

ISSUED ON BEHALF OF THE SCOTTISH LAW COMMISSION
NOT FOR PUBLICATION OR BROADCAST
BEFORE 0001 HOURS 5 OCTOBER 2022

REFORMING THE LAW ON THE ENDING OF COMMERCIAL LEASES
REPORT ON ASPECTS OF LEASES: TERMINATION

The Scottish Law Commission today publishes its Report recommending a new set of rules for the ending of leases of commercial property in Scotland, replacing the existing common law of tacit relocation.

At present, tacit relocation – the automatic continuation of a lease at the expiry of the period for which it was granted if appropriate notice has not been given (or the tenant remains without removal proceedings) – operates as a matter of common law. Parties to a lease may be unaware that the law requires prior notice to be given in order for a lease to come to an end at the expiry of that period. It is not clear whether the present law allows parties to contract out of the requirement to give notice. Nor does the present law supply clear and certain answers to questions relating to the form which such a notice must take or the effect of a sub-lease on tacit relocation and the need for notice.

The Commission recommends the replacement of the common law of tacit relocation with a modern, statutory code of automatic continuation. The new code sets out clear rules on whether notice must be given, the necessary content and timing of notice, and the effect of automatic continuation of a lease. It also makes it clear that parties to a lease may agree that the lease will end upon a specified date without the need for notice to be given.

Additionally, the Commission recommends a number of technical amendments to the requirements for the service of other documents which have the effect of bringing a lease to an end, including irritancy notices.

David Bartos, the lead Commissioner for the project, said:

“The common law of tacit relocation is unclear and uncertain. Our new scheme of automatic continuation will bring clarity and certainty to both landlords and tenants and increase the attractiveness of investment in commercial property in Scotland.”

FURTHER INFORMATION SECTION

1. The Scottish Law Commission was set up in 1965 to promote the reform of the law of Scotland. The Chair is the Rt Hon Lady Paton, a Court of Session judge. The other Commissioners are David Bartos, Professor Gillian Black, Kate Dowdalls KC and Professor Frankie McCarthy. The Interim Chief Executive is Charles Garland.
2. Further information can be obtained by contacting David Bartos, Scottish Law Commission, 140 Causewayside, Edinburgh EH9 1PR (Tel: 0131 668 2131; email info@scotlawcom.gov.uk).
3. The paper will be available on our website at <https://www.scotlawcom.gov.uk> as early as possible on 5 October 2022.