



T: 0300 244 4000  
E: [scottish.ministers@gov.scot](mailto:scottish.ministers@gov.scot)

Lady Paton  
Chair, Scottish Law Commission  
By email to:  
[Ann.Paton@scotlawcom.gov.uk](mailto:Ann.Paton@scotlawcom.gov.uk)  
Cc'd to:  
[DPLR.Committee@parliament.scot](mailto:DPLR.Committee@parliament.scot)  
[Maggie.Chapman.msp@parliament.scot](mailto:Maggie.Chapman.msp@parliament.scot)  
[Liam.McArthur.msp@parliament.scot](mailto:Liam.McArthur.msp@parliament.scot)

12 December 2024

Dear Lady Paton

## **SCOTTISH LAW COMMISSION REPORT ON ASPECTS OF LEASES: TERMINATION**

Further to this year's legislative programme I am pleased to write to inform you that the Leases (Automatic Continuation etc.) (Scotland) Bill was introduced in the Scottish Parliament yesterday. This Bill implements the SLC's recommendations for reform published in its 2022 Report on Aspects of Leases: Termination.

Firstly, I would like to thank the Commission for the work that went into making its recommendations for reform and I am grateful for it. As the Report notes, the aim of the reforms is to improve, simplify and update aspects of the Scots law of commercial leases, particularly in relation to the circumstances in which leases continue after their termination dates, so that it meets the needs of a modern Scottish economy.

My view is that the Bill which implements your recommendations will be a suitable candidate for consideration by the Delegated Powers and Law Reform Committee (DPLRC) under Rule 9.17A of the Parliament's Standing Orders and the Presiding Officer's determination under that rule. I have set out in the annex to this letter more detail on why I consider that the Bill meets these criteria.

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I am aware that the Commission is currently considering options for reforms of the Tenancy of Shops (Scotland) Act 1949, which arose from its report on the termination of commercial leases and which you aim to publish in the first quarter of 2025. I look forward to receiving your recommendations for reform on this matter and will consider whether to proceed and implement through amendment to the Bill as it passes through Parliament.

I am copying this letter to the convener of the DPLRC, Maggie Chapman MSP and Liam McArthur MSP.

Yours sincerely,



**SIOBHIAN BROWN**

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## ASSESSMENT OF THE BILL AGAINST STANDING ORDERS RULE 9.17A AND THE CRITERIA AS DETERMINED BY THE PRESIDING OFFICER FOR QUALIFICATION AS A “SCOTTISH LAW COMMISSION BILL”

### (a) The Bill must implement all or part of a report of the Scottish Law Commission

1. The Bill implements the substantive recommendations made by the SLC. The only respect in which it departs from the SLC’s recommendations is in providing for the Act resulting from the Bill to be brought into force by the Scottish Ministers by regulations<sup>1</sup>. The Scottish Government does not consider that this alters the position that the Bill implements the SLC’s report.

### (b) complies with such criteria as shall be determined by the Presiding Officer

2. The current determination of the Presiding Officer was published in the Scottish Parliament’s Business Bulletin on 24 March 2021. The key elements of this are addressed in turn below.

*A Bill, the primary purpose of which is to (a) simplify, modernise or improve the law to— (i) ensure it is fit for purpose, (ii) respond to developments, or address deficiencies, in the common law, or (iii) respond to other developments in the law.*

3. The Scots law of commercial leases is principally governed by common law rules. Where that law is not clear or readily accessible, this results in unnecessary costs for landlords and tenants. Aside from the monetary costs incurred by legal fees, this can involve delay and inconvenience to tenants and landlords. The Bill’s principal purpose is to reform the current law whereby a lease continues automatically after its termination date unless one party gives notice to the other that it will come to an end, or both parties agree at that time that it will end. This is known as tacit relocation. The current legal rules can cause difficulties for landlords and tenants, which can result in the expense of court proceedings to resolve. The overall policy aim of the Bill is to improve, simplify and update these aspects of the Scots law of commercial leases so that it meets the needs of a modern Scottish economy.

*(b) make provision which is not likely to generate substantial controversy among stakeholders.*

4. The provision made by the Bill is not expected to generate substantial controversy among stakeholders.

5. In 2018, the SLC published a Discussion Paper on Aspects of Leases: Termination in which it analysed the existing law.<sup>2</sup> In 2022, it published recommendations for reform of the law.<sup>3</sup> Overall, the majority of respondents supported the SLC’s recommendations, confirming that there is a necessity for the existing legislation to be updated and modernised.

<sup>1</sup> The intention is nonetheless to make the commencement regulations so as not to bring the Bill into force before 6 months from the date of Royal Assent (as with the SLC draft Bill).

<sup>2</sup> The discussion paper is available at

[https://www.scotlawcom.gov.uk/files/4215/2699/8107/Discussion\\_Paper\\_on\\_Aspects\\_of\\_Leases\\_-\\_Termination\\_DP\\_No\\_165.pdf](https://www.scotlawcom.gov.uk/files/4215/2699/8107/Discussion_Paper_on_Aspects_of_Leases_-_Termination_DP_No_165.pdf).

<sup>3</sup> The report is available at

[https://www.scotlawcom.gov.uk/files/2616/6539/5049/Report\\_on\\_Aspects\\_of\\_Leases\\_-\\_Termination\\_Report\\_No\\_260.pdf](https://www.scotlawcom.gov.uk/files/2616/6539/5049/Report_on_Aspects_of_Leases_-_Termination_Report_No_260.pdf).

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*Whether there are any wider legislative proposals expected within two years beginning with the date of introduction of the Bill (or by the end of the same session if sooner), which relate closely to the same particular aspect of law.*

6. The Scottish Government is not expecting to bring forward any wider legislative proposals on this topic within two years (or by the end of this session).

**(c) The Bill must not be a Consolidation, Codification, Statute Law Repeals or Statute Law Revision Bill**

The Bill is not any of the Bill types listed above.

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