

30 April 2024



Our ref: L/1/3/24

Dear Consultee

DISCUSSION PAPER ON ASPECTS OF LEASES: TENANCY OF SHOPS (SCOTLAND) ACT 1949 (DISCUSSION PAPER No 177)

We invite comment on the Discussion Paper on *Aspects of Leases: Tenancy of Shops (Scotland) Act 1949*, which was published today and an electronic copy of which can be found on our website at: [Scottish Law Commission :: Current consultations \(scotlawcom.gov.uk\)](https://www.scotlawcom.gov.uk), together with an executive summary and a news release.

The Discussion Paper is concerned with leases of retail premises, cafes, pubs, restaurants, takeaways, and hairdressing establishments. It also covers leases of warehouses, wholesale premises, and certain types of auction rooms.

The focus is on what happens when such leases expire. As the law stands, the Tenancy of Shops (Scotland) Act 1949 (“1949 Act”) allows the tenant to apply to the sheriff court for renewal of the lease for up to one year beyond its termination date. The sheriff has a wide discretion under the Act. They can grant the renewal if it is “reasonable in all the circumstances” and on terms and conditions that are “reasonable”. There are also certain limited mandatory grounds for refusal.

The 1949 Act was originally enacted on a temporary basis to provide a safety net for small shopkeepers who, owing to the shortage of property in the post-war years, were unable to find alternative premises at the end of their lease. It was made permanent in 1964 in view of the lack of time to find alternative premises with a 40-day notice-to-quit period and a shortage of affordable property, at a time when shopping centres were being introduced in redeveloped town centres.

It has been suggested that the 1949 Act has outlived its usefulness. The commercial property market is markedly different to what it was in 1949 or 1964. Our 2022 *Report on Aspects of Leases: Termination (Report No.260)* recommended a three-month notice-to-quit period (which the lease in question can extend, reduce or exclude) – for all commercial leases whether of retail, hospitality, office or industrial premises.

In addition, we have been informed of practical difficulties in how the 1949 Act works. These include uncertainty over what is “reasonable” and the cost of and delay in court proceedings. It has also been observed that the 1949 Act is capable of enabling large, sometimes multinational, tenants to obtain a long-term renewal on preferential terms, with the fear of an application preventing a landlord from sourcing other potential tenants.



However various stakeholders continue to support the retention of the 1949 Act or seek its reform. In particular, it has been suggested that businesses dependent on local footfall should be assured of a reasonable period of grace at the end of a lease, in which to find alternative premises in the locality.

In the Discussion Paper we present the following options:

1. Repeal of the 1949 Act – and so bringing the retail, pub, hospitality and other leases currently covered by it into the law applicable for all other commercial leases;
2. Repeal of the 1949 Act and its replacement with a six month (or less) compulsory notice to quit scheme – ensuring that retail, pub, hospitality, hairdressing and other tenants covered by the Act are given sufficient time to relocate to alternative premises;
3. Reform of the 1949 Act by making amendments - addressing its operational difficulties;
4. Retention of the 1949 Act in its current form.

The consultation set out in this Discussion Paper is intended to lead to a Report to the Scottish Government with recommendations for the future of the 1949 Act and the law affecting leases of retail, hospitality, hairdressing and other premises currently covered by the Act.

We invite your views on some or all of the options. All will be considered in the making of the Report. We would be grateful if they were submitted by **31 July 2024**.

Where possible, we would prefer the electronic submission of comments. You can use the electronic response form which is on our website at:

<https://www.scotlawcom.gov.uk/publications/archive/discussion-papers-and-consultative-memoranda/>.

The form has a questionnaire format which allows you to comment (briefly or at length) on any of the paper's questions which interest you. The form can be downloaded and emailed to us at info@scotlawcom.gov.uk, as can comments in other electronic formats. Alternatively, you may prefer to send your comments on the Discussion Paper by using the general comments form to be found on the website "Contact us" page at: <http://www.scotlawcom.gov.uk/contact-us/>.

Please note that 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 reformatted or summarised); and (ii) attribute comments and publish a list of respondents' names.

More information on the work of the Commission can be found on our website at: <https://www.scotlawcom.gov.uk/>. Finally, should you wish to offer any comments on the way in which we conduct our consultation exercises, just let us know.

Yours faithfully

CHARLES GARLAND

Interim Chief Executive

Charles.garland@scotlawcom.gov.uk