

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](http://www.scotlawcom.gov.uk/contact-us#sendcomments) 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)

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| **Comments on Question 1**We generally agree with the proposed requirements for the contents of notices to prevent automatic continuation of a lease. It is not entirely clear to us, however, why all of the provisions identified as being default rules that can be contracted out of are designated as such, e.g. s 11(2)(b). |

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)

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| **Comments on Question 2**We agree with these provisions. |

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

(Paragraphs 19-20)

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| **Comments on Question 3**We agree that the proposed default periods of notice for the prevention of automatic continuation are preferable to the current periods. They appear to be more logical and clearer; however, it would be useful to know why these particular periods were chosen. We assume that details about this will be provided in the report. We do also have some concern regarding the provisions relating to the period for leases of less than 6 months, in terms of the complexity of how the time period is expressed and the potential for miscalculation.  |

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)

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| **Comments on Question 4**We agree with what is proposed here. However, we have some concern regarding the possibility of hand delivery where the parties are individuals. While we understand why this provision has been included, there may be evidential problems proving that delivery has taken place in such circumstances. We accept that it is not the role of this legislation to provide for rules of evidence; however, perhaps the issue could be considered further. |

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)

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| **Comments on Question 5**We agree. |

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)

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| **Comments on Question 6**We generally agree with this. However, where there is a new landlord, does the notification under s 31(1) need to come from the previous landlord or can the new landlord provide this and what does the notification need to consist of (e.g. do they need to prove that a transfer of ownership has taken place)? For example, a tenant could receive notice from a third party, unknown to the tenant, claiming that they are now the landlord and there should be clarity as to whether this is acceptable and what exactly is required. |

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)

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| **Comments on Question 7**This seems to reasonable to us. |

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)

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| **Comments on Question 8**We agree with this. However, we raise the same point as above in relation to hand delivery. |

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

(Paragraph 4.73)

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| **Comments on Question 9**We broadly support the proposals within the draft Bill. We agree with the terminology used, including “automatic continuation”. While no specific question is asked in relation to paragraphs 9 and 10 in the consultation document, we are content with the approach outlined there. We consider that the proposals would improve, clarify and simplify the law in this area, subject to the points made above.  |

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.