

DATA LABEL: PUBLIC



COUNCIL EXECUTIVE

PROPOSED RESPONSE TO THE SCOTTISH GOVERNMENT CONSULTATION ON THE LEASES (AUTOMATIC CONTINUATION ETC) SCOTLAND) BILL

REPORT BY HEAD OF FINANCE AND PROPERTY SERVICES

A. PURPOSE OF REPORT

The purpose of this report is to present the Council Executive with a proposed response to the Scottish Government's consultation on the Leases (Automatic Continuation etc) (Scotland) Bill and to seek approval to issue that response on behalf of the council.

B. RECOMMENDATION

It is recommended that Council Executive:

1. Notes the Scottish Government's consultation on the Leases (Automatic Continuation etc) (Scotland) Bill.
2. Agrees that officers should issue the proposed consultation response included at Appendix 1 of this report on behalf of the council.

C. SUMMARY OF IMPLICATIONS

I	Council Values	Caring and compassionate. Open, honest and accountable. Collaborate, inclusive and adaptive.
II	Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	Leases (Automatic Continuation etc) (Scotland) Bill
III	Implications for Scheme of Delegations to Officers	None
IV	Impact on performance and performance Indicators	None
V	Relevance to Single Outcome Agreement	We make the most efficient and effective use of resources by minimising our impact on the built and natural environment.

Our economy is diverse and dynamic, and West Lothian is an attractive place for doing business.

VI	Resources - (Financial, Staffing and Property)	None
VII	Consideration at PDSP	Due to Scottish Government consultation deadlines, there has been insufficient time to report this proposed consultation response to the Corporate Policy and Resources PDSP. It has however been circulated to members of that PDSP for information and comment.
VIII	Other consultations	Legal Services.

D. TERMS OF REPORT

D1. Background

The Scottish Government introduced the Leases (Automatic Continuation etc.) (Scotland) Bill (the Bill) on 11 December 2024. The Bill aims to modernise and clarify the law around how certain leases can continue automatically past their termination date, and other procedural elements related to ending leases. The Bill also sets out rules for how leases end.

The Bill seeks to enact recommendations made by the Scottish Law Commission in its “Report on Aspects of Leases Termination”.

The council, as a local authority and a significant owner of public sector property, has been invited to participate in the Scottish Government’s consultation on the proposals set out within the Bill.

D2. Summary of the Leases (Automatic Continuation etc.) (Scotland) Bill

Under this Bill, certain types of commercial lease would continue automatically after the date they would otherwise have ended (the “termination date”). To end the lease on its termination date, the landlord and tenant must both agree that it will end then, or either the landlord or tenant must give notice.

The Bill sets out rules about what the notice must contain, when it must be given, how it can be given, and situations when notice can be withdrawn. The proposed legislation will replace the current law for automatic continuation of leases, which is known as “tacit relocation”.

The Bill also sets out rules for how leases end, including:

- how to determine the date of entry and duration of a lease when it is not clear.
- that all parties to a lease must provide an address in the UK where certain documents can be sent to them.
- updates the rules around a landlord ending a lease early using a process called “irritancy”, (normally as a result of the tenant breaching the terms of the lease) when there is a standard security (a mortgage) over the lease.
- allowing for repayment of rent or other payments after the end of a lease when those payments were made in advance and cover a period after the end of the lease.

The Bill is in 4 Parts, as follows:

- Part 1 makes provision for the leases to which the Bill applies. In essence, the Bill applies to commercial leases which are defined for the purposes of the Bill as being leases which are not residential or agricultural leases.
- Part 2 replaces the common law rules on tacit relocation with a new regime according to which commercial leases may continue automatically after their termination dates.
- Part 3 makes provision about miscellaneous matters relating to the start, end and length of commercial leases.
- Part 4 contains the Bill's final provisions, including a power to commence the provisions in the Bill by regulations.

D3. Proposed consultation response on behalf of the council

The proposals set out in the Bill have been considered by officers from Legal Services and Property Services to determine their potential impact on both the council's operational property estate and its Tenanted Non-Residential Property (commercial) portfolio.

In summary, officers do not consider the existing common law provisions of tacit relocation to be particularly problematic since these are well established, readily understood and applied by legal practitioners and property professionals. Officers do however consider that the proposed provisions set out in the Bill are welcome since they would modernise existing commercial leasing practices and provide clarity on a number of existing areas of uncertainty, to the benefit of both commercial landlords and tenants.

Officers have prepared a proposed consultation response using the Scottish Government's own question set and that proposed response is included at Appendix 1 of this report. Council Executive is recommended to agree that officers should issue that proposed consultation response on behalf of the council.

Due to the Scottish Government's consultation deadlines, there has been insufficient time for officers to report this proposed consultation response to the Corporate Policy and Resources PDSP. In accordance with approved governance procedures however, a copy of this report has been circulated to members of that PDSP for information and any comments received from PDSP members have been reflected in the proposed consultation response.

E. CONCLUSION

The proposals set out in the Bill have been considered by officers to determine their potential impact on both the council's operational property estate and its Tenanted Non-Residential Property (commercial) portfolio. Council Executive is asked to agree that officers should issue the proposed consultation response included at Appendix 1 of this report on behalf of the council.

F. BACKGROUND REFERENCES

Leases (Automatic Continuation etc) (Scotland) Bill
 Scottish Law Commission "Report on Aspects of Leases Termination"

Appendices/Attachments: Appendix 1: Proposed consultation response

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Date of Meeting: 11 March 2025



APPENDIX 1: Leases (Automatic Continuation etc.) (Scotland) Bill - Proposed consultation response on behalf of West Lothian Council

- 1. Part 1 of the Bill defines the leases to which the legislation will apply, excluding certain residential and agricultural leases from the Bill's scope. What are your views on the definitions as set out in Part 1 of the Bill?**

Answer: West Lothian Council agrees with the definitions as set out in Part 1 of the Bill. The excluded subjects are different in nature from typical commercial leases and it is appropriate that the Bill should reflect that.

- 2. Do you consider that the law on tacit relocation needs reforming? If so, for what reasons?**

Answer: West Lothian Council does not consider the existing law on tacit relocation to be particularly problematic since it is readily understood and applied by legal practitioners and property professionals. The council does however consider that the proposed provisions set out in the Bill are welcome since they would modernise existing practices and provide clarity on a number of existing areas of uncertainty, to the benefit of both landlords and tenants.

- 3. What are your views on each option? Is the approach taken by the Bill the best way to reform the law?**

Answer: West Lothian Council considers that Option 1 (tacit relocation being disapplied from commercial lease) would be damaging and problematic both for landlords and tenants and that, as proposed in the Bill, the adoption of Option 2 (the parties to a commercial lease having the right to contract out of tacit relocation) is the best way to reform the law.

- 4. What are your views on the statutory code in the Bill which replaces tacit relocation?**

Answer: West Lothian Council considers the provisions of the proposed statutory code to be beneficial, proportionate and practical, whilst, importantly, enabling the existing broad principle of the original tacit relocation doctrine to continue going forward.

- 5. What are your views on these sections of the Bill and the approach they take to giving notice?**

Answer: West Lothian Council welcomes the clarity that these proposals would bring, however further clarity would be welcomed in relation to the serving of Notices electronically. The rationale behind moving from 40 day notice periods to 3 month notice periods for leases in excess of 6 months is understood, however in practical terms this would result in an increased onus and resource burden on those areas within the public sector who manage property interests. Similarly, the extended notice period could prove detrimental to unwitting tenants who might miss the 3 month notice period deadline.

6. What is your view on schedule 1 of the Bill which excludes certain leases from the new rules on automatic continuation?

Answer: West Lothian Council agrees with the proposed exclusions set out in Schedule 1 of the Bill.

7. What is your view on the provisions in Part 3 of the Bill?

Answer: West Lothian Council welcomes the proposed provisions set out on Part 3 of the Bill since they seek to address and provide clarity on a range of matters to the benefit of both the landlord and the tenant.

8. What is your view on this new terminology? Are there any other areas in the Bill where the terminology could be improved or changed?

Answer: West Lothian Council considers the proposed new “plain English” terminology to be beneficial since the existing terms of “tacit relocation” and “ish date” are somewhat alien and confusing to non-legal / property professionals. The council does not consider there to be other areas of the Bill where terminology could be improved.

9. What is your view on the fact that the Bill does not include reforms to the Tenancy of Shops (Scotland) Act 1949? Is this something which should be added to the Bill?

Answer: West Lothian Council agrees it is sensible not to include reforms to the Tenancy of Shops (Scotland) Act 1949 in this Bill and that it would be preferable to address it as a separate exercise.

10. Is there anything else you think should or should not have been included in the Bill? If so, please provide details.

Answer: None.

11. Do you have any other comments on the Bill, or the approach taken by the Bill to reforming the law in this area?

Answer: None.

(END)