

## LANDLORDS AND TENANTS – ADVERSARIES OR COOPERATIVE PARTNERS FOLLOWING THE LAW COMMISSION'S REVIEW OF THE LANDLORD AND TENANT ACT?

The Law Commission published its first consultation paper on the right to renew business tenancies, set out in Part 2 of the Landlord and Tenant Act 1954. The Commission has now sought stakeholder views on four different models for security of tenure, and are considering altering the Act's scope.

### INTRODUCTION

On 18 November 2024, the Law Commission ("**the Commission**") published its first consultation paper regarding the right to renew business tenancies ("**security of tenure**") as contained within Part 2 of the Landlord and Tenant Act 1954 ("**the Act**").

As proposed changes will affect the commercial leasehold market, it is likely that they will have some impact on our clients and the potential continuity of their business practices. For example, business tenants may face increased uncertainty if security of tenure is removed (for example, if the "no security" model is adopted) and market dynamics may shift in favour of the landlord.

### THE CONSULTATION

The Commission initiated a public consultation following the Department for Levelling Up, Housing and Communities' announcement of an impending review of the Act in March 2023. The consultation was the first step in a two-part review of the Act, focusing on its fundamental principles and whether they remain suitable for the modern commercial leasehold market – bearing in mind the Act dates from 1954, when times were very different.

The consultation paper, which outlined different models for security of tenure and sought feedback on the scope of the Act, is available on the Commission's [website](#). Stakeholders were encouraged to read the paper and participate in the consultation process.

The deadline for responses was 19 February 2025, following which the Commission will review submissions, analyse the responses and reach conclusions on the issues it raises ahead of launching their second consultation paper. The second, technical consultation paper seeks to consider in detail how the recommended model and any change in scope would work in practice, the timing of which will be confirmed shortly after reviewing the responses to the first consultation paper. Once the second consultation paper is published, it will

#### Key issues

- The consultation considered whether business tenants should continue to have the legal right to security of tenure after their existing tenancy expires.
- The Commission has proposed four models of security of tenure, including no security, contracting-in, contracting-out and mandatory security of tenure.
- The Commission has also questioned the scope of the Act, and whether various tenancies should be excluded.
- The potential impact on the commercial leasehold market is important.
- There are potential pros and cons to both landlords and tenants in making changes.
- Particularly as there is already a comprehensive body of case law around the Act which has built up since 1954 – whereas new legislation risks "re-starting the clock" on case law.

then be up to the Labour government to decide whether the Commission's recommendations should be implemented.

## **DRIVERS OF CHANGE**

The drivers for amending security of tenure provisions under the Act revolve around the need to address issues arising from the current Act and its impact on the commercial leasehold market. With the Act originating as a post-war regime, the Commission is reflecting on whether the current approach is suitable for the modern commercial leasehold market.

With regards to the scope of the Act, the key drivers for reform include overlapping regimes which have created confusion (for example The Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 and the 2017 Electronic Communications Code) alongside the unnecessary application of security of tenure to some business tenancies.

## **MODELS OF SECURITY OF TENURE**

The Commission suggested four potential models for the security of tenure and how it may be reformed:

### **1. NO SECURITY OF TENURE**

This model proposed eliminating security of tenure altogether, meaning that all business tenancies would expire without an automatic right to renewal.

**Pros Landlords:** This model is likely to be deemed most beneficial to landlords, who will be provided with flexibility to choose whether or not to continue with a tenant when their tenancy expires. For landlords, it removes the need to remove tenants under the Court process with the Act (e.g. if they wish to redevelop).

**Pros Tenants:** None.

**Cons Landlords:** A potential con for landlords is that tenants may ask for lower rents if there is now security.

**Cons Tenants:** No protection to business tenants which increases uncertainty for businesses and threatens business continuity.

### **2. CONTRACTING-IN**

This model would require landlords and tenants to explicitly agree to include security of tenure in their tenancy agreement.

**Pros Landlords:** This maintains flexibility for both parties to the tenancy and eliminates the need for the "opting-out" process and its associated costs and issues if the process is not done correctly.

**Pros Tenants:** As above.

**Cons Landlords:** None.

**Cons Tenants:** This would provide less protection to tenants than under the current Act. Tenants may not be aware that they can obtain security of tenure through negotiation with the landlord and landlords may have more bargaining power.

### 3. CONTRACTING OUT

This is the current model, where security of tenure is included by default unless both parties agree to opt out.

**Pros Landlords:** This would not require any change to Part 2 of the Act and would therefore avoid potential market disruption.

**Pros Tenants:** Tenants are provided with greater protection than landlords, ensuring business continuity.

**Cons Landlords:** Landlords are required to partake in the opt-out process, which is both costly and time consuming and mistakes can be made leading to a failure to properly contract out.

**Cons Tenants:** None.

### 4. MANDATORY SECURITY OF TENURE

All business tenancies would automatically have security of tenure without the option to opt out.

**Pros Landlords:** None.

**Pros Tenants:** This provides tenants with the highest level of protection and presents a simple process to both parties.

**Cons Landlords:** This removes flexibility for landlords and may lead to landlords seeking "loopholes", such as offering shorter tenancies.

**Cons Tenants:** Landlords may demand higher rents.

## THE SCOPE OF THE ACT

The current scope of the Act encompasses almost all tenancies of property used for business purposes. However, there are specific exclusions, such as agricultural tenancies and tenancies granted for six months or less. This wide application means that most business tenants can obtain security of tenure under the Act, unless they have contracted out.

The Commission is reconsidering this scope, in order to address potential issues such as overlapping regimes and to determine if certain tenancies should be excluded. Reforming the scope could help to avoid confusion and remove tenancies for which statutory security of tenure is undesired or unnecessary.

The Commission is exploring whether the scope should be adjusted based on factors such as the use of the property, the duration of the tenancy, or the existence of another regime performing a similar function. However, they acknowledge that changes to the scope may also present problems, such as increased complexity and an increased risk of property litigation (particularly as there is already a comprehensive body of case law around the Act which has built up since 1954 – whereas new legislation risks "re-starting the clock" on case law).

The Commission hopes that stakeholders will provide their views on whether changes should be made to the scope of the Act.

## IMPACT ON OUR CLIENTS

There are many ways in which amendments to the Act may impact our clients, such as:

- **Negotiation/Leverage:** Potential reforms could alter the negotiation dynamics between landlords and tenants, requiring legal advice to understand new rights and obligations and surveyor advice on market and valuation impacts (including on rent reviews).
- **Risk Mitigation:** Increased complexity and risk of litigation may require that clients seek more comprehensive legal support to mitigate these risks. People will want to "test" areas of any new regime in court litigation.
- **Market Impact:** Amendments to the Act could affect property values and lease agreements, impacting clients involved in property investment and management.
- **Scope:** Adjustments to the scope of the Act could change which tenancies are covered, affecting clients' strategic decisions with regards to their property use (and, for example, whether to invest in extensive fitting out works).

Our clients will require updated guidance on navigating the new legal landscape, particularly if a new model of security of tenure is adopted.

If you have any queries, please do not hesitate to reach out to a member of the Clifford Chance Real Estate Litigation team or your usual Clifford Chance contact.



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