

Leases (Automatic Continuation etc.) (Scotland) Bill

[CONSULTATION DRAFT DECEMBER 2021]

CONTENTS

Section

PART 1

LEASES TO WHICH THIS ACT APPLIES

- 1 Exclusion of certain residential and agricultural leases

PART 2

AUTOMATIC CONTINUATION OF LEASE BEYOND TERMINATION DATE

Circumstances in which lease continues or terminates

- 2 Automatic continuation of lease
3 Termination of lease by notice or consensus
4 Termination in accordance with term of lease
5 Leases which terminate automatically
6 Automatic continuation of lease on basis of parties' behaviour after termination date
7 Application of section 6 to leases with multiple landlords or tenants

Effect of automatic continuation

- 8 Period and effect of automatic continuation of lease

Notice to prevent automatic continuation

- 9 Notice from the landlord: notice to quit
10 Effect of error in termination date in notice to quit
11 Notice from the tenant: notice of intention to quit
12 When notice is to be given
13 How written notice is to be delivered
14 Delivery of notice by sheriff officer
15 When written notice is taken to be received
16 Notice where there are multiple landlords or tenants
17 Variation of notice requirements
18 Withdrawal of notice
19 Notice unaffected by change of landlord or tenant

Head leases and sub-leases

- 20 Termination of sub-lease
21 Automatic continuation of head lease and sub-lease
22 Information to be given by tenant to sub-tenant

Cautionary obligations

- 23 Effect of continuation of lease on caution for obligations under lease

Definitions

- 24 Interpretation of this Part

Consequential provision

- 25 Formalities for exclusion of automatic continuation or variation of notice requirements
26 Disapplication of common law rule of tacit relocation and other rules relating to the termination of leases

PART 3

MISCELLANEOUS PROVISION RELATING TO START, END OR LENGTH OF LEASE

Default duration and date of entry

- 27 Duration of lease and date of entry in absence of agreement

Documents leading to termination of lease

- 28 Address in United Kingdom for termination documents
29 Provision of address in United Kingdom
30 Effect of failure to provide United Kingdom address
31 Giving of termination document after change or death of landlord or tenant

Irritancy notices

- 32 Service of irritancy notice and copies to be given to heritable creditors

Apportionment of rent

- 33 Repayment of rent and other payments relating to period after lease ends

PART 4

FINAL PROVISIONS

- 34 Meaning of “lease”
35 Consequential, transitional and saving provision
36 Commencement
37 Short title

Schedule— Consequential, transitional and saving provision

Part 1—Modification and disapplication of enactments

Part 2—Transitional and saving provision

Leases (Automatic Continuation etc.) (Scotland) Bill

[CONSULTATION DRAFT DECEMBER 2021]

An Act of the Scottish Parliament to make provision about the circumstances in which certain leases continue or end on their termination dates; to make provision about other matters relating to the beginning, length or ending of those leases; and for connected purposes.

PART 1

LEASES TO WHICH THIS ACT APPLIES

1 Exclusion of certain residential and agricultural leases

- (1) This Act applies to a lease which is not one (or more than one) of the following—
 - (a) a residential lease,
 - (b) an agricultural lease,
 - (c) a lease of—
 - (i) a croft,
 - (ii) a small landholding, or
 - (iii) an allotment.
- (2) In subsection (1)(a), “residential lease” means a lease which gives rise to—
 - (a) a private residential tenancy within the meaning of the Private Housing (Tenancies) (Scotland) Act 2016,
 - (b) a Scottish secure tenancy within the meaning of the Housing (Scotland) Act 2001,
 - (c) a short Scottish secure tenancy within the meaning of that Act,
 - (d) an assured tenancy (including a short assured tenancy) within the meaning of Part 2 of the Housing (Scotland) Act 1988, or
 - (e) a regulated tenancy within the meaning of the Rent (Scotland) Act 1984.
- (3) In subsection (1)(b), “agricultural lease” means a lease—
 - (a) to which the Agricultural Holdings (Scotland) Act 1991 applies, or
 - (b) which gives rise to—
 - (i) a short limited duration tenancy within the meaning of section 93 of the Agricultural Holdings (Scotland) Act 2003,
 - (ii) a limited duration tenancy within the meaning of that section,
 - (iii) a modern limited duration tenancy within the meaning of that section,
 - (iv) a repairing tenancy within the meaning of that section, or

- (v) a tenancy to which section 3 of the Agricultural Holdings (Scotland) Act 2003 applies (leases for grazing or mowing).
- (4) In subsection (1)(c)—
- “croft” has the meaning given by section 3 of the Crofters (Scotland) Act 1993,
“small landholding” means land which is subject to a lease to which the Small Landholders (Scotland) Acts 1886 to 1931 apply,
“allotment” means—
- (a) an allotment within the meaning of section 107 of the Community Empowerment (Scotland) Act 2015,
(b) an allotment site within the meaning of section 108 of that Act.

PART 2

AUTOMATIC CONTINUATION OF LEASE BEYOND TERMINATION DATE

Circumstances in which lease continues or terminates

2 Automatic continuation of lease

- (1) A lease to which this Act applies continues after its termination date unless it ends on that date in accordance with—
- (a) section 3(1) (termination of lease by notice or consensus), or
(b) section 4(2) (termination in accordance with term of lease).
- (2) Subsection (1) does not apply if the lease falls within section 5(2) or (3) (leases which terminate automatically).
- (3) Nothing in this Part affects any ground on which a lease may end other than the occurrence of its termination date.
- (4) The operation of this section on a lease (the “head lease”) is unaffected by the existence of a sub-lease over all or part of the subjects of the head lease.

3 Termination of lease by notice or consensus

- (1) A lease to which this Act applies ends on its termination date if—
- (a) the landlord gives the tenant valid notice requiring the tenant to give up possession of the subjects of the lease on that date (“notice to quit”),
(b) the tenant gives the landlord valid notice that the tenant intends to give up such possession at the end of the period of the lease (“notice of intention to quit”),
(c) the tenant gives up possession of the subjects of the lease—
- (i) with the acquiescence of the landlord, and
(ii) in circumstances which indicate that both parties intend the lease to end on that date.

- (2) For the purposes of—
 - (a) subsection (1)(a), notice to quit is valid only if it complies with the requirements of sections 9, 12, 13, 14 and 16(2)(b) as they may be varied in relation to the lease under section 17,
 - (b) subsection (1)(b), notice of intention to quit is valid only if it complies with the requirements of sections 11, 12, 13, 14 and 16(1)(b) as they may be varied in relation to the lease under section 17.

4 Termination in accordance with term of lease

- (1) A lease to which this Act applies may include a term (however expressed) the effect of which is that the lease will not continue after its termination date, regardless of whether it would come to an end on that date by virtue of section 3(1).
- (2) A lease which contains such a term ends on its termination date.
- (3) Nothing in subsection (1) affects any term (or purported term) of a lease agreed before this section comes into force.
- (4) See section 1(2) of the Requirements of Writing (Scotland) Act 1995 for how a term of a lease under subsection (1) is to be constituted.

5 Leases which terminate automatically

- (1) A lease to which this Act applies ends on its termination date if it falls within subsection (2) or (3).
- (2) A lease falls within this subsection if it is one (or more than one) of the following—
 - (a) a lease which gives rise to a tenancy mentioned in—
 - (i) paragraph 16 of schedule 1 of the Private Housing (Tenancies) (Scotland) Act 2016 (homeless persons),
 - (ii) paragraph 17 of that schedule (persons on probation or released from prison, etc.),
 - (iii) paragraph 18 of that schedule (asylum seekers),
 - (iv) paragraph 19 of that schedule (displaced persons), if the lease is for a period of one year or less,
 - (b) a lease granted with the authority of—
 - (i) the court,
 - (ii) the Accountant of Court, or
 - (iii) the Accountant in Bankruptcy,
 - (c) a lease for a period of 28 days or less.
- (3) A lease falls within this subsection if it is one (or more than one) of the following—
 - (a) a lease granted for the lifetime of the tenant,
 - (b) a lease which gives rise to a tenancy mentioned in—
 - (i) paragraph 5(1) of schedule 1 of the Private Housing (Tenancies) (Scotland) Act 2016 (student let),

- (ii) paragraph 6 of that schedule (holiday let),
- (c) a lease which is—
 - (i) for a period of one year or less, and
 - (ii) of land which is let for the purpose of its being used only for grazing or mowing during some specified period of the year (whether or not the lease expressly so provides),
- (d) a lease for a period of less than one year of—
 - (i) a right to fish for or take fish in inland waters, if the right includes the right to fish for or take salmon, trout or other freshwater fish in respect of which there is a close season, or
 - (ii) a right to take or kill birds, deer or wild animals if the right includes the right to take or kill any bird, deer or wild animal in respect of which there is a close season.
- (4) In this section—
 - “close season” means an annual period during which it is an offence—
 - (a) in relation to fish, to fish for or take the fish in circumstances in which it is not an offence to do so during the rest of the year,
 - (b) in relation to birds, deer or wild animals, to take or kill the birds, deer or wild animals in circumstances in which it is not an offence to do so during the rest of the year,
 - “court” means Court of Session or sheriff,
 - “deer” has the meaning given by section 45(1) of the Deer (Scotland) Act 1996,
 - “freshwater fish”, “inland waters”, “salmon” and “trout” have the meanings given by section 69(1) of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003,
 - “wild animal” has the meaning given by section 27(1) of the Wildlife and Countryside Act 1981.
- (5) Nothing in subsection (3)(a) affects any right or obligation of the tenant’s executor in relation to the subjects of the lease following the termination of the lease.

6 Automatic continuation of lease on basis of parties’ behaviour after termination date

- (1) The ending of a lease, other than a lease which falls within section 5(3), on its termination date by virtue of this Part is of no effect if—
 - (a) the tenant remains in possession of the subjects of the lease after that date, and
 - (b) the landlord—
 - (i) does not take steps to remove the tenant from those subjects within a reasonable period following the termination date, or
 - (ii) otherwise acts inconsistently with the lease having ended.
- (2) Where the ending of a lease is of no effect by virtue of subsection (1), the lease is to be treated as if it had continued after its termination date.

- (3) Subsection (1) does not apply if the tenant's possession after the termination date is—
 - (a) on the basis of a new lease or other agreement with the landlord, or
 - (b) in other circumstances which indicate that, on the termination date, both parties intended the tenant's continued possession to be on a basis other than continuation of the lease after that date.
- (4) The parties to a lease may not disapply the effect of subsection (1) on the lease.

7 Application of section 6 to leases with multiple landlords or tenants

- (1) Where there is more than one landlord under a lease, the condition in paragraph (b) of section 6(1) is met only if each of the landlords behaves as mentioned in that paragraph.
- (2) Where there is more than one tenant under a lease—
 - (a) section 6(1)(a) applies to the lease as if the reference to the tenant were a reference to at least one of the tenants,
 - (b) any continuation of the lease after its termination date by virtue of section 6(2) is of no effect in relation to any tenant who does not remain in possession of the subjects of the lease after that date.

Effect of automatic continuation

8 Period and effect of automatic continuation of lease

- (1) This section applies to a lease which continues after its termination date by virtue of section 2(1) or 6(2).
- (2) If the period of the lease is—
 - (a) one year or longer, the period for which it is continued is—
 - (i) one year, or
 - (ii) such shorter period of not less than three months as may be provided for in the lease,
 - (b) more than 28 days but less than one year, the period for which it is continued is—
 - (i) the period equal to the period of the lease, or
 - (ii) such shorter period of not less than 28 days as may be provided for in the lease,
 - (c) 28 days or less, the period for which it is continued is equal to the period of the lease.
- (3) The lease otherwise continues on the same terms as immediately before its termination date, except to the extent that those terms are inconsistent with the lease continuing for the period calculated in accordance with subsection (2).

Notice to prevent automatic continuation

9 Notice from the landlord: notice to quit

- (1) Notice to quit must be given in writing.

- (2) The notice must—
 - (a) include the name and postal address of—
 - (i) the landlord under the lease, where the notice is given by the landlord,
 - (ii) where the notice is given by another person on behalf of the landlord, that person,
 - (b) include a sufficient description of the subjects of the lease (whether by describing them directly or by referring to the lease),
 - (c) specify the termination date of the lease, and
 - (d) state that the tenant is required to give up possession of the subjects of the lease on that date.
- (3) A description of the subjects of the lease is sufficient for the purposes of subsection (2)(b) if a reasonable recipient of the notice whose knowledge included that of the tenant would be able to identify the subjects from that description.
- (4) An error in the information included in the notice in order to comply with paragraph (a) or (b) of subsection (2) does not make the notice invalid if a reasonable recipient of the notice would, in all the circumstances, know—
 - (a) that the information included in the notice was erroneous in that respect, and
 - (b) the correct information that should have been included in the notice in order to comply with that paragraph.
- (5) An error in the date specified in the notice in order to comply with subsection (2)(c) does not make the notice invalid if the date so specified falls—
 - (a) after the termination date of the lease, and
 - (b) before the end of the period of 7 days beginning with the day after the termination date.
- (6) Section 8 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (rectification of defectively expressed documents) does not apply to a document containing notice to quit.

10 Effect of error in termination date in notice to quit

- (1) This section applies where—
 - (a) the date specified in notice to quit in order to comply with section 9(2)(c) (the “notified date”) is erroneous but the notice is valid (see section 9(5)), and
 - (b) the giving of the notice is the only reason the lease in respect of which the notice is given ends on its termination date.
- (2) Despite the lease ending on its termination date, the tenant may remain in possession of the subjects of the lease during the post-termination period (but see section 20(5) if the lease is a sub-lease).
- (3) The tenant is not liable to the landlord for any of the following in relation to the tenant’s possession of the subjects of the lease during the post-termination period—
 - (a) violent profits,
 - (b) unjustified enrichment,

- (c) damage to the subjects sustained during that period, other than damage intentionally caused by the tenant.
- (4) The landlord must—
 - (a) comply with the landlord’s obligations under the lease during the post-termination period as if the lease had not ended,
 - (b) fulfil, or reimburse the tenant for the expense of fulfilling, any obligation owed by the tenant to another person in connection with the subjects of the lease which arises during that period.
- (5) In subsections (2) to (4), “post-termination period” means the period—
 - (a) beginning with the day after the termination date of the lease,
 - (b) ending with the notified date.

11 Notice from the tenant: notice of intention to quit

- (1) Notice of intention to quit—
 - (a) must be given in writing if the lease was granted for a period longer than one year,
 - (b) may be given in writing or orally if that period is one year or less.
- (2) The notice must—
 - (a) include a sufficient description of the subjects of the lease (whether by describing them directly or by referring to the lease), and
 - (b) state that the tenant—
 - (i) intends to give up possession of those subjects at the end of the period of the lease, or
 - (ii) does not intend to remain in possession of those subjects after the end of that period on the same terms and conditions as those of the lease.
- (3) If the notice is given in writing, it must also include—
 - (a) the name of—
 - (i) the tenant, if it is given by the tenant, or
 - (ii) where it is given by another person on behalf of the tenant, that person, and
 - (b) unless it is sent using electronic communication in accordance with section 13(4)(a), the postal address of that person.
- (4) A description of the subjects of the lease is sufficient for the purposes of subsection (2)(a) if a reasonable recipient of the notice whose knowledge included that of the landlord would be able to identify the subjects from that description.
- (5) The notice need not specify when the period of the lease will end.
- (6) An error in the information included in the notice in order to comply with subsection (2)(a) or (3) does not make the notice invalid if a reasonable recipient of the notice would, in all the circumstances, know—
 - (a) that the information included in the notice was erroneous in that respect, and

(b) the correct information that should have been included in the notice in order to comply with that paragraph.

- (7) Section 8 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (rectification of defectively expressed documents) does not apply to a document containing notice of intention to quit.

12 When notice is to be given

- (1) Notice to quit, or of intention to quit, must be given on or before the last day for giving notice under the lease to which it relates.
- (2) The last day for giving notice is—
- (a) if the period of the lease is 6 months or longer, the day which is three months before the termination date of the lease,
 - (b) if the period of the lease is less than 6 months, the day before the start of the period mentioned in subsection (4).
- (3) For the purposes of subsection (2)(a), the day which is three months before the termination date is—
- (a) the day which—
 - (i) falls in the third month (“month A”) before the month in which the termination date falls, and
 - (ii) is the same day of the month as the termination date, or
 - (b) if month A does not have such a day, the last day of month A.
- (4) The period referred to in subsection (2)(b) is the period which—
- (a) ends with the day before the termination date, and
 - (b) is the number of days, rounded up to the nearest whole day, which is equal to half of the period of the lease.
- (5) For the purposes of subsection (1), notice is given when it is received by the recipient (and see section 15 for provision about when written notice is taken to be received).

13 How written notice is to be delivered

- (1) Notice to quit, or notice of intention to quit given in writing in accordance with section 11(1)(a), must be given—
- (a) in a traditional document, or
 - (b) by electronic means.
- (2) If the notice is given in a traditional document, it is to be delivered to its recipient by one of the following methods—
- (a) being sent by the person giving the notice or a sheriff officer—
 - (i) to an address of the recipient which is set out in section 28(3) (address in United Kingdom for termination documents), and
 - (ii) by a postal service which provides for delivery of the document to be recorded,
 - (b) being delivered in Scotland by a sheriff officer (see section 14), or

- (c) being delivered by hand to the recipient by the person giving the notice, if they are both individuals.
- (3) For the purposes of subsection (2)(c), delivery—
 - (a) by the person giving the notice does not include delivery by that person’s agent,
 - (b) to the recipient does not include delivery to the recipient’s agent.
- (4) For the purposes of subsection (1)(b), notice is given by electronic means if it is—
 - (a) sent by the person giving the notice to the recipient using electronic communication in accordance with subsection (5),
 - (b) sent by the person giving the notice to the recipient by fax, or
 - (c) where subsection (6) applies, delivered or sent by a method set out in subsection (2) by means of a document—
 - (i) stored electronically on a device (such as a disc, a memory stick or some other removable or portable media), or
 - (ii) in another form which requires the use of electronic apparatus by the recipient to render the document intelligible.
- (5) Notice is given in accordance with this subsection if—
 - (a) before it is given, the person giving the notice and the recipient agree in writing that it may be given by being transmitted to an electronic address and in an electronic form specified by the recipient for that purpose, and
 - (b) the notice is sent to that address and in that form.
- (6) This subsection applies where, before the document is given, the person giving the notice and the recipient agree in writing that the document may be given by means of that device or (as the case may be) in that form.
- (7) Where a document is given in accordance with subsection (4)(c), the person giving it must do so in such a way that it would be clear to a reasonable recipient that the document is stored on the device or (as the case may be) in that form.
- (8) In this section, “traditional document” means a document written on paper, parchment or some similar tangible surface.

14 Delivery of notice by sheriff officer

- (1) For the purposes of section 13(2)(b), notice is delivered by a sheriff officer if the document containing it is—
 - (a) where the recipient is an individual, delivered by hand by the sheriff officer—
 - (i) to the recipient,
 - (ii) at the recipient’s usual residence, to another person who lives there, or
 - (iii) at the recipient’s place of business, to a person who works there,
 - (b) where the recipient is not an individual, delivered by hand by the sheriff officer at the recipient’s place of business, to a person who works there, or

- (c) where the sheriff officer has unsuccessfully attempted to deliver the document in accordance with—
 - (i) paragraph (a), left in or at the recipient's usual residence or place of business in a manner in which it is likely to come to the recipient's attention,
 - (ii) paragraph (b), left in or at the recipient's place of business in such a manner.
- (2) For the purposes of subsection (1)(a), delivery to the recipient does not include delivery to the recipient's agent.
- (3) After the sheriff officer gives the notice, the sheriff officer must prepare a written document (a "certificate of service")—
 - (a) setting out—
 - (i) how the notice was delivered in accordance with subsection (1),
 - (ii) the date on which the notice was so delivered,
 - (iii) the name of any person other than the recipient to whom the document containing the notice was delivered, and
 - (iv) if that document was delivered in accordance with subsection (1)(c), the other ways in which the sheriff officer attempted to deliver the document, and why those attempts were unsuccessful, and
 - (b) signed by the sheriff officer.
- (4) The certificate of service is sufficient evidence of the matters set out in it.

15 When written notice is taken to be received

- (1) For the purposes of section 12(5), a document containing notice to quit or notice of intention to quit is, unless the contrary is shown, taken to be received by the recipient on the day on which it is delivered—
 - (a) by post to an address for the recipient set out in section 28(3),
 - (b) by a sheriff officer in accordance with section 13(2)(b) or (4)(c),
 - (c) by the person giving the notice in accordance with section 13(2)(c) or (4)(c),
 - (d) to an electronic address to which it is sent in accordance with section 13(4)(a),
 - (e) to a fax number to which it is sent in accordance with section 13(4)(b).
- (2) Subsection (1)(b) applies only if the sheriff officer has prepared a certificate of service in relation to the notice in accordance with section 14(3).
- (3) Unless the contrary is shown, the document is taken to be delivered—
 - (a) on the second day after the day on which it is sent in accordance with section 13(2)(a) or (4),
 - (b) on the day on which it would be delivered in the ordinary course of a postal service (other than a postal service which provides for delivery of the document to be recorded) if it—
 - (i) contains notice of intention to quit given in writing under section 11(1)(b), and
 - (ii) is sent to an address for the recipient set out in section 28(3) by such a postal service.

- (4) Subsection (3) does not apply where the document is sent by post from outwith the United Kingdom.
- (5) Where a document containing notice of intention to quit given in writing under section 11(1)(b) is sent or delivered by a method provided for by section 13(2) or (4), this section applies to the document as if it were sent or delivered in accordance with that section.

16 Notice where there are multiple landlords or tenants

- (1) Where there is more than one landlord under a lease—
 - (a) notice to quit may be given by one of the landlords to the tenant, with or without the consent of the other landlord or landlords,
 - (b) notice of intention to quit given by the tenant must be given to each landlord.
- (2) Where there is more than one tenant under a lease—
 - (a) notice of intention to quit may be given by one of the tenants to the landlord, with or without the consent of the other tenant or tenants,
 - (b) notice to quit given by the landlord must be given to each tenant.
- (3) Notice given by—
 - (a) one landlord in accordance with subsection (1)(a) has effect as if it were given by all of the landlords,
 - (b) one tenant in accordance with subsection (2)(a) has effect as if it were given by all of the tenants.

17 Variation of notice requirements

- (1) A lease may vary any requirement or effect of sections 9, 11, 12, 13, 15 and 16 for the giving of notice to quit, or of intention to quit, in relation to the lease.
- (2) But the lease may not vary the requirements or effect of—
 - (a) section 9(1), (4), (5) or (6),
 - (b) section 11(1)(a), (6) or (7), or
 - (c) section 16(3).
- (3) The lease—
 - (a) may vary the last day for giving notice under the lease under section 12(1) by making that day earlier or later,
 - (b) where it does so, must provide for the same day to apply to notice to quit and to notice of intention to quit.
- (4) A term of a lease is of no effect to the extent that it is contrary to subsection (2) or (3)(b).
- (5) Where a term of a lease is inconsistent with (but does not expressly vary) a requirement or an effect which may be varied under subsection (1), the term of the lease—
 - (a) if subsection (6) applies, is to be treated as varying that requirement or (as the case may be) the effect of that section to the extent of that inconsistency,
 - (b) otherwise, is of no effect to the extent of that inconsistency.

- (6) This subsection applies if the term of the lease is constituted in a written document in accordance with section 1(2) of the Requirements of Writing (Scotland) Act 1995.
- (7) In this section, “vary” means modify or disapply.
- (8) See section 1(2) of the Requirements of Writing (Scotland) Act 1995 for how a term of a lease under subsection (1) is to be constituted.

18 Withdrawal of notice

- (1) Notice to quit or of intention to quit may be withdrawn by the person who gave the notice only with the agreement of the person to whom it was given.
- (2) The withdrawal of the notice and the agreement to the withdrawal must be in writing if the notice is—
 - (a) notice to quit,
 - (b) notice of intention to quit and was given in writing.
- (3) Notice to quit or of intention to quit withdrawn in accordance with subsection (1) is of no effect (and does not bring the lease to which it relates to an end under section 3(1)).
- (4) Where, after the notice is given, there is a successor to the interest in the lease of the person who gave, or the person who was given, the notice, subsection (1) applies to the successor as it would have applied to the person who gave or, as the case may be, was given the notice.

19 Notice unaffected by change of landlord or tenant

The validity of notice to quit, or of intention to quit, is not affected by a change in the identity of the landlord or of the tenant under the lease to which the notice relates after the notice is given.

Head leases and sub-leases

20 Termination of sub-lease

- (1) This section and sections 21 and 22 apply where there is a sub-lease over all or part of the subjects of another lease (the “head lease”).
- (2) If the purported termination date of the sub-lease is a date falling later than the termination date of the head lease, the termination date of the sub-lease is to be treated as being the same date as the termination date of the head lease (and any reference in this Part to the period of the lease is to be construed accordingly).
- (3) Where the termination date of the sub-lease is the same as the termination date of the head lease (whether by virtue of subsection (2) or otherwise), the sub-lease ends on that date if the head lease ends on that date.
- (4) Subsection (3) applies whether or not the sub-lease would otherwise have continued after its termination date by virtue of section 2(1) (but see also section 21).
- (5) Nothing in section 10 allows a sub-tenant to remain in possession of the subjects of a sub-lease after the head lease comes to an end.

- (6) The sub-tenant may not, in any proceedings before a court or tribunal, challenge the validity of any—
 - (a) notice to quit given by the landlord under the head lease to the tenant,
 - (b) notice of intention to quit given by the tenant to the landlord,
 - (c) term of the head lease under section 4(1),
 - (d) new lease entered into by the landlord and the tenant over the subjects of the sub-lease.
- (7) In subsection (6), “tribunal” includes a sole arbitrator or panel of arbitrators determining a dispute in accordance with an arbitration agreement within the meaning of section 4 of the Arbitration (Scotland) Act 2010.
- (8) In this section and sections 21 and 22—
 - (a) “head lease” does not include a lease granted in accordance with section 17(1) of the Land Tenure Reform (Scotland) Act 1974 (interposed leases),
 - (b) a reference to the head lease, sub-lease, landlord, tenant or sub-tenant is to be construed in accordance with subsection (1).

21 Automatic continuation of head lease and sub-lease

- (1) This section applies where—
 - (a) the termination date of the head lease and the sub-lease are the same date (whether by virtue of section 20(2) or otherwise), and
 - (b) both leases end on that date by virtue of this Part.
- (2) Section 6(1) does not apply to the ending of the head lease or the sub-lease on that date.
- (3) The ending of the head lease, other than a lease which falls within section 5(3), is of no effect if—
 - (a) the tenant under that lease—
 - (i) remains in civil possession and the sub-tenant remains in natural possession of the subjects of the lease after that date, or
 - (ii) resumes natural possession of those subjects and remains in possession of them after that date, and
 - (b) the landlord under that lease—
 - (i) does not take steps to remove the tenant from those subjects within a reasonable period following the termination date, or
 - (ii) otherwise acts inconsistently with the lease having ended.
- (4) The ending of the sub-lease, other than a lease which falls within section 5(3), is of no effect if—
 - (a) the sub-tenant remains in possession of the subjects of the sub-lease after that date,
 - (b) the tenant under the head lease—
 - (i) does not take steps to remove the sub-tenant from those subjects within a reasonable period following the termination date, or

- (ii) otherwise acts inconsistently with the sub-lease having ended, and
- (c) the ending of the head lease is of no effect by virtue of subsection (3).
- (5) Where this section applies, in the application of section 6(2) to (4) or 7 to—
 - (a) the head lease, a reference to section 6(1) is to be read as if it were a reference to subsection (3),
 - (b) the sub-lease, a reference to section 6(1) is to be read as if it were a reference to subsection (4).

22 Information to be given by tenant to sub-tenant

- (1) The tenant under the head lease must, as soon as reasonably practicable after—
 - (a) the notice is given, give the sub-tenant a copy of any document containing—
 - (i) notice to quit given by the landlord to the tenant,
 - (ii) notice of intention to quit given by the tenant to the landlord,
 - (b) it happens, notify the sub-tenant that the tenant has orally—
 - (i) given the landlord notice of intention to quit,
 - (ii) withdrawn notice of intention to quit,
 - (c) the document is constituted, give the sub-tenant a copy of—
 - (i) any agreement to the withdrawal of notice in accordance with section 18(1),
 - (ii) any term of the head lease under section 4(1),
 - (d) a new lease between the landlord and the tenant is constituted, notify the sub-tenant of that fact in writing if—
 - (i) the new lease is over the subjects of the sub-lease, and
 - (ii) the date of entry under the new lease immediately follows the termination date of the head lease.
- (2) Where the tenant fails to comply with a requirement of this section—
 - (a) that failure does not affect the validity of the head lease, the sub-lease or anything to which the requirement relates,
 - (b) the tenant is liable to the sub-tenant for any loss caused to the sub-tenant by that failure.
- (3) This section does not apply where the head lease is a lease which falls within section 5(2) or (3).
- (4) In this section, a reference to notice or a document is a reference to notice or a document which relates to the subjects of the sub-lease.

Cautionary obligations

23 Effect of continuation of lease on caution for obligations under lease

- (1) This section applies where—
 - (a) a lease continues after its termination date by virtue of section 2(1) or 6(2), and

- (b) on that date, there is a cautionary obligation in relation to an obligation of the tenant or the landlord under the lease (the “principal obligation”) which also continues after that date.
- (2) The cautionary obligation does not apply to the performance of the principal obligation after the termination date unless a condition of the cautionary obligation provides otherwise.

Definitions

24 Interpretation of this Part

- (1) In this Part, unless the context requires otherwise—
 - “notice” means notice to quit or notice of intention to quit,
 - “notice of intention to quit” means notice given under section 3(1)(b),
 - “notice to quit” means notice given under section 3(1)(a),
 - “termination date”, in relation to a lease, means the date of the ish of the lease (including the ish following a period for which the lease continues by virtue of section 2(1) or 6(2)).
- (2) In this Part—
 - (a) a reference to the period of a lease is a reference to—
 - (i) where the lease is continuing by virtue of section 2(1) or 6(2), the period for which the lease so continues,
 - (ii) otherwise, the period for which the lease was granted,
 - (b) where the period for which a lease was granted is varied, a reference to the period for which a lease was granted is a reference to that period as varied,
 - (c) where the ish of a lease occurs at a time on the termination date other than the end of that date, a reference to the lease ending on, or continuing after, its termination date is a reference to the lease ending at, or continuing after, that time.
- (3) Where a lease has different termination dates for different parts of the subjects of the lease—
 - (a) this Part applies to the lease as if each of those dates were the termination date of a lease over the part of those subjects to which the date relates, and
 - (b) in the application of this Part to such a date, any reference to—
 - (i) the subjects of the lease is to be construed as a reference to the part of those subjects to which the date relates,
 - (ii) the lease is a reference to the lease insofar as it relates to that part of those subjects.

Consequential provision

25 Formalities for exclusion of automatic continuation or variation of notice requirements

In section 1(2) of the Requirements of Writing (Scotland) Act 1995 (writing required for certain contracts etc.), after paragraph (ba) insert—

“(bb) the constitution of a term of a lease for which a written document is not otherwise required by this section under—

- (i) section 4(1) of the Leases (Automatic Continuation etc.) (Scotland) Act 2022 (termination in accordance with term of lease),
- (ii) section 17(1) of that Act (variation of notice requirements).”

26 Disapplication of common law rule of tacit relocation and other rules relating to the termination of leases

- (1) The rule of law by which a lease may continue after its termination date by tacit relocation, and any rule of law concerning the giving of notice by a party to a lease to the other party to prevent the lease so continuing, do not apply to a lease to which this Act applies.
- (2) Any other rule of law by which a party to a lease may bring the lease to an end on its termination date (by letter of removal or otherwise) without the agreement of the other party to the lease does not apply to a lease to which this Act applies.
- (3) Nothing in subsection (2) affects any rule of law enabling a party to a lease to bring the lease to an end on grounds other than the occurrence of its termination date.

PART 3

MISCELLANEOUS PROVISION RELATING TO START, END OR LENGTH OF LEASE

Default duration and date of entry

27 Duration of lease and date of entry in absence of agreement

- (1) This section applies where the tenant under a lease to which this Act applies has entered into possession of the subjects of the lease.
- (2) Where the lease does not provide for the period of the lease (expressly or by implication), or any period so provided for cannot be established, that period is one year beginning with the date of entry under the lease.
- (3) Where the lease does not provide for the date of entry (expressly or by implication), or any date so provided for cannot be established, the date of entry under the lease is to be treated as if it were—
 - (a) the date on which the tenant entered into possession of the subjects of the lease,
 - (b) if that date cannot be established, the date on which the lease was granted, or
 - (c) if that date cannot be established, 28 May in the earliest year in respect of which rent was paid under the lease.
- (4) A party to the lease may apply to the sheriff to determine the date of entry under the lease.
- (5) Where, in any proceedings before a court or tribunal (whether under subsection (4) or otherwise), the court or tribunal determines the date of entry under the lease, the court or tribunal may order that the lease is to be endorsed with the date of entry.
- (6) In subsection (5), “tribunal” includes a sole arbitrator or panel of arbitrators determining a dispute in accordance with an arbitration agreement within the meaning of section 4 of the Arbitration (Scotland) Act 2010.

- (7) Any rule of law by which the period of, or date of entry under, a lease is to be implied does not apply where this section applies.

Documents leading to termination of lease

28 Address in United Kingdom for termination documents

- (1) Subsection (2) applies to a document (a “termination document”)—
- (a) the giving of which by a party to the lease (“party A”) to another party to the lease (“party B”)—
 - (i) has the effect of bringing the lease to an end (whether immediately or in the future), or
 - (ii) is a necessary step before the lease is brought to an end by party A, and
 - (b) which relates to a lease to which this Act applies.
- (2) If the document may or must be given by party A to party B by being sent by post, the document may be sent by party A for that purpose to any of the addresses mentioned in subsection (3) (and see section 30 if party B does not have such an address).
- (3) The addresses referred to in subsection (2) are—
- (a) a postal address in the United Kingdom which the lease provides may be used for sending the document, or a category of documents including the document, to party B,
 - (b) where party B has notified an address, or a new address, to party A in accordance with section 29(1), the most recent address so notified,
 - (c) where party B is a body corporate with a registered or principal office in the United Kingdom, the address of that office,
 - (d) a postal address in the United Kingdom which—
 - (i) is the last residential or business address of party B of which party A is aware, and
 - (ii) is a more recent address of party B than any address of party B mentioned in paragraph (a), (b) or (c).
- (4) The address mentioned in subsection (3)(d) may be used for the purposes of subsection (2) even if party B has a more recent residential or (as the case may be) business address of which party A is not, but could reasonably be expected to become, aware before sending the document.
- (5) Subsection (2) applies despite any enactment or rule of law, or term of the lease or other agreement between party A and party B, that a termination document given to party B in relation to the lease may or must be sent to an address outwith the United Kingdom.
- (6) In this section and sections 29, 30 and 31, a reference to a termination document is to be construed in accordance with subsection (1).

29 Provision of address in United Kingdom

- (1) A party (“party B”) to a lease to which this Act applies—
 - (a) must, unless subsection (3) applies, notify the other party to the lease (“party A”) in writing of a postal address in the United Kingdom which may be used for giving party B any termination document to be sent to party B by post,
 - (b) may from time to time notify party A of a new address in place of one previously notified under this section.
- (2) Notification under subsection (1) must—
 - (a) be in writing,
 - (b) include a statement that the address may be used by party A for giving party B any termination document, or a category of documents including all termination documents, to be sent to party B by post.
- (3) This subsection applies where—
 - (a) the lease includes a postal address for party B in the United Kingdom (whether or not specified as an address to which termination documents may be sent),
 - (b) party B is a body corporate with a registered or principal office in the United Kingdom, or
 - (c) the lease is not one for which a written document is required by section 1(2) of the Requirements of Writing (Scotland) Act 1995.
- (4) The parties to a lease may not disapply the effect of this section or section 30 in relation to the parties or the lease.

30 Effect of failure to provide United Kingdom address

- (1) This section applies where a party to a lease (“party B”) fails to comply with the requirements of section 29(1)(a) (the “notification requirements”).
- (2) Party B is not liable to the other party to the lease (“party A”) for any loss sustained by party A as a result of that failure.
- (3) Where party A is the tenant, party A—
 - (a) may withhold payment of any sum due to be paid during the non-compliance period in accordance with the lease to party B by party A,
 - (b) must pay any sum withheld under paragraph (a) to party B before the end of the 14 day post-compliance period.
- (4) Subsections (5), (6) and (7) apply to a termination document to be sent by party A to party B by post during the non-compliance and 14 day post-compliance periods.
- (5) Where party A is the landlord, party A may, if documents can be delivered to the subjects of the lease by post, send the document to those subjects.
- (6) Subsection (7) applies where, for any reason—
 - (a) party A is unable to send the document by post—
 - (i) to another address for party B mentioned in section 28(3), or
 - (ii) in accordance with subsection (5),

- (b) party A is unable to send the document to party B by electronic communication, and
 - (c) the document cannot be delivered to party B by a sheriff officer.
- (7) Party A may send the document by post to the Extractor of the Court of Session.
- (8) A document sent in accordance with subsection (5) or (7) is to be treated as if it had been sent by post to an address for party B mentioned in section 28(3).
- (9) In this section—
- (a) the “non-compliance period” is the period beginning with the first day on which party B is subject to the notification requirements and ending with the day on which party B complies with those requirements,
 - (b) the “14 day post-compliance period” is the period of 14 days beginning with the day after the day on which the non-compliance period ends.

31 Giving of termination document after change or death of landlord or tenant

- (1) Where there is a change in the identity of the landlord or the tenant under a lease to which this Act applies, the other party to the lease may give any termination document relating to the lease to the former landlord or (as the case may be) tenant until notified in writing of—
- (a) the fact that there is a new landlord or tenant (the “new party”), and
 - (b) the name of, and a postal address in the United Kingdom for, the new party.
- (2) A termination document given to the former landlord or tenant in accordance with subsection (1) is to be treated as having been given to the new party.
- (3) Subsection (4) applies where—
- (a) a party (“party B”) to a lease to which this Act applies dies, and
 - (b) any termination document relating to the lease may or must be given by the other party to the lease (“party A”) to party B by being sent by post.
- (4) Party A may give any termination document relating to the lease by sending it by post to party B until notified in writing of—
- (a) the fact that—
 - (i) an executor has been confirmed over the estate of party B, or
 - (ii) a heritable creditor of party B has entered into possession of party B’s interest in the subjects of the lease, and
 - (b) the name of, and a postal address in the United Kingdom for, the executor or (as the case may be) heritable creditor.
- (5) A termination document given in accordance with subsection (4) is to be treated as having been given to the executor or (as the case may be) heritable creditor.

Irritancy notices

32 Service of irritancy notice and copies to be given to heritable creditors

- (1) The Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (the “1985 Act”) is amended as follows.

- (2) In section 4 (irritancy clauses etc. relating to monetary breaches of lease), for subsection (4) substitute—
- “(4) A notice served under subsection (2) must be served by being—
- (a) sent by post to the tenant by the landlord or a sheriff officer, by recorded delivery,
 - (b) delivered in Scotland by a sheriff officer (see section 5B), or
 - (c) delivered by hand to the tenant by the landlord, if they are both individuals.
- (4A) For the purposes of subsection (4)(a), the document is sufficiently served if it is sent to—
- (a) the last address given to the landlord by the tenant for the purpose of service of such a notice, or
 - (b) another address for the tenant mentioned in section 28(3) of the Leases (Automatic Continuation etc.) (Scotland) Act 2022 (and see section 30 of that Act if the tenant does not have such an address).
- (4B) For the purposes of subsection (4)(c), delivery—
- (a) by the landlord does not include delivery by the landlord’s agent,
 - (b) to the tenant does not include delivery to the tenant’s agent.
- (4C) The lease may provide that the notice must, in addition to being served in accordance with subsection (4), be served by such other method as is specified in the lease.”.
- (3) After section 5 insert—
- “5A Irritancy of lease where there is a heritable creditor**
- (1) This section applies where there is a creditor in a standard security over a lease and either—
- (a) the consent of the landlord at the time the security was granted was not required under the lease for the granting of the security, or
 - (b) such consent was so required and was given.
- (2) The landlord must, at the same time as, or as soon as reasonably practicable after, serving any irritancy-related notice on the tenant, serve a copy of the notice on the creditor if—
- (a) the security was registered before the start of the period of 10 days ending with the day on which the notice is served on the tenant, and
 - (b) the creditor has—
 - (i) a postal address in the United Kingdom known to the landlord, or
 - (ii) provided a postal address in the United Kingdom to the landlord for those purposes.
- (3) The copy of the notice must be served by being—
- (a) sent by post to the creditor to the address mentioned in subsection (2)(b), by recorded delivery,
 - (b) delivered in Scotland by a sheriff officer (see section 5B), or

- (c) delivered by hand by the landlord to the creditor, if the landlord and the creditor are both individuals.
- (4) The address mentioned in subsection (2)(b) may be used for the purposes of subsection (3)(a) even if the creditor has a more recent address of which the landlord is not, but could reasonably be expected to become, aware before serving the copy of the notice.
- (5) For the purposes of subsection (3)(c), delivery—
 - (a) by the landlord does not include delivery by an agent of the landlord,
 - (b) to the creditor does not include delivery to an agent of the creditor.
- (6) If the landlord fails to comply with any requirement of subsection (2) in relation to the lease, the landlord is not entitled to rely, for the purpose of terminating the lease or treating it as terminated, on any irritancy clause in the lease, or material breach of the lease, to which the requirement relates.
- (7) The creditor may, in civil proceedings, challenge—
 - (a) the validity of any irritancy-related notice relating to the lease,
 - (b) the termination of the lease in reliance on an irritancy clause or a material breach of the lease, on the grounds that—
 - (i) the landlord failed to comply with a requirement of subsection (2) or section 4 in relation to the termination of the lease,
 - (ii) the landlord failed to take a step required by the lease to be taken before terminating the lease or treating it as terminated, or
 - (iii) a fair and reasonable person in the position of the landlord would not, having regard to the interests of the creditor, have relied on the irritancy clause or material breach to terminate the lease or treat it as terminated.
- (8) In this section—
 - “civil proceedings” includes proceedings before an arbitrator or a panel of arbitrators in relation to an arbitration agreement within the meaning of section 4 of the Arbitration (Scotland) Act 2010,
 - “irritancy clause” means a provision of a lease which purports to terminate it, or enables the landlord to terminate it, in the event of an act or omission by the tenant or of a change in the tenant’s circumstances,
 - “irritancy-related notice” means a document the giving of which by the landlord to the tenant under a lease—
 - (a) results in the termination of the lease (whether immediately or in the future) under an irritancy clause or as a result of a material breach of the lease, or
 - (b) is a necessary step before the lease is terminated in accordance with such a clause or as a result of such a breach,
 - “material breach”, in relation to a lease, means an act or omission of the tenant, or a change in the tenant’s circumstances, which is, or is deemed by a provision of the lease to be, a material breach of the lease,

“registered” means registered in the Law Register of Scotland or recorded in the Register of Sasines.

5B Sections 4 and 5A: delivery by sheriff officer

- (1) For the purposes of sections 4(4)(b) and 5A(3)(b), a document is delivered by a sheriff officer if it is—
 - (a) where the recipient is an individual, delivered by hand by the sheriff officer—
 - (i) to the recipient,
 - (ii) at the recipient’s usual residence, to another person who lives there, or
 - (iii) at the recipient’s place of business, to a person who works there,
 - (b) where the recipient is not an individual, delivered by hand by the sheriff officer at the recipient’s place of business, to a person who works there, or
 - (c) where the sheriff officer has unsuccessfully attempted to deliver the document in accordance with—
 - (i) paragraph (a), left in or at the recipient’s usual residence or place of business in a manner in which it is likely to come to the recipient’s attention, or
 - (ii) paragraph (b), left in or at the recipient’s place of business in such a manner.
- (2) For the purposes of subsection (1)(a), delivery to the recipient does not include delivery to the recipient’s agent.
- (3) After the sheriff officer delivers the document, the sheriff officer must prepare a written document (a “certificate of service”)—
 - (a) setting out—
 - (i) how the document was delivered in accordance with subsection (1),
 - (ii) the date on which the document was so delivered,
 - (iii) the name of any person other than the recipient to whom the document was delivered, and
 - (iv) if the document was delivered in accordance with subsection (1)(c), the other ways in which the sheriff officer attempted to deliver the document, and why those attempts were unsuccessful, and
 - (b) signed by the sheriff officer.
- (4) A certificate of service is sufficient evidence of the matters set out in it.”.

Apportionment of rent

33 Repayment of rent and other payments relating to period after lease ends

- (1) A lease to which this Act applies is to be treated as including a term which makes the provision set out in subsections (2) to (4).

- (2) Subsection (3) applies where—
 - (a) the lease ends other than by virtue of an irritancy clause,
 - (b) the tenant under the lease, on or before the day on which the lease ends—
 - (i) pays rent, or
 - (ii) makes any other payment,due under the lease to the landlord, and
 - (c) the rent paid, or other payment made, relates wholly or partly to a period falling after the lease ends.
- (3) The landlord must, no later than 10 working days after the day on which the lease ends, pay to the tenant a sum equal to the total of—
 - (a) that part of the rent paid as mentioned in subsection (2)(b) which relates to the period falling after the lease ends, and
 - (b) that part of any other payment made as mentioned in that subsection which relates to that period.
- (4) In this section—

“irritancy clause” means a term of a lease which terminates the lease, or enables the landlord to terminate it, in the event of an act or omission by the tenant or of a change in the tenant’s circumstances,

“working day” means any day other than a Saturday, a Sunday, or a day which, under the Banking and Financial Dealings Act 1971, is a bank holiday in Scotland.
- (5) A lease may include—
 - (a) a term disapplying subsection (1) in relation to the lease,
 - (b) a term modifying subsections (2) to (4) as they are to be included in the lease.

PART 4

FINAL PROVISIONS

34 Meaning of “lease”

In this Act, unless the context requires otherwise, a reference to a lease includes a reference to a sub-lease (and any reference to the landlord or the tenant under a lease is to be construed accordingly).

35 Consequential, transitional and saving provision

The schedule contains transitional and saving provision and provision consequential on this Act.

36 Commencement

- (1) This Part, other than section 35, comes into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force at the end of the period of six months beginning with the day of Royal Assent.

37 Short title

The short title of this Act is the Leases (Automatic Continuation etc.) (Scotland) Act 2022.

SCHEDULE
Introduced by section 35

CONSEQUENTIAL, TRANSITIONAL AND SAVING PROVISION

PART 1

MODIFICATION AND DISAPPLICATION OF ENACTMENTS

Removal Terms (Scotland) Act 1886

- 1 (1) The Removal Terms (Scotland) Act 1886 is amended as follows.
- (2) In section 4—
 - (a) the existing text becomes subsection (1),
 - (b) after that subsection insert—
 - “(2) This section does not apply in relation to a lease to which the Leases (Automatic Continuation etc.) (Scotland) Act 2022 applies.”.
- (3) Sections 5 and 6 are repealed.

Sheriff Courts (Scotland) Act 1907

- 2 (1) The Sheriff Courts (Scotland) Act 1907 is amended as follows.
- (2) After section 37A insert—

“37B Exception for certain leases

Sections 34 to 37 and 38 do not apply to or in relation to a lease to which the Leases (Automatic Continuation etc.) (Scotland) Act 2022 applies.”.
- (3) In schedule 1 (Ordinary Cause Rules), in rule 34.5, after sub-paragraph (1) insert—
 - “(1A) Sub-paragraph (1) does not apply in relation to a lease to which the Leases (Automatic Continuation etc.) (Scotland) Act 2022 applies.”.

Tenancy of Shops (Scotland) Act 1949

- 3 Section 1 of the Tenancy of Shops (Scotland) Act 1949, after subsection (7) insert—
 - “(8) In this section, a reference to notice of termination of tenancy given by—
 - (a) the landlord is a reference to notice to quit given under section 3(1)(a) of the Leases (Automatic Continuation etc.) (Scotland) Act 2022 (the “2022 Act”),
 - (b) the tenant is a reference to notice of intention to quit given under section 3(1)(b) of that Act.
 - (9) Section 6(1) of the 2022 Act (automatic continuation of lease on basis of parties’ behaviour after termination date) does not apply in relation to any period during which the tenant continues in occupation of the premises by virtue of subsection (5).”.

Abolition of Feudal Tenure etc. (Scotland) Act 2000

- 4 In section 67(3) of the Abolition of Feudal Tenure etc. (Scotland) Act 2000, after paragraph (a) (and before the word “or” immediately following that paragraph) insert—
- “(aa) any lease being continued by virtue of section 2(1) or 6(2) of the Leases (Automatic Continuation etc.) (Scotland) Act 2022;”.

Long Leases (Scotland) Act 2012

- 5 In section 72 of the Long Leases (Scotland) Act 2012, after “tacit relocation” insert “or by virtue of section 2(1) or 6(2) of the Leases (Automatic Continuation etc.) (Scotland) Act 2022”.

Act of Sederunt (Summary Cause Rules) 2002

- 6 In the Act of Sederunt (Summary Cause Rules) 2002 (S.S.I. 2002/132), in rule 30.5, after sub-paragraph (1) insert—
- “(1A) Sub-paragraph (1) does not apply in relation to a lease to which the Leases (Automatic Continuation etc.) (Scotland) Act 2022 applies.”.

Codifying Act of Sederunt 1913

- 7 Sections 1 and 2 of chapter XV of Book L of the Codifying Act of Sederunt 1913 (SR & O 1913/638) do not apply in relation to a lease to which this Act applies.

PART 2

TRANSITIONAL AND SAVING PROVISION

- 8 (1) Part 2 of this Act, and the modifications and disapplications of enactments made by Part 1 of this schedule, apply to a lease which was entered into before commencement day and which subsists on that day, subject to the following provision.
- (2) If, on the day before commencement day, the lease is continuing by tacit relocation—
- (a) the period for which the lease continues is unaffected by the coming into force of Part 1 of this Act,
- (b) during that period, a reference in that Part to—
- (i) the period of the lease is a reference to that period,
- (ii) the termination date of the lease is a reference to the last day of that period.
- (3) Sub-paragraphs (4), (5) and (6) apply where—
- (a) on commencement day, the lease has a termination date falling before the end of the period of 6 months beginning with commencement day, and
- (b) after that day, a party to the lease gives notice to the other party in relation to that termination date.
- (4) Sections 3(2) and 9 to 19 do not apply in relation to the notice, and the notice is to be treated as if it were given under the pre-commencement law as it applied to the lease immediately before commencement day.

- (5) Accordingly—
 - (a) the notice is valid for the purposes of section 3(1) if it would have been valid under the pre-commencement law, and
 - (b) the lease ends on its termination date by virtue of that section if it would have ended by virtue of the notice being given under the pre-commencement law.
 - (6) Where the lease is a head lease within the meaning of section 22(3), the requirements of section 22(1)(a), (b) and (c)(i) do not apply in relation to the notice.
 - (7) Where the lease is a head lease within the meaning of section 22(3), the requirements of—
 - (a) section 22(1)(c)(ii) do not apply to a term of the lease constituted during the period of 6 months beginning with the day after commencement day,
 - (b) section 22(1)(d) do not apply in relation to a new lease between the landlord and the tenant if the date of entry under the new lease falls before the end of that period.
 - (8) Where, on commencement day, the lease includes an express term which is valid on the day before commencement day under the pre-commencement law but would, if agreed on or after commencement day, be contrary to a provision of Part 1 of this Act, the term does not become invalid as a result of that provision coming into force.
 - (9) The modification of section 1 of the Tenancy of Shops (Scotland) Act 1949 by paragraph 3 does not affect the application of that section in relation to any notice of termination of tenancy given before commencement day.
 - (10) Nothing in Part 2 of this Act affects—
 - (a) the validity, invalidity, effect or consequence of any notice given, or anything else done, by a party to the lease before commencement day in relation to the termination date of the lease where that date occurs on or after commencement day,
 - (b) any existing right in relation to the lease,
 - (c) any legal proceeding or remedy that relates to such a right, and such proceeding or remedy may be instituted, continued or enforced as if this Act had not come into force.
 - (11) In sub-paragraph (10)—
 - (a) “notice” means notice to quit or notice of intention to quit under the pre-commencement law,
 - (b) “existing right” means a right, interest, title, immunity, privilege, obligation or liability acquired, accrued or incurred before commencement day.
- 9 (1) This paragraph applies to a lease which—
- (a) has a termination date falling before commencement day, and
 - (b) is a lease to which this Act would apply if it subsisted on that day.
- (2) Any question as to whether the lease continues after its termination date is to be determined in accordance with the pre-commencement law.
 - (3) For the purposes of determining such a question, regard may be had to the behaviour of the parties to the lease after commencement day.

- 10 (1) Part 3 of this Act, other than section 33, applies to a lease entered into before commencement day and which subsists on that day, subject to the following provision.
- (2) Nothing in section 27 affects the period of, or date of entry under, a lease determined in accordance with the pre-commencement law.
- (3) The modifications of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 made by section 32 are of no effect in relation to—
- (a) a notice served under section 4(2) of that Act before that day, or
 - (b) any other irritancy-related notice within the meaning of section 5A(7) of that Act (as inserted by section 32(3)) served before that day.
- 11 In this Part of the schedule—
- “commencement day” means the day on which this schedule comes into force,
“pre-commencement law” means the law applying before that day.