at proposal 14.

Regarding section 11, we previously suggested (proposal 8) that the contents of notices to quit and notices of intention to quit should be materially in the same terms. This has (broadly speaking) been done, although we note section 11(1)(b) allows notices of intention to be made orally if a lease is for less than a year. In relation to the section 11(3)(a)(ii) requirement for an agent's name to appear, we refer again to our previous comments at proposal 14.

In relation to section 11(2)(b) we reiterate our previous observation (proposal 11) that 'active' wording should be used.

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

Regarding section 9(5)(b), we suggested (proposal 19) that reference should be made to 'clear days' – this has a well-understood legal meaning, provides legal certainty and reduces the potential for confusion. We remain of that view.

In terms of sections 9(4) and 11(6) we observe that, if the intention of the Commission is to incorporate the doctrine of *falsa demonstratio*, there is the prospect for confusion to arise between the relatively brief terms of sections 9(4) and 11(6) and the more comprehensively developed common law doctrine. If, however, the intention of the Commission is to limit the scope of the relief to that set out under sections 9(4) and 11(6), whether by exclusion of the doctrine of *falsa demonstratio* or otherwise, there might be advantage in sections 9(4) and 11(6) making an express statement to that effect.

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

In our prior comments (proposal 15), we suggested a simple six month period for notices to quit, and the exclusion of tacit relocation for periods less than a year (or a period of 28 days if leases less than a year were still subject to relocation). The Commission's proposal, although different to the above, appears a reasonable solution, as a slight modification of the existing rules. We would, however, respectfully observe that the language used in sections 12(3) and (4) might be made more straightforward and more easily understood.

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

This part of the Bill appears to accord with our earlier comments and we have no further comments.

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

We agree that the stated addresses should be available for service of all termination notices. In addition, we see no material reason not to include the statutory duties or the statutory remedies available for breach thereof.

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

Yes, as respects a change of landlord. No, as respects a change of 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

Yes.

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

Beyond observing that we previously suggested (proposal 41) that the law of irritancy should be left to a separate reform project, we have no comments to make regarding question 8.

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

We raise whether there would be advantage in section 8 making explicit whether 'automatic continuation' operates by extending the existing lease or by granting a new lease on the same terms as the previous lease but for a different term.

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.