



**Law
Commission**
Reforming the law



Business Tenancies: the right to renew

Summary of Consultation Paper 1:
models of security of tenure

Our consultation

Who are we?	The Law Commission of England and Wales is an independent body established by statute to make recommendations to Government to reform the law in England and Wales.
What is it about?	The legal right for business tenants to obtain another tenancy when their existing tenancy ends, subject to the landlord being able to oppose that on a limited number of grounds. The right is known as “security of tenure”. Where the right applies it enables tenants to remain at their property, when they might otherwise have to leave.
What are we doing?	Conducting a public consultation on whether, and in what circumstances, business tenants should have security of tenure.
Why are we consulting?	We are seeking views on whether the law needs to change. We present four different ways in which security of tenure could operate (which we refer to as “models”) and ask consultees which model they prefer. Consultation is essential to our work. We want any recommendations we ultimately make to have as strong an evidence base as possible.
Who do we want to hear from?	We would like to hear from as many stakeholders as possible, including business tenants, landlords, representative groups, property professionals, judges, academics, researchers, and members of the public.
Where can I find the Consultation Paper?	The full Consultation Paper, along with an accompanying survey, are available at our website: https://lawcom.gov.uk/project/business-tenancies-the-right-to-renew/
When is the deadline?	The deadline for responses is 19 February 2025.

What happens next?	<p>After reviewing all responses, we will decide on our recommendations about whether the law should change. Whatever model of security of tenure we recommend, we expect to publish a second Consultation Paper about the detail of how the model should work. Once we have reached our conclusions, we will publish a report setting out our final recommendations for reform. It will be for Government to decide whether to implement our recommendations.</p>
How to respond	<p>We would appreciate responses to the Consultation Paper using the online response form available at: https://consult.justice.gov.uk/law-commission/business-tenancies-consultation-paper-1. We would also welcome responses to our survey, which accompanies the Consultation Paper. The online response form for the survey is available at: https://consult.justice.gov.uk/law-commission/business-tenancies-survey.</p> <p>Otherwise you can respond to us:</p> <ul style="list-style-type: none"> • by email to: BusinessTenancies@lawcommission.gov.uk • by post to: Business Tenancies Team, Law Commission, 1st Floor, 52 Queen Anne's Gate, London, SW1H 9AG. <p>For further information about how the Law Commission conducts its consultations, and our policy on the confidentiality and anonymity of consultees' responses, please see page ii of the Consultation Paper.</p>

Key definitions

business tenant: a person or organisation that rents property from a landlord for their business.

renewal tenancy: a tenancy granted to the existing tenant, which runs on after the existing tenancy ends.

security of tenure: the legal right under the Landlord and Tenant Act 1954 for business tenants to obtain another tenancy when their existing tenancy ends, subject to the landlord being able to oppose that on a limited number of grounds.

contract out: when a landlord and tenant agree that a new business tenancy is not going to benefit from security of tenure, and follow a set procedure to exclude it, they are said to “contract out” of security of tenure.

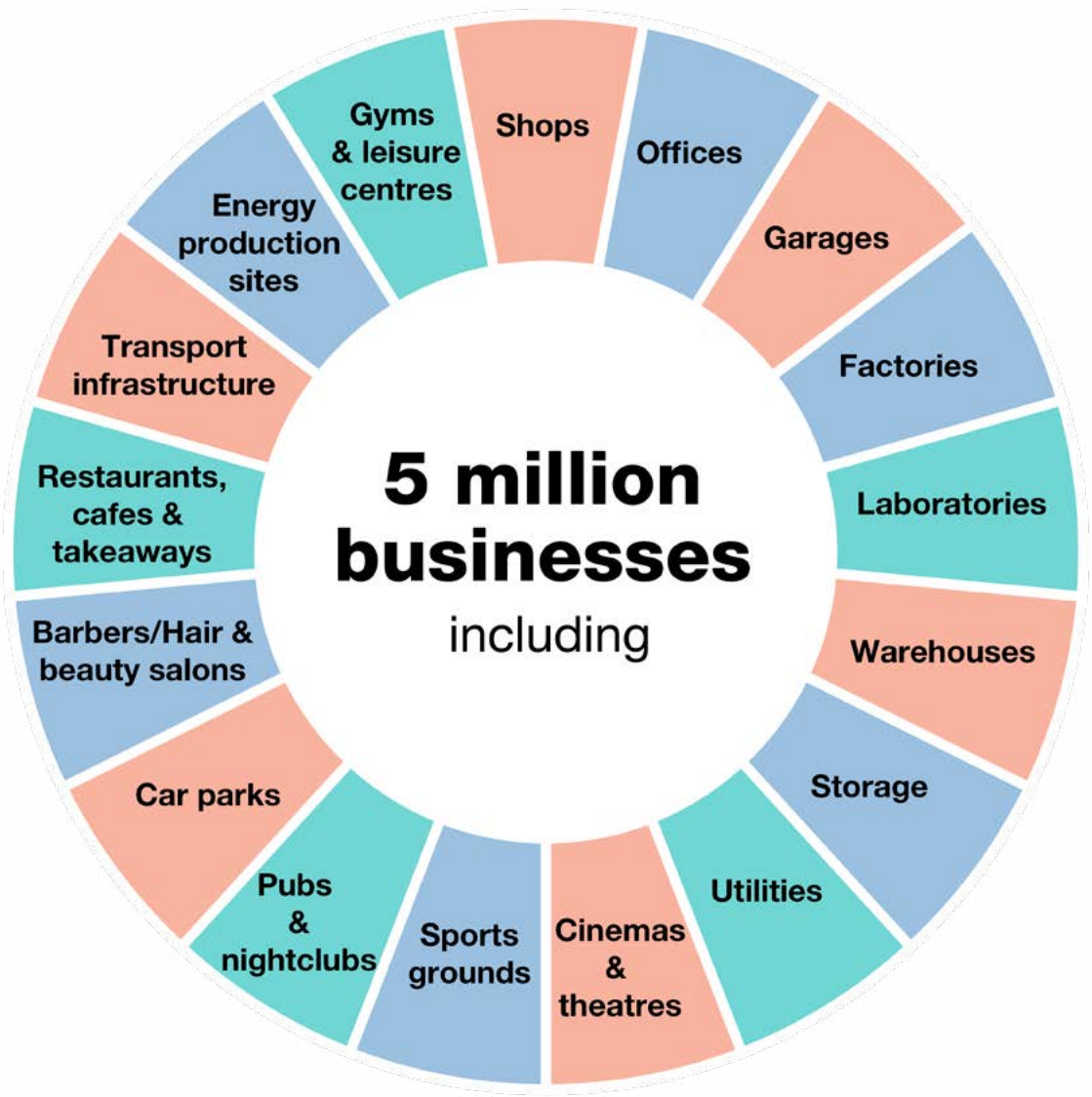
option: an agreed term in a tenancy agreement entitling the tenant to a renewal tenancy in particular circumstances. An option is different from the statutory right to a renewal tenancy under the Landlord and Tenant Act 1954.

Introduction

There are around 5 million businesses in England and Wales. Some trade from the owner’s home or garage, or provide services at a customer’s place of business. But, for many, the business will have its own base, for example a shop on a high street, a workshop on an industrial estate, an office in a city centre, or a warehouse at the junction of a motorway. Some businesses trade from just one property. Other businesses have many locations from which they operate.

While some businesses own the freehold of the properties from which they operate, many occupy their premises as tenants, renting them from a landlord.

Our project is about business tenants – people or organisations that rent property from a landlord for their businesses. In our Consultation Paper, we are asking whether business tenants should have a legal right to a renewal tenancy after their existing tenancy expires.



Security of tenure under the Landlord and Tenant Act 1954

The Landlord and Tenant Act 1954 (“the 1954 Act”) gives business tenants a right to continue to occupy their property, and obtain a renewal tenancy, when their existing tenancy would otherwise come to an end. The right is subject to the landlord being able to oppose a renewal tenancy on a limited number of grounds, for example, that the tenant has breached the terms of their tenancy, or the landlord intends to redevelop the property. The right is known as “security of tenure”.

Almost every business tenant is entitled to security of tenure under the 1954 Act. However, even where a business tenant is entitled to security of tenure, it is not compulsory. The landlord and tenant can follow a set procedure before the tenancy begins to exclude security of tenure – a process known as “contracting out”.

If a landlord and tenant have contracted out (and assuming they have not agreed an option in their tenancy), when the tenancy expires, the tenant has no right to a renewal tenancy. If the tenant wishes to remain in their property, the tenant must attempt to negotiate for a renewal tenancy with the landlord who may or may not agree to grant one.



Agreeing business tenancies: how does it work in practice?

Entering into new business tenancies

Landlords and tenants regularly agree and enter into new business tenancies. As a minimum, the landlord and tenant will agree the level of rent and the duration of the tenancy. Usually, the landlord and tenant will agree a wide range of other matters as well.

One of the key issues that they ought to consider is whether the tenant will have security of tenure under the 1954 Act, or whether the tenancy will be “contracted out”. If a landlord and tenant enter into a business tenancy and do nothing about security of tenure (including if they are not aware of the existence of the 1954 Act) then the tenancy will benefit from security of tenure by default.

A wide range of factors are at play during negotiations for a new business tenancy including the supply of, and demand for, commercial property in the area, the current and future economic outlook, and the landlord’s and tenant’s respective business needs and bargaining power.

The existence of the 1954 Act is one factor for the landlord and tenant to take into account when negotiating a new business tenancy. Sometimes security of tenure will be particularly important to one or the other; sometimes it will not. In some cases, the bargaining power of either the landlord or the tenant is so strong that the other may have no practical choice other than to accept the terms that are offered, including whether or not the tenancy benefits from security of tenure.

Entering into renewal business tenancies

As a tenancy reaches its expiry date:

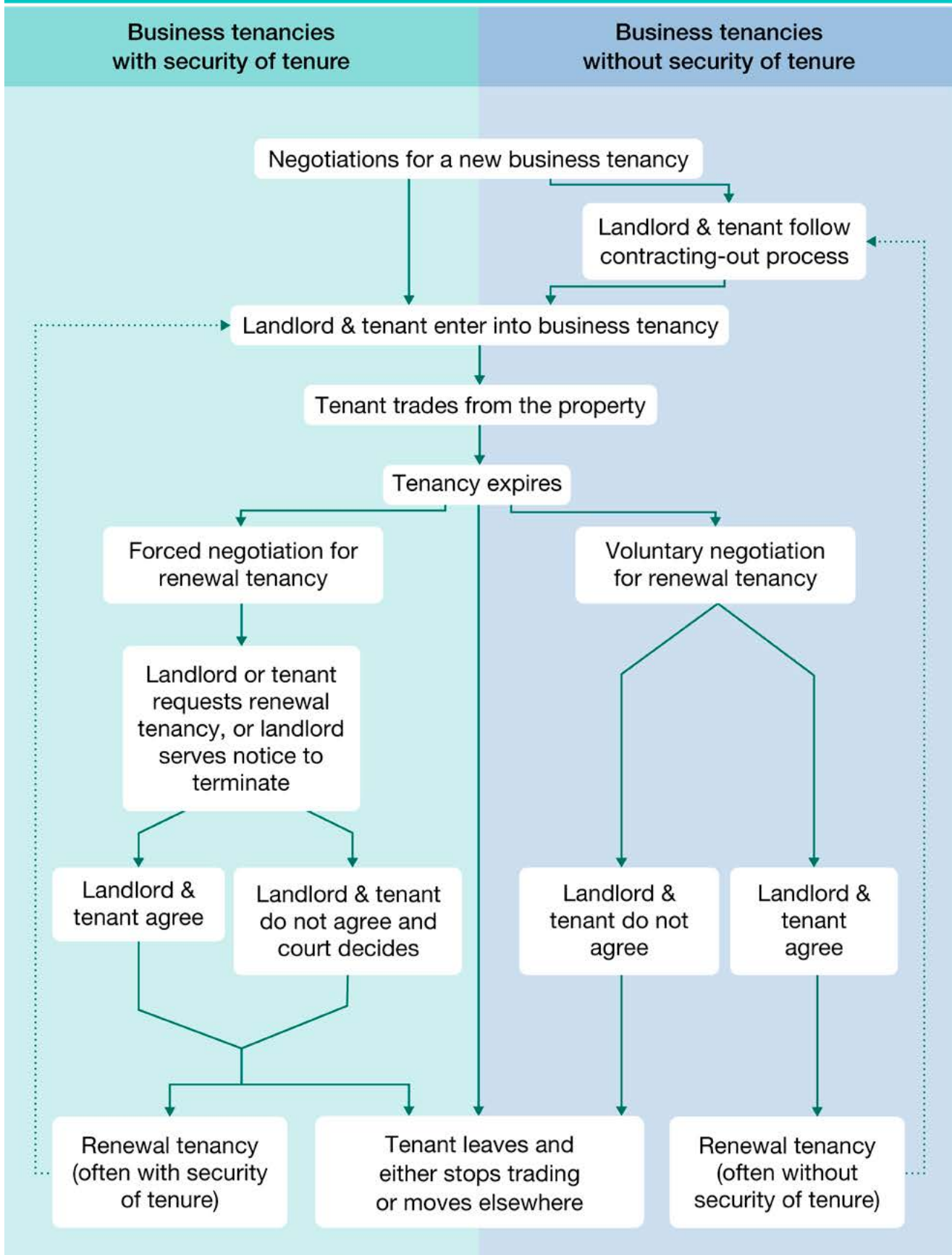
- the tenant may decide to leave the property, or may wish to continue trading there, and
- the landlord may be content for the tenant to remain at the property, or they may want the tenant to leave.

Whether or not the tenant has security of tenure makes a significant difference:

- When a tenant does not have security of tenure, the landlord can simply demand that the tenant leaves the property.
- By contrast, where a tenant has security of tenure, the default position is that the tenant is entitled to a renewal tenancy. The landlord is forced to negotiate and agree (or can be ordered by the court to grant) a renewal tenancy, unless the landlord can establish a ground of opposition.

Whether or not the tenant has security of tenure is therefore an important starting point in negotiations for a renewal tenancy between a landlord and tenant, and it can be the most significant factor – it is likely to impact their respective negotiating positions, and the agreement that they reach.

Entering into and renewing business tenancies: the differences between having, and not having, security of tenure



The commercial leasehold market

The availability of commercial property to rent, and the demand from those running a business for property to trade from, creates the commercial leasehold market.

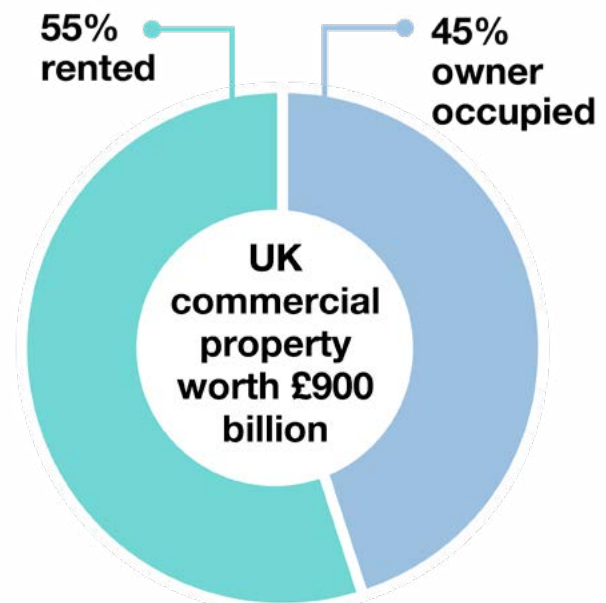
By using the phrase "commercial leasehold market", we do not mean that there is a single market operating in the same way throughout the country.

The market is complex, multifaceted and changes over time. It varies between different types of business, between different types of property, between different parts of the country, and between different areas within a town or city.

Like the commercial leasehold market, landlords and tenants themselves are also varied and complex. Whilst we talk about "landlords" and "tenants" in broad terms, we recognise that not all landlords and tenants are the same. Each is influenced in their dealings by their own circumstances and experiences. Similarly, the balance of power between a landlord and a tenant depends on the particular landlord and tenant involved.

The commercial leasehold market is important context for our work, since any reform to security of tenure will sit within, and therefore potentially impact, the market.

The significance of the 1954 Act



Commercial property in the UK is thought to be worth nearly £900 billion, with more than half of it being rented. But beyond the value of commercial properties themselves, they provide a base for businesses which, in turn, support other businesses and people by providing places of employment and leisure, and facilitating trade.

The 1954 Act is part of the bedrock of the commercial leasehold market. It can have far reaching impact for both landlords and tenants of business premises. We have heard from tenants that having security of tenure can be extremely important to them, and have heard of the difficulties tenants can face at the end of their tenancy when they do not have security of tenure.

On the other hand, we have heard that the 1954 Act can cause problems for landlords and that, after nearly 70 years, it has had its day and the commercial leasehold market should be left to operate without it.

Reform of the 1954 Act has the potential to impact every business tenancy in England and Wales, as well as the prosperity and growth of the areas where those businesses are situated.

Our project

This consultation is the first step in our two-part review of the 1954 Act. It is a chance to test the 1954 Act's foundations – its “reason for being”. In our consultation, we take a step back and ask, at a fundamental level, whether the current approach of giving tenants security of tenure by default, subject to the ability to contract out, is appropriate for a modern commercial leasehold market.

The content of our second Consultation Paper will depend on the outcome of our first consultation. If we recommend security of tenure be retained in some form, then we will consider the detailed operation of that scheme. If we conclude security of tenure should be abolished, then we will consider how that might best be achieved.

Our consultation: models and scope of security of tenure

The fundamental issue we ask about in our Consultation Paper (in Chapter 3) is whether business tenants should have security of tenure and, if so, how it should operate. We present, and ask questions about, four different “models” of security of tenure, which are summarised below.



It is important to note that:

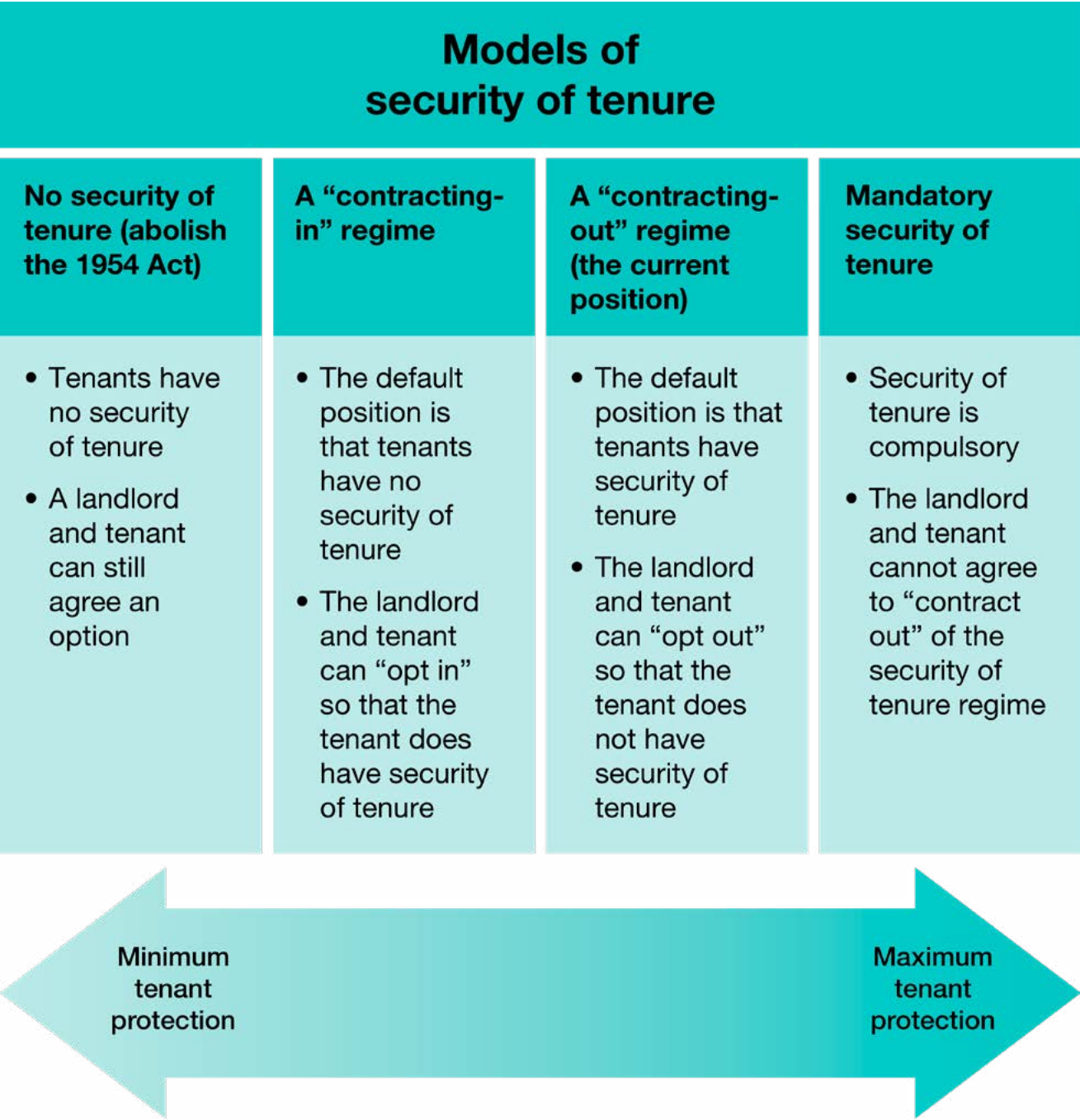
- any change from the current position would be significant and may have a big impact on the commercial leasehold market;
- if problems exist with the current law, it does not necessarily mean there should be a change of model for security of tenure: problems might be better fixed by changing the way that the current model operates; and
- the detailed operation of any alternative model would not have to, and in some cases would not be able to, mirror the current 1954 Act.

We also ask, in Chapter 4 of the Consultation Paper, whether the “scope” of the 1954 Act – which tenancies can benefit from security of tenure and which cannot – is appropriate.

The fact that we are consulting on the four models and the scope of the 1954 Act should not be seen as indicating that the Law Commission favours any particular approach. We are keen to consult widely so that we have as strong an evidence base as possible to reach a conclusion as to which model we will recommend to Government and whether the scope of the 1954 Act needs reform.



Models of security of tenure



Models: pros and cons

Chapter 3 of the Consultation Paper sets out our detailed analysis of the pros and cons of each model of security of tenure. The summary below includes some of the key points.

No security of tenure

Pros: Because no tenancies would have security of tenure, landlords would have certainty that a tenancy would end on its expiry date, giving maximum freedom to choose what happens with the property afterwards. Costs and delay incurred by both landlords and tenants might be reduced because they would no longer have to go through any statutory processes to deal with security of tenure.

Cons: This model offers the least protection to tenants because they would no longer have security of tenure. Whether tenants could obtain a renewal tenancy and, if so on what terms, would therefore be governed entirely by market forces and the willingness of the landlord. Whilst there might be other ways to provide security to tenants, such as contractual options, these may not be as beneficial or familiar to either landlords or tenants as a statutory scheme providing security of tenure.



Contracting-in model

Pros: As now, landlords and tenants would retain the flexibility to enter into tenancies either with or without security of tenure. For those who prefer tenancies without security of tenure, a contracting-in model would remove the cost and time currently required to contract out. Landlords might be in a stronger negotiating position with this model (compared to the position now) because tenants would no longer have security of tenure by default.

Cons: This model offers less protection to tenants than they have now (under the contracting-out model) because tenants would no longer have security of tenure by default. If tenants could not, or were not aware they needed to, persuade their landlords to opt into the security of tenure scheme, their tenancies would not benefit from security of tenure. It is not clear how widely used a contracting-in scheme would be.

Contracting-out model

Pros: This is the current model and so is a known quantity. There would be no risk of unexpected or undesirable change to the market resulting from a change in model. Landlords and tenants would retain the flexibility to enter into tenancies either with or without security of tenure. This model offers more protection to tenants than a contracting-in model because tenants have security of tenure by default. Tenancies are only granted without security of tenure if the parties agree, and follow a set process, to opt out of security of tenure.

Cons: For those who prefer tenancies without security of tenure, this model requires them to continue to incur the cost and time required to opt out of the security of tenure scheme. Landlords might be in a weaker negotiating position than under a contracting-in model because all tenancies will benefit from security of tenure by default.

Mandatory security of tenure

Pros: This model would provide tenants with the greatest level of protection because security of tenure would be compulsory. All business tenancies would automatically benefit from security of tenure and it would not be possible to opt out. The process of entering into new tenancies might also be simpler because there would be no need to agree whether or not the tenancy would have security of tenure.

Cons: The ability to enter into tenancies without security of tenure would be lost. This could weaken landlords' negotiating positions and reduce their choices when tenancies come to an end. They might look for ways to avoid security of tenure – for example, by not offering space for rent at all or by offering very short-term tenancies (that are excluded from security of tenure) – which could be detrimental to tenants. Some tenants might also prefer to retain the ability to enter into tenancies without security of tenure in the right circumstances.

Consultation questions

We invite consultees' views as to which model of statutory security of tenure they consider should operate, along with the reasons for their choice of model.

We also invite consultees' views as to the impact a change to the model of security of tenure would have on landlords and tenants, their advisors and the commercial leasehold market generally.

(See consultation questions 2 and 3 in paragraphs 3.127 and 3.128 of the Consultation Paper.)

See page 3 of this Summary for full details of how to respond to the consultation questions.



Scope

What tenancies should be covered by the 1954 Act?

If a model is recommended that provides security of tenure, it could apply to the business tenancies that the 1954 Act currently applies to, or there could be a change to the type of tenancies that it applies to – which we refer to as the “scope” of the 1954 Act.

Currently, certain types of tenancy are excluded from the scope of the 1954 Act (such as agricultural tenancies) and tenancies granted for six months or less are generally also excluded. In Chapter 4 of the Consultation Paper, we ask whether there should be any reform to the scope of the 1954 Act. It would be possible for tenancies to be excluded from the 1954 Act based on (for example):

- the use made of the property;
- the duration of a tenancy;
- the existence of another regime performing a similar protective function; or
- other characteristics of the tenancy or the property, such as:
 - the floor space;
 - the location of the property; or
 - the rent payable.

Reforming the scope of the 1954 Act could avoid confusion where there are potentially overlapping regimes, or it could remove tenancies for which statutory security of tenure is unwanted or unnecessary. These issues, to a large extent, arise because the 1954 Act takes a one-size-fits-all approach: almost all tenancies of property used for business purposes are within the scope of the 1954 Act. There are, however, potential disadvantages to reforming the scope of the

1954 Act, including increased complexity in the law, potential uncertainty and an increased risk of litigation, a loss of choice, and unintended consequences.

Our view is that the strongest arguments for reforming the scope of the 1954 Act are where there may be competing regimes or where an adjustment could be made to an existing exclusion (such as the exclusion of tenancies of six months or less).

Consultation questions

Alongside asking consultees whether we have assessed the pros and cons of changing the scope of the 1954 Act correctly, we invite consultees’ views as to whether the scope of the 1954 Act is appropriate.

We also invite views as to whether consultees’ answers would differ depending upon which model for the 1954 Act is recommended, and what impact a change to the scope of the 1954 Act would have on landlords and tenants, their advisors and the commercial leasehold market generally.

(See consultation questions 4, 5 and 6 in paragraphs 4.62 to 4.65 of the Consultation Paper.)



The law in Wales

Our consultation covers the law in England and in Wales. Under the Government of Wales Act 2006, the power to change the law in Wales is “devolved” and exercised by the Senedd (the Welsh Parliament), unless a topic is “reserved” to the UK Parliament. It is not clear whether any reforms to the 1954 Act would be devolved to Wales. Nevertheless, we want to consult stakeholders about reform of the 1954 Act in Wales specifically.

Consultation question

We invite consultees to tell us about any particular considerations or experiences in Wales, which consultees think are relevant to potential reform to the model or scope of security of tenure in Wales.

(See consultation question 1 in paragraph 1.57 of the Consultation Paper.)



Conclusion

We encourage you to read the chapters in the Consultation Paper on the topics of interest to you, and to respond to the questions in the paper as well as the accompanying survey.

Links to the full Consultation Paper, the online response form, and the survey, can be found at www.lawcom.gov.uk/project/business-tenancies-the-right-to-renew/.

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