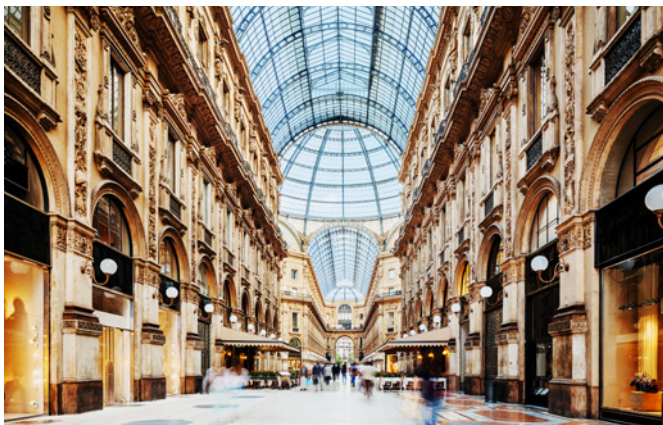


Seventy years after the Landlord and Tenant Act 1954 (the Act) brought in an automatic tenant right to renew a commercial lease, the Law Commission is considering whether business tenants should continue to have a legal right to renew their tenancy on expiry of the original agreement.

The first of two consultation papers asks whether Part II of the Act, which formalised the concept of security of tenure, still meets the needs of business tenants – and landlords – in the present day. If not, what would a better model look like?

There is obvious recognition by the Law Commission of the significance of the Act, the need for review of a piece of legislation that is pivotal to commercial landlord and tenant relationships, and the importance of the review to both landlords and tenants.



Background

The effect of the Act is that business tenants have a right to remain in the property they occupy for business purposes, and to be granted a renewal tenancy when the term of their existing tenancy comes to an end (security of tenure). Although the right is subject to the landlord having the ability to oppose on specified grounds, these are limited, meaning that the tenant right to remain is a valuable one.

The right to security of tenure attaches automatically to a business tenancy, but it is possible for the tenant to “contract out.” A “contracted out” tenant waives its right to remain at the end of the term. The landlord is under no obligation to grant a fresh lease so a tenant could find itself looking for new premises if it wishes to continue to trade or having to agree more onerous terms to remain.

Why Change Now?

The commercial leasehold market today looks very different to 70 years ago. The consultation recognises the present-day variety and complexity of dealings, properties, landlords and tenants. There is also an acknowledgement that the balance of power is rarely equal when parties are negotiating new terms.

As well, procedural aspects of the Act do not work hugely well in practice and a review will be welcome.

Many voices, over many years, have pressed for a review of the Act.

The prospect of the loss of security of tenure, however, may alarm business tenants, and not just a little. While there are undoubtedly arrangements that recognise short-term commitments and both parties are happy with this, there are, equally, many business tenants who rely on continuity. Radical reform will significantly impact those businesses. The Law Commission has indicated that it is entirely cognisant of the implications.

What Could the Future Hold?

Alongside the question of whether the right to renew should be by default sits the issue of the scope of the Act and whether the current definition of which tenancies should benefit from security of tenure remains appropriate in today's market.

The Consultation invites feedback on four proposed models:

- **“Contracting-out” regime**

Continuing the existing approach whereby tenants automatically have security of tenure, with the parties able to opt out where agreed.

- **Abolition of the Act: no security of tenure**

Tenants will no longer have the right to remain at the end of an existing term.

- **A regime of “contracting-in”**

Tenants will not automatically have security of tenure, but parties can opt-in to automatic renewal where agreed

- **Mandatory security of tenure**

Offering maximum protection for tenants, such a regime would automatically deliver security of tenure, with no option to contract out.



The consultation explores the advantages and disadvantages of the various options in detail (chapter 3), which gives rise to some interesting questions. Would mandatory security of tenure, for example, lead to landlords offering only short-term lettings to take advantage of any excluded tenancies? Could it herald a change of business direction for landlords who might not want to let their space at all on that basis, leading to a shortage of available space? Would a contracting-in model mean that tenants' position is considerably weaker than now, given that there is little incentive for landlords?

Reaching a fair proposal following the consultation feedback is likely to be an unenviable task!

Next Steps

Whether we see total repeal of these important tenant rights, or simply an oiling of the wheels, the fact that the Law Commission has now decided to take potential change forward is a strong indicator that the status quo is likely to be challenged.

This is a significant and welcome undertaking, however, and all relevant parties should take the opportunity to share their views with the Law Commission. This should be through responding to the consultation itself, but respondents are also encouraged to complete the accompanying Business Tenancies Survey, which seeks views on experiences of working with the 1954 Act in the current market.

Links to key documents:

- [Business Tenancies: the right to renew - Summary of Consultation Paper 1](#)
- [Business tenancies survey](#)
- [Business Tenancies Consultation Paper 1](#)

The Law Commission is seeking responses from the widest possible audience: members of the public, commercial landlords and tenants, representative groups, property professionals, academics and more. If you have any sort of stake at all in the commercial leasehold market, make a note in your calendar. You have until 19 February 2025 to respond.

A consultation does not, of course, mean that reform is a done deal. However, there has been enough discussion over a very long time to suggest that change is coming.

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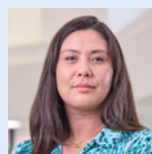
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