

SCOTTISH LAW COMMISSION
THE SCOTTISH TERM AND QUARTER DAYS:
A STATUTORY DEFINITION

CONSULTATION PAPER

This Consultation Paper is published for comment and criticism and does not represent the final views of the Scottish Law Commission.

The Commission would be grateful if comments on this Consultation Paper were submitted by 10 October 1986. All correspondence should be addressed to:-

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Note: In writing its Report with recommendations for reform, the Commission may find it helpful to refer to and attribute comments submitted in respect of this Consultation Paper. Any requests from respondents to treat all, or part, of their replies in confidence will, of course, be respected, but if no request for confidentiality is made, the Commission will assume that comments on the Consultation Paper can be used in this way.

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THE SCOTTISH TERM AND QUARTER DAYS:
A STATUTORY DEFINITION

INTRODUCTION

1. We have 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."

Significance of Term and Quarter Days

2. A term day, and to a lesser extent a quarter day, can be referred to in a lease of agricultural or non-agricultural subjects as the day upon which the tenant takes entry to or removes from the subjects leased, or is obliged to make payment of his rent to the landlord (although other days in the year may be selected for any of these purposes by the parties to the lease).

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

4. Various statutes have also 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. 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. In the Appendix to this Consultation Paper we list various statutes which contain a reference to a term or quarter day, and specify the particular day referred to. This list, which may not be exhaustive of such statutory references, indicates the different contexts in which these days have been used. Some of these references are however of little present day significance.

5. 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, and more commonly referred to now as Pentecost Sunday. Our proposals are not intended to affect the use of, and the method of calculation of, these days for such other purposes.

6. There is what is often referred to as an established common law definition 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 possible for parties to a lease to stipulate, either expressly or impliedly, that the term days have a customary meaning. 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, the authors of text-books on agricultural leases point out that it is desirable that parties to a lease should specify what date is intended by any reference to Whitsunday or Martinmas.¹

7. 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 gives 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 provide four equal, or nearly equal, terms in the legal year.

8. In this Consultation Paper we accordingly examine the background and present position both at common law and in terms of statute in relation to (first) the term days of Whitsunday and Martinmas and (second) the quarter days of Candlemas and Lammas. In each case we suggest a statutory definition. We then consider the giving of retrospective effect to the proposed definitions. Finally, we annex a summary of the Questions raised in this Paper on which we invite comment.

THE TERM DAYS OF WHITSUNDAY AND MARTINMAS

9. Whitsunday was at one time regarded as a moveable term day.² 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.³ 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.⁴ This definition of Whitsunday as 15 May was later extended for all purposes by an Act in 1693.⁵

10. Martinmas, the mass or feast of St Martin, on the other hand, has always been regarded at common law as falling on 11 November.⁶ In the 1690 Act already mentioned, the "winter term" was simply defined as "Martinmas".

11. It seems however that following the Calendar (New Style) Act 1750⁷, 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 arose under the Gregorian calendar on the day which would have been 3 September under the Julian calendar. 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.⁸ However, in practice, according to Hunter, "by local custom, old Whitsunday (26th May) and old Martinmas (22nd November) are still in use, or were so, relative to lands and dwellinghouses let since 1752".⁹ 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 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."¹⁰

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 14th 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.

12. The existence of local customs in Scotland concerning the definition of the term days was considered by the Court of Session in the case of Hunter v. Barron's Trs. in 1886.¹¹ 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.¹² 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 judgement, 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.¹³ 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."¹⁴

13. 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 also apply in relation to the common law definition of Martinmas as 11 November.

14. Our review of the law concerning Whitsunday and Martinmas now leads us to consider in turn the various statutory definitions of these term days made 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

15. Section 4 of the Removal Terms (Scotland) Act 1886 ("the 1886 Act") provides that where under any lease the term of entry to, or removal from, a house¹⁵ 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.

16. Rankine explains¹⁶ 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 1752.¹⁷ 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.

17. Section 37 of the Sheriff Courts (Scotland) Act 1907 ("the 1907 Act") applies to houses let with or without land attached not exceeding 2 acres in extent, as also to mills, fishings, shootings and all other heritable subjects except land exceeding 2 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

18. Section 93(1) of the Agricultural Holdings (Scotland) Act 1949 ("the 1949 Act") 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.¹⁸ 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.

19. 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. Whyte¹⁹, Sheriff Kidd 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. Gibson²⁰ 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 is so used without further specification.

20. 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

21. 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."

Our Consultation on Recovery of Possession of Heritable Property

22. In January 1984 we published our Consultative Memorandum No. 59 on Recovery of Possession of Heritable Property ("the Memorandum"). Consideration in the Memorandum was given to the provisions relating to removings contained in the 1886 Act, the 1907 Act and the 1949 Act.

23. 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.²¹ This proposition was accepted by consultees. We suggested in the Memorandum²² 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.

24. In the Memorandum various other proposals were made with a view to simplifying the procedures involved in termination of leases. Taken together, these proposals applied to all leases of non-agricultural subjects (except these not capable of being continued in force by tacit relocation since a notice is not required to terminate such leases). Consultees were generally in favour of these proposals and, specifically, agreed that implementation thereof would overtake and involve the repeal of section 37 of the 1907 Act (and also sections 34-36, 38 and 38A of that Act).²³ It may also be the case that such a rationalisation of the law and the introduction of new simplified procedures would also require the repeal of the 1886 Act.

25. Regarding agricultural leases, we considered in the Memorandum the difficulties outlined in paragraph 19 above in relation to the definitions of Whitsunday and Martinmas contained in section 93(1) of the 1949 Act. We 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.²⁴ 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

26. 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 22 to 25 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.

27. However, as indicated in the Introduction to this Paper, the term days of Whitsunday and Martinmas are used in law for purposes other than entry to and removal from leased property. 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 seems to us 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.

28. It therefore seems desirable to provide, for all purposes, one statutory definition of Whitsunday and Martinmas. We think however that parties to a lease, a deed or an agreement should, as at present, be entitled to refer therein to a term day and expressly stipulate that by this they intend a specific date other than the statutory date. We take the view therefore that the statutory definition should apply where these terms are referred to, in whatever circumstances, without express stipulation of the date intended thereby. It seems to us that such a statutory definition would clarify the law in relation to these term days. Any reference to a term day would have a clear meaning, either as expressly provided for, or as defined by statute. This would achieve a situation in which far fewer mistakes would be made in practice - for example, as to the date of entry to heritable property, the removal date from leased property, and the date against which to serve a notice to quit.

29. Regarding a specific definition, consultees to the Memorandum have already responded favourably to our suggestion that the term days should be defined as 28 May and 28 November

respectively for entry and removal purposes from leased property. On this basis, we therefore propose that these dates should be applied to all circumstances in which a reference is made to Whitsunday or Martinmas, and there is no express stipulation to the contrary.

1. We invite views as to whether, for all purposes in law, the terms of Whitsunday and Martinmas should, in the absence of express stipulation to the contrary, be 28 May and 28 November respectively.

THE QUARTER DAYS OF CANDLEMAS AND LAMMAS

30. The Scottish quarter days are Candlemas, 2 February (the feast of the purification of the Virgin Mary) and Lammas, 1 August (the feast of first fruits). 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 rent²⁵ 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.²⁶ There does not seem to be any doubt concerning the definition of these quarter days.²⁷

31. However it has been drawn to our attention that these quarter days, when taken with the term days of Whitsunday and Martinmas (defined either as 15 May and 11 November respectively, or as we suggest in this Paper, 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

				<u>No. of Days</u>
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

32. 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. If this indeed is the case, 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 in the absence of express stipulation to the contrary, would give in the legal year four terms which are as nearly equal as possible.

33. A comparison in this respect with the English quarter days is not particularly helpful. The English quarter days are Lady Day (25 March), Midsummer Day (24 June), Michaelmas Day (29 September) and Christmas Day (25 December).²⁸ These quarter days do not provide four equal, or nearly equal terms, as noted in the following Table:-

LENGTH OF THE ENGLISH QUARTER TERMS

		<u>No. of Days</u>
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

34. To define the quarter days of Candlemas and Lammas as 28 February and 28 August respectively 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

		<u>No. of Days</u>
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

35. As in the case of Whitsunday and Martinmas, we think that the parties to a lease, a deed or an agreement should, as at present, be entitled to refer therein to a quarter day and expressly stipulate that a specific date other than the statutory one is intended.

2. We invite views as to whether, for all purposes in law, the quarter days of Candlemas and Lammas should, in the absence of express stipulation to the contrary, be 28 February and 28 August respectively.

RETROSPECTIVE EFFECT OF THE STATUTORY DEFINITIONS

36. Lastly, there arises for consideration the question whether any statutory provisions which implement our suggested definitions should be given limited retrospective effect so as to apply, for purposes following the commencement of the legislation, to any term or quarter day referred to without express stipulation of the date intended thereby in a lease, a deed or an agreement then in force or in existence. The definitions should, of course, be applied in this way in relation to such references contained in earlier statutes. Any such legislation would not therefore affect any day which occurred before the commencement date.

37. Regarding leases, deeds and agreements, we think that there must be many cases which contain a reference to the term or quarter days without specifying the precise date intended thereby. Regarding Whitsunday and Martinmas, in such cases the parties have not expressed their intention in a clear and unmistakable manner. As pointed out in the course of this Paper, uncertainty and confusion exist in relation to these terms as to the applicable or correct date. This results in mistakes being made in practice. If left unaltered by the proposed statutory definition, this situation could continue for many years to come, in relation to such references in agreements, in long leases and in leases continued on tacit relocation. Accordingly, for the purposes of clarification, we take the view that limited retrospective effect should be given to the proposed statutory definition of Whitsunday and Martinmas, so that it applies, for purposes following the commencement of the legislation, to any reference to the term days in a lease, a deed or an agreement then in existence which does not expressly stipulate the date intended thereby.

38. To be borne in mind however are any possible difficulties which may arise as a result of this proposal, in relation to

short leases which had been entered into before the commencement of any implementing legislation. Such leases might, by use of a term day without express stipulation of the date intended thereby, be radically affected in duration by the introduction of such legislation. We think that such cases would be adequately protected if the legislation did not come into effect until a period of, say, 6 months following the Royal Assent. If our proposals are accepted, we would therefore intend to make a recommendation to this effect.

39. Regarding the quarter days in such cases, there does exist a clear common law definition of these days. But it may well be that, in referring simply to Candlemas and Lammas, the parties have just used terms which have a fixed definition under existing law. These parties may not therefore have applied their minds to specifying particular dates, or different dates. Moreover, if such references to the quarter days were not in fact given the same retrospective effect we suggest in relation to the term days, this would result in certain anomalies. For example, in relation to a lease which referred simply to all the term and quarter days, the proposed statutory definitions would change two dates only, namely the term days - this seems inconsistent and may result in confusion; and the benefit of obtaining for such cases four terms as nearly equal as possible would be lost. Accordingly, in the interests of convenience and uniformity, we favour retrospective effect being given to our proposed definition of Candlemas and Lammas in the same way as in relation to the term days.

40. We are aware that such a recommendation, if implemented, would cause some inconvenience to those such as legal practitioners and estate factors, who in some instances may have to make necessary adjustments - for example, to payment dates for rent. Such adjustments would only, of course, have to be made initially, and this inconvenience has to be weighed against the benefits of achieving certainty and consistency regarding the

definition of the term and quarter days. At present therefore we incline to the view that any such temporary inconvenience caused in this respect would be acceptable in order to achieve a desirable clarification of the law in this area.

3. Do consultees agree that any enactment of the proposed statutory definitions of Whitsunday and Martinmas as 28 May and 28 November respectively and Candlemas and Lammas as 28 February and 28 November respectively for all purposes in law should be given limited retrospective effect so as to apply, for purposes following the commencement of the legislation, to any reference to these days in a lease, deed or agreement then in existence which does not expressly stipulate the date intended thereby?

SUMMARY OF QUESTIONS FOR CONSIDERATION

41. Note Attention is drawn to the notice on the front of the Paper concerning confidentiality of comments. If no request for confidentiality is made, we shall assume that comments submitted in response to this consultation may be referred to or attributed in our subsequent report.

1. We invite views as to whether, for all purposes in law, the terms of Whitsunday and Martinmas should, in the absence of express stipulation to the contrary, be 28 May and 28 November respectively.

(Paras. 26-29)

2. We invite views as to whether, for all purposes in law, the quarter days of Candlemas and Larmas should, in the absence of express stipulation to the contrary, be 28 February and 28 August respectively.

(Paras. 30-35)

3. Do consultees agree that any enactment of the proposed statutory definitions of Whitsunday and Martinmas as 28 May and 28 November respectively and Candlemas and Larmas as 28 February and 28 November respectively for all purposes in law should be given limited retrospective effect so as to apply, for purposes following the commencement of the legislation, to any reference to these days in a lease, deed or agreement then in existence which does not expressly stipulate the date intended thereby?

(Paras. 36-40)

NOTES TO THE PAPER

1. Connell, The Agricultural Holdings (Scotland) Acts (6th edn. 1970) at p.20 and Gill, The Law of Agricultural Holdings in Scotland (1982) at para. 149.
2. Bell, Dictionary and Digest of the Law of Scotland (7th edn. 1889) under "Whitsunday".
3. Erskine, Institute of the Law of Scotland, (1871 edn.) Vol. I, Book II, tit. VI, para. 46.
4. 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.7c.38)) 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 ofttimes 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 fourty days preceding the same."
5. Act of William and Mary ("Act anent the Term of Whitsunday") 1693, cap. 24 12 mo Edn. (cap. 40, Record V Edn.) which (as repealed in part by the Statute Law Revision (Scotland) Act 1964 (c.80)) reads:-

"Our Sovereigne 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 comeing in place of the former terme of Whitsunday to all effects whatsoever as well as to removeings."
6. Rankine, The Law of Leases in Scotland (3rd edn. 1916) (cited as "Rankine") at p.341; Bell, op. cit., under "Martinmas".
7. 24 Geo. 2 c.23.
8. Ibid, s.1.
9. Hunter, Law of Landlord and Tenant (3rd edn. 1860) Vol II at p.40-41.
10. Rankine, at p.341.
11. (1886) 13R. 883.

NOTES (Contd)

12. 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."
13. Ibid., at p.890.
14. Ibid., at p.891.
15. "House" is widely defined in s.1 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.
16. Rankine, at p. 562.
17. The Scottish National Dictionary, under "Whitsunday".
18. Connell, op. cit., p.20, Gill, op. cit., para. 149. See also Hunter v. Barron's Trs., (1886) 13R. 883.
19. 1968 S.L.T. 157 at 160.
20. 1979 S.L.T. (Land Ct.) 12.
21. Proposition 14, para. 2.22.
22. At para. 2.22.
23. Proposition 53, para. 8.3.
24. Proposition 15, para. 2.24.
25. Rankine, p.343.
26. Rankine, p.340.
27. Rankine, p. 343; Bell, op. cit., under "Candlemas-Day" and "Lammas-Day".
28. Halsbury's Laws of England (4th edn. 1981) Vol. 27, para. 223.

APPENDIX

STATUTORY PROVISIONS MAKING REFERENCE TO
A TERM OR QUARTER DAY

<u>Statutory Provision</u>	<u>Term or Quarter Day Referred To</u>
1. Entail Improvement Act 1770 (c.51) - ss. 1, 10, 28. s.12.	Whitsunday Martinmas
2. Thirlage Act 1799 (c.55) - s.7.	Candlemas
3. Registration of Leases (Scotland) Act 1857 (c.26)- Schedule (B), Form of Bond and Assignation in Security.	Whitsunday and Martinmas
4. Glebe Lands (Scotland) Act 1866 (c.71) - s.3.	Martinmas
5. Titles to Land Consolidation (Scotland) Act 1868 (c.101) - Schedule (FF) No. 1 - Form of a Bond and Disposition in Security.	Whitsunday and Martinmas
6. Conveyancing (Scotland) Act 1874 (c.94) - s.28.	Whitsunday and Martinmas
7. Crofters Holdings (Scotland) Act 1886 (c.29) - ss.6 & 7.	Whitsunday and Martinmas
8. Sheriff Courts (Scotland) Act 1907 (c.51) - s.37.	Whitsunday and Martinmas
9. Church of Scotland (Property and Endowments) Act 1925 (c.33) - s.8.	Candlemas and Lammas
ss.8, 12, 14, 15, 31, 35.	Whitsunday and Martinmas
10. Small Landholders and Agricultural Holdings (Scotland) Act 1931 (c.44) - s.22.	Whitsunday and Martinmas
11. Hill Farming Act 1946 (c.73) - ss.28 and 30.	Whitsunday and Martinmas
12. The Agricultural Holdings (Scotland) Act 1949 (c.75) - s.93 (Definition section for the purposes of the Act).	Whitsunday and Martinmas

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| 13. Long Leases (Scotland) Act
1954 (c.49) - s.15. | Whitsunday |
| 14. Crofters (Scotland) Act 1955
(c.21) - s.37(1)
(Definition section for the
purpose of the Act). | Whitsunday and Martinmas |
| 15. Land Tenure Reform (Scotland)
Act 1974 (c.38) - s.4. | Whitsunday and Martinmas |