

Leases (Automatic Continuation etc.) (Scotland) Bill

[AS INTRODUCED]

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**THE FOLLOWING ACCOMPANYING DOCUMENTS ARE ALSO PUBLISHED:
Explanatory Notes (SP Bill 54-EN), a Financial Memorandum (SP Bill 54-FM), a Policy
Memorandum (SP Bill 54-PM), a Delegated Powers Memorandum (SP Bill 54-DPM) and
statements on legislative competence (SP Bill 54-LC).**

Leases (Automatic Continuation etc.) (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision about the circumstances in which certain leases continue or end on their termination dates; to make provision about other matters relating to the beginning, length or ending of those leases; and for connected purposes.

PART 1

LEASES TO WHICH THIS ACT APPLIES

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1 Exclusion of certain residential and agricultural leases

- (1) This Act applies to a lease which is not one (or more than one) of the following—
- (a) a residential lease,
 - (b) an agricultural lease,
 - 10 (c) a lease of—
 - (i) a croft,
 - (ii) a small landholding, or
 - (iii) an allotment.
- (2) In subsection (1)(a), “residential lease” means a lease which gives rise to—
- 15 (a) a private residential tenancy within the meaning of the Private Housing (Tenancies) (Scotland) Act 2016,
 - (b) a tenancy which would be a private residential tenancy within the meaning of that Act but for one of the following paragraphs of schedule 1 of that Act—
 - 20 (i) paragraph 1(1) (low rent),
 - (ii) paragraph 7 (resident landlord),
 - (iii) paragraph 12 (police housing),
 - (iv) paragraph 13 (military housing),
 - (v) paragraph 15 (sublet, assigned, etc. social housing),
 - (vi) paragraph 16 (homeless persons),

- (vii) paragraph 17 (persons on probation or released from prison etc.),
 - (viii) paragraph 18 (asylum seekers),
 - (c) a Scottish secure tenancy within the meaning of the Housing (Scotland) Act 2001,
 - (d) a short Scottish secure tenancy within the meaning of that Act,
 - 5 (e) an assured tenancy (including a short assured tenancy) within the meaning of Part 2 of the Housing (Scotland) Act 1988, or
 - (f) a regulated tenancy within the meaning of the Rent (Scotland) Act 1984.
- (3) In subsection (1)(b), “agricultural lease” means a lease—
- (a) to which the Agricultural Holdings (Scotland) Act 1991 applies, or
 - 10 (b) which gives rise to—
 - (i) a short limited duration tenancy within the meaning of section 93 of the Agricultural Holdings (Scotland) Act 2003,
 - (ii) a limited duration tenancy within the meaning of that section,
 - (iii) a modern limited duration tenancy within the meaning of that section,
 - 15 (iv) a repairing tenancy within the meaning of that section, or
 - (v) a tenancy to which section 3 of the Agricultural Holdings (Scotland) Act 2003 applies (leases for grazing or mowing).
- (4) In subsection (1)(c)—
- “croft” has the meaning given by section 3 of the Crofters (Scotland) Act 1993,
- 20 “small landholding” means land which is subject to a lease to which the Small Landholders (Scotland) Acts 1886 to 1931 apply,
- “allotment” means—
- (a) an allotment within the meaning of section 107 of the Community Empowerment (Scotland) Act 2015,
 - 25 (b) an allotment site within the meaning of section 108 of that Act.

PART 2

AUTOMATIC CONTINUATION OF LEASE BEYOND TERMINATION DATE

Circumstances in which lease continues or terminates

2 Automatic continuation or termination of lease

- 30 (1) A lease to which this Act applies continues after its termination date unless—
- (a) it ends on that date in accordance with—
 - (i) section 3(1) (termination of lease by notice or consensus), or
 - (ii) section 4(2) (termination in accordance with term of lease), or
 - (b) it is a lease which ends on that date in accordance with subsection (2).
- 35 (2) A lease ends on its termination date if it—
- (a) is for a period of less than three months, or

(b) falls within schedule 1.

- (3) But see also section 5, which provides for circumstances in which the ending of a lease (other than a lease which falls within schedule 1) on its termination date is of no effect.
- (4) Nothing in this Part affects any ground on which a lease may end other than the occurrence of its termination date.
- (5) The operation of this section on a lease (the “head lease”) is unaffected by the existence of a sub-lease over all or part of the subjects of the head lease.

3 Termination of lease by notice or consensus

- (1) A lease to which this Act applies ends on its termination date if—
- (a) the landlord gives the tenant valid notice to quit,
- (b) the tenant gives the landlord valid notice of intention to quit, or
- (c) the tenant gives up possession of the subjects of the lease—
- (i) with the acquiescence of the landlord, and
- (ii) in circumstances which indicate that both parties intend the lease to end on that date.
- (2) For the purposes of—
- (a) subsection (1)(a), notice to quit is valid only if it complies with—
- (i) the requirements of sections 8, 11, 13 and 17(2)(b), or
- (ii) those requirements as varied in relation to the lease under section 23,
- (b) subsection (1)(b), notice of intention to quit is valid only if it complies with—
- (i) the requirements of sections 10, 11, 13 and 17(1)(b), or
- (ii) those requirements as varied in relation to the lease under section 23.
- (3) See section 17 for provision about the giving of notice where there is more than one landlord or tenant under a lease.

4 Termination in accordance with term of lease

- (1) A lease to which this Act applies may include a term (however expressed) a purpose of which is to provide that the lease will not continue after its termination date by virtue of section 2(1).
- (2) A lease which contains such a term ends on its termination date.
- (3) A term of a lease which has the purpose mentioned in subsection (1) must be in writing.
- (4) Nothing in subsection (1) affects any term (or purported term) of a lease agreed before this section comes into force.

5 Automatic continuation of lease on basis of parties’ behaviour after termination date

- (1) The ending of a lease, other than a lease which falls within schedule 1, on its termination date by virtue of this Part is of no effect if—
- (a) the tenant remains in possession of the subjects of the lease after that date, and

(b) the landlord—

(i) does not take steps to remove the tenant from those subjects within a reasonable period following the termination date, or

(ii) otherwise acts inconsistently with the lease having ended.

5 (2) Where the ending of a lease is of no effect by virtue of subsection (1), the lease is to be treated as if it had continued after its termination date.

(3) Subsection (1) does not apply if the tenant's possession after the termination date is—

(a) on the basis of a new lease or other agreement with the landlord, or

10 (b) in other circumstances which indicate that, on the termination date, both parties intended the tenant's continued possession to be on a basis other than continuation of the lease after that date.

6 Application of section 5 to leases with multiple landlords or tenants

(1) Where there is more than one landlord under a lease, the condition in paragraph (b) of section 5(1) is met only if each of the landlords behaves as mentioned in that paragraph.

15 (2) Where there is more than one tenant under a lease—

(a) section 5(1)(a) applies to the lease as if the reference to the tenant were a reference to at least one of the tenants,

20 (b) any continuation of the lease after its termination date by virtue of section 5(2) is of no effect in relation to any tenant who does not remain in possession of the subjects of the lease after that date.

Effect of automatic continuation

7 Period and effect of automatic continuation of lease

(1) This section applies to a lease which continues after its termination date by virtue of section 2(1) or 5(2).

25 (2) If the period of the lease before its termination date is—

(a) one year or longer, the period for which it is continued is—

(i) one year, or

(ii) such shorter period of not less than 28 days as may be provided for in the lease,

30 (b) more than 28 days but less than one year, the period for which it is continued is—

(i) the period equal to the period of the lease, or

(ii) such shorter period of not less than 28 days as may be provided for in the lease,

35 (c) 28 days or less, the period for which it is continued is—

(i) the period equal to the period of the lease, or

(ii) such shorter period of not less than 7 days as may be provided for in the lease.

- (3) But subsection (2)(c)(ii) does not apply to a lease which—
- (a) was granted for a period of more than 28 days, and
 - (b) before its termination date, was for a period of 28 days by virtue of subsection (2)(a)(ii) or (b)(ii).
- 5 (4) The lease otherwise continues on the same terms as immediately before its termination date, 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).
- (5) A term of a lease which makes provision as mentioned in subsection (2)(a)(ii), (b)(ii) or (c)(ii) must be in writing.

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Notice to prevent automatic continuation

8 Notice from the landlord: notice to quit

- (1) Notice to quit must be given in writing.
- (2) The notice must—
- 15 (a) state (in whatever terms) that the tenant is required to give up possession of the subjects of the lease on the termination date of the lease,
 - (b) specify the termination date of the lease,
 - (c) include the name of—
 - 20 (i) the landlord under the lease, where the notice is given by the landlord, or
 - (ii) where the notice is given by another person on behalf of the landlord, that person, and
 - (d) sufficiently identify the subjects of the lease (whether directly or by reference to the lease).
- (3) The notice does not comply with subsection (2)(a) if it states (in whatever terms) that the requirement mentioned in that subsection is subject to a condition.
- 25 (4) For the purposes of subsection (2)(d), the notice sufficiently identifies the subjects of the lease if a reasonable recipient of the notice whose knowledge included that of the tenant would be able to identify the subjects from the notice.
- (5) An error in the date specified in the notice in order to comply with subsection (2)(b) does not make the notice invalid if the date so specified falls—
- 30 (a) after the termination date of the lease, and
 - (b) before the end of the period of 7 days beginning with the day after the termination date.
- (6) An error in the information included in the notice in order to comply with paragraph (c) or (d) of subsection (2) does not make the notice invalid if a reasonable recipient of the notice would, in all the circumstances, know—
- 35 (a) that the information included in the notice was erroneous in that respect, and
 - (b) the correct information that should have been included in the notice in order to comply with that paragraph.

(7) The following do not apply to information included in the notice in order to comply with subsection (2)—

(a) section 8 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (rectification of defectively expressed documents),

(b) any rule of law by virtue of which a court may order the rectification of, or otherwise provide relief from, an error in a document.

9 Effect of error in termination date in notice to quit

(1) This section applies where—

(a) the date specified in notice to quit in order to comply with section 8(2)(b) (the “notified date”) is erroneous but the notice is valid (see section 8(5)), and

(b) the giving of the notice is the only reason the lease in respect of which the notice is given ends on its termination date.

(2) Despite the lease ending on its termination date, the tenant may remain in possession of the subjects of the lease during the post-termination period (but see section 19(5) if the lease is a sub-lease).

(3) The tenant is not liable to the landlord for any of the following in relation to the tenant’s possession of the subjects of the lease during the post-termination period—

(a) violent profits,

(b) unjustified enrichment,

(c) damage to the subjects sustained during that period, other than damage caused by the tenant (whether intentionally or through negligence).

(4) The landlord must—

(a) comply with the landlord’s obligations under the lease during the post-termination period as if the lease had not ended,

(b) fulfil, or reimburse the tenant for the expense of fulfilling, any obligation owed by the tenant to another person (“P”) in connection with the subjects of the lease which—

(i) arises during that period, and

(ii) would be owed by the landlord to P if the landlord were in occupation of the subjects when the obligation arises.

(5) In subsections (2) to (4), “post-termination period” means the period—

(a) beginning with the day after the termination date of the lease,

(b) ending with the notified date.

10 Notice from the tenant: notice of intention to quit

(1) Notice of intention to quit—

(a) must be given in writing if the period for which the lease was granted is longer than one year,

(b) may be given in writing or orally if that period is one year or less.

- (2) The notice must—
- (a) state (in whatever terms) that the tenant intends to give up possession of the subjects of the lease at the end of the period of the lease, and
 - (b) sufficiently identify the subjects of the lease (whether directly or by reference to the lease).
- (3) If the notice is given in writing, it must include the name of—
- (a) the tenant, if it is given by the tenant, or
 - (b) where it is given by another person on behalf of the tenant, that person.
- (4) The notice does not comply with subsection (2)(a) if it states (in whatever terms) that the intention mentioned in that subsection is subject to a condition.
- (5) For the purposes of subsection (2)(b), the notice sufficiently identifies the subjects of the lease if a reasonable recipient of the notice whose knowledge included that of the landlord would be able to identify the subjects from the notice.
- (6) The notice need not specify when the period of the lease will end.
- (7) An error in the information included in the notice in order to comply with subsection (2)(b) or (3) does not make the notice invalid if a reasonable recipient of the notice would, in all the circumstances, know—
- (a) that the information included in the notice was erroneous in that respect, and
 - (b) the correct information that should have been included in the notice in order to comply with that subsection.
- (8) The following do not apply to information included in the notice in order to comply with subsection (2) or (3)—
- (a) section 8 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (rectification of defectively expressed documents),
 - (b) any rule of law by virtue of which a court may order the rectification of, or otherwise provide relief from, an error in a document.

11 Consent required to use electronic means to give notice in writing

- (1) Notice which may or must be given in writing under section 8(1) or 10(1) must not be given by sending it to an electronic address, or by using any other electronic means, unless the condition in subsection (2) is met.
- (2) The condition is that before the notice is given A has given (and not withdrawn) consent to the notice being given—
- (a) in the form in which it is sent, and
 - (b) by being sent to the electronic address, or by the other means, used.
- (3) For the purposes of subsection (2)—
- (a) consent may be express or implied,
 - (b) withdrawal of consent may be—
 - (i) express, or
 - (ii) implied from A's course of conduct.

- 5 (4) Despite subsection (1), notice sent to an electronic address or given by other electronic means without the condition in subsection (2) being met is to be treated as having been sent or given in compliance with subsection (1) if A acknowledges receipt of the notice in writing to B on or before the last day for the notice to be received (as provided for in section 13).
- (5) Where a question arises as to whether consent to a notice being sent to an electronic address, or given using other electronic means, had been withdrawn by A before the notice was so sent or given, it is to be presumed that the consent was not withdrawn unless the contrary is shown.
- 10 (6) In this section—
 “electronic address” means any address or number used for the purposes of sending or receiving documents or information by electronic means (for example, an e-mail address or fax number),
 “A” is the tenant or, as the case may be, landlord to whom notice is sent,
 “B” is the tenant or, as the case may be, landlord by whom notice is sent.
- 15 (7) Section 4 of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 (delivery of traditional documents by electronic means) does not apply to a document containing notice to quit or notice of intention to quit.

12 Further provision about giving of notice

- 20 (1) Notice to quit or of intention to quit given in writing need not include the name of, or be addressed by name to, the tenant or (as the case may be) the landlord.
- (2) But if the notice does include that name, or is so addressed, it is not invalid by reason of an error in the name unless a reasonable recipient of the notice would, in the circumstances, be unaware that it was intended to be given to that person.
- 25 (3) For the purposes of this Part—
 (a) notice is given to a person when it is received by that person,
 (b) it does not matter whether the notice is received directly from the person giving it or from a third party.

13 Day by which notice must be received

- 30 (1) Notice to quit or of intention to quit must be received on or before the last day for giving notice under the lease to which it relates.
- (2) The last day for giving notice is—
 (a) if the period of the lease is 6 months or longer, the day which is three months before the termination date of the lease,
 (b) if the period of the lease is less than 6 months, the day which is one month before the termination date of the lease.
- (3) For the purposes of subsection (2), the day which is three months or (as the case may be) one month before the termination date is—
 (a) the day which—
 40 (i) falls in the third or (as the case may be) first month (“month A”) before the month in which the termination date falls, and

- (ii) is the same day of the month as the termination date, or
 (b) if month A does not have such a day, the last day of month A.
- (4) See section 14 for provision about circumstances in which notice given in writing is taken to be received on a particular day.

5 **14 Day on which notice given in writing is taken to be received**

- (1) Notice to quit or notice of intention to quit given in writing as mentioned in the first column of the table is taken to be received as mentioned in the corresponding entry in the second column of the table.

	<i>Notice given:</i>	<i>Is taken to be received on:</i>
10	By sending it, in a traditional document, from within the United Kingdom to a listed address using a recorded delivery service.	The day of delivery to the listed address. That day is, unless the contrary is shown, taken to be— (a) the second day after the day on which the document is sent, or (b) where that second day is a non-working day, the next working day after that second day.
15		
20	By sending it, in a traditional document, from within the United Kingdom to a listed address by pre-paying and posting it using a non-recorded delivery service.	The day of delivery to the listed address. That day is, unless the contrary is shown, taken to be— (a) the day on which the document would be delivered in the ordinary course of the non-recorded delivery service used, or (b) where that day is a non-working day, the next working day after that day.
25		
30	By sending it, in a traditional document, from outside the United Kingdom to a listed address.	The day of delivery to the listed address.
35	By a traditional document containing the notice being delivered by a sheriff officer in accordance with section 15.	The day on which the document is so delivered.
40	By sending it, on a working day, by electronic means in compliance with section 11(1) (other than compliance by virtue of section 11(4)).	Unless the contrary is shown, the day on which the notice is sent.

<i>Notice given:</i>	<i>Is taken to be received on:</i>
<p>By sending it, on a non-working day, by electronic means in compliance with section 11(1) (other than compliance by virtue of section 11(4)).</p>	<p>Unless the contrary is shown, the next working day after the day on which notice is sent.</p>

- (2) Nothing in this section affects when notice given other than as mentioned in the first column of the table is, or is taken to be, received.
- (3) For the purposes of subsection (1), notice is sent to a listed address if it is sent—
- (a) to—
- (i) the last postal address in the United Kingdom notified in writing by A to B as an address to which notice to quit or notice of intention to quit (or a category of documents including such notice) may be sent, or
- (ii) where A is a body corporate or other legal person with a registered office in the United Kingdom, either the address mentioned in sub-paragraph (i) or the postal address of that registered office, or
- (b) where A does not have an address mentioned in paragraph (a), to the last postal address in the United Kingdom of A of which B is aware.
- (4) For the purposes subsection (3)(b), it does not matter whether A has a more recent address in the United Kingdom of which B was not, but could reasonably have been expected to become, aware before the document was sent.
- (5) In this section—
- (a) a reference to a recorded delivery service is to a postal service which provides for sending and delivery to be recorded (and reference to a non-recorded delivery service is to be construed accordingly),
- (b) a reference to a working day is a reference to any day other than a Saturday, a Sunday or a day which, under the Banking and Financial Dealings Act 1971, is a bank holiday in Scotland (and a reference to a non-working day is to be construed accordingly),
- (c) “traditional document” means a document written on paper, parchment or some other similar tangible surface,
- (d) “A” and “B” have the meanings given by section 11.
- (6) Section 26 of the Interpretation and Legislative Reform (Scotland) Act 2010 (service of documents) does not apply to a document containing notice to quit or of intention to quit.

15 Delivery of notice in writing by sheriff officer

- (1) For the purposes of section 14(1), notice to quit or of intention to quit given in a traditional document is delivered by a sheriff officer in accordance with this section if—
- (a) the document is delivered in accordance with subsection (2), and
- (b) after the sheriff officer delivers it, the sheriff officer prepares a certificate of delivery in relation to the document in accordance with subsection (4).

- (2) The document is delivered in accordance with this subsection if it is—
- (a) where the recipient is an individual, delivered by hand by the sheriff officer—
 - (i) to the recipient,
 - (ii) at the recipient's residence, to another person who lives there, or
 - 5 (iii) at the recipient's place of business, to an employee of the recipient or a person authorised to receive the document,
 - (b) where the recipient is not an individual, delivered by hand by the sheriff officer at the recipient's place of business, to an employee of the recipient or a person authorised to receive the document, or
 - 10 (c) where the sheriff officer has unsuccessfully attempted to deliver the document in accordance with—
 - (i) paragraph (a), left in or at the recipient's residence or place of business in a manner in which it is likely to come to the recipient's attention,
 - (ii) paragraph (b), left in or at the recipient's place of business in such a manner.
- (3) In subsection (2), a reference to the recipient of a document does not include a reference to the recipient's agent.
- (4) The certificate of delivery must—
- (a) be in writing,
 - (b) set out—
 - 20 (i) how the document was delivered in accordance with subsection (2),
 - (ii) the date on which the document was so delivered,
 - (iii) the name of any person other than the recipient to whom the document was delivered, and
 - 25 (iv) if the document was delivered in accordance with subsection (2)(c), the other ways in which the sheriff officer attempted to deliver the document, and why those attempts were unsuccessful, and
 - (c) be signed by the sheriff officer.
- (5) The certificate of delivery is sufficient evidence of the matters set out in it.

16 Withdrawal of notice

- 30 (1) Notice to quit or of intention to quit may be withdrawn only with the agreement of—
- (a) in the case of notice to quit, the tenant,
 - (b) in the case of notice of intention to quit, the landlord.
- (2) The withdrawal of the notice and the agreement to the withdrawal must be in writing if the notice is—
- 35 (a) notice to quit,
 - (b) notice of intention to quit and was given in writing.
- (3) Notice to quit or of intention to quit withdrawn in accordance with subsection (1) is of no effect (and does not bring the lease to which it relates to an end under section 3(1)).

- (4) Where, after the notice is given, the interest in the lease of a party to it is transferred to another person (“the successor”), the successor may withdraw or (as the case may be) agree to the withdrawal of the notice in accordance with this section.
- (5) See section 17 for provision about the withdrawal of notice where there is more than one landlord or tenant under a lease.

17 Giving and withdrawal of notice where there are multiple landlords or tenants

- (1) Where there is more than one landlord under a lease—
- (a) notice to quit may be given by one of the landlords to the tenant, with or without the consent of the other landlord or landlords,
- (b) notice of intention to quit given by the tenant must be given to each landlord.
- (2) Where there is more than one tenant under a lease—
- (a) notice of intention to quit may be given by one of the tenants to the landlord, with or without the consent of the other tenant or tenants,
- (b) notice to quit given by the landlord must be given to each tenant.
- (3) Notice given as mentioned in—
- (a) subsection (1)(a) may be withdrawn only with the agreement of the other landlord or each of the other landlords (in addition to the agreement of the tenant as required by section 16(1)(a)),
- (b) subsection (1)(b) may be withdrawn only with the agreement of each landlord.
- (4) Notice given as mentioned in—
- (a) subsection (2)(a) may be withdrawn only with the agreement of the other tenant or each of the other tenants (in addition to the agreement of the landlord as required by section 16(1)(b)),
- (b) subsection (2)(b) may be withdrawn only with the agreement of each tenant.
- (5) Notice given by—
- (a) one landlord in accordance with subsection (1)(a) has effect as if it were given by all of the landlords,
- (b) one tenant in accordance with subsection (2)(a) has effect as if it were given by all of the tenants.
- (6) Section 16(2) applies to an agreement under subsection (3) or (4) as it applies to an agreement under section 16(1).

18 Notice unaffected by change of landlord or tenant

The validity of notice to quit, or of intention to quit, is not affected by a change in the identity of the landlord or of the tenant under the lease to which the notice relates after the notice is given.

Head leases and sub-leases

19 Termination of sub-lease

- (1) This section and sections 20 and 21 apply where there is a sub-lease over all or part of the subjects of another lease (the “head lease”).
- 5 (2) If the purported termination date of the sub-lease is a date falling later than the termination date of the head lease, the termination date of the sub-lease is to be treated as being the same date as the termination date of the head lease (and any reference in this Part to the period of the lease is to be construed accordingly).
- 10 (3) Where the termination date of the sub-lease is the same as the termination date of the head lease (whether by virtue of subsection (2) or otherwise), the sub-lease ends on that date if the head lease ends on that date.
- (4) Subsection (3) applies whether or not the sub-lease would otherwise have continued after its termination date by virtue of section 2(1) (but see also section 20).
- 15 (5) Nothing in section 9 allows a sub-tenant to remain in possession of the subjects of a sub-lease after the head lease comes to an end.
- (6) The sub-tenant may not, in any proceedings before a court or tribunal, challenge the validity of any—
- (a) notice to quit given by the landlord under the head lease to the tenant,
 - (b) notice of intention to quit given by the tenant to the landlord,

20 (c) term of the head lease under section 4(1),

 - (d) new lease entered into by the landlord and the tenant over the subjects of the sub-lease.
- (7) In subsection (6), “tribunal” includes a sole arbitrator or panel of arbitrators determining a dispute in accordance with an arbitration agreement within the meaning of section 4 of the Arbitration (Scotland) Act 2010.
- 25 (8) In this section and sections 20 and 21—
- (a) “head lease” does not include a lease granted in accordance with section 17(1) of the Land Tenure Reform (Scotland) Act 1974 (interposed leases),
 - (b) a reference to the head lease, sub-lease, landlord, tenant or sub-tenant is to be construed in accordance with subsection (1).
- 30

20 Automatic continuation of head lease and sub-lease

- (1) This section applies where—
- (a) the termination date of the head lease and the sub-lease are the same date (whether by virtue of section 19(2) or otherwise), and

35 (b) both leases end on that date by virtue of this Part.
- (2) Section 5(1) does not apply to the ending of the head lease or the sub-lease on that date.

- (3) The ending of the head lease, other than a lease which falls within schedule 1, is of no effect if—
- (a) the tenant under that lease—
 - (i) remains in civil possession and the sub-tenant remains in natural possession of the subjects of the lease after that date, or
 - (ii) resumes natural possession of those subjects and remains in possession of them after that date, and
 - (b) the landlord under that lease—
 - (i) does not take steps to remove the tenant from those subjects within a reasonable period following the termination date, or
 - (ii) otherwise acts inconsistently with the lease having ended.
- (4) The ending of the sub-lease, other than a lease which falls within schedule 1, is of no effect if—
- (a) the sub-tenant remains in possession of the subjects of the sub-lease after that date,
 - (b) the tenant under the head lease—
 - (i) does not take steps to remove the sub-tenant from those subjects within a reasonable period following the termination date, or
 - (ii) otherwise acts inconsistently with the sub-lease having ended, and
 - (c) the ending of the head lease is of no effect by virtue of subsection (3).
- (5) Where this section applies, in the application of section 5(2) and (3) or 6 to—
- (a) the head lease, a reference to section 5(1) is to be read as if it were a reference to subsection (3),
 - (b) the sub-lease, a reference to section 5(1) is to be read as if it were a reference to subsection (4).

21 Information to be given by tenant to sub-tenant

- (1) The tenant under the head lease must, as soon as reasonably practicable after—
- (a) the notice is given, give the sub-tenant a copy of any document containing—
 - (i) notice to quit given by the landlord to the tenant,
 - (ii) notice of intention to quit given by the tenant to the landlord,
 - (b) it happens, notify the sub-tenant that the tenant has orally—
 - (i) given the landlord notice of intention to quit,
 - (ii) withdrawn notice of intention to quit,
 - (c) the document is constituted, give the sub-tenant a copy of—
 - (i) any agreement to the withdrawal of notice in accordance with section 16(1),
 - (ii) any term of the head lease under section 4(1),

(d) a new lease between the landlord and the tenant is constituted, notify the sub-tenant of that fact in writing if—

(i) the new lease is over the subjects of the sub-lease, and

(ii) the date of entry under the new lease immediately follows the termination date of the head lease.

(2) Where the tenant fails to comply with a requirement of this section—

(a) that failure does not affect the validity of the head lease, the sub-lease or anything to which the requirement relates,

(b) the tenant is liable to the sub-tenant for any loss caused to the sub-tenant by that failure.

(3) This section does not apply where the head lease—

(a) is for a period of less than three months, or

(b) falls within schedule 1.

(4) In this section, a reference to notice or a document is a reference to notice or a document which relates to the subjects of the sub-lease.

Cautionary obligations

22 Effect of continuation of lease on caution for obligations under lease

(1) This section applies where—

(a) a lease continues after its termination date by virtue of section 2(1) or 5(2), and

(b) on that date, there is a cautionary obligation in relation to an obligation of the tenant or the landlord under the lease (the “principal obligation”) which also continues after that date.

(2) The cautionary obligation does not apply to the performance of the principal obligation after the termination date unless the terms of the cautionary obligation provide otherwise.

Contracting out of Part

23 Restriction on modification or disapplication of this Part

(1) A lease to which this Part applies—

(a) may vary any requirement or effect of section 10(1)(b), 12, 13, 14, 16 or 17 in relation to the lease,

(b) may not vary any other requirement or effect of this Part in relation to the lease.

(2) The lease—

(a) may vary the last day for giving notice under the lease under section 13(1) by making that day earlier or later,

(b) where it does so, must provide for the same day to apply to notice to quit and to notice of intention to quit.

(3) A term of a lease which varies any requirement or effect of a provision mentioned in subsection (1)(a) must be in writing.

- (4) A term of a lease is of no effect to the extent that it—
- (a) purports to vary any requirement or effect of a provision of this Part other than one mentioned in subsection (1)(a), or
 - (b) is contrary to subsection (2)(b).
- 5 (5) Where a term of a lease is inconsistent with (but does not expressly vary) a requirement or an effect of a section which may be varied under subsection (1)(a), the term of the lease—
- (a) if it is in writing, is to be treated as varying that requirement or (as the case may be) the effect of that section to the extent of that inconsistency,
 - 10 (b) otherwise, is of no effect to the extent of that inconsistency.
- (6) In this section, “vary” means modify or disapply.

Definitions

24 Interpretation of this Part

- (1) In this Part, unless the context requires otherwise—
- 15 “notice” means notice to quit or notice of intention to quit,
 - “notice of intention to quit” means notice given under section 3(1)(b),
 - “notice to quit” means notice given under section 3(1)(a),
 - “termination date”, in relation to a lease, means the date of the ish of the lease (including the ish following a period for which the lease continues by virtue of section 2(1) or 5(2)).
 - 20
- (2) In this Part—
- (a) a reference to the period of a lease is a reference to—
 - (i) where the lease is continuing by virtue of section 2(1) or 5(2), the period for which the lease so continues,
 - 25 (ii) otherwise, the period for which the lease was granted,
 - (b) where the period for which a lease was granted is varied, a reference to the period for which a lease was granted is a reference to that period as varied,
 - (c) where the ish of a lease occurs at a time on the termination date other than the end of that date, a reference to the lease ending on, or continuing after, its termination date is a reference to the lease ending at, or continuing after, that time.
 - 30
- (3) Where a lease has different termination dates for different parts of the subjects of the lease—
- (a) this Part applies to the lease as if each of those dates were the termination date of a lease over the part of those subjects to which the date relates, and
 - 35 (b) in the application of this Part to such a date, any reference to—
 - (i) the subjects of the lease is to be construed as a reference to the part of those subjects to which the date relates,
 - (ii) the lease is a reference to the lease insofar as it relates to that part of those
 - 40 subjects.

- 5 (4) Where the interest of the landlord or the tenant under a lease is held jointly by two or more trustees of a trust, a reference in this Part to the landlord or (as the case may be) the tenant is a reference to the trustees as a whole (and, in particular, the trustees are not to be treated as being more than one landlord or tenant for the purposes of sections 6 and 17).

Disapplication of certain common law rules

25 Disapplication of common law rule of tacit relocation and other rules relating to the termination of leases

- 10 (1) The rule of law by which a lease may continue after its termination date by tacit relocation, and any rule of law concerning the giving of notice by a party to a lease to the other party to prevent the lease so continuing, do not apply to a lease to which this Act applies.
- 15 (2) Any other rule of law by which a party to a lease may bring the lease to an end on its termination date (by letter of removal or otherwise) without the agreement of the other party to the lease does not apply to a lease to which this Act applies.
- (3) Nothing in subsection (2) affects any rule of law enabling a party to a lease to bring the lease to an end on grounds other than the occurrence of its termination date.

PART 3

MISCELLANEOUS PROVISION RELATING TO START, END OR LENGTH OF LEASE

Default duration and date of entry

26 Duration of lease and date of entry in absence of agreement

- 20 (1) This section applies where the tenant under a lease to which this Act applies has entered into possession of the subjects of the lease.
- 25 (2) Where the lease does not provide for the period of the lease (expressly or by implication), or any period so provided for cannot be established, that period is one year beginning with the date of entry under the lease.
- (3) Subsections (4) and (5) apply where the lease does not provide for the date of entry (expressly or by implication) or any date so provided for cannot be established.
- 30 (4) The date of entry under the lease is to be treated as if it were—
- (a) the date on which the tenant entered into possession of the subjects of the lease,
 - (b) if that date cannot be established, the date on which the lease was granted, or
 - (c) if that date cannot be established, 28 May in the earliest year in respect of which rent was paid under the lease.
- 35 (5) A party to the lease may apply to the sheriff to determine the date of entry under the lease.
- (6) Where, in any proceedings before a court or tribunal (whether under subsection (5) or otherwise), the court or tribunal determines the date of entry under the lease, the court or tribunal may order that the lease is to be endorsed with the date of entry.

- (7) In subsection (6), “tribunal” includes a sole arbitrator or panel of arbitrators determining a dispute in accordance with an arbitration agreement within the meaning of section 4 of the Arbitration (Scotland) Act 2010.
- (8) Any rule of law by which the period of, or date of entry under, a lease is to be implied does not apply where this section applies.

Documents leading to termination of lease

27 Notification of postal address in United Kingdom for termination documents

- (1) A party (“A”) to a lease to which this Act applies—
- (a) must, unless subsection (3) applies, notify the other party to the lease (“B”) of a postal address in the United Kingdom to which any termination document in relation to the lease to be sent to A by post may be sent,
- (b) may from time to time notify B of a new address in place of one previously notified under this section.
- (2) In this section, “termination document” means a document the giving of which by a party to the lease to another party to the lease—
- (a) has the effect of bringing the lease to an end (whether immediately or in the future), or
- (b) is a necessary step before the lease is brought to an end by one of the parties.
- (3) This subsection applies where—
- (a) a postal address for A in the United Kingdom (whether or not specified as an address to which termination documents may be sent) is included in the lease,
- (b) a postal address for A in the United Kingdom (whether or not specified as an address to which termination documents may be sent) is included in a document—
- (i) disposing the subjects of the lease to A and granted after the lease was granted, or
- (ii) assigning or otherwise transferring an interest in the lease to A,
- which has been registered in the Land Register or recorded in the Register of Sasines, or a copy of which has been given to B,
- (c) A is a body corporate or other legal person with a registered office in the United Kingdom,
- (d) A is—
- (i) a person who has been confirmed as an executor over an estate which includes an interest in the lease, or
- (ii) a heritable creditor who has entered into possession of the interest of a party to the lease who has died, or
- (e) the lease is not one for which a written document is required by section 1(2) of the Requirements of Writing (Scotland) Act 1995.
- (4) Notification under subsection (1)—
- (a) must be in writing,

(b) must state (in whatever terms) that any termination document, or a category of documents including all termination documents, to be sent to A by post may be sent to that address,

(c) may—

(i) notify different addresses for different types of termination document,

(ii) be given in one or more documents.

(5) This section applies despite any enactment or rule of law, or term of the lease or other agreement between the parties, that a termination document may or must be sent to A at an address outwith the United Kingdom (and any termination document sent to an address notified under subsection (1) is not invalid only by reason of any such enactment, rule, term or agreement).

(6) The parties to a lease may not disapply the effect of this section or section 28 in relation to the parties or the lease.

28 Effect of failure to notify United Kingdom address under section 27

(1) This section applies where a party to a lease (“A”) fails to comply with the requirements of section 27(1)(a) (the “notification requirements”).

(2) A is not liable to the other party to the lease (“B”) for any loss sustained by B as a result of that failure.

(3) Where B is the tenant, B—

(a) may withhold payment of the whole or part of any sum due to be paid during the non-compliance period in accordance with the lease to A by B,

(b) must pay any sum withheld under paragraph (a) to A before the end of the 14 day post-compliance period.

(4) Subsections (5), (6) and (7) apply to a termination document to be sent by B to A by post during the non-compliance and 14 day post-compliance periods.

(5) Where B is the landlord, B may send the document to the subjects of the lease if documents can be delivered to those subjects by post.

(6) Subsection (7) applies where—

(a) if B is the tenant, either—

(i) the document will not be legally effective if it is sent by electronic means, or

(ii) it is not reasonably practicable to send it by electronic means,

(b) if B is the landlord—

(i) B is unable to send the document in accordance with subsection (5) because documents cannot be delivered to the subjects of the lease by post, and

(ii) either—

(A) the document will not be legally effective if it is sent by electronic means, or

(B) it is not reasonably practicable to send it by electronic means.

(7) B may send the document by post to the Extractor of the Court of Session.

- (8) A document sent in accordance with subsection (5) or (7) is to be treated as if it had been sent by post to an address for A notified under section 27(1).
- (9) Where a question arises as to whether the condition in subsection (6)(a) or (b)(ii) was met in relation to a document sent to the Extractor of the Court of Session under subsection (7), it is to be presumed that the condition was not met unless the contrary is shown.
- (10) In this section—
- (a) “termination document” has the meaning given by section 27(2),
 - (b) the “non-compliance period” is the period beginning with the first day on which A is subject to the notification requirements and ending with the day on which A complies with those requirements,
 - (c) the “14 day post-compliance period” is the period of 14 days beginning with the day after the day on which the non-compliance period ends.

29 Effect of termination document given after death or change of party to lease

- (1) Subsection (2) applies where—
- (a) the interest of the landlord (“the former landlord”) in a lease to which this Act applies has been transferred to another person (“the new landlord”), other than as a result of the death of the former landlord,
 - (b) the tenant has not been notified in writing by the new landlord of the name of, and a postal address (whether or not in the United Kingdom) for, the new landlord, and
 - (c) the tenant gives a termination document in relation to the lease to the former landlord.
- (2) The termination document is to be treated as having been given to the new landlord.
- (3) Subsection (4) applies where—
- (a) a party (“P”) to a lease to which this Act applies has died,
 - (b) the other party to the lease (“the sender”) has not been notified in writing by—
 - (i) P’s executor, of the fact that the executor has been confirmed over P’s estate and the name of, and a postal address in the United Kingdom for, the executor, or
 - (ii) a heritable creditor of P, of the fact that the creditor has entered into possession of P’s interest in the lease and the name of, and a postal address in the United Kingdom for, the creditor, and
 - (c) the sender sends a termination document in relation to the lease to, or leaves the document at, a proper address for P (as if P were still alive).
- (4) The document is to be treated as having been given to the executor or (as the case may be) the heritable creditor on—
- (a) where it is sent to a postal address, the day on which, if P were still alive, the document would have been taken to be received by P by virtue of any relevant rule,

(b) where it is sent to an electronic address—

(i) the day on which, if P were still alive, the document would have been taken to be received by P by virtue of any relevant rule, or

(ii) where there is no such day, the earliest day on which, if P were still alive, it would have been reasonable to expect P to receive the document and which is a working day, or

(c) the day on which it is left at a postal address.

(5) For the purposes of—

(a) subsection (3)(c), a proper address for P is a postal or electronic address which, immediately before P's death, the sender could have used to give the document to P by virtue of any relevant rule,

(b) subsection (4), it does not matter whether the executor has been confirmed or (as the case may be) the heritable creditor has entered into possession of P's interest in the lease on the day mentioned in subsection (4)(a), (b) or (c).

(6) The parties to a lease may not disapply the effect of this section in relation to the lease.

(7) Nothing in subsection (2) or (4) affects any ground on which a termination document may not be effective other than the requirement to give it to the other party to the lease.

(8) In this section—

“electronic address” means any address or number used for the purposes of sending or receiving documents or information by electronic means (for example, an e-mail address or fax number),

“relevant rule”, in relation to a termination document, means any—

(a) enactment or rule of law, or

(b) term of the lease or other agreement between the parties to the lease,

relating to the giving of the document,

“termination document” has the meaning given by section 27(2),

“working day” means any day other than a Saturday, a Sunday or a day which, under the Banking and Financial Dealings Act 1971, is a bank holiday in Scotland.

Irritancy notices

30 Service of irritancy notice and copies to be given to heritable creditors

(1) The Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (the “1985 Act”) is amended as follows.

(2) In section 4 (irritancy clauses etc. relating to monetary breaches of lease), for subsection (4) substitute—

“(4) A notice served under subsection (2) must be—

(a) sent by post to the tenant, by recorded delivery, or

(b) delivered in Scotland by a sheriff officer (see section 5B).

(4A) A notice sent in accordance with subsection (4)(a) is sufficiently served if it is delivered to—

- (a) the last postal address in the United Kingdom given by the tenant to the landlord for the purpose of sending the notice,
- (b) where the tenant is a body corporate or other legal person with a registered office in the United Kingdom, the address of that office,
- (c) where the tenant does not have an address mentioned in paragraph (a) or (b), the last postal address for the tenant in the United Kingdom of which the landlord is aware.

(4B) For the purposes of subsection (4A)(c), it does not matter whether the tenant has a more recent address in the United Kingdom of which the landlord is not, but could reasonably be expected to become, aware before sending the notice.

(4C) The lease may provide that the notice must, in addition to being served in accordance with subsection (4), be served by such other method as is specified in the lease.”.

(3) After section 5 insert—

“5A Irritancy of lease where there is a heritable creditor

(1) This section applies where there is a creditor in a standard security over a lease and either—

- (a) the consent of the landlord at the time the security was granted was not required under the lease for the granting of the security, or
- (b) such consent was so required and was given.

(2) The landlord must, at the same time as, or as soon as reasonably practicable after, serving any irritancy-related notice on the tenant, serve a copy of the notice on the creditor if—

- (a) the security was registered before the start of the period of 10 days ending with the day on which the notice is served on the tenant, and
- (b) the creditor has—
 - (i) a postal address in the United Kingdom known to the landlord, or
 - (ii) provided a postal address in the United Kingdom to the landlord for those purposes.

(3) The copy of the notice served under subsection (2) must be—

- (a) sent by post to the creditor, by recorded delivery, or
- (b) delivered in Scotland by a sheriff officer (see section 5B).

(4) A copy of a notice sent in accordance with subsection (3)(a) is sufficiently served if it is delivered to—

- (a) the last postal address in the United Kingdom given by the creditor to the landlord for the purpose of sending the copy of the notice,
- (b) where the creditor is a body corporate or other legal person with a registered office in the United Kingdom, the address of that office,

(c) where the creditor does not have an address mentioned in paragraph (a) or (b), the last postal address for the creditor in the United Kingdom of which the landlord is aware.

5 (5) For the purposes of subsection (4)(c), it does not matter if the creditor has a more recent address in the United Kingdom of which the landlord is not, but could reasonably be expected to become, aware before serving the copy of the notice.

10 (6) If the landlord fails to comply with any requirement of subsection (2) in relation to the lease, the landlord is not entitled to rely, for the purpose of terminating the lease or treating it as terminated, on any irritancy clause in the lease, or material breach of the lease, to which the requirement relates.

(7) The creditor may, in civil proceedings, challenge—

(a) the validity of any irritancy-related notice relating to the lease,

15 (b) the termination of the lease in reliance on an irritancy clause or a material breach of the lease, on the grounds that—

(i) the landlord failed to comply with a requirement of subsection (2) or section 4 in relation to the termination of the lease,

(ii) the landlord failed to take a step required by the lease to be taken before terminating the lease or treating it as terminated, or

20 (iii) a fair and reasonable person in the position of the landlord would not, having regard to the interests of the creditor, have relied on the irritancy clause or material breach to terminate the lease or treat it as terminated.

25 (8) Subsection (7)(b)(iii) does not apply where the landlord has relied on the irritancy clause or material breach as a result of a failure by the tenant of the type mentioned in section 4(1)(a) (irritancy clauses etc. relating to monetary breaches of lease).

(9) In this section—

30 “civil proceedings” includes proceedings before an arbitrator or a panel of arbitrators in relation to an arbitration agreement within the meaning of section 4 of the Arbitration (Scotland) Act 2010,

“irritancy clause” means a provision of a lease which purports to terminate it, or enables the landlord to terminate it, in the event of an act or omission by the tenant or of a change in the tenant’s circumstances,

35 “irritancy-related notice” means a document the giving of which by the landlord to the tenant under a lease—

(a) results in the termination of the lease (whether immediately or in the future) under an irritancy clause or as a result of a material breach of the lease, or

40 (b) is a necessary step before the lease is terminated in accordance with such a clause or as a result of such a breach,

“material breach”, in relation to a lease, means an act or omission of the tenant, or a change in the tenant’s circumstances, which is, or is deemed by a provision of the lease to be, a material breach of the lease,

“registered” means registered in the Land Register of Scotland or recorded in the Register of Sasines.

5B Sections 4 and 5A: delivery by sheriff officer

- 5 (1) For the purposes of sections 4(4)(b) and 5A(3)(b), a document is delivered by a sheriff officer if it is—
- 10 (a) where the recipient is an individual, delivered by hand by the sheriff officer—
- (i) to the recipient,
- (ii) at the recipient’s residence, to another person who lives there, or
- (iii) at the recipient’s place of business, to an employee of the recipient or a person authorised to receive the document,
- 15 (b) where the recipient is not an individual, delivered by hand by the sheriff officer at the recipient’s place of business, to an employee of the recipient or a person authorised to receive the document, or
- 20 (c) where the sheriff officer has unsuccessfully attempted to deliver the document in accordance with—
- (i) paragraph (a), left in or at the recipient’s residence or place of business in a manner in which it is likely to come to the recipient’s attention, or
- (ii) paragraph (b), left in or at the recipient’s place of business in such a manner.
- 25 (2) In subsection (1), a reference to the recipient of a document does not include a reference to the recipient’s agent.
- 30 (3) After the sheriff officer delivers the document, the sheriff officer must prepare a written document (a “certificate of service”)—
- (a) setting out—
- (i) how the document was delivered in accordance with subsection (1),
- (ii) the date on which the document was so delivered,
- (iii) the name of any person other than the recipient to whom the document was delivered, and
- (iv) if the document was delivered in accordance with subsection (1)(c), the other ways in which the sheriff officer attempted to deliver the document, and why those attempts were unsuccessful, and
- 35 (b) signed by the sheriff officer.
- (4) A certificate of service is sufficient evidence of the matters set out in it.”.

Apportionment of rent

31 Repayment of rent and other payments relating to period after lease ends

- 40 (1) A lease to which this Act applies is to be treated as including a term which makes the provision set out in subsections (2) to (4).

- (2) Subsection (3) applies where—
- (a) the lease ends other than by virtue of an irritancy clause,
 - (b) the tenant under the lease, on or before the day on which the lease ends—
 - (i) pays rent, or
 - (ii) makes any other payment,due under the lease to the landlord, and
 - (c) the rent paid, or other payment made, relates wholly or partly to a period falling after the lease ends.
- (3) The landlord must, no later than 10 working days after the day on which the lease ends, pay to the tenant a sum equal to the total of—
- (a) that part of the rent paid as mentioned in subsection (2)(b) which relates to the period falling after the lease ends, and
 - (b) that part of any other payment made as mentioned in that subsection which relates to that period.
- (4) In this section—
- “irritancy clause” means a term of a lease which terminates the lease, or enables the landlord to terminate it, in the event of an act or omission by the tenant or of a change in the tenant’s circumstances,
- “working day” means any day other than a Saturday, a Sunday, or a day which, under the Banking and Financial Dealings Act 1971, is a bank holiday in Scotland.
- (5) A lease may include—
- (a) a term disapplying subsection (1) in relation to the lease,
 - (b) a term modifying subsections (2) to (4) as they are to be included in the lease.

PART 4

FINAL PROVISIONS

32 Meaning of “lease”

In this Act, unless the context requires otherwise, a reference to a lease includes a reference to a sub-lease (and any reference to the landlord or the tenant under a lease is to be construed accordingly).

33 Ancillary provision

- (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act or any provision made under it.
- (2) Regulations under this section may—
- (a) make different provision for different purposes,
 - (b) modify any enactment (including this Act).

- (3) Regulations under this section—
- (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act,
 - (b) otherwise, are subject to the negative procedure.

5 **34 Consequential, transitional and saving provision**

Schedule 2 contains transitional and saving provision and provision consequential on this Act.

35 Commencement

- (1) This Part, other than section 34, comes into force on the day after Royal Assent.
- 10 (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.
- (3) Regulations under subsection (2) bringing into force any provisions containing any text referring to the day on which the provisions come into force may amend the text so that the text specifies the date on which the provisions actually come into force.
- 15 (4) Regulations under this section may—
- (a) include transitional, transitory or saving provision,
 - (b) make different provision for different purposes.

36 Short title

20 The short title of this Act is the Leases (Automatic Continuation etc.) (Scotland) Act 2025.

SCHEDULE 1
Introduced by section 2

LEASES WHICH TERMINATE AUTOMATICALLY UNDER SECTION 2(2)(B)

1 A lease falls within this schedule if it is one (or more than one) of the following—

- 5 (a) a lease granted for the lifetime of the tenant,
(b) a lease which gives rise to a tenancy mentioned in—
(i) paragraph 5(1) of schedule 1 of the Private Housing (Tenancies) (Scotland) Act 2016 (student let),
(ii) paragraph 6 of that schedule (holiday let),
10 (c) a lease granted with the authority of—
(i) the court,
(ii) the Accountant of Court, or
(iii) the Accountant in Bankruptcy,
(d) a lease which is—
15 (i) for a period of one year or less, and
(ii) of land which is let for the purpose of its being used only for grazing or mowing during some specified period of the year (whether or not the lease expressly so provides),
(e) a lease for a period of less than one year of—
20 (i) a right to fish for or take fish in inland waters, if the right includes the right to fish for or take salmon, trout or other freshwater fish in respect of which there is a close season, or
(ii) a right to take or kill birds, deer or wild animals if the right includes the right to take or kill any bird, deer or wild animal in respect of which there is a close season.
25

2 In this schedule—

“close season” means an annual period during which it is an offence—

- (a) in relation to fish, to fish for or take the fish in circumstances in which it is not an offence to do so during the rest of the year,
30 (b) in relation to birds, deer or wild animals, to take or kill the birds, deer or wild animals in circumstances in which it is not an offence to do so during the rest of the year,

“court” means Court of Session or sheriff,

“deer” has the meaning given by section 45(1) of the Deer (Scotland) Act 1996,

35 “freshwater fish”, “inland waters”, “salmon” and “trout” have the meanings given by section 69(1) of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003,

“wild animal” has the meaning given by section 27(1) of the Wildlife and Countryside Act 1981.

- 3 Nothing in paragraph 1(a) affects any right or obligation of the tenant’s executor in relation to the subjects of the lease following termination of the lease.

SCHEDULE 2
Introduced by section 34

5 CONSEQUENTIAL, TRANSITIONAL AND SAVING PROVISION

PART 1

MODIFICATION AND DISAPPLICATION OF ENACTMENTS

Removal Terms (Scotland) Act 1886

- 1 After section 3 of the Removal Terms (Scotland) Act 1886 insert—

10 **“3A Disapplication of Act to certain leases**

This Act does not apply in relation to a lease to which the Leases (Automatic Continuation etc.) (Scotland) Act 2025 applies.”.

Sheriff Courts (Scotland) Act 1907

- 2 (1) The Sheriff Courts (Scotland) Act 1907 is amended as follows.

- 15 (2) After section 37A insert—

“37B Exception for certain leases

Sections 34 to 37 and 38 do not apply to or in relation to a lease to which the Leases (Automatic Continuation etc.) (Scotland) Act 2025 applies.”.

- (3) In schedule 1 (Ordinary Cause Rules), in rule 34.5, after paragraph (1) insert—

20 “(1A) Paragraph (1) does not apply in relation to a lease to which the Leases (Automatic Continuation etc.) (Scotland) Act 2025 applies.”.

Tenancy of Shops (Scotland) Act 1949

- 3 In section 1 of the Tenancy of Shops (Scotland) Act 1949, after subsection (7) insert—

“(8) In this section, a reference to notice of termination of tenancy given by—

25 (a) the landlord is a reference to notice to quit given under section 3(1)(a) of the Leases (Automatic Continuation etc.) (Scotland) Act 2025 (the “2025 Act”),

(b) the tenant is a reference to notice of intention to quit given under section 3(1)(b) of that Act.

30 (9) Section 5(1) of the 2025 Act (automatic continuation of lease on basis of parties’ behaviour after termination date) does not apply in relation to any period during which the tenant continues in occupation of the premises by virtue of subsection (5).”.

Abolition of Feudal Tenure etc. (Scotland) Act 2000

4 In section 67(3) of the Abolition of Feudal Tenure etc. (Scotland) Act 2000, after paragraph (a) (and before the word “or” immediately following that paragraph) insert—

5 “(aa) any lease being continued by virtue of section 2(1) or 5(2) of the Leases (Automatic Continuation etc.) (Scotland) Act 2025;”.

Long Leases (Scotland) Act 2012

5 In section 72 of the Long Leases (Scotland) Act 2012, after “tacit relocation” insert “or by virtue of section 2(1) or 5(2) of the Leases (Automatic Continuation etc.) (Scotland) Act 2025”.

10 *Act of Sederunt (Summary Cause Rules) 2002*

6 In the Act of Sederunt (Summary Cause Rules) 2002 (S.S.I. 2002/132), in rule 30.5, after sub-paragraph (1) insert—

“(1A) Sub-paragraph (1) does not apply in relation to a lease to which the Leases (Automatic Continuation etc.) (Scotland) Act 2025 applies.”.

15 *Codifying Act of Sederunt 1913*

7 Sections 1 and 2 of chapter XV of Book L of the Codifying Act of Sederunt 1913 (SR & O 1913/638) do not apply in relation to a lease to which this Act applies.

PART 2

TRANSITIONAL AND SAVING PROVISION

20 8 (1) Part 2 of this Act, and the modifications and disapplications of enactments made by Part 1 of this schedule, apply to a lease which was entered into before commencement day and which subsists on that day, subject to the following provision.

(2) If, on the day before commencement day, the lease is continuing by tacit relocation—

25 (a) the period for which the lease continues is unaffected by the coming into force of Part 2 of this Act,

(b) during that period, a reference in that Part to—

(i) the period of the lease is a reference to that period,

(ii) the termination date of the lease is a reference to the last day of that period.

(3) Sub-paragraphs (4), (5) and (6) apply where—

30 (a) on commencement day, the lease has a termination date falling before the end of the period of 6 months beginning with commencement day, and

(b) after that day, a party to the lease gives notice to the other party in relation to that termination date.

35 (4) Sections 3(2) and 8 to 18 do not apply in relation to the notice, and the notice is to be treated as if it were given under the pre-commencement law as it applied to the lease immediately before commencement day.

(5) Accordingly—

- (a) the notice is valid for the purposes of section 3(1) if it would have been valid under the pre-commencement law, and
- (b) the lease ends on its termination date by virtue of that section if it would have ended by virtue of the notice being given under the pre-commencement law.

(6) Where the lease is a head lease within the meaning of section 19(1), the requirements of section 21(1)(a), (b) and (c)(i) do not apply in relation to the notice.

(7) Where the lease is a head lease within the meaning of section 19(1), the requirements of—

- (a) section 21(1)(c)(ii) do not apply to a term of the lease constituted during the period of 6 months beginning with the day after commencement day,
- (b) section 21(1)(d) do not apply in relation to a new lease between the landlord and the tenant if the date of entry under the new lease falls before the end of that period.

(8) Where, on commencement day, the lease includes an express term which is valid on the day before commencement day under the pre-commencement law but would, if agreed on or after commencement day, be contrary to a provision of Part 2 of this Act, the term does not become invalid as a result of that provision coming into force.

(9) The modification of section 1 of the Tenancy of Shops (Scotland) Act 1949 by paragraph 3 does not affect the application of that section in relation to any notice of termination of tenancy given before commencement day.

(10) Nothing in Part 2 of this Act effects—

- (a) the validity, invalidity, effect or consequence of any notice given, or anything else done, by a party to the lease before commencement day in relation to the termination date of the lease where that date occurs on or after commencement day,
- (b) any existing right in relation to the lease,
- (c) any legal proceeding or remedy that relates to such a right, and such proceeding or remedy may be instituted, continued or enforced as if this Act had not come into force.

(11) In sub-paragraph (10)—

- (a) “notice” means notice to quit or notice of intention to quit under the pre-commencement law,
- (b) “existing right” means a right, interest, title, immunity, privilege, obligation or liability acquired, accrued or incurred before commencement day.

9 (1) This paragraph applies to a lease which—

- (a) has a termination date falling before commencement day, and
- (b) is a lease to which this Act would apply if it subsisted on that day.

(2) Any question as to whether the lease continues after its termination date is to be determined in accordance with the pre-commencement law.

(3) For the purposes of determining such a question, regard may be had to the behaviour of the parties to the lease after commencement day.

- 10 (1) Part 3 of this Act, other than section 31, applies to a lease entered into before commencement day and which subsists on that day, subject to the following provision.
- (2) Nothing in section 26 affects the period of, or date of entry under, a lease where that period or date has been determined by a court or tribunal in accordance with the pre-commencement law.
- 5
- (3) Section 26 does not apply in relation to proceedings before a court or tribunal raised before commencement day.
- (4) Accordingly, the pre-commencement law applies for the purpose of the determination by a court or tribunal of any question as to the period of, or date of entry under, a lease which is the subject of or arises in, or in relation to, such proceedings.
- 10
- (5) The modifications of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 made by section 30 are of no effect in relation to—
- (a) a notice served under section 4(2) of that Act before that day, or
- (b) any other irritancy-related notice within the meaning of section 5A(9) of that Act (as inserted by section 30(3)) served before that day.
- 15

11 In this Part of this schedule—

“commencement day” means the day on which this schedule comes into force,

“pre-commencement law” means the law applying before that day,

“tribunal” has the meaning given by section 26(7).

Leases (Automatic Continuation etc.) (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision about the circumstances in which certain leases continue or end on their termination dates; to make provision about other matters relating to the beginning, length or ending of those leases; and for connected purposes.

Introduced by: Angela Constance
On: 11 December 2024
Bill type: Government Bill

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