



SCOTTISH LAW COMMISSION
(Scot Law Com No 108)

Report on the Scottish Term and Quarter Days

Presented to Parliament by the Lord Advocate
by Command of Her Majesty
October 1987

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£4.50 net

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Scottish Law Commission

THE SCOTTISH TERM AND QUARTER DAYS

*To: The Right Honourable the Lord Cameron of Lochbroom, QC,
Her Majesty's Advocate*

In pursuance of our duty under section 3(1)(a) of the Law Commissions Act 1965 to receive and consider any proposals for the reform of the law which may be made to us, we have examined a proposal relating to the subject of the Scottish term and quarter days. We have the honour to submit our report.

(Signed) PETER MAXWELL, *Chairman*
E M CLIVE
PHILIP N LOVE
JOHN MURRAY
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L A LILLEKER, *Acting Secretary*
24 August 1987

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Part I Introduction

The proposal

1.1 On 28 April 1986 we received from the Scottish Landowners' Federation a proposal under section 3(1)(a) of the Law Commissions Act 1965 in the following terms:

“To consider a possible statutory definition for all purposes of the Scottish term days of Whitsunday and Martinmas, and the quarter days of Candlemas and Lammas, and to make appropriate recommendations, with a view to rationalisation and simplification of the law, taking into account the desirability of achieving so far as possible four equal terms in the legal year.”

The significance of term and quarter days

1.2 Whitsunday, Martinmas, Candlemas and Lammas are, so far as we are aware, the only traditional expressions now used in Scottish legal practice to denote specific dates for particular legal purposes. These expressions are most frequently used in the context of leasing, both of agricultural and non-agricultural subjects. Whitsunday and Martinmas are normally described in practice as the term days since they are often used in leases to refer to the terms or days on which the tenant takes entry to or removes from the subjects leased. The four expressions, when taken together, divide the legal year into four parts and so are described as the quarter days. They are often used to refer to the dates upon which a tenant is obliged to make quarterly payment of rent to his landlord. The parties to a lease may however select any other day in the year for these purposes.

1.3 The term and quarter days are also of legal significance outwith the context of leases. They have been and still on occasion are used for the purpose of identifying the date of entry in a conveyance of heritable property, particularly one of agricultural subjects.

1.4 Various statutes have made use of the term and the quarter days. For example, section 28 of the Conveyancing (Scotland) Act 1874 provides that where no term of entry is stated in the conveyance of land, entry shall be the first term of Whitsunday or Martinmas after the date or the last date of the conveyance, unless the terms of the conveyance show that another date is intended; and under section 4 of the Land Tenure Reform (Scotland) Act 1974 a proprietor has the right to redeem his feuduty or ground annual at any term of Whitsunday or Martinmas.

Definitions of the term and quarter days

1.5 There are what are often referred to as common law definitions of the term days of Whitsunday and Martinmas, although in the case of Whitsunday this definition has in fact been established by statute. However it seems that there have been local variations as to the dates implied by these term days, and also the parties to a lease may stipulate, either expressly or impliedly, their own definitions for the term days. Moreover, there exist certain statutory definitions, applicable where the term days are used for particular purposes. These various definitions do not all coincide. This situation has understandably given rise to some confusion and uncertainty in the

minds of the legal profession and the public alike, as to the correct or applicable definition of the term days in any case. Accordingly, as an author of a text-book on agricultural leases points out, it is desirable that parties to a lease should specify what date is intended by any reference to Whitsunday or Martinmas.¹

1.6 Regarding the quarter days of Candlemas and Lammas, there is no similar difficulty in relation to the definition of these days. We understand however that, in the context of leases, the definition of these days can give rise to some inconvenience in practice. This is so since the quarter days, taken with any of the possible definitions of Whitsunday and Martinmas (no matter which definition is taken), do not in fact provide four equal or nearly equal quarters or terms in the legal year.

Consultation

1.7 The uncertainty and possible inconvenience arising in relation to the term and quarter days led to our receiving the proposal from the Scottish Landowners' Federation and thereafter publishing a consultation paper on this topic on 17 July 1986.² There was a wide response to our consultation, including comments from legal practitioners and academic commentators; from legal bodies; and from organisations representing the interests of either landlord or tenant. We are most grateful to all who commented to us.³

Context of our recommendations

1.8 We should at this point make it clear that our consideration of this matter is confined to the use of the term and quarter days for strictly legal purposes. We are aware that Whitsunday is also used for the purpose of allocating holidays. Furthermore, branches of the Christian Church may use these days, or certain of them, as festivals—for example, there is a celebration on Whitsunday, calculated for this purpose as the seventh Sunday after Easter day, now more commonly referred to as Pentecost Sunday. Our recommendations are not intended to affect the use of, and the method of calculation of, these days for such other purposes.

Summary of contents

1.9 In Part II of this Report in relation to the term days, and in Part III in relation to the quarter days, we examine the existing law, discuss comments made to us by consultees, and make what we consider to be suitable recommendations for reform. Part IV deals with the scope of our recommendations and Part V with the effect of the recommended definitions on subsisting leases, agreements, undertaking and documents. Certain ancillary matters are considered in Part VI. A summary of our recommendations is then given in Part VII, and a draft Bill which would implement our recommendations is contained in Appendix A.

1. Connell, *The Agricultural Holdings (Scotland) Acts* (Sixth Edn 1970) (cited as 'Connell') at p 20.
2. Consultation Paper, *The Scottish Term and Quarter Days: A Statutory Definition*, referred to in the Report as the 'Consultation Paper'.
3. A list of those submitting comments on the Consultation Paper is contained in Appendix B.

Part II The term days of Whitsunday and Martinmas

Present law

Principal definitions

2.1 Whitsunday was at one time regarded as a moveable term day.¹ This was so since, for legal as well as for other purposes, Whitsunday fell on the seventh Sunday after Easter, and Easter day itself is a moveable date (being the first Sunday after the calendar full moon which happens on or next after 21 March). Accordingly, difficulties arose from the use of Whitsunday as a term day, since it did not fall on the same day in each year and this gave rise to a consequent annual variation in the length of the period between Whitsunday and Martinmas. Another difficulty seems to have been that Whitsunday would on occasion fall during the summer itself—an undesirable consequence of this in the context of removings was that the outgoing tenant, before removing from the subjects leased to him, would have obtained the benefit of the early pasture.² An Act was passed in 1690 in order to resolve these difficulties for legal purposes. This Act, now repealed, defined Whitsunday, referred to as the summer term and the legal term of removing both in burgh and landward, as 15 May.³ This definition of Whitsunday as 15 May was later extended for all purposes by an Act in 1693.⁴

2.2 Martinmas, the mass or feast of St Martin, on the other hand has usually been regarded at common law as falling on 11 November.⁵ In the 1690 Act already mentioned the ‘winter term’ was simply defined as ‘Martinmas’.

Local variations

2.3 It seems however that following the Calendar (New Style) Act 1750,⁶ there arose in Scotland local variations in the actual dates of Whitsunday and Martinmas. This Act regulated the commencement of the year and corrected the calendar then in use—in effect, changing from the Julian to the Gregorian calendar. The transition took place on the next natural day immediately following 2 September 1752, which, having omitted eleven intermediate nominal days of the previous calendar, became 14 September. Thus 14 September in that year occurred under the Gregorian calendar on the day which would have been 3 September under the Julian calendar.

2.4 The adoption of the new calendar should not in theory have altered the fact that Whitsunday fell on 15 May, and Martinmas on 11 November.⁷ However, in

1. Bell, *Dictionary and Digest of the Law of Scotland* (Seventh Edn 1890) (cited as ‘Bell’) under ‘Whitsunday’.

2. Erskine, *Institute of the Law of Scotland*, (1871 Edn) Vol I, Book II, tit VI, para 46.

3. Act of William and Mary (‘Act anent Removing from land’) 1690, cap 39 12 mo Edn (cap 98, Record Edn) (repealed by the Statute Law Revision (Scotland) Act 1906 (6 Edw 7 c38)) which read:

‘Our Sovereign Lord and Lady and the Estates of Parliament, considering the inconveniency arising from the uncertainty of the term of Whitsunday, whereby the indurance of the two ordinary terms of Whitsunday and Martinmas is so unequal, and Whitsunday oft times reaching far in summer, by the removing from lands at that time, those who remove do eat up and destroy the meadows and hained ground; For remeed whereof their Majesties, with consent of the saids Estates of Parliament, do statute and ordain that the summer and winter terms shall in all time coming be the 15th day of May and Martinmas; and that the legal term of removing both in burgh and landward shall be the 15th day of May upon warning forty days preceding the same.’

4. The Removings Act 1693 (formerly ‘Act anent the Term of Whitsunday’) 1693, cap 40, Record Edn (cap 24 12 mo Edn) which (as repealed in part by the Statute Law Revision (Scotland) Act 1964 (c80)) reads:

‘Our Sovereign Lord and Lady The King and Queens Majesties with advice and consent of the Estates of Parliament . . . Statute and declare that the fifteenth day of May . . . shall be in all time coming in place of the former terme of Whitsunday to all effects whatsoever as well as to removeings.’

5. Rankine, *The Law of Leases in Scotland* (Third Edn 1916) (cited as ‘Rankine’) at p 341; Bell, under ‘Martinmas’.

6. 24 Geo 2 c23; referred to in the Report as the ‘1750 Act’.

7. *Ibid*, s 1.

practice, according to Hunter, 'By local custom, old Whitsunday (26 May), and old Martinmas (22 November), are still in use, or were so, relative to lands and dwellinghouses let since 1752'.¹ Rankine also noted that in relation to removings from both rural and urban subjects, this change of 11 days had by custom of district or by express provision been ignored in practice. He gave possible reasons for this:

"This postponement of removal, taken along with the circumstance that the date of payment of rent is not postponed, has some advantages in enabling the landlord to avail himself of his right of hypothec without haste or undue harshness. And in late high pasture land, the lambs are more fit for removal near the end than at the middle of May."²

2.5 The practice of using the 'old style' of term day in the context of leases no doubt originated in a perpetuation of the transitional provisions contained in section 6 of the 1750 Act. In relation to leases and other agreements entered into before the calendar changeover date of 14 September 1752, this section provided that the rent and other charges payable thereunder should be payable, and the terms of entry to and removal from the subjects should take place, on the same natural days as would have happened if the Act had not been passed.

Conventional definitions

2.6 While there were local variations in the accepted definitions of the term days, the entitlement of parties to a lease to make a conventional definition—ie to stipulate in the lease their own definition—was considered by the Court of Session in the case of *Hunter v Barron's Trs* in 1886.³ In that case, the tenants had in 1866 entered into an agricultural lease of an Aberdeenshire farm for a period of 19 years commencing at Whitsunday 1866. Notwithstanding that the tenants had entered into possession on 26 May 1866 and remained in possession until 26 May 1885, the issue before the court concerned the correct definition of 'Whitsunday' within the context of the lease. By joint admission, the parties agreed that different customs existed in various parts of Scotland as to the date of Whitsunday and Martinmas, where these terms were used without express stipulation.⁴ The court however in this case did not find it necessary to decide whether any customary meaning of the term day was imputed. It was held that the term 'Whitsunday' occurring in the lease was open to construction, and that the parties had by their actings interpreted this to mean, for the purposes of the lease, 26 May or old term, and not 15 May or legal term. In his judgment, the Lord Justice-Clerk stated that, on the basis of the existing authorities, 15 May is the legal term of Whitsunday and that this term, if it stood by itself, meant nothing else.⁵ However, the 1690 Act, he further observed, was introduced to make a moveable feast permanent and 'did not in any way affect the power of parties to regulate their respective interests under contract of lease.'⁶

2.7 The court in *Hunter v Barron's Trs* therefore recognised that, while the established definition of Whitsunday was 15 May, the parties to a lease could stipulate otherwise either expressly or by implication. This principle would presumably also apply in relation to the common law definition of Martinmas as 11 November.

Particular statutory definitions

2.8 In this review of the law concerning Whitsunday and Martinmas we now turn to consider the various statutory definitions of these term days made subsequent to

1. Hunter, *Law of Landlord and Tenant* (Third Edn 1860) Vol II at p 40–41.

2. Rankine, at p 341.

3. (1886) 13R 883.

4. *Ibid*, at p 888: "To obviate proof the parties agreed upon these admissions,—“(1) That it is, and always has been, the custom throughout Scotland, with the exception of the counties after mentioned, that where the terms of Whitsunday and Martinmas are the stipulated terms of entry and removal of agricultural tenants, and there is no stipulation to the contrary, the actual entry and removal take place at 26th May and 22nd November respectively; but that in Fifeshire, Kinross-Shire, and Clackmannanshire, the actual entry and removal take place at 15th May and 11th November respectively and that in Stirlingshire and in that part of the county of Perth which adjoins said forementioned counties, and in part of Lanarkshire, the custom varies, the actual entry and removal of tenants, however, taking place in the majority of cases on 15th May and 11th November, where the terms of Whitsunday and Martinmas are the stipulated terms of entry and removal, and there is no stipulation to the contrary.’

5. *Ibid*, at p 890.

6. *Ibid*, at p 891.

the 1693 Act for particular purposes. There are two statutes which deal specifically with entry to, and removal from, urban subjects of lease and which give a definition of the term days for these purposes; again in the context of leases, there is such a definition in the legislation relating to agricultural leases; and lastly, there is such a definition in the crofting legislation.

Lease of urban subjects

2.9 Section 4 of the Removal Terms (Scotland) Act 1886¹ provides that where under any lease the term of entry to, or removal from, a house² is a term of Whitsunday or Martinmas, then, in the absence of stipulation to the contrary, the tenant shall, notwithstanding any custom or usage to the contrary, enter into or remove from the house at noon on 28 May, if the term is Whitsunday, or at noon on 28 November, if the term is Martinmas, or on the following day if the 28th falls on a Sunday. In all cases where warning is required however it must, in terms of the concluding portion of section 4, be given 40 days before 15 May for a Whitsunday termination, and before 11 November for a Martinmas termination.

2.10 Rankine explains³ that the mischief which section 4 of the 1886 Act sought to abate 'was that a custom had existed in Scotland whereby, for the purpose of a tenant's entry to and removal from a house, a period beyond the date of the legal term of entry or removal was allowed within which such entry or removal might take place, and that the period so allowed had not been uniform but had varied according to local usage'. It may be the case that, as one source suggests, this period of grace was allowed due to difficulties caused by the change of the calendar in 1752.⁴ The 1886 Act in effect standardised the period of grace by postponing the tenant's actual date of removal in the case of a Whitsunday removal to 28 May, and in the case of a Martinmas removal to 28 November.

2.11 Section 37 of the Sheriff Courts (Scotland) Act 1907⁵ applies to houses let with or without land attached not exceeding two acres in extent, as also to mills, fishings, shootings and all other heritable subjects except land exceeding two acres in extent, and let for a year or more. This section provides that notice of not less than 40 days shall be given before 15 May when the termination of the tenancy is at Whitsunday, and before 11 November when the termination is at Martinmas.

Lease of agricultural subjects

2.12 Section 93(1) of the Agricultural Holdings (Scotland) Act 1949⁶ provides that 'in this Act, unless the context otherwise requires . . . "Whitsunday" and "Martinmas" in relation to any lease entered into on or after the first day of November, nineteen hundred and forty-eight, mean respectively the twenty-eighth day of May and the twenty-eighth day of November'. These definitions are stated to apply only to references to Whitsunday and Martinmas in the Act. Accordingly references to Whitsunday and Martinmas in an agricultural lease continue to mean 15 May and 11 November respectively in the absence of an express stipulation, or actings of the parties, to the contrary.⁷ However the situation may be more complicated if there is applied to the lease a provision of the 1949 Act which refers to a term of Whitsunday and Martinmas. The application of such a provision could give rise to a confusing situation in that the terms of Whitsunday and Martinmas could, in relation to the same lease, attract different dates for different purposes. For example, where a term day is referred to in a lease as the date of entry to the subjects or as the day for payment of rent, then in the absence of stipulation to the contrary, the established definition of 15 May or 11 November will apply; whereas if it is used also as the date for ejection of the tenant in an action of removing under section 19 of the 1949 Act, the statutory definition of 28 May or 28 November provided by section 93(1) of the Act would apply as the date of termination of the tenancy.

1. Referred to in the Report as the '1886 Act'.

2. 'House' is widely defined in s 3 of the 1886 Act to mean 'a dwelling-house, shop, or other building and their appurtenances, and shall include a dwelling-house or building let along with land for agricultural or other purposes.'

3. Rankine, at p 562.

4. *The Scottish National Dictionary*, under 'Whitsunday'.

5. Referred to in the Report as the '1907 Act'.

6. Referred to in the Report as the '1949 Act'.

7. Connell, p 20; Gill, *The Law of Agricultural Holdings in Scotland* (1982), para 149. See also *Hunter v Barron's Trs* (1886) 13R 883.

2.13 There appears furthermore to be some doubt whether a notice to quit an agricultural holding at 'Whitsunday' takes effect at 15 or 28 May where the lease is entered into on or after 1 November 1948 and the term 'Whitsunday' is not defined in the lease. In *Stirrat v Whyte*¹ a sheriff expressed the opinion that in such a lease 'Whitsunday' must be held to mean 15 May, and notice to quit must be served within the appropriate period prior to that date. On the other hand in *Austin v Gibson*² the Land Court took the contrary view that in a post-1948 lease the term 'Whitsunday' where not specified must be construed, because of the definition in section 93(1) of the 1949 Act, as a reference to 28 May. There would be similar doubt where the term of Martinmas were so used without further specification.

2.14 We understand too that there is a certain degree of confusion in practice caused by a tendency among legal practitioners, factors and the like, to interpret the definition of Whitsunday and Martinmas in section 93(1) of the Act as meaning that these terms are, for all purposes relating to agricultural leases, in fact 28 May and 28 November. Such an interpretation does of course overlook the qualification in the definition, that it is to apply to the term days where referred to in the Act itself.

Crofting legislation

2.15 Section 37(1) of the Crofters (Scotland) Act 1955 states that 'In this Act, unless the context otherwise requires . . . "Whitsunday" and "Martinmas" mean respectively the twenty-eighth day of May and the twenty-eighth day of November.'

Consultation on recovery of possession of heritable property

2.16 In January 1984 we published a consultative memorandum on the topic of recovery of possession of heritable property.³ Consideration in the Consultative Memorandum was given to the provisions relating to removings contained in the 1886 Act, the 1907 Act and the 1949 Act.

2.17 Having considered section 4 of the 1886 Act, we put forward for consultation the proposition that every period of notice of removing should be calculated with reference only to the period intervening between the date of service of the notice and the date upon which it is to take effect.⁴ This proposition was accepted by consultees. We suggested in the Consultative Memorandum⁵ that amendment of the law in accordance with this proposition might require little more than the repeal of the concluding portion of section 4 of the 1886 Act—in other words, the repeal of the requirement to serve notice against 15 May in respect of a Whitsunday termination and against 11 November in respect of a Martinmas termination. Notice would therefore require to be served against a Whitsunday date of 28 May and against a Martinmas date of 28 November, in effect defining the term days for the purposes of the section as 28 May and 28 November respectively. We thought this suggestion a reasonable one in view of the fact that due to the operation of the period of grace, in practice the actual date of entry and removal by a tenant had before the 1886 Act been around, and then as provided by section 4 of the 1886 Act had become, 28 May in the case of Whitsunday and 28 November in the case of Martinmas.

2.18 It may be useful to note as incidental to this Report that in the Consultative Memorandum various other proposals were made with a view to simplifying the procedures involved in termination of non-agricultural leases. Consultees were generally in favour of these proposals and specifically agreed that their implementation would overtake and involve the repeal of section 37 of the 1907 Act.⁶ It may also be the case that such a rationalisation of the law and the introduction of new simplified

1. 1968 SLT 157 at 160.

2. 1979 SLT (Land Ct) 12.

3. Consultative Memorandum No 59, *Recovery of Possession of Heritable Property*, referred to in the Report as the 'Consultative Memorandum'.

4. Proposition 14, para 2.22.

5. At para 2.22.

6. Proposition 53, para 8.3.

procedures would also require the repeal of the 1886 Act. It is accordingly intended to deal with any questions relating to the 1886 and 1907 Acts in our forthcoming report on recovery of possession of heritable property.

2.19 Regarding agricultural leases, we considered in the Consultative Memorandum the difficulties arising in relation to the definitions of Whitsunday and Martinmas contained in section 93(1) of the 1949 Act, and suggested that where a tenant enters or removes from a farm at the term of Whitsunday or Martinmas, the entry or removal term should, in the absence of express stipulation to the contrary, be 28 May, or as the case may be, 28 November.¹ As indicated above, the 1949 Act had already adopted these definitions of the term days for certain purposes. This proposition also received a favourable response from consultees.

A statutory definition for all purposes

2.20 If, in our forthcoming report on recovery of possession of heritable property, we were to make recommendations in accordance with the response to our consultation as outlined in paragraphs 2.16 to 2.19 above, and these recommendations were implemented, this would certainly achieve a rationalisation of the law relating to entry to and removal from leased property. There would be certainty as to the date against which a notice to remove is to be served, and as to the date on which a tenant is to enter into or remove from leased subjects.

2.21 However as already indicated the term days of Whitsunday and Martinmas are used in law for purposes other than entry to and removal from leased property.² The examples we gave include the use of these term days as the dates on which rent and other charges are due under a lease, and as entry dates to heritable subjects as specified in missives or in a subsequent conveyance. It would seem to us to be anomalous to provide one statutory definition of the term days, where used without express stipulation to the contrary, in certain limited circumstances, while allowing different established and customary definitions of the same term days, where used without express stipulation to the contrary, for other purposes. Such a situation would merely serve to perpetuate the confusion as to the applicable or correct definition of the term days in the minds of the public and legal practitioners alike.

Recommendations

2.22 It therefore seemed desirable to provide, for all purposes, one statutory definition of Whitsunday and Martinmas. We accordingly made a proposal to this effect in our Consultation Paper. We also suggested that the term days should be defined as 28 May and 28 November respectively, on the basis that consultees to the Memorandum had already responded favourably to these definitions for entry and removal purposes from leased property. On consultation we received overwhelming support for these proposals. Some in supporting the proposal, referred specifically to the confusion or uncertainty encountered in practice as to the correct definitions of these terms.

2.23 We therefore recommend that:

- (1) **The terms of Whitsunday and Martinmas should be defined as 28 May and 28 November respectively.**

(Paragraphs 2.1–2.22; clause 1(1)(a))

2.24 When reviewing the response we received on consultation it occurred to us that reference may be made, particularly in certain leases and deeds, simply to the phrase the ‘term days’ without further specification, although the date intended may

1. Proposition 15, para 2.24.

2. See para 1.8 above.

be indicated elsewhere in the deed. Given that any such reference without any specification or indication to the contrary is normally taken to mean the terms of Whitsunday and Martinmas, we take the view that it would be useful to clarify any possible doubts which may arise by defining the reference as meaning the specific dates which we recommend for Whitsunday and Martinmas—ie 28 May and 28 November—unless the context otherwise requires.

2.25 We therefore recommend that:

- (2) **The phrase the ‘term days’ should, unless the context otherwise requires, be taken to mean 28 May and 28 November.**

(Paragraph 2.24; clause 1(1)(c))

Part III The Quarter days of Candlemas and Lammas

Present law

3.1 The two Scottish quarter days other than Whitsunday and Martinmas are Candlemas and Lammas. These days have common law definitions. Candlemas (the feast of the purification of the Virgin Mary) falls on 2 February and Lammas (the feast of first fruits) falls on 1 August.¹ These quarter days are of significance as payment days for rent and other charges due under a lease, and may still be in use as entry or removal dates from land, particularly in relation to agricultural subjects. According to Rankine, Candlemas was in use as a date for payment of grain rent² and was the usual date of entry to gardens if they were not merely accessory to a house, but let as a fruit-growing subject, independent of, although let at the same time as, the house.³ There does not seem to be any doubt concerning the definition of these quarter days.

3.2 However it has been drawn to our attention by an experienced practitioner that these quarter days, when taken with Whitsunday and Martinmas (whether defined either as 15 May and 11 November respectively, or as we recommend in this Report, 28 May and 28 November respectively) do not provide four equal, or nearly equal, terms in the legal year. Tables indicating the length of the four terms in relation to these different definitions of Whitsunday and Martinmas are as follows:

LENGTH OF THE SCOTTISH QUARTER TERMS

A: DEFINITION OF WHITSUNDAY AS 15 MAY, AND MARTINMAS AS 11 NOVEMBER

				NO OF DAYS
2 February	(Candlemas)	—15 May	(Whitsunday)	—102
15 May	(Whitsunday)	—1 August	(Lammas)	— 78
1 August	(Lammas)	—11 November	(Martinmas)	—102
11 November	(Martinmas)	—2 February	(Candlemas)	— 83

B: DEFINITION OF WHITSUNDAY AS 28 MAY, AND MARTINMAS AS 28 NOVEMBER

2 February	(Candlemas)	—28 May	(Whitsunday)	—115
28 May	(Whitsunday)	—1 August	(Lammas)	— 65
1 August	(Lammas)	—28 November	(Martinmas)	—119
28 November	(Martinmas)	—2 February	(Candlemas)	— 66

3.3 Although parties to a lease may specify alternative dates for payment of rent, and entry to or removal from subjects of lease, it is our understanding that these four terms are still commonly in use in both commercial and agricultural leases. We also understand that having unequal terms can cause inconvenience to legal practitioners—for example, when apportioning rents.

3.4 For comparison purposes we examined the English quarter days. These days are Lady Day (25 March), Midsummer Day (24 June), Michaelmas Day (29 September) and Christmas Day (25 December).⁴ The comparison is not however helpful for this particular purpose, since these quarter days also do not provide four equal or nearly equal terms, as noted in the following Table:

1. Rankine, p 343; Bell, under 'Candlemas-Day' and 'Lammas-Day'.
2. Rankine, p 343, footnote 34.
3. Rankine, p 340.
4. Halsbury's *Laws of England* (Fourth Edn 1981) Vol 27, para 223.

LENGTH OF THE ENGLISH QUARTER TERMS

				NO OF DAYS
25 March	(Lady Day)	—24 June	(Midsummer Day)	—91
24 June	(Midsummer Day)	—29 September	(Michaelmas Day)	—97
29 September	(Michaelmas Day)	—25 December	(Christmas Day)	—87
25 December	(Christmas Day)	—25 March	(Lady Day)	—90

Consultation

3.5 Accordingly in our Consultation Paper we suggested¹ that if having unequal terms can cause inconvenience, then when recommending a statutory definition of Whitsunday and Martinmas the opportunity might also be taken to recommend a statutory definition of the Scottish quarter days as dates which, along with our suggested definitions of Whitsunday and Martinmas as 28 May and 28 November respectively, would give in the legal year four terms which are as nearly equal as possible. We proposed² therefore a definition of the quarter days of Candlemas and Lammas as 28 February and 28 August respectively, which would provide in the legal year four nearly equal terms—three terms of 92 days each, and one term of 89 days. A Table indicating these calculations is as follows:

LENGTH OF THE SCOTTISH QUARTER TERMS

DEFINITION OF TERM AND QUARTER DAYS AS 28 OF APPROPRIATE MONTH

				NO OF DAYS
28 February	(Candlemas)	—28 May	(Whitsunday)	—89
28 May	(Whitsunday)	—28 August	(Lammas)	—92
28 August	(Lammas)	—28 November	(Martinmas)	—92
28 November	(Martinmas)	—28 February	(Candlemas)	—92

3.6 The majority of consultees favoured this proposal, although the support for this was not so overwhelming as that received in relation to our proposal concerning a definition of the term days. A few commentators, referring to their interest in either agricultural or commercial leasing, stated that in their experience the quarter days are not widely used. Two academic commentators in particular were not in favour of any reform, partly since they felt that the quarter days are not so widely used as, and are of lesser importance than, the term days, and also since the present definition of the quarter days is clear. It was thought too that any inconvenience experienced by practitioners in apportioning rent by having unequal terms in the legal year was not a sufficient reason to justify changing the definition of the quarter days.

Recommendations

3.7 While we see the force of these arguments, on balance we are in agreement with the views of the majority of consultees, including the various other academic commentators, who supported our proposal. The reform would be useful, since although the quarter days may not be as widely used as the term days, references in existing leases and other deeds to the quarter days are still encountered and these days are still on occasion used in practice. It was put to us by those in favour of the reform that the present definitions of the quarter days were not widely known in practice and therefore any change in these dates would not be an unduly onerous burden on legal practitioners and others. The point was made too that these present definitions, when taken also with the definitions of the term days, are in fact illogical and confusing, bearing in mind that their purpose was to split the year into quarters. Finally, we think that the proposed definitions, when taken with our recommended definitions of Whitsunday and Martinmas, would be logical, simple and easy to remember.

1. Para 32.

2. Para 35.

3.8 Accordingly we recommend that:

- (3) The quarter days of Candlemas and Lammas should be defined as 28 February and 28 August respectively.**

(Paragraphs 3.1–3.7; clause 1(1)(b))

3.9 In leases and documents, reference is occasionally made simply to the phrase the ‘quarter days’, without further specification, although the dates intended may be indicated elsewhere in the deed. In practice such a reference, without further specification or any indication to the contrary, is usually taken to mean Candlemas, Whitsunday, Lammas and Martinmas¹—ie the traditional days which split the legal year into four nominal quarters. Where rent under a lease is to be paid in four instalments each year, these quarter days are often used as the payment dates. We take the view that it would be useful to clarify the position by defining any such reference to the phrase the ‘quarter days’ as meaning the specific dates which we recommend for the four terms referred to—ie 28 February, 28 May, 28 August and 28 November—unless the context otherwise requires.

3.10 We recommend that:

- (4) The phrase the ‘quarter days’ should, unless the context otherwise requires, be taken to mean 28 February, 28 May, 28 August and 28 November respectively.**

(Paragraph 3.9; clause 1(1)(d))

1. Ross and McKichan, *Drafting and Negotiating Commercial Leases in Scotland*, (1985) para 5.20.

Part IV Scope of the definitions recommended

Purpose of the definitions

4.1 We have already drawn attention¹ to the fact that certain of the traditional expressions used to denote a term or a quarter day are used also for purposes outwith a strictly legal context. This exercise however is restricted to recommending a statutory definition for legal purposes only. These expressions can occur in a variety of legal contexts—in enactments; under the common law; in leases, agreements and undertakings, whether constituted in writing or orally; and generally in any document, such as a notice, which is intended to have legal effect. Reference without further definition to the phrases the ‘term days’ and the ‘quarter days’ would most likely be encountered in a lease, though they might arise also in other legal contexts.

4.2 We recommend that:

- (5) **The definitions of Whitsunday, Martinmas, Candlemas, Lammas and of the phrases the ‘term days’ and ‘quarter days’, which we recommend, should apply to these expressions where used only for the purposes of any enactment or rule of law, any lease, agreement or undertaking, whether constituted in writing or orally, and generally any document intended to have legal effect.**

(Paragraph 4.1; clause 1(2), (3))

Contracting out of the recommended statutory definitions

Consultation 4.3 In our Consultation Paper we proposed² that Whitsunday and Martinmas should be defined respectively as 28 May and 28 November, and Candlemas and Lammas as 28 February and 28 August respectively, ‘in the absence of express stipulation to the contrary’. While some consultees expressed a view only on the specific dates proposed, others accepted the proposition as a whole, thus supporting the view that parties should be able to contract out of any statutory definition by expressly defining one of these expressions as another date.

4.4 On the other hand certain commentators, while in agreement with the specific dates proposed, were firmly against contracting out. For example one experienced legal practitioner took the view that if parties to a lease wished to use a specific date other than the one provided by statute, then they should be able to do so, but subject to the restriction that a traditional expression may not be used in relation to and as meaning that date. One landlord considered too that, to give full effect to our proposal and to avoid creating further confusion, contracting out of the statutory definition should not be permitted where a term or quarter day is used in a lease for rental purposes.

4.5 After careful consideration of the views expressed to us, we decided in favour of consistency in the definitions of the term and quarter days as the primary objective of any reform. It seems to us that this approach is a clear and simple one, and would be more effective in reducing the prevailing uncertainty and confusion over the correct definition of a term and quarter day. We therefore take the view that the traditional expressions for the term and quarter days, and the phrases the ‘term days’ and ‘quarter

1. See para 1.8 above.

2. Paras 29 and 35.

days', should simply be given the specific statutory meanings which we recommend in this Report.¹

Future conflict of dates 4.6 We do recognise however that, immediately following the commencement of any implementing legislation, there may well be instances where parties fail to take account of the statutory provisions and refer erroneously in a lease, agreement, undertaking or document to a traditional expression, or to one of the phrases the 'term days' or 'quarter days', and expressly specify that this means a date (or dates) other than that provided by statute. While we hope that there will be few such instances, such a situation could give rise to difficulties of interpretation. For example, if such reference is made to 'Whitsunday (15 May)', should the statutory definition of 'Whitsunday' prevail (ie 28 May) or, on the other hand, the date specified by the parties (ie 15 May)?

4.7 We feel that a practical approach should be taken to resolving any such conflict of dates. Having expressly incorporated a specific date in a deed, the parties will in all probability proceed to use that date in practice. We think therefore that for the purposes of interpreting the deed in question, the fairest and simplest solution would be to provide that the date specified by the parties shall have effect, and the reference to the traditional expression or to the phrase the 'term days' or 'quarter days' shall be disregarded.

4.8 Accordingly we recommend:

- (6) **Where there is in any lease or agreement entered into, or in any undertaking given, or in any document executed, following the commencement of any legislation implementing our recommended definitions, a reference to one of the traditional expressions of Whitsunday, Martinmas, Candlemas or Lammas, or to one of the phrases the 'term days' or 'quarter days', and a date other than the statutory one is specified for such reference, then for the purposes of interpreting the lease, agreement, undertaking or document in question the date specified should have effect and the reference should be disregarded.**

(Paragraphs 4.3–4.7; clause 1(7))

1. See para 2.23, Recommendation 1 and clause 1(1)(a) in the case of Whitsunday and Martinmas, para 2.25, Recommendation 2 and clause 1(1)(c) in the case of the 'term days', para 3.8, Recommendation 3 and clause 1(1)(b) in the case of Candlemas and Lammas, and para 3.10, Recommendation 4 and clause 1(1)(d) in the case of the 'quarter days'.

Part V Subsisting leases, agreements, undertakings and documents

5.1 We now deal with the effect of any legislation implementing our recommended definitions on references to one of the traditional expressions, or to one of the phrases the 'term days' or 'quarter days', in a lease, agreement, undertaking or document entered into or given before, and subsisting at, the date of commencement of the legislation.

Where specific date stipulated

5.2 The parties may have made a reference to a term or quarter day and expressly stipulated the specific date which is to apply. Where this is so, the parties' intentions have been clearly expressed. We therefore consider that in this situation any statutory definition should not apply to the reference in question, and that the specific date stipulated by the parties should continue to have effect following commencement of the statutory provision.

Where no date stipulated

5.3 On the other hand parties may have referred to a term or quarter day without specifying the date intended thereby. In our Consultation Paper we put forward our preliminary view,¹ that in order to clarify any doubts which may arise, the definitions we proposed should be given effect so as to apply, for purposes following the commencement of any implementing legislation, to such references.

Consultation 5.4 Most consultees agreed with this general approach, which was intended to introduce the recommended statutory definitions in as widespread a way as possible, while giving effect to the parties' intentions where clearly expressed. However we received various constructive comments on the transitional arrangements required in order to introduce any implementing legislation. The Law Society of Scotland considered on balance that the proposed definitions should simply be brought into effect on a given date, without any transitional arrangements being made, on the basis that such arrangements would be likely to cause confusion rather than clarity. Other commentators however saw a need for detailed transitional provisions. One landlord for example pointed out that any such legislation would, for major landlords at least, have a substantial impact on cash-flow and income if it did not take account of the loss of rental income which would be incurred by the postponement in existing leases of the rental payment dates (from, for example, 15 May to 28 May), which would in effect be made as a result of the introduction of the new statutory definitions.

5.5 Initially we were inclined to agree that specific provisions should be made to cater for, and regulate in a fair manner, the effect of any implementing legislation on parties' existing arrangements. However after careful consideration of the full consequences of following through such an approach, we came to the view that it would not be practicable to adopt such transitional arrangements. It seemed to us that this approach would require complex and detailed provisions, regarding for example in the case of a lease, not only compensation for the initial postponement of rental payment dates, but also compensation for the extension of the period of a lease by the postponement of the termination date, where that date is stated to be

1. Paras 36–40.

a term or quarter day. We think too that it would be difficult to foresee, and attempt to provide for, every conceivable situation in which existing arrangements might be adversely affected by such legislation.

5.6 Subject to the qualifications which we discuss in paragraphs 5.7–5.11 below, we therefore favour our preliminary view referred to earlier—namely that our recommended definitions should apply, for purposes following the commencement of any implementing legislation, to any reference to one of the traditional expressions, or to one of the phrases the ‘term days’ or ‘quarter days’, in a lease or agreement then subsisting, or an undertaking already given, or a document already executed, where the date or dates intended have not been specified.

Opting out of the statutory definitions by agreement

5.7 We gave some thought to cases which would be affected by the approach described in paragraph 5.6 above—where parties had, for example, already adopted in practice for the purposes of a lease, dates for the term and quarter days other than those which would be provided by the legislation. Application of the statutory dates to the lease, in lieu of those operated by the parties, might cause difficulty in some instances. One party may, for example, wish to make a suitable financial arrangement to take account of the initial change in rental payment dates, but may not be able to reach agreement on such an arrangement with the other party.

5.8 We feel that such potential difficulties may be overcome by the implementation of our Recommendation 11 in paragraph 6.4 below, namely that any legislative provision which gives a statutory definition of the term and quarter days should not come into force for a period of 12 months after the date of enactment. This 12 month period would give the parties (or, in the case of an undertaking, the persons having an interest) an opportunity to consider the effect of these provisions on their existing arrangements. Where the statutory dates would not coincide with the dates used in practice, and the parties or the persons having an interest do not wish the statutory dates to apply to and alter their practice, they could by way of an agreement stipulate the specific dates they prefer. Where this is done the statutory definitions would not, on their introduction at the end of the 12 month period mentioned, apply to the reference to a term or quarter day as the case may be.

5.9 Since the parties are of course free to make such agreements under the existing common law, we do not require to recommend any legislation to provide for this.

Summary application to the sheriff

5.10 It may be however that parties do not reach agreement on the interpretation of an unspecified reference to a term or quarter day, and there is a dispute as to whether the new statutory definition should apply to that reference or, on the other hand, the reference should be amended to specify that another date will apply. One party may, for example, wish to allow the statutory definition to apply to an existing lease, contrary to the wishes of the other party, so as to gain a short extension to the lease. To resolve these disputes, we consider that there should be an entitlement to make a summary application to the appropriate sheriff, within the 12 month period referred to earlier, for a declaration to the effect that he is satisfied that the date intended in the lease, agreement, undertaking or document in question was a specific date other than the one which we recommend as the statutory definition. Where the sheriff does not grant such a declaration, the statutory date would apply. We think that any person having an interest should be entitled to make a summary application. This would include for example in the case of a lease, a creditor who had taken possession of the subjects of let, and in the case of an undertaking, the person entitled to benefit from it.

5.11 If a summary application is submitted shortly before the expiry of the 12 month period in question, we consider that any legislative provisions implementing our recommended definitions should not apply to any such case until the application has been disposed of. Lastly, we take the view that the sheriff’s decision on any summary application should be final.

Recommendations

5.12 The following recommendations bring together our various conclusions on the foregoing matters:

- (7) **Subject to Recommendation 8 below, for purposes following the commencement of any implementing legislation the statutory definitions which we recommend should be given effect so as to apply to any reference in a lease, agreement or undertaking subsisting or in existence, or in any document which has been executed, to Whitsunday, Martinmas, Candlemas or Lammas, or to one of the phrases the ‘term days’ or ‘quarter days’, where the particular date or dates intended have not been specified.**

(Paragraphs 5.1–5.9; clause 1(4))

- (8) **Any legislation implementing Recommendation 7 above should not apply where a summary application has been made by a person having an interest to do so to the sheriff within the period of 12 months beginning with the date of enactment of any implementing legislation, and the sheriff has made a declaration that he is satisfied that the date intended in the lease, agreement, undertaking or document in question was a specific date other than the statutory date.**

(Paragraph 5.10; clause 1(5))

- (9) **The decision of the sheriff on any summary application referred to in Recommendation 8 above should be final.**

(Paragraph 5.11; clause 1(6))

- (10) **Any legislative provision implementing our recommended statutory definitions should not, on commencement at the end of the 12 month period following the date of enactment, (see Recommendation 11 below) apply to any lease, agreement, undertaking or document in relation to which a summary application is pending until the application has been disposed of.**

(Paragraph 5.11; clause 3(3))

Part VI Ancillary matters

Commencement of any implementing legislation

6.1 In our Consultation Paper we pointed out¹ that if our recommended definitions were implemented and the appropriate legislative provisions were brought into effect immediately on enactment, this might cause certain problems in relation to short leases entered into before that date. Such leases might refer to a traditional expression as the termination day of the lease, without expressly stipulating the specific date intended thereby. The duration of the lease might be radically affected on the introduction of the legislation. Any reference for example to 'Whitsunday' as the termination date of the lease, perhaps intended by the parties as 15 May, would be taken to be 28 May in terms of the statutory definition which we recommend. We therefore intended to recommend a period of delay following enactment before bringing the provisions into effect.

6.2 Consultees expressed agreement with this proposal, and in addition made some helpful comments. The Law Society of Scotland were in favour of our proposals so as to allow a breathing-space in which the profession would have time to advise their clients, landlord and tenant alike, regarding the effects of the legislation on matters such as rent reviews and periods of notice. One major landlord pointed out the scale of the adjustments which would be required in relation to some existing leases as a result of the change in dates, and recommended that the relevant statutory provisions should come into force at the end of a 12 month period following the date of enactment, so as to allow sufficient time to make the necessary adjustments to computer records, for purposes such as collecting rent.

6.3 For the various reasons given, we favour a period of delay following enactment of the legislation before the statutory definitions are brought into effect, and we are in agreement with the suggested period of 12 months.

6.4 We recommend that:

- (11) **Any legislative provision implementing our recommended definitions should not be brought into force until the end of a period of 12 months following the date of enactment.**

(Paragraphs 6.1–6.3; clause 3(2))

Saving provisions

Notice given before commencement

6.5 A notice may be given before the commencement date of any legislation implementing our recommended statutory definitions, which takes effect after that date, and which contains a reference to a traditional expression for a term or quarter day, or to a 'term day' or 'quarter day', without specification of the date intended. The reference may be either an express one or it may be implied, by referring to a clause in the lease which uses the expression.

6.6 In terms of Recommendation 8 in paragraph 5.12 above, the statutory definitions would not apply to such a reference where the notice has been given in pursuance of a declaration of the sheriff as to the date intended in a lease or deed.

1. Para 38.

6.7 However where a notice contains such a reference, and is given before the statutory definitions come into operation, but not in pursuance of a declaration referred to in paragraph 6.6 above, then that reference would, as the terms of Recommendation 7 in paragraph 5.12 above stand, fall within the application of the statutory definitions. This is so since these definitions would under Recommendation 7 apply, for purposes following commencement of the legislation, to any reference, without further specification, to a term or quarter day contained in a document which has been executed prior to commencement. Included in this category would be a notice which has been given. We consider that a saving provision should be made in the legislation for such notices.

6.8 We take this view since the giving of a notice is a significant act. It may for example result in the termination of a lease. A party may have served the notice against a specific date, either on the basis that the lease itself specified that date as the one intended by the reference to a term or quarter day, or alternatively on the understanding that a reference in the lease to a term or quarter day, without further specification, meant a date other than that provided by the statutory definition. For example, a notice may be given to terminate a lease, referring to the termination date simply as 'Whitsunday', on the basis that the lease contained a similar reference. Where both parties had taken this to mean 15 May, they would expect the lease to terminate on that day, and not on 28 May, being the statutory definition of Whitsunday. We therefore think that these notices should take effect and be enforceable, as if any legislation implementing our recommendations had not been passed.

6.9 We recommend that:

(12) In any legislation implementing our recommended statutory definitions, a saving provision should be made for any notice given (other than a notice given in accordance with a declaration of the sheriff specified in Recommendation 8 above) before the statutory definitions take effect which, in relation to any lease, agreement, undertaking or document contains a reference, either expressly or by implication, to Whitsunday, Martinmas, Candlemas or Lammass, or to the phrase 'term day' or 'quarter day', without further specification as to the date intended, so that any notice would have effect and be enforceable as if the legislation had not been enacted.

(Paragraphs 6.5–6.8; clause 2(1))

**Rights and obligations
enforceable before
commencement**

6.10 One consultee suggested to us that any implementing legislation should contain a saving provision for actions of sequestration for rent, and other actions involving payment of interest on overdue rent. We do not think however that such a provision is necessary. On implementation, our recommendations would in certain cases provide a new interpretation of a reference in an existing lease, but this would apply only for purposes arising after the commencement date of the legislation. The parties' rights under an existing lease would not therefore be affected in a retrospective manner. Any action on the basis of the parties' rights arising prior to commencement of the legislation, whether raised before or after the commencement date, would therefore be unaffected by the introduction of the legislation.

6.11 We do recognise however that in practice there may well be some doubt or confusion as to the actual effect of any legislation implementing our recommendations on existing leases, agreements, undertakings and documents—ie whether any rights and obligations arising thereunder, and enforceable before commencement of the legislation, are affected in a retrospective manner. We therefore feel that for the benefit of practitioners and others, and for the sake of clarity, it would be worthwhile expressly providing in any implementing legislation that any such rights or obligations are not affected in any way.

6.12 We therefore recommend that:

- (13) **In any legislation implementing our recommended statutory definitions, a saving provision should be made for any right accrued, or any obligation incurred, which is enforceable before the commencement date.**

(Paragraphs 6.10–6.11; clause 2(2))

Terminology

6.13 Although having some doubts about this himself as a legal historian, one consultee put to us the suggestion that in any reform the traditional expressions for the term and quarter days should be abolished, and in their place a modern terminology adopted, such as the First Quarter, the Second Quarter and so on. We did not consider this point in our Consultation Paper, and no consultee expressed to us dissatisfaction with the existing terminology. In practice these traditional expressions appear to be frequently used, and any party who wishes to do so can avoid referring to them by stipulating instead the specific dates desired. Also, we suspect that many of our consultees would favour the retention of these Scottish traditional expressions. Accordingly we make no recommendation for abolishing these traditional expressions.

Consequential repeal

6.14 We note that enactment of the foregoing recommendations will require the consequential repeal of the Removing Act 1693. This is provided for in the draft Bill annexed to this Report.

Draft legislation

6.15 A draft Bill giving effect to the foregoing recommendations is annexed to this Report.¹

1. See Appendix A.

Part VII Summary of recommendations

Whitsunday and Martinmas

- (1) The terms of Whitsunday and Martinmas should be defined as 28 May and 28 November respectively.
(Paragraphs 2.1–2.23; clause 1(1)(a))

The phrase the ‘term days’

- (2) The phrase the ‘term days’ should, unless the context otherwise requires, be taken to mean 28 May and 28 November.
(Paragraphs 2.24–2.25; clause 1(1)(c))

Candlemas and Lammas

- (3) The quarter days of Candlemas and Lammas should be defined as 28 February and 28 August respectively.
(Paragraphs 3.1–3.8; clause 1(1)(b))

The phrase the ‘quarter days’

- (4) The phrase the ‘quarter days’ should, unless the context otherwise requires, be taken to mean 28 February, 28 May, 28 August and 28 November respectively.
(Paragraphs 3.9–3.10; clause 1(1)(d))

Purpose of the definitions

- (5) The definitions of Whitsunday, Martinmas, Candlemas, Lammas and of the phrases the ‘term days’ and ‘quarter days’, which we recommend, should apply to these expressions where used only for the purposes of any enactment or rule of law, any lease, agreement or undertaking, whether constituted in writing or orally, and generally any document intended to have legal effect.
(Paragraphs 4.1–4.2; clause 1(2), (3))

Future conflict of dates

- (6) Where there is in any lease or agreement entered into, or in any undertaking given, or in any document executed, following the commencement of any legislation implementing our recommended definitions, a reference to one of the traditional expressions of Whitsunday, Martinmas, Candlemas or Lammas or to one of the phrases the ‘term days’ or ‘quarter days’, and a date other than the statutory one is specified for such reference, then for the purposes of interpreting the lease,

agreement, undertaking or document in question the date specified should have effect and the reference should be disregarded.

(Paragraphs 4.3–4.8; clause 1(7))

Subsisting leases, agreements, undertakings and documents

- (7) Subject to Recommendation 8 below, for purposes following the commencement of any implementing legislation the statutory definitions which we recommend should be given effect so as to apply to any reference in a lease, agreement or undertaking subsisting or in existence, or in any document which has been executed, to Whitsunday, Martinmas, Candlemas and Lammas, or to one of the phrases the ‘term days’ or ‘quarter days’, where the particular date or dates intended have not been specified.

(Paragraphs 5.1–5.9, 5.12; clause 1(4))

- (8) Any legislation implementing Recommendation 7 above should not apply where a summary application has been made by a person having an interest to do so to the sheriff within a period of 12 months beginning with the date of enactment of any implementing legislation, and the sheriff has made a declaration that he is satisfied that the date intended in the lease, agreement, undertaking or document in question was a specific date other than the statutory date.

(Paragraphs 5.10, 5.12; clause 1(5))

- (9) The decision of the sheriff on any summary application referred to in Recommendation 8 above should be final.

(Paragraphs 5.11, 5.12; clause 1(6))

- (10) Any legislative provision implementing our recommended statutory definitions should not, on commencement at the end of the 12 month period following the date of enactment, (see Recommendation 11 below) apply to any lease, agreement, undertaking or document in relation to which a summary application is pending until the application has been disposed of.

(Paragraphs 5.11, 5.12; clause 3(3))

Commencement of legislation

- (11) Any legislative provision implementing our recommended definitions should not be brought into force until the end of a period of 12 months following the date of enactment.

(Paragraphs 6.1–6.4; clause 3(2))

Saving provisions

- (12) In any legislation implementing our recommended statutory definitions, a saving provision should be made for any notice given (other than a notice given in accordance with a declaration of the sheriff specified in Recommendation 8 above) before the statutory definitions take effect which, in relation to any lease, agreement, undertaking or document contains a reference, either expressly or by implication, to Whitsunday, Martinmas, Candlemas or Lammas, or to the phrase ‘term day’ or ‘quarter day’, without further specification as to the date intended, so that any such notice would have effect and be enforceable as if the legislation had not been enacted.

(Paragraphs 6.5–6.9; clause 2(1))

- (13) In any legislation implementing our recommended statutory definitions, a saving provision should be made for any right accrued, or any obligation incurred, which is enforceable before the commencement date.

(Paragraphs 6.10–6.12; clause 2(2))

Appendix A

TERM AND QUARTER DAYS (SCOTLAND) BILL

ARRANGEMENT OF CLAUSES

Clause

1. Whitsunday, Martinmas, Candlemas and Lammas.
2. Saving provisions and repeal.
3. Short title, commencement and extent.

DRAFT
OF A
BILL
TO

AD 1987

Regulate, in relation to Scotland, the dates of Whitsunday, Martinmas, Candlemas and Lammas; and for connected purposes.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Term and Quarter Days (Scotland) Bill

Whitsunday, Martinmas, Candlemas and Lammas.

- 1.—(1) For the purposes mentioned in subsection (2) below—
 - (a) Whitsunday and Martinmas mean 28th May and 28th November respectively;
 - (b) Candlemas and Lammas mean 28th February and 28th August respectively;
 - (c) the term days shall, unless the context otherwise requires, be taken to fall on 28th May and 28th November; and
 - (d) the quarter days shall, unless the context otherwise requires, be taken to fall on 28th February, 28th May, 28th August and 28th November.
- (2) The purposes referred to in subsection (1) above are the purposes of—
 - (a) any enactment or rule of law;
 - (b) any lease, agreement or undertaking which is entered into or given or any document which is executed, after this subsection comes into force.
- (3) In this Act—
 - (a) any reference to a lease, agreement or undertaking is a reference to a lease, agreement or undertaking, whether written or oral;
 - (b) any reference to a document is a reference to a document intended to have legal effect.
- (4) Subject to subsection (5) below, where in a lease, agreement or undertaking which is subsisting on, or in a document which has been executed before, the day when this subsection comes into force there is a reference to any of the following—
 - (a) Whitsunday, Martinmas, Candlemas or Lammas; or
 - (b) a term or quarter day,without further specification, the date applicable to the reference shall be the date prescribed therefor in paragraph (a), (b), (c) or (d) of subsection (1) above.
- (5) Subsection (4) above shall not apply if the sheriff (on a summary application made within the period of 12 months beginning with the date of the passing of this Act by a person having an interest) on being satisfied that the date intended in the lease, agreement, undertaking or document was a specific date other than the date so prescribed, makes a declaration accordingly.
- (6) The decision of the sheriff on a summary application under subsection (5) above shall be final.
- (7) Where in a lease, agreement or undertaking which is entered into or given, or in a document which is executed, after this subsection comes into force there is a reference to any of the matters mentioned in subsection (4)(a) or (b) above and a date is specified therefor which is a date other than the date prescribed therefor in paragraph (a), (b), (c) or (d) of subsection (1) above, the date so specified shall have effect and the reference shall be disregarded.

EXPLANATORY NOTES

Clause 1 implements Recommendations 1–9.

Subsection (1) provides, for certain purposes, definitions concerning the term and quarter days. Paragraph *(a)* implements Recommendation 1 and defines Whitsunday and Martinmas (see paragraphs 2.1–2.23). Paragraph *(b)* implements Recommendation 3 and defines Candlemas and Lammass (see paragraphs 3.1–3.8). Paragraph *(c)* implements Recommendation 2 and defines the phrase the “term days” (see paragraphs 2.24–2.25). Paragraph *(d)* implements Recommendation 4 and defines the phrase the “quarter days” (see paragraphs 3.9–3.10).

Subsections (2) and *(3)* implement Recommendation 5 and in effect apply the definitions in subsection *(1)* for legal purposes only (see paragraphs 4.1–4.2).

Subsection (4) implements Recommendation 7 and, subject to subsection *(5)*, applies the definitions prescribed in subsection *(1)* to leases, agreements, undertakings and documents subsisting on, or as the case may be executed before, the day when the subsection comes into force, where the date intended by a reference to a term and quarter day has not been specified (see paragraphs 5.1–5.6, 5.12). The definitions prescribed do not therefore apply where the specific date intended has been stipulated, either along with the reference itself (see paragraph 5.2) or in a subsequent agreement (see paragraphs 5.7–5.9).

Subsection (5) implements Recommendation 8 and provides that a summary application may be made to the sheriff for a declaration that the date intended by the reference to a term or quarter day was a specific date other than that prescribed in subsection *(1)*, and if such a declaration is obtained, subsection *(4)* shall not apply (see paragraphs 5.10, 5.12).

Subsection (6) implements Recommendation 9 (see paragraphs 5.11, 5.12).

Subsection (7) implements Recommendation 6 and makes provision for the situation where, in a lease, agreement, undertaking or document entered into or made after the subsection comes into force, there is a reference to a term or quarter day along with the stipulation of a date other than that prescribed in subsection *(1)*. In such a situation, which would give rise to a conflict between the prescribed definition of the term or quarter day in question and the other date stipulated, it is provided that the specific date stipulated will prevail (see paragraphs 4.3–4.8).

Term and Quarter Days (Scotland) Bill

Saving provisions
and repeal.

2.—(1) Any notice given in relation to any lease, agreement, undertaking or document before this section comes into force (other than a notice given in accordance with a declaration of the sheriff under section 1(5) of this Act) which contains a reference (expressly or by implication) to Whitsunday, Martinmas, Candlemas or Lammas, or to a term day or quarter day, without further specification shall have effect and be enforceable as if this Act had not been passed.

(2) Nothing in this Act shall affect—

- (a) any right accrued; or
- (b) any obligation incurred,

which is enforceable before this section comes into force.

(3) The Removing Act 1693 is hereby repealed.

Short title com-
mencement and
extent.

3.—(1) This Act may be cited as the Term and Quarter Days (Scotland) Act 1987.

(2) This Act (except section 1(5) and (6) and this section) shall come into force at the end of the period of 12 months beginning with the date on which it is passed.

(3) This Act (except section 1(5) and (6) and this section) shall not apply to a lease, agreement, undertaking or document in relation to which a summary application under section 1(5) of this Act is pending until the application has been disposed of.

(4) This Act extends to Scotland only.

EXPLANATORY NOTES

Clause 2 implements Recommendations 12 and 13 and makes a repeal consequential to the provisions of the Bill.

Subsection (1) implements Recommendation 12 and saves from the provisions of the Bill any notice given before the definitions prescribed in clause 1(1) come into force. An exception however is made for a notice given in pursuance of a declaration of the sheriff under clause 1(5). (See paragraphs 6.5–6.9).

Subsection (2) implements Recommendation 13 and makes an express saving provision for any right accrued, or any obligation incurred, which is enforceable before the clause comes into force (see paragraphs 6.10–6.12).

Subsection (3) repeals the Removing Act 1693 as a consequence of the definition of Whitsunday prescribed in clause 1(1)(a) (see paragraphs 2.1, 2.23 and 6.14).

Clause 3 implements Recommendations 10 and 11.

Subsection (2) implements Recommendation 11 and brings the provisions of the Bill into force at the end of the 12 month period beginning with the date on which it is passed, with the exception of clause 1(5) and (6) which concern a summary application to the sheriff. These subsections come into force on the date on which the Bill is passed. (See paragraphs 5.10, 6.1–6.4).

Subsection (3) implements Recommendation 10 and is concerned with the situation in which a summary application made under clause 1(5) has not been disposed of within the 12 month period following the date on which the Bill is passed. As the definitions prescribed in clause 1(1) come into effect at the end of this 12 month period, it is provided that they shall not apply to the lease, agreement, undertaking or document in question until the application has been disposed of (see paragraphs 5.11, 5.12).

APPENDIX B

List of those who submitted written comments on the Consultation Paper.

(Note: in the case of some of the organisations listed below the views which were expressed were those of individuals, or groups of individuals, within the organisation in question, and were not necessarily the views of the organisation itself.)

R Black
J A H Butters
R C Connal
Crofters Commission
Department of Agriculture and Fisheries for Scotland
Faculty of Advocates
G Gretton
Law Society of Scotland
National Farmers' Union for Scotland
J J Robertson
Scottish Development Agency
Scottish Landowners' Federation
Sheriffs' Association
Society of Directors of Administration
Society of Writers to HM Signet
University of Aberdeen, Faculty of Law
A S Weatherhead