

Report on Aspects of Leases: Tenancy of Shops (Scotland) Act 1949

Executive Summary

Introduction

1. The Scottish Law Commission has published its Report recommending the repeal of the Tenancy of Shops (Scotland) Act 1949 (“the 1949 Act”). The Commission’s recommendations are set out in its Report on Aspects of Leases: Tenancy of Shops (Scotland) Act 1949 (Scot Law Com No. 267) (“the Report”).

The current law

2. The 1949 Act applies when certain commercial leases expire, namely those of premises used for retail, food and drink hospitality, beauty services, wholesale units and warehouses (“shop leases”). The 1949 Act gives tenants of such leases a limited right to seek renewal of the tenancy. A single sheriff is given discretion either to renew the lease on terms and conditions that they consider to be “reasonable” in all the circumstances, or to dismiss the application. The maximum period of renewal is one year. However, the tenant can apply for further renewals and there is no restriction to the number of renewals that can be sought. The general discretion of the court is disappplied only if the landlord proves that one of the mandatory grounds for refusal applies.

Problems with the current law

3. Many criticisms have been directed at the 1949 Act, including the following:
- originating in the 1940s and having last been reviewed in the 1960s, the Act is an outdated piece of legislation that fails to reflect the changes that have occurred in Scotland’s commercial property market. Given the current conditions, the Act is no longer necessary;
 - it is unclear whether certain types of non-retail premises are “shop leases” and therefore covered by the Act;
 - the application of the “reasonableness” test is uncertain as the Act provides no guidance or limit on the circumstances that might be relevant in the sheriff’s assessment. The outcome of decisions under the Act is therefore highly unpredictable;
 - an application under the Act requires expensive and time-consuming court action. The expenditure and length of the action is further exacerbated by the uncertainties of the Act.



Accordingly, the remedy offered by the Act is inaccessible for most tenants, and in particular the small businesses that the Act was originally introduced to protect;

- there is very little awareness and use of the Act in practice, even amongst those involved in the commercial leasing sector. In the rare instances that it is invoked, it is commonly used by large commercial enterprises as leverage in negotiations to the prejudice of landlords and other parties who may have an interest in the property. It was never envisaged that the Act would be used for such purposes;
- the Act is an interference with the contractual autonomy of the parties to decide when a lease ends and detracts from the flexibility that Scots commercial lease law offers.

The Report

4. The Report is divided into eight chapters. Following the introductory chapter, Chapter 2 sets out the historical background to the 1949 Act and provides an overview of its operation in practice. It discusses the leases to which the Act applies, the remedy that it gives the tenant, the application of the “reasonableness” test and the court procedure that must be followed for renewal to be obtained.

5. Chapter 3 considers whether special legal rules should continue to apply to “shop leases”, but not to those of other commercial premises such as for example, those used for financial, legal or estate agency purposes. Tenants of such premises, and many others, have no renewal rights on the expiry of the lease. It concludes that nowadays no overriding reasons exist that justify such a separate legal regime.

6. The Discussion Paper,¹ which preceded the Report, presented four separate options for the future of the 1949 Act and invited stakeholders and the public at large for their views on each of those. What follows in the subsequent chapters of the Report is an analysis of the appropriateness of each of the options.

7. Chapter 4 examines the first option: the retention of the Act in its current form. It looks at the arguments in favour and against this option and concludes that, given the many difficulties of the current law, the Act is no longer fit for purpose and cannot remain as it is on the statute book.

8. Chapter 5 discusses the second option: the reform of the Act to address the criticisms of vagueness, expense, inaccessibility for small businesses and inappropriate use by large businesses. The proposed features of the reformed Act are outlined. Thereafter, the arguments in favour and against this option are assessed, uncovering the many weaknesses of this approach. Significantly, consultee responses revealed much dissensus about what the reforms should be and a lack of support for any reform that appears necessary to address certain issues which afflict the 1949 Act. The chapter concludes that this option should not be adopted.

¹ Scottish Law Commission, *Discussion Paper on Aspects of Leases: Tenancy of Shops (Scotland) Act 1949* (DP No. 177, 2024).



9. Chapter 6 evaluates the next option: the replacement of the 1949 Act with a mandatory notice to quit scheme. The scheme would require that landlords who wish a “shop lease” to end on its termination date give their tenant notice to quit the premises no later than six (or three) months before that date. This would assist tenants of “shop leases” by giving them a guaranteed period of time to find and relocate to alternative premises. The chapter explores the various aspects of the scheme and the arguments for and against it. It concludes that the latter outweigh the former, and the scheme is therefore not the suitable way forward.

10. Chapter 7 addresses the last option: repeal of the 1949 Act with no reform or replacement. As in the previous chapters, both the arguments in favour and against this option are presented. The discussion shows that the reasons supporting repeal are more compelling than its criticisms. Repeal is also the only viable option of the four and the one which garnered the most support from consultees. Accordingly, the chapter recommends that the 1949 Act is repealed.