Law Commission
Reforming the law

Business Tenancies: the right to renew

Consultation Paper 1: models of security of tenure

Consultation Paper 266

Law Commission
Reforming the law

Consultation Paper 266

Business Tenancies: the right to renew

Consultation Paper 1: models of security of tenure

19 November 2024

This publication is available at https://lawcom.gov.uk/project/business-tenancies-the-right-to-renew/.

THE LAW COMMISSION – HOW WE CONSULT

About the Law Commission: The Law Commission was set up by section 1 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law. The Law Commissioners are: The Rt Hon Lord Justice Fraser, Chair, Professor Nicholas Hopkins, Professor Penney Lewis, and Professor Alison Young. The Chief Executives are Joanna Otterburn and Roshnee Patel.

Topic of this consultation: We are consulting on whether, and in what circumstances, business tenants should have "security of tenure", which is 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. Where the right applies it enables tenants to remain at their property, when they might otherwise have to leave

Geographical scope: This consultation applies to the law of England and Wales.

Duration of the consultation: We invite responses from 19 November 2024 to 19 February 2025.

How to respond: Responses to the consultation and survey may be submitted using online forms accessible at: https://lawcom.gov.uk/project/business-tenancies-the-right-to-renew/. Where possible, it would be helpful if these online forms were used.

Alternatively, responses may be sent:

By email to BusinessTenancies@lawcommission.gov.uk
OR
By post to Business Tenancies Team, Law Commission, 1st Floor, Tower, 52 Queen Anne's Gate, London, SW1H 9AG.

If you send your responses by post, it would be helpful if, whenever possible, you could also send them by email.

Availability of materials: The Consultation Paper and survey are available on our website at https://lawcom.gov.uk/project/business-tenancies-the-right-to-renew/.

We are committed to providing accessible publications. If you require this Consultation Paper or the survey to be made available in a different format please email BusinessTenancies@lawcommission.gov.uk or call 020 3334 0200.

After the consultation: 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 about the detail of how it 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.

Consultation Principles: The Law Commission follows the Consultation Principles set out by the Cabinet Office, which provide guidance on type and scale of consultation, duration, timing, accessibility and transparency. The Principles are available on the Cabinet Office website at: https://www.gov.uk/government/publications/consultation-principles-guidance.

Information provided to the Law Commission: We aim to be transparent in our decision-making, and to explain the basis on which we have reached conclusions. We may publish or disclose information you provide in response to Law Commission papers and surveys, including personal information. For example, we may publish an extract of your response in Law Commission publications, or publish the response itself. We may also share responses with Government. Additionally, we may be required to disclose the information, such as in accordance with the Freedom of Information Act 2000. We will process your personal data in accordance with the Data Protection Act 2018 (formerly General Data Protection Regulation).

Consultation responses and responses to our surveys are most effective where we are able to report which consultees responded to us, and what they said. If you consider that it is necessary for all or some of the information that you provide to be treated as confidential and so neither published nor disclosed, please contact us before sending it. Please limit the confidential material to the minimum, clearly identify it and explain why you want it to be confidential. We cannot guarantee that confidentiality can be maintained in all circumstances and an automatic disclaimer generated by your IT system will not be regarded as binding on the Law Commission.

Alternatively, you may want your response to be anonymous. That means that we may refer to what you say in your response, but will not reveal that the information came from you. You might want your response to be anonymous because it contains sensitive information about you or your family, or because you are worried about other people knowing what you have said to us.

We list who responded to our consultations in our reports. If you provide a confidential response your name will appear in that list. If your response is anonymous we will not include your name in the list unless you have given us permission to do so.

Any queries about the contents of this Privacy Notice can be directed to: enquiries@lawcommission.gov.uk.

Contents

Chapter 1: Introduction

1.1 At the start of 2023, there were around five million businesses in England and Wales.[1] Some of those businesses trade from the owner's home or garage, or provide services at a customer's place of business. But, for many, the business itself 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.

1.2 Some small businesses trade from just one property. Other businesses, for example banks and professional services firms, may have many locations from which they operate; familiar brands on our high-streets can have dozens or hundreds of shops, spread across England and Wales, supported by warehouses and a head-office.

1.3 While there is no doubt that online trade has increased enormously,[2] many businesses will have both an online and physical presence, whether that be shops and showrooms that sit alongside their virtual stores, offices for their staff, or warehouses for their products.

1.4 While some businesses own the freehold of the properties from which they operate, many occupy their premises as tenants, leasing them from a landlord. There are many reasons why a business may occupy a property as a tenant as opposed to a freeholder, for example:

(1) necessity: a business may not have the funds to purchase a freehold, or there may be no suitable freehold properties available;

(2) flexibility: a business may prefer to take a lease of premises knowing that, when the lease comes to an end, it can move to larger or smaller premises, or a different location altogether, without having to sell its original premises; or

(3) accounting and budgeting: a business may prefer to pay a regular rent for its premises,[3] rather than making an up-front freehold purchase (whether or not with funding from a bank).

SECURITY OF TENURE FOR BUSINESS TENANTS

1.5 Absent any special provision set out in statute or any contractual right to a new tenancy, when a tenancy expires a tenant must vacate the premises. That may be

---

1 See https://www.gov.uk/government/statistics/business-population-estimates-2023/business-population-estimates-for-the-uk-and-regions-2023-statistical-release#:~:text=in%20Figure%206.-,At%20the%20start%20of%202023%3A,of%20the%20UK%20business%20population.

2 The Centre for Retail Research has indicated that the online share of retail trade increased from 10.6% to 26.5% between 2012 and 2022. The study showed that, during the pandemic, the percentage was "more than 30%, even reaching more than 35% for a brief period" (see The Centre for Retail Research, "Online Trends & Statistics for UK, Europe & N. America 2022-2023" at https://www.retailresearch.org/online-retail.html).

3 Also see Property Industry Alliance, *Property Data Report 2023* (January 2024), p 4, available at https://propertyindustryalliance.org/property-data-report/.

acceptable to the tenant, who may wish to move to different premises that better accommodate its needs where they have changed over time. However, if the tenant wishes to stay in the premises, it needs a new tenancy (or some other right, for example a licence) from the landlord. That might happen by negotiation between the tenant and the landlord as the tenancy nears its end, or the tenant might have planned ahead and previously agreed in a contract with the landlord that a new tenancy will be granted if the tenant wishes to take one.[4]

1.6 However, where a tenant occupies a property for business purposes,[5] there is special provision set out in Part 2 of the Landlord and Tenant Act 1954 (which, in this Consultation Paper, we call "the 1954 Act"). That Act gives such tenants a statutory right to continue to occupy, and obtain a renewal tenancy, when their existing tenancy would otherwise come to an end, subject to the landlord being able to oppose the grant of a renewal tenancy on a limited number of grounds.[6] Where the parties cannot agree the terms of the renewal tenancy, the 1954 Act provides a mechanism for the court to decide those terms. Where a tenant has the benefit of the 1954 Act, they are said to have "security of tenure".

1.7 Almost every tenant that occupies premises for business purposes will either have security of tenure under the 1954 Act or the parties will have had to take procedural steps set out in the 1954 Act to exclude it (a process known as "contracting out").[7]

1.8 If the tenancy is contracted-out, then, unless the tenant has the benefit of a previously negotiated option,[8] when it expires, the tenant has no right to a new tenancy. If the tenant wishes to remain in the premises, it must attempt to negotiate a new tenancy with the landlord who may or may not agree to grant one.

THE PROJECT AND ITS BACKGROUND

1.9 Our project is a review of the statutory regime giving tenants security of tenure that is set out in the 1954 Act.

1.10 The 1954 Act is one of the key pieces of legislation in the commercial leasehold landscape, and it can have far reaching impact for both landlords and tenants of business premises. We consider that, given its significance, periodic reviews of the 1954 Act are essential,[9] and they are particularly important following periods of

---

4 A tenant's contractual right to have another tenancy granted to it is often called an "option". The option can be contained in the original tenancy or it can be contained in a document ancillary to it.

5 Where a tenant does not occupy a property for business purposes at the time the tenancy ends (for example, if it has vacated the premises), it will not have security of tenure and will not be entitled to a new tenancy under the 1954 Act. See Appendix 1, para 1.10 below.

6 The 1954 Act is more complex than is set out here. For a more detailed overview of the existing law, see Appendix 1.

7 For more details about contracting out, see Appendix 1, para 1.4. We note that there are no clear statistics on the prevalence of contracting out and we are aware of contradictory messages about that (see para 3.60 and following below).

8 See para 1.5 above.

9 The Law Commission has undertaken two reviews of the 1954 Act previously. See para 1.13 and following below.

considerable change in the commercial leasehold market (for example, those which arose during and as a consequence of the COVID-19 pandemic). The reasons for our view include that:

(1) the policy imperative that underpins the 1954 Act may have diminished, or changed;

(2) if left unchecked, then any failings can, at best, become an annoyance and, at worst, create obstacles and risks to businesses with a corresponding impact upon economic growth;

(3) if the 1954 Act does put in place obstacles and/or risks for businesses then they can disincentivise the use of the regime, leading to parties having to take time-consuming steps to avoid it, and leaving it bereft of purpose or meaningful use; and

(4) regular reviews allow for economic, societal, technological, environmental and other relevant changes to be considered.

1.11 A periodic review can be expected to examine the detailed functioning of the 1954 Act; it is certainly the case that there are problems with the current law. For example, in the consultation for our 14th Programme of Law Reform,[10] stakeholders raised a variety of issues, including:

(1) concerns about the procedure for both "contracting out" of the protection afforded by the 1954 Act and for obtaining a renewal tenancy when a tenancy that has protection ends;

(2) concerns about the application to, and interaction of the 1954 Act with, periodic tenancies;

(3) the adequacy of the grounds on which a landlord may oppose the grant of a renewal tenancy; and

(4) potential inflexibility in the 1954 Act in terms of the renewal lease, including that it does not accommodate modern rental models.

1.12 However, a periodic review is also a chance to test the 1954 Act's foundations – its "reason for being". This project allows us to take a step back and look widely at the security of tenure regime established by the Act, including, at a fundamental level, whether it remains the right starting point in today's commercial leasehold market. As we explain below, it is those foundations on which we focus in this first Consultation Paper.[11]

---

10 See https://www.lawcom.gov.uk/14th-programme/.

11 See para 1.28 and following below.

Our previous work

1.13 The Law Commission has undertaken projects to review the workings of the 1954 Act twice before, leading to reports in 1969 and 1992.[12] The recommendations made in those reports gave rise to important changes to the workings of the Act which have, broadly speaking, resulted in the security of tenure regime that is seen today. We summarise below two key recommendations arising from those two projects that are relevant to the substance of this Consultation Paper.

1.14 In our 1969 report we made 12 recommendations to reform the 1954 Act. The most significant recommendation was to provide for a court-based procedure that allowed parties to contract out of the protection of the Act.[13] The recommendation was implemented in the Law of Property Act 1969 and marked an end to the previously mandatory nature of security of tenure provided for by the 1954 Act.

1.15 In our 1992 report, we made 43 recommendations; one significant recommendation was to change the process by which leases are contracted out of the protection of the Act. We recommended a new procedure requiring the parties to observe certain formalities, rather than apply to court, to contract out of the security of tenure afforded by the Act. While the procedure ultimately enacted was different from that which the Law Commission recommended, the principle of a procedural basis for contracting out was implemented and remains part of the law today.[14]

The scope and terms of reference for our project

1.16 Our current work is guided by terms of reference agreed between Government and the Law Commission which enable us to undertake the periodic review envisaged above. Those terms of reference set us the following task.

Our terms of reference

… to conduct a wide review of Part 2 of the Landlord and Tenant Act 1954 with a view to modernising commercial leasehold legislation, with an emphasis on:

- creating a legal framework that is widely used rather than opted out of, without limiting the rights of parties to reach their own agreements, by making sure legislation is clear, easy to use, and beneficial to landlords and tenants;
- supporting the efficient use of space in high streets and town centres, now and in future, by making sure current legislation is fit for today's commercial market, taking into account other legislative frameworks and wider government priorities, such as the "net zero" and "levelling up" agendas; and

---

12 Report on the Landlord and Tenant Act 1954 Part II (1969) Law Com No 17; Business Tenancies: A Periodic Review of the Landlord and Tenant Act 1954 Part II (1992) Law Com No 208.

13 See the Law Commission's Report on the Landlord and Tenant Act 1954 Part II (1969) Law Com No 17, paras 32 and 33.

14 For further details of our 1969 and 1992 reports, see Appendix 2, para 2.34 and following.

- fostering a productive and beneficial commercial leasing relationship between landlords and tenants.

The following aspects of the law are outside of the scope of the review:

- property taxation;
- planning law (including permitted development rights and use classes);
- residential leasehold; and
- the insolvency regime.

1.17 One matter our terms of reference require us to take into account are "wider government priorities". The priorities we are required to take into account were not set in stone at the time the terms of reference were drafted. Instead, the intention of the terms of reference was for us to take into account Government priorities that are current during the period our work is underway.

1.18 The specific examples set out in our terms of reference reflected the priorities of Government at the time our terms of reference were agreed in March 2023. Since that time the Government has changed,[15] which has brought with it a shift in priorities. In particular, a "levelling up agenda" was a core policy of the previous Government and is no longer a "government priority" for us to take into account in this project.[16]

The potential impact of our work

1.19 The scale of the market for business tenancies in England and Wales is vast. In 2023, the Property Industry Alliance published its most recent "Property Data Report". It concluded that the value of commercial property in the UK was nearly £900 billion and that more than half is rented.[17] However, the economic impact goes beyond the value of the commercial properties themselves. Commercial premises provide a base for businesses which, in turn, support other businesses and communities by providing places of employment and leisure, and facilitating trade.

1.20 As our work has the potential to impact each tenancy of business premises that engages the 1954 Act, so it has the potential to impact on the prosperity and growth of those areas where the premises are situated. From villages to cities, business tenancies are commonplace on our high-streets, in rural industrial parks, city centre office blocks and shopping centres, as well as sports and leisure facilities, pubs, warehouses and car-parks.

1.21 Engaging with the provisions of the 1954 Act is often not a one-off. Landlords and tenants of business premises will have to grapple with its provisions when tenancies are first granted. They will almost certainly have to do so again, at some point, if a

---

15 Following the general election that took place on 4 July 2024.

16 The Government announced in July 2024 that the name of the Department for Levelling up, Housing and Communities would change to the Ministry of Housing, Communities and Local Government.

17 Property Industry Alliance, *Property Data Report 2023* (January 2024), p 4 and p 6, available at https://propertyindustryalliance.org/property-data-report/.

tenant continues to use the premises for business purposes and wishes to remain after that tenancy, and any subsequent tenancy, has ended. Research suggests that "half of all new commercial leases have a length of five years or less",[18] it follows that landlords and tenants of business premises may engage with the Act many times over relatively short periods.

1.22 This project is, therefore, of great importance. From a purely economic perspective, the generation of even small savings – in time or expense – on each occasion when a business tenancy is granted, or subsequently renewed, may deliver considerable benefits. That is due to the scale of the commercial leasehold market and the frequency with which tenancies are granted.

1.23 However, our ambition for this project is not limited to small transactional savings. This work is an important opportunity thoroughly to test the foundations of the 1954 Act. It is a chance to consider whether the Act is working as it should for those who are subject to, and rely upon, its provisions, and for their advisors. It is also an opportunity to test the operation of the Act against a modern commercial leasehold market which has been challenged and changed by various factors including COVID-19 and a shift in working patterns, and where aging properties must be adapted to meet modern environmental challenges.[19]

Our approach to consultation and the making of recommendations

Two Consultation Papers

1.24 This is the first of two Consultation Papers that we will publish during our project examining the 1954 Act.

1.25 We have taken a decision to publish two Consultation Papers because, in the course of our initial work, we have identified various fundamental questions, the answers to which could significantly affect the direction in which our work proceeds. By asking those questions now, we believe our second Consultation Paper will be better informed and have greater clarity and focus, allowing consultees to give us clearer answers from which to build our final recommendations.

1.26 We welcome responses to our consultations from as many and as wide a range of those who are interested as possible. In particular, we encourage all businesses – whether large or small, whether landlord, tenant or both, and whatever sector[20] in which they may operate – and their advisors, to take the time to let us know their views.

---

18 Property Industry Alliance, *Property Data Report 2023* (January 2024), p 11, available at https://propertyindustryalliance.org/property-data-report/.

19 We consider the importance of the commercial leasehold market to this project at para 1.37 below.

20 In the commercial property field, a reference to a "sector" commonly refers to the nature of the business undertaken at a property – in other words, the "use" made of the premises. So, a business on a trading estate might be wholesale or retail units, or manufacturing units. Large out of town premises might be "retail" (for example, supermarkets or large furniture stores), or warehousing (for example, the distribution hubs of supermarkets or online retailers), or related to the electricity supply (for example, solar or windfarms).

The first Consultation Paper

1.27 As we have indicated above,[21] when the 1954 Act came into force, it provided for mandatory security of tenure; in other words, the parties could not agree between themselves that the tenant would not have the security of tenure provided by the Act. However, from 1970 onwards, it became possible for security of tenure to be excluded by a process known as "contracting out".[22] As highlighted above,[23] the move from mandatory security of tenure to the model we have today, where the parties, without the involvement of the court, can exclude security of tenure, occurred over a prolonged period.

1.28 The fundamental issue we examine in this Consultation Paper is whether tenants of business premises should have statutory security of tenure and, if so, how it should operate. We present, and ask questions about, four different "models" of security of tenure. These models are considered in detail in Chapter 3 and can be summarised as follows.

(1) Mandatory statutory security of tenure: where the parties cannot agree to "contract out" of the statutory security of tenure regime.

(2) No statutory security of tenure: where there is no statutory security of tenure regime.

(3) A "contracting-in" regime: where the default position is that tenants have no statutory security of tenure, but parties can "opt in" to the regime.

(4) A "contracting-out" regime (being the current law): where the default position is that tenants have statutory security of tenure, but the parties can "opt out" of the regime.

1.29 We also consider, in Chapter 4, the scope of the 1954 Act. In that chapter we explore whether certain types of tenancies, or tenancies with certain characteristics – for example, those where the premises are used for certain types of business, or that are of a certain size – should benefit from statutory protection when others do not.

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

The importance of consultation responses

1.31 Whenever the Law Commission makes recommendations, it looks at whether there is evidence to make a particular change. Much of that evidence comes from the responses it receives to its consultations.

---

21 See para 1.13 and following above.

22 See para 1.7 and n 7 above.

23 See paras 1.14 and 1.15 above.

1.32 The strength of evidence needed before making any recommendation differs depending upon the context. However, generally speaking, the more significant the change to the law, the greater the evidence needed for us to recommend it.

1.33 Any recommendation to change the law that might arise from this first Consultation Paper would be significant and we would look for significant evidence that a different model should be adopted (and the existing model departed from), or for the scope of the Act to be reformed, before making any recommendation to do so.

The second Consultation Paper

1.34 The responses to our first Consultation Paper are important to the content of our second Consultation Paper. For example, and to state the obvious, if we were to conclude that a contracting-in model was appropriate, then current problems with the contracting-out model would not need to be considered in our second Consultation Paper.[24] Conversely, if we concluded that the contracting-out model should be retained, then we would expect to cover those issues in some detail.

1.35 More generally, unless the outcome of this first consultation is a recommendation to Government that there should be no statutory security of tenure regime,[25] then we expect our second Consultation Paper to consider all other aspects of the 1954 Act that are not covered by this Consultation Paper. So, for example, we would expect to consider: the forum in which disputes are heard and whether there are alternatives for dispute resolution; the grounds on which a renewal lease can be opposed by the landlord and the compensation payable in some cases when the opposition is successful; the terms, including rent, of a renewal lease; and any issues caused to parties by the "registration gap".[26]

1.36 If the outcome of this consultation is a recommendation to Government to abolish security of tenure, then we would expect, as a minimum, our second Consultation Paper would consider in what way that might be best achieved.[27]

THE COMMERCIAL LEASEHOLD CONTEXT

The commercial leasehold market

1.37 The commercial leasehold market is an important context for our work. Here we explain what the commercial leasehold market is and its relevance.

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

---

24 See para 3.123.

25 See para 1.28(2) above and para 3.54 and following below.

26 The registration gap is the period between a purchaser of, say, a freehold property that is registered at HM Land Registry completing their purchase, and the registration of the acquisition at HM Land Registry. It is important because the purchaser only becomes the legal owner of the acquired property once they are registered as its proprietor.

27 We would expect, as a minimum, to need to consider whether and what transitional arrangements might be needed for those tenancies that benefited from security of tenure at the time that it is abolished generally. See para 3.14 and following below.

1.39 The commercial leasehold market (like any market) is complex and multifaceted, which we explore, briefly, below.

(1) In very simple terms, when demand for commercial premises exceeds supply, rental levels will often go up (and it is described as a "rising market", or a "landlords' market"), and when supply exceeds demand, rental levels will often go down (and it is described as a "falling market", or a "tenants' market").

(2) Various factors influence the commercial leasehold market – and, in turn, the market can also influence those factors. For example:

(a) economic factors, such as the economic outlook, construction costs, the affordability of debt finance, consumer spending and the desirability of England and Wales as a place for business and investment;

(b) wider external and social factors, such as changing working, industrial and social practices; and

(c) legal frameworks, regulation and guidance, such as planning law and practice, the tax regime, financial regulation, environmental legislation, and professional guidance.[28]

(3) The commercial leasehold market varies between (for example) different sectors, different types of property, different regions, different towns and cities, and different areas within towns and cities.

(4) The commercial leasehold market changes over time.

(5) There are various different indicators of how the commercial leasehold market is operating – for example, trends in: rental levels, the length of the average tenancy, the nature and frequency of rent reviews, how much space is occupied in comparison to that which is available for rent but remains empty.

1.40 Throughout this Consultation Paper, we refer to the "commercial leasehold market" in the singular. In doing so, however, we do not mean to suggest that there is a single commercial leasehold market operating in the same way throughout the country. As we explain above, the reality is that it is highly complex, with the capacity to operate differently (and even independently) between sectors, locations, types of property and in other ways.

1.41 Most business tenancies have the potential to be protected under the 1954 Act. So, a tenancy of a ground-floor café on a local high street is as capable of having security of tenure under the Act as a tenancy of a large city centre office building, or an oil terminal.[29] It follows that the Act is itself an important feature of the existing commercial leasehold market and we explore its impact in Chapter 2.

---

[28] For example, the Royal Institution of Chartered Surveyors, *Code for Leasing Business Premises* (1st ed 2020), available at https://www.rics.org/profession-standards/rics-standards-and-guidance/sector-standards/real-estate-standards/code-for-leasing-business-premises-1st-edition.

[29] See *Humber Oil Terminals Trustee Ltd v Associated British Ports* [2012] EWCA Civ 596.

1.42 Law reform does not operate in a vacuum. The operation of the commercial leasehold market is therefore an important context for our work. Any reform of the 1954 Act will sit within, and therefore potentially impact, the commercial leasehold market. In addition, given that the market changes over time, any reform of the 1954 Act will need to maintain sufficient resilience to accommodate (and not stymie) future changes in the market.

The balance between landlord and tenant interests

1.43 There is an inherent tension between the interests of landlords and tenants. Broadly speaking:

(1) landlords will want to secure the highest rents possible and will generally (but not always) want freedom and flexibility to develop and let their property as they wish to whom they wish; and

(2) tenants will want to secure the lowest rents possible and will generally (but not always) want certainty that they can occupy and invest in their property, while retaining the flexibility to move if their needs change.

1.44 The 1954 Act sets a particular balance between the interests of landlords and tenants. But it is important to acknowledge that the balance sits within the broader context of the commercial leasehold market which itself strikes an ever-changing balance between landlords and tenants as a result, for instance, of the factors listed in paragraph 1.39 above. The commercial leasehold market is influenced by a myriad of factors, of which the 1954 Act is one.

1.45 While we have set out the tension between landlords and tenants and the balance drawn by the 1954 Act in this way, we acknowledge that it is a simplification of the full picture. We are speaking broadly about what is *generally* the case. We acknowledge, however, that it may not be correct in *every* case.

1.46 Throughout this Consultation Paper we talk about landlords and tenants of business premises in broad terms. That is necessary in order to explain clearly the issues that we consider. However, we do not seek to suggest that all landlords and tenants are the same. Like the commercial leasehold market, landlords and tenants are varied and complex. Each will be influenced in their dealings to different degrees by different factors, and by their own experiences. Similarly, in any specific case, the balance of power between a landlord and a tenant will depend on the particular landlord and tenant involved, and their circumstances.

Wider reform of commercial leasehold law

1.47 As will be clear from our terms of reference, our project is limited to an examination of the 1954 Act. [30] We are, however, aware of wider concerns about the law as it relates to commercial leasehold.

1.48 For example, in response to our consultation for our 14th Programme of Law Reform stakeholders highlighted various issues, including the following.

---

[30] See para 1.16 above.

(1) Landlord and Tenant (Covenants) Act 1995: the 1995 Act was introduced, in particular, to avoid the original parties to a lease remaining liable on obligations owed in the lease when it is assigned.[31] While this corrected unfairness in the law, stakeholders have argued that it is creating practical problems in commercially important arrangements. In particular, "Authorised Guarantee Agreements" and the effect of anti-avoidance provisions that were originally intended to benefit tenants, create problems for intra-group and other consensual assignments.

(2) The right of first refusal under the Landlord and Tenant Act 1987: where a landlord proposes to make a disposal of all or part of its interest in a block of flats – for example, by selling its freehold interest, or granting a lease of the non-residential parts – it is often under an obligation to give residential leaseholders "first refusal", to enable them to acquire the interest rather than a third party. It is arguable that the right is having unintended consequences where it is triggered in mixed use developments.

(3) Terminal dilapidations: the "terminal dilapidations regime" is shorthand for the law and practice that applies when a tenant leaves a property when their lease comes to an end and the parties establish whether a tenant's obligations to keep the property in repair have been complied with and, if not, assessing the damages which are then payable to the landlord. The regime is complex, cumbersome, and built on law that may be in need of modernising.

1.49 While we are not able to address any of the above in our current project, we remain open to the possibility of undertaking further work on aspects of commercial leasehold in the future.

1.50 In addition, we have also heard concerns that there may be barriers within leases and leasehold law that undermine rather than support the improved environmental performance of buildings. In our work on the 1954 Act, stakeholders have raised a number of concerns that support that view. While it may be possible for some of those issues to be addressed (or addressed in part) through our current work, there may be benefit in further work looking at the commercial leasehold regime as a whole with a view to considering whether there is more that might be done. In particular, in this project we are only able to consider the terms of renewal tenancies and are unable to consider the terms of the original tenancies entered into between landlords and tenants. It may be that some issues would need to be considered and addressed with that wider scope in mind.

WELSH DEVOLUTION

1.51 Part 2 of the 1954 Act extends to England and Wales. The 1954 Act came into force before the devolution settlement was established. As to whether any reforms to the 1954 Act would be devolved, the position is currently not clear.

[31] A lease is assigned when it is transferred from the existing tenant to a new tenant.

1.52 Property law (including leasehold law) is not explicitly a reserved matter under the Government of Wales Act 2006 ("the 2006 Act").[32] However, the 2006 Act prevents the Senedd from modifying "private law" unless that modification has a purpose which does not relate to a reserved matter.[33]

1.53 The "private law" includes property law (and leasehold law, including the 1954 Act, is an aspect of property law). Accordingly, the Senedd is prevented from modifying the 1954 Act unless that modification has a purpose which does not relate to a reserved matter. Whether a particular modification is devolved, therefore, depends on its purpose. For example, if the purpose of any proposed modification to the 1954 Act was, say, the regeneration and development of high streets, then it is possible that the relevant reform would be devolved.

1.54 The challenge we face is that the *purpose* of any modification to the 1954 Act which we might recommend (or which might ultimately be implemented) is not yet completely clear, or fixed. The purpose of any modification may depend not just on what reforms we recommend and why (matters which are, by definition, not decided at the consultation stage of our project), but also on which recommendations are ultimately implemented by legislation and why.

1.55 Whether or not any of the reforms which we may recommend in this project relate to areas which are devolved, we do not want to miss the opportunity to consult stakeholders about reform of the 1954 Act in Wales. In doing so, it is important to be clear that we are not asking consultees for their views about whether they think any possible reform *is* or *should be* devolved. That is outside the scope of the project.

1.56 What we are asking is whether there are particular considerations or experiences relating to Wales which consultees think we should take into account when considering the case for reform. For example, in considering whether to recommend a change in model for security of tenure from the current contracting-out model, we would like to understand whether there are particular considerations or experiences relating to Wales which mean that any change of model would be more (or less) suitable for Wales compared to England, or whether the same considerations are likely to apply to both.

Consultation Question 1.

1.57 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.

IMPACT OF REFORM

1.58 The different options for reform that we present will have financial and non-financial implications for landlords and tenants, their advisors, and for the wider property

[32] As amended by the Wales Act 2017. See Government of Wales Act 2006, sch 7A.

[33] Government of Wales Act 2006, sch 7B, para 3.

market and economy. Government will undertake impact assessments in relation to any recommendations to reform the law that it pursues. This consultation and the one that follows provides an opportunity to gather evidence and data which can be used in the preparation of impact assessments.

SURVEY ABOUT THE USE AND IMPACT OF THE 1954 ACT IN THE COMMERCIAL LEASEHOLD MARKET

1.59 This Consultation Paper asks questions about whether and how the 1954 Act should be reformed, and about the impact of any such reform.

1.60 In addition to asking those questions, we want to develop a better understanding of the context of reform, and in particular about the current operation of the 1954 Act and its impacts on the commercial leasehold market. We are therefore also asking all consultees (and any others, even if they do not respond to our consultation) to complete a survey to give us more information about the operation of the Act. In developing our recommendations for reform, we would be greatly assisted by information about the prevalence of contracting out, about the length of business tenancies, about the effect of the Act on rents and on the market, and about the financial impacts of the Act.

1.61 We therefore ask all consultees to complete the survey in order to tell us about the business tenancies that they have or deal with. We acknowledge that our survey will not generate statistics that necessarily give a representative overview of the market, but responses to the survey will allow us to understand the position (taken together) of many landlords, tenants, representative groups, professionals and others.

1.62 Details about how to respond to this Consultation Paper, and to the survey, are set out on page i. The survey is available at: https://consult.justice.gov.uk/law-commission/business-tenancies-survey. For completeness, the questions that we ask in the survey are also set out in Appendix 4.

THE STRUCTURE OF THIS CONSULTATION PAPER

1.63 As explained above, in this first Consultation Paper we focus on fundamental issues, being those that would have a considerable impact on the direction of our work, and how we present our work, in the second Consultation Paper. The structure of the remaining chapters of this Consultation Paper is set out below.

(1) **Chapter 2**: in this chapter we explore how the existing legal landscape operates in practice, with new tenancies and most renewal tenancies being agreed between landlords and tenants. We note that any reform to the model of security of tenure would continue to operate within the commercial leasehold market, where agreements are generally reached between parties, but it could change the balance of power between landlords and tenants.

(2) **Chapter 3**: in this chapter we examine the current “contracting-out” model that underpins the 1954 Act. We consider alternatives to that model, namely: mandatory security of tenure for business tenants, abolition of statutory security of tenure, and a “contracting-in” model. We ask for the input of consultees to enable us to reach a conclusion on which model is appropriate for a modern

commercial leasehold market which will provide a foundation for our second Consultation Paper.

(3) **Chapter 4**: in this chapter we consider the scope of the 1954 Act and the possibility of the security of tenure regime applying to some types of tenancies, or tenancies with certain characteristics, and not others (for example, based on the use to which the premises that are let are put, or their size).

(4) **Chapter 5**: in this chapter we bring together into one place the consultation questions that we ask in Chapters 1, 3 and 4.

(5) **Appendix 1**: in Appendix 1 we set out an overview of the current law in Part 2 of the 1954 Act which gives business tenants security of tenure.

(6) **Appendix 2**: in this appendix we set out a brief history of the protection of business tenants in England and Wales.

(7) **Appendix 3**: in Appendix 3 we look to other jurisdictions and consider to what extent, if any, they afford security of tenure to business tenants.

(8) **Appendix 4**: in this appendix we set out the questions that we ask in our survey about the operation of the 1954 Act.

(9) **Appendix 5:** sets out a glossary.

ACKNOWLEDGEMENTS

1.64 We have held a number of meetings and discussions with individuals and organisations while we have been preparing this paper, and we are extremely grateful to them all for sharing their time, expertise and views with us so generously.

PROJECT TEAM

1.65 The following members of the Property, Family and Trusts Law team have contributed to this Consultation Paper: Charlotte Black (lawyer); Georgios-Nikiforos Dougenis (research assistant); James Kapadia (research assistant); Poppy Kemp (research assistant); Lucy McCaughan (research assistant); Colin Oakley (lawyer and interim joint team manager); Roshan Panesar (research assistant); Daniel Robinson (lawyer); Dhruv Singhal (research assistant).

Chapter 2: Business tenancies – the current landscape

INTRODUCTION

2.1 In this Consultation Paper, we ask what model of security of tenure business tenants should have. In order to answer that question, it is necessary to understand how the current model operates in practice, the wider context in which it operates, and the context in which any alternative model would operate.

2.2 In Chapter 1, we explained that the 1954 Act gives business tenants a statutory right to continue to occupy their premises, and obtain a renewal tenancy, when their tenancy would otherwise come to an end, subject to the landlord's ability to oppose a renewal tenancy on specified grounds. We also explained how parties can agree to "contract out" of security of tenure before they enter into a business tenancy. We provide a more detailed explanation of the current law in Appendix 1.

2.3 Security of tenure has been a critical feature of the commercial leasehold market for 70 years. The current model of security of tenure – where the default is that a tenant is entitled to a renewal tenancy, subject to the parties agreeing to contract out of that – has been in place for around 55 years. It is part of the bedrock of the commercial leasehold market and the market has developed with it as part of its foundations. 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.

2.4 Whether or not a sitting tenant has security of tenure provides an important starting point for negotiations when a tenancy comes up for renewal. Where the tenant does have security, it generally prevents landlords from being able to take advantage of the tenant's desire to remain at their current premises, albeit subject to the landlord opposing the grant of a new tenancy on specified grounds. Indeed, in some cases, whether or not a tenant has security will be the most significant factor in the negotiations; security may give a tenant a strong negotiating position in a market that would otherwise leave it in a weak position. However, outcomes are also influenced by matters outside of the 1954 Act.

2.5 In this chapter, we explain what happens, in practice, when parties enter into a new business tenancy and when they enter into a renewal tenancy, and the impact on those processes of the 1954 Act. While it cannot explore every angle of how business tenancies are agreed in practice, this chapter is intended to give an idea of the myriad factors that might affect the agreement that is reached. The chapter is not intended to denigrate the significance of security of tenure, but to place it in the wider context of other factors that impact on negotiations between commercial landlords and tenants.

2.6 This chapter is particularly important in the context of this Consultation Paper because those factors – including whether or not the tenant has security of tenure – influence the negotiating strength of each party when a tenancy is being discussed. If a different

model of security of tenure were to be adopted (as we go on to discuss in Chapter 3), then the bedrock of the commercial property market that we mention at paragraph 2.3 would be adjusted. As we explain below,[34] it is not easy to assess the impact of that adjustment. However, we highlight here that, while many of the practicalities concerning entering into new and renewal tenancies, and many of the wider factors that influence outcomes that we explore in this chapter, would remain the same, the balance of power between landlords and tenants is likely to change.

ENTERING INTO NEW BUSINESS TENANCIES

2.7 We summarised some of the features of the commercial leasehold market in Chapter 1.[35] Commercial property will typically, but not always, be marketed by prospective landlords as being available to let. Prospective tenants will investigate and inspect various properties that are on the market with a view to taking a tenancy of a property that best meets the requirements of their business.

2.8 Parties enter into business tenancies in a variety of different ways. Sometimes there will be an informal discussion directly between a property owner and a business owner which culminates in an oral or written tenancy agreement being entered into without professional advice. In other cases, the discussions and negotiations will be between the staff or property agents of the prospective landlord and/or the prospective tenant and the process will be more formal.

2.9 When a deal is agreed in principle, the parties often agree non-binding "heads of terms" summarising the main aspects of their agreement, before going on to enter into a written business tenancy which incorporates those, and other more detailed, terms. Various professionals are often involved during the process, including property agents, surveyors, and lawyers.

2.10 The process is voluntary and depends on the parties reaching agreement. At any point during the process either party can "walk away" from the negotiations and the proposed transaction will not be completed.

Issues that the parties negotiate and agree

2.11 When parties adopt an informal approach, they might expressly agree little more than the amount of a periodic rent and a commencement date. When parties follow a more formal process or engage the services of property professionals, the parties will normally negotiate and agree a range of matters, including:

(1) the duration of the tenancy;

(2) the rent that will be payable, and whether the rent will be reviewed during the tenancy;

(3) whether there will be any opportunities for either party, or both, to terminate the tenancy early ("a break clause");

---

34 See para 3.8 below.

35 See paras 1.37 to 1.42 above.

(4) who will be responsible for repairing and insuring the premises, and whether the tenant will have to pay a service charge for the upkeep of the premises;

(5) whether there are restrictions on the tenant selling the tenancy to a third party or sub-letting the premises, commonly referred to as an "alienation covenant";

(6) whether the tenant will be required to use the premises only for specified purposes, commonly referred to as a "user covenant"; and

(7) a wide range of other matters concerning the way that the parties will deal with each other, such as the way in which notices will be served, whether applications can be made for planning permission in respect of the premises, whether interest will be payable on late payments, and so on.

2.12 One of the key issues that the parties ought to consider is whether the tenant will have security of tenure under the 1954 Act, or whether the tenancy will be "contracted out" of the Act.[36]

2.13 Parties following a more formal negotiation process are likely to discuss and agree on the status of the tenancy under the 1954 Act – so whether a tenancy has security of tenure or not is a deliberate decision.[37]

2.14 However, in circumstances where a tenancy is entered into without formal negotiations, or if the parties do nothing about security of tenure during the negotiation process, including if they are not aware of the effect of the 1954 Act, then the tenancy will benefit from security of tenure by default.[38]

What is the impact of the 1954 Act on negotiations for a new business tenancy?

2.15 Whether or not a new business tenancy is to have security of tenure is a significant decision. Security of tenure is generally considered to be advantageous to tenants so, all other things being equal:

(1) a prospective tenant is likely to want security of tenure, to give them maximum flexibility and a stronger negotiating position at the end of the tenancy, and potentially to provide a firmer basis for them to be willing to make capital investment at the premises; and conversely

---

[36] An overlapping question for the parties to decide is whether the tenancy should include a contractual right for the tenant to renew the tenancy at its expiry ("an option to renew"). The mere fact that a tenancy is contracted out of the 1954 Act does not necessarily mean that the tenant has no security because the effective operation of an option could lead to a similar outcome. Also see n 4 above.

[37] If the parties agree that the tenant is not to have security of tenure, then the parties must actively take steps to exclude it. In summary, the prospective landlord must serve a "warning notice" on the prospective tenant, and the prospective tenant must complete a declaration confirming that they understand the consequences of the tenancy not having security of tenure. See, further, Appendix 1, para 1.4.

[38] Provided the tenancy falls within the scope of the 1954 Act and the tenant remains in occupation for business purposes when the contractual term of the tenancy comes to an end: see Appendix 1, para 1.10.

(2) a prospective landlord is likely not to want the tenant to have security, to give the landlord maximum flexibility and a stronger negotiating position at the end of the tenancy.

But that is not always the case – some tenants will not want security of tenure, and some landlords are content to grant protected tenancies.

2.16 As we explained in paragraph 1.37 and following, a wide range of factors are at play when parties are negotiating a business tenancy, including when they are negotiating whether the tenancy is to be granted with, or without, the benefit of security of tenure. These factors include the supply of, and demand for, commercial property in the area, the current and future economic outlook, and the parties' respective business needs and bargaining power. So, for example:

(1) in a market where there is a surplus of commercial properties available to rent, a landlord may be willing to grant a protected tenancy to obtain the rental income and avoid the premises being vacant, even though it would not have granted a protected tenancy in different market conditions;

(2) conversely, in a market where there is a shortage of commercial properties available to rent, a tenant may be willing to take a contracted-out tenancy in order to commence trading, even though it would have sought a protected tenancy in different market conditions;

(3) a landlord may be particularly keen to secure a specific tenant and therefore be more willing to grant a protected tenancy, and conversely a tenant may be particularly keen to secure specific premises and therefore be more willing to accept a contracted-out tenancy;

(4) a landlord may plan on granting a renewal tenancy in the future, but nevertheless want the tenancy to be contracted-out in order to improve its negotiating position when it comes to the time for renewal: the landlord may be able to use the lack of security as a negotiating tool to secure a higher rent, or other favourable changes to the tenancy agreement, without having any intention of actually losing the tenant.

2.17 The existence of the 1954 Act is therefore just one factor to be taken into account by the parties when negotiating the terms of a proposed new business tenancy. The agreement that they reach will be impacted by their particular business needs and by their negotiating strength. Sometimes the question of whether or not a proposed business tenancy is to have security of tenure will be particularly important to one or other party; sometimes it will not. In some cases, the bargaining power of one party is so strong that the other party 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.

RENEWAL BUSINESS TENANCIES

2.18 As a tenancy reaches its expiry date:

(1) The tenant may decide to leave the premises, or may wish to continue trading from the premises. If the tenant wishes to continue its business at the premises, it may want the rent to reduce, or may want some other change to the terms on which it occupies the premises.

(2) The landlord may be content for the tenant to remain at the premises, or the landlord may want the tenant to leave the premises. If the landlord is content for the tenant to remain at the premises, it may nonetheless want the rent to increase, or want some other change to the terms on which the tenant occupies the premises.

2.19 Regardless of whether the tenant is *entitled* to a renewal tenancy under the 1954 Act, the parties are free to reach their own agreement about what happens when the tenancy expires.

(1) The parties may agree to the grant of, and the terms of, a renewal tenancy. In doing so, the parties negotiate the terms on which the relationship will continue, similarly to the process of when parties agree the terms of a *new* business tenancy,[39] albeit with the benefit of the existing tenancy as a starting point.

(2) Alternatively, the parties may agree that the tenancy will end and the tenant will vacate the premises.

Whether the tenant has security of tenure is a (and can be the most) significant factor – it is likely to impact the parties' respective negotiating positions, and may impact the terms that are agreed by the parties – but their negotiations may also be influenced by other factors.

The difference between new business tenancies and renewal business tenancies

2.20 Whether parties are negotiating a *new* tenancy or a *renewal* tenancy, the tenant is always free to walk away from negotiations with a landlord and seek alternative premises elsewhere.

2.21 But for tenants there is an important difference between the two. When parties are negotiating a *new* tenancy, the tenant does not usually have any practical, financial and/or emotional tie to particular premises. But when parties are negotiating a *renewal* tenancy, the tenant will often have a practical, financial and/or emotional tie to the current premises. A sitting tenant may have a particular interest in staying at those premises, for example, to preserve its goodwill, to carry on a business at premises into which they have put a great deal of their personal time and energy, to avoid business disruption and potential gaps in trading caused by moving premises, or to avoid incurring fit-out costs at new premises (and closure costs at the original premises).[40]

---

[39] See paras 2.8 and 2.9 above.

[40] Closure costs can include putting the premises into a good state of repair when vacating, or paying damages to the landlord for any disrepair that remains. This is referred to as a "terminal dilapidations claim": see paragraph 1.48(3) above.

The impact on negotiations for a renewal tenancy where a tenant does not have security of tenure

2.22 If a tenant does not have security of tenure, the landlord can simply refuse a renewal tenancy and the tenant must vacate. However, the parties will often negotiate and agree the terms of a renewal tenancy, and the terms that are agreed will be significantly influenced by the parties' respective negotiating strength, as well as wider factors.

2.23 The particular importance to the tenant of continuing to trade from the current premises will often put the tenant in a weaker negotiating position than if they (or any incoming new tenant) were negotiating with the landlord for a potential new tenancy of those premises. The landlord will always be able to (and be able to threaten to) walk away from the negotiations, in which case the tenant will have to leave, severing its ties to the premises (as set out in paragraph 2.21 above). That may (but will not necessarily) enable the landlord to demand more favourable terms for a renewal tenancy from the sitting tenant than if the landlord were letting the property in the open market to a new tenant.

The impact on negotiations for a renewal tenancy where a tenant does have security of tenure

2.24 While, in practice, the vast majority of renewal tenancies are granted by agreement between the parties, where a tenant has security of tenure, the landlord cannot simply refuse a renewal. The landlord must either negotiate (or be compelled by the court to grant) a renewal tenancy, or demonstrate a ground of opposition.[41]

2.25 So, where the tenant has security of tenure, the particular importance to the tenant of being able to run its business from the premises will not generally cause the tenant to be in a weaker negotiating position than if they (or any incoming new tenant) were negotiating with the landlord for a potential new tenancy of those premises. The parties are conducting a negotiation about the terms for a renewal tenancy with a starting point of the tenant having a statutory entitlement to a renewal tenancy, and the rent under that renewal tenancy will be the "open market rent" (that is, the level of rent that a new tenant would pay for the premises in the open market).

2.26 Accordingly, the landlord cannot simply threaten to "walk away" from the negotiations, and the tenant is therefore at less risk of its ties to the premises (as set out in paragraph 2.21 above) being severed. Since it is a forced negotiation, the landlord is generally less likely to be able to demand more favourable terms for a renewal tenancy from the sitting tenant than if the landlord were letting the property in the open market to a new tenant. Indeed, far from being in a weaker position, the effect of the 1954 Act might cause the tenant to be in a comparatively strong position: the landlord is forced to negotiate and renew, whereas the tenant can walk away.

2.27 However, whether a renewal tenancy is granted, and on what terms, will still be influenced by the parties' respective negotiating positions, as well as wider factors – just as is the case when parties negotiate a *new* business tenancy, and just as is the

---

41 We explain the grounds of opposition in para 1.33 of Appendix 1.

case when parties negotiate a renewal tenancy where the tenant did *not* have security of tenure.

Summary

2.28 In summary, therefore, where a tenant does not have security, the landlord can simply demand that the tenant vacates the premises. By contrast, where a tenant has security of tenure, the default position is that the tenant is entitled to a renewal tenancy and the landlord is forced to negotiate (or can be ordered by the court to grant) a renewal tenancy unless it can establish a ground of opposition. In addition, during negotiations for a renewal tenancy, the potential for the landlord to take advantage of the sitting tenant is significantly reduced.

Negotiating for a renewal tenancy in the shadow of the 1954 Act

2.29 It follows from what we say above that whether or not a tenant has security of tenure provides an important starting point to negotiations for a renewal tenancy. It makes a difference, for example, as to whether the landlord can simply walk away. But while security of tenure is important, if one or other party wants a renewal tenancy there will usually be a negotiation between the parties. Those negotiations will take place in the shadow of the 1954 Act, but also in the wider context of a range of other factors, for example:

(1) the landlord may be particularly keen to keep the tenant, or conversely the tenant may be particularly keen to keep the premises;

(2) the transaction may be time-sensitive to one or other party, or one or other party may be under financial strain, meaning they want to reach agreement quickly;

(3) one or other party may have better knowledge of, or practical ability to engage with, the renewal process;

(4) one or other party, or both, may want to avoid the delay, cost, distraction, hassle and uncertainty caused by court proceedings; or

(5) one party's knowledge of, or speculation about, the *other party's* negotiating strength may influence its conduct and tactics.

2.30 Accordingly, while the status of a tenancy under the 1954 Act (either protected or contracted-out) is important, negotiations about renewal tenancies will also be influenced by other factors. The parties' negotiations may result in a tenancy without security of tenure being renewed, or conversely a tenancy with security of tenure not being renewed, and the negotiations may result in the parties agreeing an outcome that differs from what one or other party could have achieved by relying on their strict legal rights. These outcomes can be a consequence of the status of the tenancy under the 1954 Act, as well as a consequence of wider economic factors and the parties' negotiating strength.

RENEWAL BUSINESS TENANCIES: THE OVERRIDING IMPACT OF THE OPEN MARKET

2.31 The 1954 Act is a significant part of the commercial leasehold landscape in which landlords and tenants negotiate and agree on new, and renewal, tenancies. When a tenant has security of tenure, the legal starting point is that the tenant is entitled to a renewal tenancy, and the landlord is generally prevented from taking advantage of the sitting tenant's particular need to stay at the premises. When a tenant does not have security, the legal starting point is not the same, but in practice a renewal tenancy will often still be agreed.

2.32 In the majority of cases, whether the tenant has security or not, the parties reach agreement. Their negotiations will be conducted in the shadow of the tenant having security of tenure, or in the shadow of the tenant not having security of tenure – and that is a very important distinction which can give rise to different outcomes. Indeed, it can be the difference between whether or not the tenant obtains a renewal tenancy and stays in the premises, and the favourability of the terms on which they do so. However, it is also important to note that outcomes may sometimes have little to do with whether or not a tenant has security of tenure, but instead reflect wider economic or individual factors. That is all because the 1954 Act sits within the commercial leasehold open market, where wider economic and individual factors are at play and influence outcomes.

2.33 Whether or not a business tenant has security of tenure is a binary question. But it will be clear from the discussion above that the answer to that binary question does not necessarily dictate any particular outcome, because the parties are free to reach their own agreements. Similarly, changing to a different model of security of tenure, as we now go on to discuss in Chapter 3, would not necessarily dictate any particular outcome, because any different model would still sit within the commercial leasehold market. Accordingly, whichever model is ultimately adopted, it will continue to operate within a landscape where parties negotiate and reach their own agreements, albeit with potentially different parameters and with a shift in the balance of power between landlords and tenants.

Chapter 3: Models of security of tenure

INTRODUCTION

3.1 In this chapter we ask whether fundamental change to the security of tenure regime is necessary or desirable. As we explained in Chapter 1,[42] in responding to this Consultation Paper, we would like to hear consultees' views as to which model for security of tenure should operate in England and Wales and the reasons for that view.

3.2 When we talk about a "model" for security of tenure, we are referring to the overarching question as to whether, and if so, in what circumstances, business tenants should be entitled to security of tenure. It is important to be clear what we mean when we talk about having "security of tenure" in this context. As we explained in Chapter 1,[43] we are referring to a legal system whereby business tenants have a statutory right to a renewal tenancy when their current tenancy comes to an end. That right is subject to the ability of landlords, in certain prescribed circumstances, to oppose renewal of the tenancy and regain possession of the premises.

3.3 Currently, we have a system of security of tenure where the default position is that business tenants are entitled to security of tenure, unless the parties follow a statutory procedure to contract out prior to the tenancy being entered into. But the legal framework has not always been, and does not need to remain, this way; it would be possible to move from the current contracting-out model to a different model.

MODELS OF SECURITY OF TENURE

3.4 In this chapter, we consider four different models for security of tenure. We introduce each model here, before exploring them in more detail below.

(1) Mandatory security of tenure – when the 1954 Act was originally enacted, security of tenure was mandatory. In other words, it was not possible for parties to agree to contract out of the right to a new tenancy afforded to tenants by the Act. As we have explained, the ability to contract out of the Act was not introduced until 1970.[44] One option we explore below is whether to return to a model where security of tenure is mandatory and it is no longer possible to contract out.

(2) No security of tenure – another option we explore is the abolition of security of tenure. This would mean that tenants would have no statutory right to a renewal tenancy.[45] Note that if statutory security of tenure was abolished, this would not

---

42 See para 1.28 above.

43 See para 1.5 and following above.

44 See para 1.14 above.

45 We discuss the application of any new model of security of tenure to existing tenancies in para 3.14 and following below.

prevent landlords and tenants from agreeing contractual options to renew a tenancy.

(3) Security of tenure which parties can contract in to (a "contracting-in model") – this option would essentially reverse the current model which underpins the 1954 Act. The law would move from a scheme where the default position is that tenants have security of tenure, with parties having to go through the process of contracting out if they do not want that protection, to one where the scheme takes the opposite approach. In other words, a scheme where the default position is that tenants do not have security of tenure, but the parties can choose to contract into a statutory scheme if they wish.

(4) Security of tenure which parties can contract out of (a "contracting-out model") – this is the model used under the current law. Under this model, the default position is that tenants have security of tenure unless, prior to entering into the tenancy, they agree otherwise and follow a prescribed statutory procedure to contract out. As we explain further in paragraph 3.10 below, retaining a contracting-out model for security of tenure, would not necessarily mean retaining the 1954 Act in exactly the form it is now. Our second Consultation Paper would seek consultees' views on whether, and if so how, the detail of the 1954 Act might be reformed, to allow it to work efficiently for a modern commercial leasehold market.

3.5 As we explain in Chapter 1, the fact that we are consulting on these models should not be seen as indicating that the Law Commission favours or supports any particular approach. We are keen to consult widely on the models set out above so that we have as strong an evidence base as possible to reach a conclusion as to which model we will recommend to Government.[46]

3.6 Below, we set out various arguments for and against each model. The arguments set out are those which, at present, we consider to be the key arguments for or against each model. We recognise, however, that there might be other arguments which consultees think we should take into account when considering each model. We would welcome consultees telling us not just which model they favour, but the reasons why they favour that model (whether those reasons are the same as or different from the arguments we have set out below). We would also find it useful to understand consultees' reasons for rejecting other models, in favour of their chosen model.

3.7 When considering each of the models for security of tenure, it is important to bear in mind the following general points.

Impact on market of changing models

3.8 Any move away from the current contracting-out model to another model would be a significant change, which may have a big impact on the commercial leasehold market. While it is possible to try to predict what the main consequences of a move to an alternative model might be (and we invite consultees' views in this respect in consultation responses), it will be difficult to build up a comprehensive picture of exactly how the market might react to such a change and whether any changes to the

[46] See para 1.30 above.

market would be desirable. There might also be a period of uncertainty or instability while any change in model bedded in. The potential uncertainty and unpredictability generated by a change to an alternative model are factors that could count against such a move and in favour of retaining the status quo.

3.9 As we explain in Chapter 1, because it would amount to a major change, we would look for significant evidence that a different model should be adopted (and the existing contracting-out model departed from), before making any recommendation to do so.[47]

Appropriate solution to problems with the current law may not be changing model

3.10 It is important for consultees to reflect on the nature of any problems they think currently exist with the 1954 Act. Consultees should consider whether such problems need to be fixed by changing the model for security of tenure or whether they might be better fixed by retaining the current contracting-out model, but making changes to how the 1954 Act operates. A response to this first Consultation Paper in favour of retaining the current contracting-out model, does not necessarily mean that the Act would be retained in exactly its current form. As we explained in Chapter 1,[48] if the outcome of this first consultation is that we recommend retaining the contracting-out model, we will consult in our second Consultation Paper about the detail of the 1954 Act and how it could be improved to ensure that it meets the needs of the modern commercial leasehold market. In response to this second Consultation Paper, therefore, consultees would have an opportunity to tell us how they think the detail of the 1954 Act should be improved.

3.11 For example, some may take the view that the current statutory procedure for contracting out[49] is too cumbersome and costly and needs to be streamlined. However, this does not necessarily mean that they would favour a move to an entirely new model for security of tenure. They might still favour a contracting-out model for security of tenure and they should tell us that in response to the questions we ask in this first Consultation Paper. They might, nevertheless, want improvements to be made to the detail of how the current contracting-out process functions (for example, they might favour a process whereby contracting out would take place on the face of the lease). Assuming we recommended retaining a contracting-out model, that is something consultees could tell us about in response to our second Consultation Paper where we would look at the detail of how the 1954 Act functions and consult on possible improvements.

Detail of scheme could be different for each model

3.12 When thinking about the possibility of a move to either mandatory security of tenure or a contracting-in model, it should not be assumed that, for each model, the detail of the statutory scheme would simply mirror the current 1954 Act. We are conscious that these alternative models of security of tenure:

---

47 See para 1.31 and following above.

48 See para 1.34 and following above.

49 We explain the current contracting-out procedure in more detail in Appendix 1, paras 1.4 and 1.5.

(1) may involve different policy considerations from the current contracting-out model;

(2) may need to function differently within the commercial leasehold market; and/or

(3) may require a different balance to be drawn between the interests of landlords and tenants.

Accordingly, there might be arguments for framing elements of the statutory scheme – for example, the grounds of opposition – differently depending on which model for security of tenure we recommend.

3.13 As we explained in Chapter 1,[50] once it is clear from the responses to this Consultation Paper which model for security of tenure we will recommend, we intend to consult in our second Consultation Paper about the detail of exactly how that scheme should function and how it should mirror or differ from the current 1954 Act.

Application of any new model to existing tenancies

3.14 If the model for security of tenure were changed from the current contracting-out model, one significant complexity which would arise is whether, and if so how, the new model would apply to existing tenancies and to renewal tenancies of existing tenancies.[51]

3.15 In addressing this issue, there are a number of relevant factors which would need to be considered, in particular the following.

(1) It would need to be recognised that parties to existing tenancies have agreed their terms on the basis that the current contracting-out model applies. To apply a new model of security of tenure to existing tenancies with immediate effect could distort the terms of the agreement that the parties entered into, failing to account for the fact that they might have agreed entirely different terms had they known at the start of their tenancy that a different model for security of tenure would apply part-way through. For example, if the parties to an existing tenancy have contracted out of the protection of the 1954 Act, it is likely to be seen as unfair if, say, a change to a mandatory model of security of tenure was immediately applied to that tenancy. This would mean that although the parties agreed the terms of the tenancy on the basis that the tenant would have no statutory security of tenure, the tenant would in fact be given statutory security of tenure mid-way through the tenancy by virtue of the change in model.

(2) Given this context, there might be an argument that implementing a change in model for existing tenancies with immediate effect would breach the right to peaceful enjoyment of property contained in Article 1 of the First Protocol to the European Convention of Human Rights, which is incorporated into the law of England and Wales by the Human Rights Act 1998.

---

50 See para 1.34 and following above.

51 When we refer to “existing tenancies” here, broadly, we mean tenancies which have already been granted when any change of model comes into effect.

(3) On the other hand, it is important to recognise that an existing tenancy could be renewed a number of times – in fact, there is no limit to the number of times an existing tenancy could be renewed whether or not it benefits from security of tenure under the 1954 Act. If a new model for security of tenure were never applied to any of these renewal tenancies at any point in the future, then the current contracting-out model (and the current 1954 Act) would need to remain in place indefinitely. This would create a complex legal framework in which some tenancies were governed by the new model (alongside a reformed 1954 Act designed to support that new model) and some tenancies were governed by the current contracting-out model and the current 1954 Act. As well as creating legal complications, this could have an impact on the commercial leasehold market itself. It could risk creating, for an indefinite period of time, a multi-tier market in which it is necessary to ask not just (as now) whether a tenancy has security of tenure, but also *which type* of security of tenure the tenancy has (the old contracting-out model or the new model).

3.16 We recognise that the issue of whether, and if so how, a new model for security of tenure would be applied to existing tenancies or any renewal of an existing tenancy is complex. How the various factors set out above could be balanced against one another in order to reach a solution to this issue is something which we would explore with consultees in our second Consultation Paper. We raise the issue in this first Consultation Paper, however, because we consider it important for consultees to bear in mind that it is a significant issue which would need to be grappled with in the event that the model for security of tenure were changed.

The international perspective

3.17 In Appendix 3 we have summarised the way in which business tenancies are protected by statute, if at all, in some other jurisdictions. The *scope* of the protection afforded to tenants in different jurisdictions is discussed in Chapter 4. What is relevant in this chapter is the *nature* of the protection in these jurisdictions.

3.18 It is important to note that the level and type of protection provided in a particular jurisdiction will depend on a variety of factors, and these factors will differ between jurisdictions. In particular, the commercial property market in other jurisdictions is not necessarily the same as in England and Wales.

3.19 A number of jurisdictions around the world provide business tenants – or some types of business tenants – with statutory rights to enable them to remain in their business premises longer than they might otherwise be able to do so. While some jurisdictions (for example, New Zealand) provide business tenants with little or no statutory security, our jurisdiction is certainly not an "outlier" in taking a different approach and providing business tenants with statutory protection.

3.20 That said, aside from Northern Ireland, we are not aware of any other jurisdictions where the scheme of statutory protection is mandatory. We are also not aware of any other jurisdiction which operates a contracting-in model (in other words, a model whereby tenants are not entitled to statutory protection by default, but can take steps to opt into the statutory scheme). It appears as though the usual position is that the statutory scheme applies by default, but there are generally some steps which can be taken by the parties to avoid the statutory scheme applying (or to avoid the full force of

the statutory scheme). The current model used in England and Wales – a contracting-out model – also takes this approach.

Terminology

3.21 In this chapter, we use the term "protected tenancy" as a general term to refer to a tenancy which benefits from statutory security of tenure. That security of tenure might be provided under the current contracting-out model or (if the model for security of tenure were changed) under either a mandatory model or a contracting-in model.

3.22 We use the term "unprotected tenancy" as a general term to refer to a tenancy which does not benefit from statutory security of tenure (although it may still include a contractual option to renew). A tenancy might be "unprotected" because we are assuming any of the following:

(1) a contracting-out model applies and the tenancy has been contracted out;

(2) a contracting-in model applies and the tenancy has not been contracted into the statutory scheme; or

(3) statutory security of tenure has been abolished (so that it is no longer possible to create any protected tenancies).

MANDATORY SECURITY OF TENURE

What would a mandatory security of tenure model look like?

3.23 It would be possible to return to a system whereby security of tenure was mandatory. A system of mandatory security of tenure has previously operated in England and Wales, between 1954 (when the 1954 Act was first introduced) and 1970 (when the law was changed to allow contracting out via court application).[52]

3.24 As we note in paragraph 3.12 above, if we returned to a system of mandatory security of tenure, however, it should not be assumed that it would look exactly as the 1954 Act does currently (but simply with the provisions allowing contracting out removed). If the outcome of this first consultation is that we recommend a move to a mandatory model, then in our second Consultation Paper, we would consult on the detail of how such a model would operate, looking at each aspect of the 1954 Act and consulting on whether this might be changed in order to form part of a workable and efficient mandatory scheme.

3.25 It is important to recognise, however, that such a process can only go so far. Any system of mandatory security of tenure is one that is primarily designed to protect tenants. In this context, it would not be possible to construct a statutory scheme for mandatory security of tenure in which the protection intended to be offered to tenants was significantly reduced or even illusory. In particular, a central pillar of any such scheme must be that the parties would not be able to agree to contract out of the tenant's statutory right to a renewal lease.

---

[52] As we explain in para 1.14 above, the law was changed to permit contracting out via a court process by the Law of Property Act 1969, which came into force on 1 January 1970.

Arguments in favour of mandatory security of tenure

Increased tenant protection

3.26 A key argument in favour of a mandatory model of security of tenure is that it would provide additional protection to tenants. A mandatory model is intended to provide the most significant level of protection to tenants of all the models for security of tenure considered in this chapter (although as we note in para 3.32 and following below, a mandatory model may not always provide as much protection to tenants as was intended).

3.27 We have explained in Chapter 2 that tenants often prefer to have protected tenancies. With a protected tenancy, tenants have a statutory entitlement to a renewal tenancy when their existing tenancy expires and (in comparison to an unprotected tenancy) this usually puts them in a stronger position in relation to their landlord if they wish to remain in the premises.[53] In the absence of security of tenure, tenants are reliant at lease expiry on being able to negotiate a renewal tenancy with their landlord on affordable terms or face the prospect of incurring the costs of finding and moving to new premises and losing any goodwill they had built up in their current location.

3.28 Under the current contracting-out model as well as under a contracting-in model, it is possible for landlords and tenants to enter into either protected or unprotected tenancies. Tenants who are in a weaker negotiating position in comparison to their landlord, however, may not have sufficient bargaining power to negotiate with their landlord for a protected tenancy. As such, under either a contracting-out or contracting-in model, some tenants will not be able to benefit from security of tenure even if they wish to. (As we explain further at paragraph 3.109 below, the position would arguably be worse for tenants under a contracting-in model compared to a contracting-out model, because under a contracting-in model tenants would no longer have security of tenure by default.)

3.29 By contrast, under a system of mandatory security, all tenancies will be protected because it will not be possible for parties to opt out of security of tenure. A mandatory system of security of tenure could therefore improve the position of more vulnerable tenants, by ensuring their tenancies always benefit from security of tenure. Indeed, in broad terms, rebalancing the market so as to offer more protection to tenants was an original purpose of the 1954 Act. Consultees who feel that the commercial leasehold market would benefit from rebalancing in favour of tenants today, may see that as an argument in favour of a return to a system of mandatory security of tenure.

3.30 While we have not heard many voices calling for a return to a system of mandatory security of tenure, it was suggested by an organisation representing a group of tenants that it is something they would welcome. That organisation told us that their members encounter landlords who are operating a “blanket policy” only to offer contracted-out tenancies. As such, we have been told that tenants this organisation represents are struggling to take advantage of the statutory right to a renewal lease tenancy offered by the 1954 Act, even though they would like to do so.

---

[53] See para 2.15 above.

Market simplification

3.31 It might also be argued that a return to a system of mandatory security of tenure could reduce the time and costs both landlords and tenants currently incur when entering into tenancies. In particular, they would no longer need to negotiate about whether tenancies were protected or contracted-out, and there would no longer be any costs incurred by either party in going through any statutory process for contracting-out (whether that is the current process or a reformed process). There would also be no risk of mistakes being made during the contracting-out process because contracting out would no longer be possible. To an extent, it might be argued that this approach could simplify the market.

Arguments against mandatory security of tenure

Previous impact of this model on the market

3.32 At paragraph 3.26 above, we explain that one argument in favour of a system of mandatory security of tenure is that it could provide additional protection to tenants. In practice, however, prior experience has shown that the position is not straightforward.

3.33 A system of mandatory security of tenure has operated before in England and Wales, between 1954 (when the 1954 Act was first introduced) and 1970 (when the law was changed to allow contracting out). As we explain in more detail in Appendix 2,[54] in our 1969 project, the Law Commission found that such a system was problematic. The main problem was that it disincentivised landlords from offering short-term business tenancies to tenants because landlords were concerned about not being able to get vacant possession of their premises when those tenancies came to an end.

3.34 As we explain at paragraph 3.30 above, some tenants have told us that, at present, they are unhappy with the current contracting-out model for security of tenure because their experience is that landlords are only prepared to offer them contracted-out tenancies (as opposed to protected tenancies). However, under the previous system of mandatory security of tenure, an arguably more severe problem arose in that, at least in relation to short-term occupancy, landlords were reluctant to offer tenancies at all. Instead, landlords preferred to keep their space vacant to give them certainty that they would have vacant possession to carry out their plans for the premises as and when they were ready.

3.35 Far from improving the position of tenants in the commercial leasehold market, therefore, a system of mandatory security of tenure actually appeared to decrease the amount of space available to business tenants, reducing flexibility within the market and disadvantaging tenants. The problem was significant enough for the Law Commission to recommend (and Government to implement) a move away from mandatory security of tenure to a contracting-out model.

3.36 A similar problem arose in the context of agricultural tenancies in the 1990s. The statutory protection afforded to agricultural tenants at that time had the effect of discouraging landowners from being willing to grant agricultural tenancies. As a consequence, security of tenure and rent control were removed in 1995, with support

---

[54] See Appendix 2 para 2.37.

from both landlord and tenant groups, in order to bring more land to the tenanted market.[55]

3.37 A return to mandatory security of tenure for business tenants could, similarly, have the effect of reducing flexibility within the commercial leasehold market. Landlords might be less willing to offer space to rent or might otherwise adjust their business practices (for example by only offering licences or short-term tenancies which are excluded from the protection of the Act). This might ultimately disadvantage tenants.

3.38 More generally, the reintroduction of mandatory security of tenure would be a significant change for the commercial leasehold market. It could impact tenancies and/or the market in ways which are difficult to predict and which might not benefit tenants.

Removal of choice for some tenants

3.39 While some tenants have told us that under the current contracting-out model they feel disadvantaged because they are unable to insist on a protected tenancy, for other tenants, particularly where they have more equal bargaining power with landlords, the position might be very different.

3.40 For those tenants, the ability to choose between either having a protected or an unprotected tenancy might be seen as a useful, flexible tool, giving them a choice about how to structure their leases and enabling them to obtain the right deal. For example, tenants might choose to forgo security of tenure in exchange for more advantageous lease terms in other respects, such as a lower rent or a shorter, more flexible lease term. Alternatively, tenants might prefer to retain complete freedom to agree contractual options to renew on any terms they wish. For these types of tenant, a return to a mandatory system of security of tenure might be seen as a significant backwards step, disadvantaging them by reducing flexibility within the market.

Impact on landlords

3.41 From the point of view of landlords, re-introducing mandatory security of tenure is likely to be seen as disadvantageous. As we note above, a mandatory model is designed to offer significant protection to tenants, but, in doing so, it reduces flexibility and increases risks for landlords.

3.42 Under a mandatory model, landlords would only be able to enter into protected tenancies. Generally, however, as we explain in Chapter 2,[56] landlords may prefer entering into unprotected tenancies, or at least, may prefer to have the option to do so. The following are examples of reasons why landlords might prefer to retain the option to enter into unprotected tenancies.

(1) With an unprotected tenancy, the tenant has no right to remain in the premises after the tenancy ends. In comparison to a protected tenancy, the tenant of an unprotected tenancy is generally in a weaker negotiating position in relation to

---

55 See Agricultural Holdings Act 1986 and Agricultural Tenancies Act 1995. For a summary of the circumstances leading to the 1995 Act, see Scammell, Densham and Williams, *Law of Agricultural Holdings* (11th ed 2023), paras 1.58 to 1.64.

56 See para 2.15 above.

their landlord if they wish to enter into a renewal tenancy. By contrast, with an unprotected tenancy the landlord is generally in a stronger position. It has both the certainty that the tenancy will come to an end on the contractual expiry date and the freedom to choose what it would like to do with the premises thereafter. If the landlord wishes to relet the premises, it can choose either to relet to the sitting tenant or to someone else. The landlord might also seek to take advantage of the fact that the sitting tenant is likely to have a vested interest in remaining in the premises (so that they can preserve their goodwill and to avoid incurring the costs and disruption of moving) in order to secure a higher rent and/or better terms from that tenant than they would otherwise be able to achieve either by letting to a new tenant on the open market or (if the tenancy were protected) under a statutory renewal.

(2) A landlord might have plans for the premises which require vacant possession, such as redevelopment. With an unprotected tenancy, landlords can generally be confident that they will quickly and reliably be able to get vacant possession of the premises at lease expiry, because the tenant has no right to a new tenancy or to remain in occupation.

(3) Landlords might also prefer to grant unprotected tenancies for estate management reasons. For example, if they have a number of different tenants on one site (such as in an office block or a shopping centre), landlords might want certainty that all tenancies will come to an end at the same time, without going through the process of opposing renewal under the 1954 Act. Alternatively, landlords might want certainty that they can uniformly "upgrade" the lease terms to take account of changes in the management of an estate.

(4) There may also be cases in which landlords are willing to grant tenants security but would prefer to use bespoke contractual options to renew.

3.43 If landlords felt sufficiently disadvantaged by a system of mandatory security of tenure, it is possible that changing to such a model could hamper the market and disincentivise investment by landlords (domestic and/or international) in commercial property. As we note above, previously, when there was a system of mandatory security of tenure in England and Wales, landlords were sometimes sufficiently concerned about the practical difficulty of getting vacant possession at the end of a short, protected tenancy (even if they could establish a ground of opposition), that they chose not to offer a tenancy of the relevant premises at all.

Modern market conditions / leasing practices

3.44 We have been told that the modern commercial leasehold market and commercial leasing practices are different in some respects from those that have existed historically. Because of these changes, it might be argued that it would be inappropriate or undesirable to move to a mandatory system of security of tenure.

3.45 First, we have been told that today there is a glut of vacant commercial space (for example in the retail sector) and that there is currently a "tenants' market" at least in some sectors. If this is correct, landlords may argue that it would be unfair to introduce a mandatory model for security of tenure because such a move would skew the market unfairly and unjustifiably in favour of tenants, disadvantaging landlords.

3.46 Second, we have heard that tenancies are now often much shorter in length than they were in the past, with the trend in some markets being towards tenancies of five years or less.[57] Where tenancies are shorter it means that the statutory lease renewal process must be undertaken more frequently than with longer tenancies, leading to parties incurring more cost. If the trend towards shorter tenancies is widespread and likely to be long-term, it could be argued that this might make a move to a mandatory model (whereby parties had no choice but to go through the statutory renewal process when a tenancy expires) less suited to the modern commercial leasehold market than another model of security of tenure.

3.47 Third, we have been told that new rental models, such as turnover rents, have become more common and that the 1954 Act is not necessarily well suited to these models. We have also heard it suggested that the existence of the Act has (unhelpfully) discouraged the growth of such modern rental models in this country, when compared to other countries. Such issues might be exacerbated under a mandatory system of security of tenure where *all* tenancies were protected under the statutory scheme and contracting out was not possible. However, this would not necessarily be the case. If a mandatory scheme were introduced,[58] it might be possible to amend the test in the 1954 Act for determining the rent payable under the renewal tenancy, to make it clear that the court can grant renewal tenancies with turnover rents.

3.48 More generally, it is important to note that just because market conditions or leasing practices *today* may be less well suited than they might be at other times to a particular model of security of tenure, this should not automatically rule out considering introducing that particular model. Market conditions and leasing practices will change over time and today's market conditions and leasing practices may not last. *Today's* market conditions and leasing practices cannot, therefore, be determinative on their own as to which model for security of tenure should apply.

3.49 However, what, perhaps, can be said is that the more rigid the model of security of tenure that is selected, the more likely it is that the model will suit certain market conditions much less well than others. In other words, a more rigid and inflexible model might prove less resilient over time, as market conditions and leasing practices change, than a more flexible model for security of tenure.

3.50 The mandatory model for security of tenure is designed to provide the most significant protection to tenants of all the models for security of tenure; but the model is inflexible. Under a mandatory model, all tenancies must be protected tenancies; the parties have no choice to enter into an unprotected tenancy even if they wish to do so. It is perhaps not surprising, therefore, that a mandatory model might be better suited to some markets (particularly landlords' markets) but much less suited to other markets as conditions change over time.

---

[57] See Property Industry Alliance, *Property Data Report 2023* (January 2024), pp 4 and 11, available at https://propertyindustryalliance.org/property-data-report/.

[58] And, indeed, if the current contracting-out model were retained or if we adopted a contracting-in model, the same would apply.

3.51 By contrast, the current contracting-out model (or a contracting-in model) are more flexible models because parties can agree to enter into either protected or unprotected tenancies. Parties may make different decisions about whether to enter into a protected or unprotected tenancy depending on the particular market conditions which exist at any given time. Accordingly, while these models draw a different balance between the interests of landlords and tenants (and give tenants less protection) than a mandatory scheme, they might prove more resilient and flexible overall in terms of weathering changes in market conditions and leasing practices over time.

Further statutory intervention in the market

3.52 Some may take the position, as a general point of policy, that statutory intervention into the commercial leasehold market is undesirable and that it is preferable for the market to operate freely and regulate itself.

3.53 For anyone taking this view, a move to a mandatory system of security of tenure would be seen as an undesirable option. This is because when compared to the other models under consideration in this chapter, a model of mandatory security of tenure would represent the most significant statutory regulation of the commercial leasehold market. It would be a more intrusive intervention into the market than the current contracting-out model because parties would have no choice but to use the statutory scheme.

NO SECURITY OF TENURE (ABOLITION)

What would abolition of security of tenure look like?

3.54 If security of tenure were abolished, tenants would no longer have a statutory right to a new tenancy when their tenancy came to an end. If tenants wished to remain in their premises at the end of their tenancy, they would only be able to do so if:

(1) at lease expiry, their landlord agreed to grant them a new tenancy. The terms of the new tenancy, including the rent and the length of the tenancy would be subject to agreement with the landlord; or

(2) they had the benefit of a contractual right to a new tenancy (an option), negotiated with their landlord usually when the lease was originally entered into.

3.55 In general terms, therefore, if security of tenure were abolished, whether or not tenants were offered a new tenancy when their current tenancy came to an end (and what the terms of that new tenancy would be) would depend on market forces, rather than on the intervention of the statutory scheme.

Historical context

3.56 As we explain in Appendix 2, prior to the introduction of the 1954 Act, there was already some statutory regulation of business tenancies. While it was not a system of statutory security of tenure, it was a system designed to give tenants some protection at the expiry of their tenancy. In particular, the Landlord and Tenant Act 1927 (the "1927 Act") introduced a system whereby, if certain conditions were met, landlords

were required at lease expiry to compensate tenants in respect of any goodwill they had built up and in respect of any improvements they had made to the premises.[59]

3.57 The obligation to compensate tenants for the goodwill they had built up is, clearly, not the equivalent of the right to a new tenancy under the 1954 Act. However, its existence might have caused landlords to pause at lease expiry where a sitting tenant wanted a new tenancy but the landlord did not wish to grant one. In other words, it may, indirectly, have meant more tenants were successful in negotiating new tenancies on acceptable terms, and therefore staying in their premises, than would otherwise have been the case without the 1927 Act. Even if tenants could not agree a new tenancy with their landlord, then, subject to various conditions, the 1927 Act gave tenants a right to compensation for goodwill and so tenants may not have had to move to new premises entirely empty-handed.

3.58 With the introduction of the 1954 Act, the right to compensation for goodwill under the 1927 Act was replaced with a right to compensation based on rateable values, which applies where the landlord successfully opposes renewal of the tenancy on certain grounds under the 1954 Act.[60] The right to compensation for improvements under the 1927 Act was reformed by Part III of the 1954 Act, and remains in place. In a report in 1989, however, the Law Commission noted that the right to compensation for improvements was little used by tenants and recommended its repeal.[61] We are not aware that the position has changed since 1989 or that the right to compensation is now any more widely used.[62]

3.59 It is important to bear in mind that if security of tenure is abolished, this would not resurrect the previous system under the 1927 Act whereby tenants could claim compensation for goodwill. With the abolition of the 1954 Act, therefore, there would be less statutory protection for business tenants at lease expiry than there has been for around 100 years.

Arguments in favour of abolition

Lack of use

3.60 We have heard a variety of views from stakeholders about how widespread contracting out is across the commercial leasehold market. Some have suggested it is very widespread. However, others have told us that a large proportion of tenancies are still protected under the 1954 Act.

3.61 Inevitably, when stakeholders give us their views about the prevalence of contracting out, they are giving the benefit of their own experience from within their own sector.

---

59 In addition, the 1927 Act gave tenants an alternative right to claim a renewal tenancy if compensation would not adequately compensate the tenant. See Appendix 2 paras 2.14 to 2.18.

60 See Appendix 2 para 2.32.

61 Landlord and Tenant Law – Compensation for Tenants' Improvements (1989) Law Com No 178, para 3.23.

62 We note that one of the reasons we gave in our 1989 Report as to why the right was not being used was that tenants were, instead, relying on their rights under the 1954 Act (see Landlord and Tenant Law – Compensation for Tenants' Improvements (1989) Law Com No 178, paras 3.6 and 3.7). If that remains the case, it is possible that if security of tenure were abolished, tenants may seek to place more reliance on the right to compensation under the 1927 Act.

While in some instances these views may be impressionistic, in others they reflect surveys undertaken or data collected by the stakeholder. Whilst such information is useful, it is not without limitations. We have looked for market-wide empirical data or studies to help us understand the prevalence of contracting out, but, so far, we have not found any. We ask stakeholders about the prevalence of contracting out in the survey that accompanies this Consultation Paper to give us a greater understanding of the position.[63]

3.62 In the event that contracting out were now widespread (a point about which, as we have said above, we are not yet clear), some might suggest that it no longer makes sense to keep the 1954 Act.

3.63 If contracting out does turn out to be widespread, then taken on its own, this would not *necessarily* mean that there is no longer any appetite to enter into protected tenancies. For example, there may still be a significant appetite amongst tenants to enter into protected tenancies, but they may not be able to persuade their landlords to grant them. Alternatively, landlords and tenants may wish to enter into protected tenancies, but might feel that the current scheme for security of tenure needs to be reformed in order to make it work better for a modern commercial leasehold market.

3.64 However, if it were the case that there is no longer any real appetite amongst either landlords or tenants to enter into tenancies which provide security of tenure, then it could be sensible to abolish security of tenure altogether on the grounds of lack of use. There is little point in having a legal framework in place that people do not want to use. Abolition of security of tenure would remove the cost and time currently spent by parties in contracting out. It would also remove the risk of mistakes being made during the contracting-out process, mistakes which can invalidate the process (meaning that tenancies which the parties believe are contracted-out of the Act are in fact protected), and which can lead to litigation.

Increased flexibility for landlords

3.65 We explain elsewhere[64] that:

(1) landlords often prefer entering into unprotected tenancies rather than protected tenancies because unprotected tenancies generally give landlords various advantages. These advantages include:

(a) certainty that the tenancy will end on the contractual expiry date;

(b) freedom to choose what to do with the premises after the contractual expiry date; and

(c) on a renewal tenancy, the possibility of extracting a higher rent or other more advantageous lease terms from the sitting tenant than they might otherwise be able to achieve; and accordingly

---

63 We explain more about the survey at para 1.59 above. The text of the survey itself is at Appendix 4.

64 See para 2.15 and paras 3.41 to 3.43 above.

(2) a move to a mandatory system of security of tenure (under which it would no longer be possible for landlords to grant unprotected tenancies) is likely to be seen by landlords as disadvantageous to them.

3.66 For these same reasons, some landlords may take the view that abolishing statutory security of tenure altogether (so that tenants are never able to obtain protected tenancies) would be advantageous to landlords.

3.67 It has also been suggested to us that the 1954 Act is not well understood by global investors and that it might hold back investment in the commercial property market. If this is the case, abolition might also encourage more investment in the market.

Modern market conditions / leasing practices

3.68 We note above that we have been told that market conditions and leasing practices are, in some respects, very different now from those that have existed in the past.[65]

3.69 We have explained that some might see this as an argument against changing from the current contracting-out model to a mandatory model of security of tenure. Some might, however, go so far as to argue that it means that statutory security of tenure is no longer necessary or desirable at all.

3.70 As we noted above, however, the position is not necessarily straightforward. Just because the market or leasing practices may have changed over time, this does not necessarily mean it is desirable to abolish security of tenure altogether. In some cases, it might be possible (and preferable) to make amendments to the 1954 Act in order to update and adapt it to modern leasing practices and market conditions, rather than taking the major step of abolishing security of tenure altogether. For example, as we have noted at paragraph 3.47, it might be possible to amend the test in the 1954 Act for determining the rent payable under the renewal tenancy, to make it clear that the court can grant renewal tenancies with turnover rents.

3.71 In addition, more generally, it is not appropriate for reform to be driven solely by reference to *today's* commercial leasehold market. Any move to abolish security of tenure would need to suit not just today's market, but also future (as yet unknown) market conditions. It is notable that in its 70-year history, the 1954 Act has shown sufficient resilience to endure through a number of different changes (both temporary and permanent) in the commercial leasehold market, in leasing practices and in wider society.

Reduction in cost, bureaucracy and delay

3.72 Some have suggested that abolishing statutory security of tenure may reduce some costs and delay incurred by both landlords and tenants in commercial leasehold transactions. In particular:

(1) parties would no longer need to negotiate about whether tenancies were protected or contracted-out;

---

65 See para 3.44 above.

(2) there would no longer be any costs incurred by either party in going through any statutory process for contracting out (whether that is the current process or a reformed process);

(3) there would be no risk of mistakes being made during the contracting-out process because contracting out would no longer be possible; and

(4) parties would no longer need to incur any cost or delay in going through the statutory lease renewal process at the expiry of a protected tenancy.

3.73 Linked to this argument, some have made the point that having a statutory scheme of security of tenure is unnecessary given that tools already exist in the market which parties can use to ensure tenants have security in their premises. In particular, as we have explained in Chapter 1,[66] tenants can negotiate contractual options to renew with their landlords. In fact, we have been told that some tenants prefer to rely on contractual options rather than the 1954 Act, because options can be drafted to meet their particular needs. Alternatively, tenants might seek to agree a longer tenancy (perhaps with a tenant's break clause)[67] in order to give themselves more security than a shorter tenancy would provide.

3.74 However, the position might not be quite so straightforward as the above analysis would suggest. In general terms, as we note in paragraph 3.87 below, it is possible that the ability to use an "off the shelf", standardised statutory scheme for security of tenure might have advantages for both landlords and tenants, when compared to other tools such as contractual options which require bespoke drafting. In addition, even if security of tenure were abolished, parties would still incur costs and delay during commercial transactions in various ways, including:

(1) negotiating whether a tenant is getting security via a contractual option or in some other way (such as via a longer lease with a tenant's break), and subsequently drafting any such option or break clause; and

(2) negotiating the terms of an (unprotected) renewal tenancy.

3.75 It is also important to consider the role of industry guidance and professional standards. In a world without statutory security of tenure, some might argue that guidance notes and professional standards could be used to ensure that landlords and tenants (and their advisors) have a better understanding of the various alternative ways in which security could be provided to tenants. Such guidance and standards could improve fairness in the market, as well as reducing costs for parties. Currently, for example, the Code for Leasing Business Premises sets out matters which should be discussed and agreed during negotiations for business tenancies.[68]

---

66 See para 1.5 above.

67 A tenant's break clause allows for the tenant to terminate a lease earlier than it would otherwise expire. Break clauses often require conditions to be met, for example that notices are served by a particular point in time.

68 See the Royal Institution of Chartered Surveyors, *Code for Leasing Business Premises* (1st ed 2020), available at

Removal of statutory intervention in the market

3.76 As we explained in paragraph 3.52 above, some may take the position as a general point of policy that statutory intervention into the commercial leasehold market is undesirable and that it is preferable for the market to operate freely and regulate itself. We explained that, for anyone taking this view, a move to a system of mandatory security of tenure is likely to be seen as undesirable. Conversely, a move to abolish statutory security of tenure may be seen as a desirable option because it would remove a layer of statutory intervention in the commercial leasehold market.

Arguments against abolition

Reduction in tenant protection

3.77 A key argument raised with us against abolition is that security of tenure continues to provide important protection to tenants, particularly tenants of small businesses, which is still necessary in today's commercial leasehold market. A model in which security of tenure is abolished provides the least statutory protection for tenants of all the options we consider in this chapter. Some stakeholders have referred to jurisdictions which do not have security of tenure (for example, Scotland) as "the wild west" for tenants.[69]

3.78 As we have noted above and in Chapter 2, without the protection offered by security of tenure, tenants have no statutory right to a renewal tenancy. Tenants of unprotected tenancies who wish to remain in their premises after the expiry of their tenancy, may be in a weaker bargaining position in relation to their landlord than if they had a protected tenancy. In some cases, tenants may be at risk of their landlord seeking to take advantage of their position as a sitting tenant, for example by seeking a higher rent for a renewal tenancy. If tenants are unable to agree acceptable terms with their landlord for a renewal tenancy, they face the prospect of incurring the costs of finding and moving to new premises, and losing any goodwill they had built up in their current location.

3.79 As we note in paragraph 3.73 above, if security of tenure were abolished, parties would still be able to use contractual options to renew in order to give tenants security.[70] For a number of reasons, however, it is not necessarily the case that the ability to use contractual options is as beneficial to tenants as statutory security of tenure.

3.80 First, the possibility of relying on contractual options may be less well known and understood than a system of statutory security of tenure (particularly amongst less well-advised tenants). We note above at paragraph 3.75 that industry guidance might be helpful in improving awareness and understanding about contractual options. However, less well-advised tenants may not reliably become aware of such guidance in all cases.

---

https://www.rics.org/content/dam/ricsglobal/documents/standards/February_2020_Code_For_Leasing_Business_Premises_England_And_Wales_1st_Edition.pdf.

69 As we explain in Appendix 3, Scotland does provide limited statutory security to some retail tenants, but it does not provide security of tenure to business tenants in the way the 1954 Act does.

70 We note there may be other methods of providing tenants with security, such as agreeing longer lease terms with tenant break options, but for the purposes of this section we focus on contractual options.

3.81 Second, even if tenants know about the possibility of taking an option, not all tenants may be able to persuade their landlord to agree to including one in their tenancy. Additionally, some tenants may not be able to afford to access the professional advice needed to ensure that an option is drafted so as to meet their needs. By contrast, statutory security of tenure provides a standardised form of security, which can be applied to a lease "off the shelf". As such, tenants may be more familiar with a statutory scheme and may be better able to access the security it offers without needing to incur significant legal costs.

3.82 In theory, both options and statutory security of tenure can be used to provide tenants with security. In practice, however, tenants might find it harder to persuade their landlord to include an option in their tenancy than they find it, currently (under a contracting-out model of security of tenure), to persuade their landlords to offer a protected tenancy. Under the current contracting-out model, if a tenant asks for a protected tenancy, they are simply asking for the default position to apply (the default position being that tenants are entitled to security of tenure unless the parties contract out). If, instead, the parties enter into an unprotected tenancy, they are likely to have to incur additional costs in going through the statutory contracting-out process. The need to go through the contracting-out process may also delay the start of the tenancy, which in turn could delay the point at which both parties start to receive income as a result of the transaction (rent in the case of the landlord and income from trade in the case of the tenant). These factors may incentivise landlords to enter into protected tenancies (as opposed to unprotected tenancies), putting tenants into a stronger negotiating position when seeking a protected tenancy.

3.83 By contrast, under a system where there is no statutory security of tenure, the tenant is not entitled to a contractual option by default. In asking for an option, the tenant is asking for an additional right to be included in the tenancy (to which it is not otherwise entitled). Moreover, agreeing to include that right is likely to cause the landlord to incur additional costs, and to cause delay in completing the lease (which in turn could lead to a delay in both parties receiving income as a result of the transaction, as explained in paragraph 3.82 above). These factors may disincentivise landlords from agreeing to an option, putting tenants into a weaker negotiating position when they are negotiating with their landlord for security.

Disincentivises tenant investment

3.84 It is also possible that the existence of statutory security of tenure might give some tenants more confidence to invest, both emotionally and financially, in their premises and in their business, because they have greater confidence that their business will not be forced to move without good reason. If this is the case, it could be argued that abolishing statutory security of tenure could disincentivise investment by some tenants, harming growth amongst certain businesses.

Impact on market

3.85 A move to abolish security of tenure would be a very significant change in the commercial leasehold market. As we note in paragraph 3.8 above, it is difficult to predict how the market might react to such a change and whether any changes to the market would be desirable. There might also be a period of uncertainty or instability while the change in model bedded in.

Loss of standardised system of security of tenure

3.86 We note in paragraph 3.72 above, an argument that abolition of security of tenure could simplify the commercial leasehold market, reducing costs and bureaucracy for both landlords and tenants. However, the position is not necessarily so straightforward.

3.87 Abolishing security of tenure would mean that there was no longer a standardised, statutory scheme available in the market for landlords and tenants to use. This is likely to increase the need for parties to rely on contractual options to renew in order to give tenants security.[71] We explained in paragraph 3.77 above that some tenants might argue that the loss of a standardised statutory scheme for security of tenure would disadvantage them. However, it is arguable that it could also prove problematic for the market more widely, disadvantaging tenants and landlords alike, for the following reasons.

(1) Contractual options to renew generally require bespoke, professional drafting which can be complex and can come at significant cost for the parties. By contrast, a system of statutory security of tenure provides a standardised scheme which can be applied to a lease "off the shelf" without the need to pay for bespoke drafting.

(2) With a standardised, statutory scheme, the same legal framework is widely used across the market, which should mean that there is a collective familiarity with the scheme amongst landlords, tenants and professionals alike. This arguably makes for a simpler and clearer commercial leasehold landscape than one in which security is granted via contractual options.

(3) The ability to use a standardised scheme of security of tenure, which is contained in statute and so is approved by Parliament, may inspire more collective confidence across the commercial leasehold market than a system which relies on contractual options.

(4) A statutory scheme of security of tenure could, in some circumstances, be a more powerful device than a contractual option, providing the market with tools which cannot be achieved by the use of options. For example, the 1954 Act has the effect of statutorily extending a protected tenancy beyond its contractual expiry date; the same result cannot be achieved by using an option.

CONTRACTING-IN MODEL

What would a contracting-in model look like?

3.88 In contrast to a model where security of tenure is abolished, under a contracting-in model landlords and tenants would retain the ability to enter into tenancies with security of tenure should they choose to do so. Unlike a mandatory scheme, however, parties would not be compelled to use the statutory scheme; it would still be possible for the parties to enter into unprotected tenancies.

---

[71] We note there are other ways in which security could be provided, such as via longer lease terms, but for the purposes of this section, we focus on options.

3.89 Accordingly, a contracting-in model would share some characteristics with a contracting-out model for security of tenure (which is the current model used under the 1954 Act) in that landlords and tenants could agree whether or not to enter into a protected tenancy.

3.90 There would, however, be a key difference between the operation of the two models. Under a contracting-out model, the default position is that tenants have security of tenure (in other words, the default position is that tenants have protected tenancies) unless the parties agree otherwise and go through a prescribed statutory process to contract out of security. Under a contracting-in model, that position is reversed so that the default position is that tenants do *not* have security of tenure (in other words, the default position is that tenants have unprotected tenancies) unless the parties agree otherwise and go through a statutory process to contract *into* the scheme.

3.91 As we have noted above at paragraph 3.12, it is important to recognise that if there were a move to a contracting-in model, the detail of the scheme need not look exactly like the current 1954 Act. How such a scheme would operate would be considered in detail in our second Consultation Paper.

Use of a statutory scheme for a contracting-in model

3.92 The contracting-in model we present in this chapter assumes that there would be a statutory scheme for security of tenure, which parties could agree to contract into voluntarily. We believe this matches the way in which stakeholders from whom we have heard envisaged such a model would work.

3.93 We recognise that this type of legislative approach, whereby parties choose to contract into a statutory regime, would be unusual. Particularly given this context, it might be questioned whether legislation is, in fact, needed to achieve the policy objective underpinning the contracting-in model and, if not, whether there is any need for the contracting-in model at all.

3.94 For example, it might be suggested that the provision of industry or Government guidance, such as a standard-form contractual option,[72] could achieve the same goal as the contracting-in model by giving parties a standardised method for including security of tenure in their tenancy, should they choose to do so. Unlike the contracting-in model we present in this chapter, this type of non-statutory approach would amount to the abolition of statutory security of tenure altogether.

3.95 However, we believe that abolition of statutory security of tenure (with the possibility of providing guidance) and a contracting-in model each benefit from being raised in this consultation.[73] We explain key aspects of that conclusion below.

3.96 First, we think that a statutory scheme might be able to operate in a way that a guidance-based approach cannot. In particular, it may be difficult to provide a non-statutory security of tenure system which is both sufficiently versatile and sufficiently

---

[72] We explain what an option is in para 1.5 above and in the Glossary at Appendix 5.

[73] We discuss abolishing statutory security of tenure as a possible model elsewhere, at para 3.54 above. At para 3.75, we mention the possibility of non-statutory guidance being used in the event that statutory security of tenure were abolished.

detailed to be useable "off the shelf" by the huge variety of businesses that currently use the 1954 Act.

3.97 Secondly, parties are used to having a statutory scheme available to them, the 1954 Act having been in force for 70 years. A contracting-in model would most likely retain many hallmarks of the existing contracting-out model and would therefore be familiar to existing landlords and tenants, enabling continuity and clarity of understanding when parties talk about security of tenure.

Arguments in favour of a contracting-in model

Better suits market if there were widespread contracting out

3.98 As we have indicated in paragraphs 3.60 to 3.61 above, it is not yet clear to us how widespread contracting out is in today's commercial leasehold market. Some consultees have told us that contracting out is widespread, while others have told us, conversely, that protected tenancies are still widely used. We have looked for market-wide empirical data or studies to help us understand the prevalence of contracting out, but, so far, we have not found any. We ask stakeholders about the prevalence of contracting out in the survey that accompanies this Consultation Paper to give us a greater understanding of the position.[74]

3.99 If contracting out were now widespread (a point about which, as we have indicated, we are not yet clear), this could be an argument in favour of moving to a contracting-in model. If there is a longstanding and widespread prevalence in the market for using unprotected tenancies, rather than protected tenancies, then moving to a contracting-in model would allow a significant section of the market to avoid the costs, risks and delay currently associated with contracting out.

Flexibility to enter into protected and unprotected tenancies

3.100 With a contracting-in model (as with the current contracting-out model) parties would retain the flexibility to enter into either protected or unprotected tenancies. By contrast, under a mandatory model, it would only be possible to enter into protected tenancies; while if statutory security of tenure were abolished, it would only be possible to enter into unprotected tenancies.

3.101 This flexibility might have a number of advantages, in particular the following.

(1) Some landlords and tenants may consider that a system where they can enter into protected or unprotected tenancies is more versatile, giving them more choice and enabling them to enter into the arrangement that suits them best in any particular circumstance. Under a contracting-in model (as under the current contracting-out model), parties could agree to:

(a) enter into a protected tenancy, giving the tenant security of tenure pursuant to the statutory scheme;

---

74 We explain more about the survey at para 1.59 above. The text of the survey itself is at Appendix 4.

(b) enter into an unprotected tenancy, giving the tenant security by means of a contractual option or in some other way (for example by entering into a longer unprotected tenancy with a tenant's break clause); or

(c) enter into an unprotected tenancy, without giving the tenant any additional security.

(2) As we explain in paragraphs 3.86 to 3.87 above, retaining the possibility of using a standardised "off the shelf" statutory scheme for security of tenure, with which the market, collectively, is familiar, might have advantages generally for the market.

(3) As we explain in paragraphs 3.49 to 3.51 above, a model in which parties can enter into both protected and unprotected tenancies could prove more resilient over time. Such a legal framework may more effectively weather changes in market conditions and leasing practices, than more rigid models of security of tenure, such as a mandatory model.

Advantages for landlords compared to contracting-out model

3.102 Under a contracting-in model, the default position is that tenants do not have security of tenure, unless the parties agree to contract into the scheme. Landlords might take the view that this model is more advantageous to them than a contracting-out model.

3.103 We note elsewhere that landlords often prefer entering into unprotected tenancies, rather than protected tenancies.[75] For a number of reasons, even though a contracting-in model and a contracting-out model would both enable the parties to enter into protected or unprotected tenancies, landlords might feel more reliably able to enter into unprotected tenancies under a contracting-in model compared to a contracting-out model.

3.104 First, as we note below in paragraph 3.109 below, under a contracting-in model, tenants may be (or feel that they are) in a weaker negotiating position in asking their landlord to grant a protected tenancy. Under a contracting-in model, in seeking a protected tenancy, tenants are asking for additional protection to which they are not entitled by default. In addition, in order to enter into a protected tenancy, the parties must incur additional cost in going through the statutory procedure to contract into the statutory scheme. The need to go through the contracting-in process may also delay the start of the tenancy, which in turn could delay the point at which both parties start to receive income as a result of the transaction (rent in the case of the landlord and income from trade in the case of the tenant). These factors might make it harder for tenants to persuade landlords to grant protected tenancies. By contrast, under a contracting-out model, the position is reversed. In asking for a protected tenancy, a tenant is asking for a right to which it is entitled by default. The parties will incur additional cost and delay only if the landlord insists on granting an *unprotected* tenancy, requiring the parties to go through the statutory procedure to contract out.

3.105 Second, as we explain in paragraph 3.110 below, some tenants do not know of the existence of a scheme for security of tenure when they enter into negotiations with a

---

[75] See para 2.15 above.

landlord for a new tenancy. Under a contracting-in model, there may be much less opportunity for such tenants to learn about the existence of the scheme as the transaction progresses, than under a contracting-out model. By default, under a contracting-in model, the tenancy will be unprotected and there will be no contracting-out process to alert the tenant to the existence of the statutory scheme for security of tenure. Some tenants may, therefore, never become aware that the scheme exists at all.

3.106 Finally, under a contracting-out model, there is a risk of protected tenancies being created inadvertently, to the detriment of landlords. Protected tenancies can be created inadvertently for a number of reasons, including the following:

(1) because an error was made when carrying out the contracting-out process (meaning that a tenancy was not validly contracted out);

(2) where a tenant has started occupying premises informally or has not left premises when an unprotected tenancy has come to an end without the legal basis for the tenant's ongoing occupation being properly documented. In such scenarios, if the tenant pays rent to the landlord, a protected periodic tenancy can be created; or

(3) because neither party was aware that the 1954 Act existed when they entered into their tenancy and so they do not realise that they are creating a protected tenancy.

3.107 A contracting-in model removes the risk of inadvertently creating a protected tenancy. If, for example, an error was made during the contracting-in process, it would, instead, lead to the inadvertent creation of an *unprotected* tenancy. The position is therefore reversed under a contracting-in model compared to a contracting-out model. Under a contracting-out model, there is a risk of inadvertently creating protected tenancies to the detriment of landlords, whereas under a contracting-in model there is a risk of inadvertently creating unprotected tenancies to the detriment of tenants. Landlords may see this as an advantage of a contracting-in model over a contracting-out model for statutory security of tenure; although, as we explain in paragraph 3.112 below, tenants are likely to take the opposite view.

Arguments against a contracting-in model

Reduction in tenant protection compared to contracting-out model

3.108 A key argument against a contracting-in model is that it would reduce the protection tenants receive from a system of security of tenure compared to the current contracting-out model.

3.109 Under a contracting-in model the default position is that tenants do not have security of tenure unless they contract into the statutory scheme. This reverses the position under the current contracting-out model. While under both models (a contracting-out model and a contracting-in model), it is open to the parties to agree whether or not the tenant should have security of tenure, it is arguable that it is more beneficial to tenants to have a scheme where they are entitled to security of tenure by default. Tenants might, psychologically, feel in a weaker negotiating position in respect of their landlord

in negotiating for a protected tenancy, in a system where they are not entitled by default to security of tenure.

3.110 Moreover, some smaller or less well-advised tenants may not know about the existence of the statutory scheme when they enter negotiations with their landlords for a new tenancy and so will not be in a position to ask their landlords for a protected tenancy. Currently, under the 1954 Act, where tenants do not know about the existence of the Act when they start negotiations with their landlord for a new tenancy, there is opportunity for the tenant to learn about the existence of the 1954 Act. This opportunity arises because if the landlord wishes to grant an unprotected tenancy, they will have to go through the statutory process for contracting out which should, at the very least, alert the tenant to the existence of the 1954 Act and the rights it affords them. Under a contracting-in model, however, there may be much less opportunity for a tenant who is not aware of the statutory scheme to learn about its existence during negotiations. By default, the tenancy will be outside the statutory scheme and the landlord will not need to go through any process to contract out of security of tenure.

3.111 It is also likely to be more expensive and cumbersome under a contracting-in model (than under a contracting-out model) to grant protected tenancies, because, in order to do so, the parties would have to go through a statutory procedure to contract in. The need to go through the contracting-in process may also delay the start of the tenancy, which in turn could delay the point at which both parties start to receive income as a result of the transaction (rent in the case of the landlord and income from trade in the case of the tenant). It is possible that this additional expense, delay and bureaucracy might disincentivise landlords from offering protected tenancies under a contracting-in model.

3.112 Finally, we note in paragraph 3.106 above that under a contracting-out model there is a risk of inadvertently creating protected tenancies and that, if this happens, it generally prejudices landlords and benefits tenants. Under a contracting-in model, the position is reversed and so is the allocation of risk. In other words, under a contracting-in model, there is a risk of inadvertently creating an *unprotected* tenancy, where the parties thought they were creating a protected tenancy. If this happens, it will generally prejudice tenants and benefit landlords. For example, if a mistake is made in undertaking the statutory prescribed process for contracting a tenancy into the statutory scheme for security of tenure, then this could mean that the tenancy is unprotected rather than protected.

Risk of lack of use

3.113 It has also been suggested to us that a contracting-in model for security of tenure would not be widely used (and in particular, that it would be used less than a contracting-out model). As explained above, we have been told that some tenants might find it more difficult under a contracting-in model to persuade their landlord to grant a protected tenancy. In addition, we have been told that landlords and larger or less vulnerable tenants (who might have the bargaining power to persuade their landlord to grant a protected tenancy) would have no desire or need to use the statutory scheme.

Impact on market

3.114 A move to a contracting-in model for statutory security of tenure would be a significant change in the market. As we note in paragraph 3.8 above, it is difficult to predict exactly how the market will react to the change and whether any such change will be desirable. This is a potential disadvantage of moving to a contracting-in model for security of tenure, compared to the option of retaining the current contracting-out model.

CONTRACTING-OUT MODEL

What would retaining a contracting-out model look like?

3.115 As we have previously explained, a contracting-out model is the current model for security of tenure, which underpins the 1954 Act. Under a contracting-out model, the tenant has security of tenure unless the parties agree to contract out and grant an unprotected tenancy. The parties therefore have a choice as to whether to grant a tenancy with security of tenure.

3.116 As we explain above, while there are some similarities between a contracting-out model and a contracting-in model for statutory security of tenure, there is a crucial difference between the two models. Under a contracting-out model the default position is that the tenant is entitled to security of tenure unless the parties agree to contract *out* of the scheme, whereas under a contracting-in model that default position is reversed, so that tenants are not entitled to security of tenure unless the parties agree to contract *into* the scheme.

3.117 It is important to understand that a response to this Consultation Paper in favour of retaining a contracting-out model for security of tenure would not necessarily mean that the 1954 Act will be retained in its current form. As we have explained,[76] the detail of the model of security of tenure that we recommend in light of responses to this Consultation Paper will be consulted upon in our second Consultation Paper. If a contracting-out model is retained, consultees will therefore have a chance to explain to us how they think the detail of the 1954 Act should be reformed in order to make it function better within a modern commercial leasehold market.

Arguments in favour of a contracting-out model

Established part of commercial leasehold market

3.118 Having operated for over 50 years and having weathered the changes to the market that have occurred over that time, a contracting-out model is a known quantity.[77] The model is well embedded into the current commercial leasehold landscape and the ways in which it interacts with other factors in the commercial leasehold market are well known. There is also considerable familiarity with the current contracting-out model amongst landlords, tenants and professionals.

3.119 Accordingly, retaining a contracting-out model would avoid the risk of unexpected, undesirable change being caused to the market as a result of moving to a new model

---

[76] See para 3.10 above.

[77] As we explain in Appendix 2, the law was changed to enable contracting out by the Law of Property Act 1969, which came into force on 1 January 1970.

for security of tenure. It would also avoid the risk of any period of uncertainty or unpredictability within the market while a new model bedded in.

3.120 For these reasons, unless there are compelling reasons to move to a different model, consultees may consider there is considerable value in retaining the current contracting-out model.

Offers more tenant protection than contracting-in model

3.121 We explain in paragraphs 3.108 to 3.112 above that, although under both models it is possible to enter into both protected and unprotected tenancies, some tenants may argue that a contracting-out model for security of tenure provides them with more protection than a contracting-in model. In particular, as we explain above, we highlight the following.

(1) In negotiating for a protected tenancy, tenants might psychologically feel in a stronger position in respect of their landlord under a contracting-out model where they are entitled by default to security of tenure, than under a contracting-in model where they are not.

(2) Under a contracting-out model, the parties incur additional cost and delay (along with any associated loss of income) in granting unprotected tenancies rather than protected tenancies, because they must go through the statutory contracting-out process. Under a contracting-in model the default position is reversed, so that the parties incur more cost and delay when entering into protected tenancies rather than unprotected tenancies, because they must go through a statutory process to contract into the statutory scheme.

(3) More vulnerable or less well-advised tenants may not know about the existence of the statutory scheme for security of tenure when they enter negotiations with their landlord for a new tenancy (and therefore would not know to ask their landlord for a protected tenancy). Such tenants may have more opportunity to learn about the existence of the statutory scheme under a contracting-out model than they do under a contracting-in model. This opportunity arises under a contracting-out model because in order to enter into an unprotected tenancy, the parties will have to go through the statutory process to contract out.

(4) Under a contracting-out model, there is a risk of protected tenancies being created inadvertently (for example, if a mistake is made in carrying out the statutory contracting-out process, so that a tenancy is not validly contracted out). If that happens, it generally benefits the tenant at the expense of the landlord. By contrast, under a contracting-in model that position is reversed. There is a risk of unprotected tenancies being created inadvertently (when both parties thought they were creating a protected tenancy). If this happens, it generally benefits the landlord at the expense of the tenant.

Flexibility to enter into protected and unprotected tenancies

3.122 As with a contracting-in model, retaining a contracting-out model would mean that parties would have the ability either to enter into protected tenancies or unprotected tenancies. As we explain above in paragraphs 3.100 to 3.101, this flexibility may for some landlords and tenants be seen as an advantage, in comparison to either a

mandatory model (which only allows for protected tenancies) or a model of no security of tenure (which only allows for unprotected tenancies), for the following reasons.

(1) Some landlords and tenants may see a contracting-out model as a more versatile approach, which gives the flexibility to enter into a protected or unprotected tenancy depending on circumstance.

(2) A model which retains the possibility of using a standardised "off the shelf" statutory scheme for security of tenure, with which the market, collectively, is familiar, might have advantages generally for the market.

(3) A model under which parties can enter into both protected and unprotected tenancies may more effectively weather changes in market conditions and leasing practices, than less flexible models of security of tenure, such as a mandatory model.

Arguments against a contracting-out model

Disadvantageous for landlords in comparison to contracting-in model

3.123 We explain above that landlords might take the view that a contracting-in model would be more advantageous to them than a contracting-out model.

3.124 Landlords often prefer entering into unprotected tenancies because they can give landlords more freedom and flexibility than protected tenancies.[78] For the reasons we explain in paragraphs 3.102 to 3.107 above, even though both models enable the parties to enter into protected and unprotected tenancies, landlords might feel that they would more reliably be able to enter into unprotected tenancies under a contracting-in model compared to a contracting-out model. In particular, under a contracting-out model, the following might apply.

(1) Tenants might feel in a stronger position to ask their landlord for a protected tenancy because they are entitled to statutory protection by default. If the landlord wishes to enter into an unprotected tenancy, the parties must incur the cost and delay (along with any associated loss of income) resulting from the need to go through the statutory contracting-out process. Under a contracting-in model, that position is reversed.

(2) There may be more opportunity for tenants who do not know about the existence of the statutory scheme for security of tenure to learn about its existence before they enter into their tenancy (particularly during the contracting-out process). Under a contracting-in model, the parties will not go through a contracting-out process; rather, they will only be able to contract *into* the statutory scheme.

(3) There is a risk of protected tenancies being created inadvertently (for example, if a mistake is made in carrying out the statutory contracting-out process, so that a tenancy is not validly contracted-out). If that happens, it generally benefits the tenant at the expense of the landlord. By contrast, under a contracting-in model that position is reversed. There is a risk of unprotected tenancies being

[78] See para 2.15 above.

created inadvertently (when both parties thought they were creating a protected tenancy). If this happens, it generally benefits the landlord at the expense of the tenant.

Less suited to market if widespread contracting out

3.125 We have explained in paragraphs 3.60 to 3.61 above that it is not yet clear to us how widespread contracting out is in today's commercial leasehold market. Some consultees have told us that contracting out is widespread, while others have told us, conversely, that protected tenancies are still widely used. We have looked for market-wide empirical data or studies to help us understand the prevalence of contracting out, but, so far, we have not found any. We ask stakeholders about the prevalence of contracting out in the survey that accompanies this Consultation Paper to give us a greater understanding of the position.[79]

3.126 We have noted above that if there is widespread contracting out (a point about which, as we have said, we are not yet clear), and, particularly, if this represents a long-term trend which is unlikely to change, this could be an argument in favour of having a contracting-in model rather than a contracting-out model.[80] In such circumstances, a contracting-in model would allow significant sections of the market to enter into unprotected tenancies without incurring the cost and delay associated with contracting out.

CONSULTATION QUESTION

Consultation Question 2.

3.127 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:

(1) mandatory security of tenure;

(2) no statutory security of tenure (abolition);

(3) contracting-in (so that a tenancy only has statutory security of tenure if the parties opt into a statutory scheme); or

(4) contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

---

79 We explain more about the survey at para 1.59 above. The text of the survey itself is at Appendix 4.

80 See para 3.99 above.

THE IMPACT OF REFORM

Consultation Question 3.

3.128 We invite consultees' views, together with evidence wherever possible, as to what impact a change to the model of security of tenure will have:

(1) on the parties to tenancies and their advisors; and

(2) on the commercial leasehold market.

Chapter 4: What types of tenancies should be covered by the 1954 Act?

INTRODUCTION

4.1 In the previous chapter, we considered possible reform to the *model* of security of tenure that underpins the 1954 Act. We considered changing to a model based on mandatory security of tenure, one where there is no statutory security of tenure, or one based on contracting in, or retaining the current "contracting-out" model.[81]

4.2 In this chapter, we consider the possibility of reforming the *scope* of the 1954 Act. Consideration of reforming the scope of the 1954 Act is only relevant if there is some scheme providing security of tenure. Accordingly, if statutory security of tenure is abolished then consideration of scope does not arise.[82] However, if a model is adopted that provides security of tenure in some way, it could apply to the business tenancies that the Act currently applies to, or there could be a change to the type of tenancies that it applies to.

4.3 If it were thought to be beneficial, then tenancies could fall outside of the 1954 Act based on a wide variety of factors. For example, tenancies could fall outside of the Act based on: the use made of the premises;[83] the duration of a tenancy;[84] because there is another regime that performs a similar protective function;[85] or because of other characteristics of the tenancy or the premises demised by it, such as the floor space of the premises, its location, or the rent payable.

4.4 We have included consideration of this issue in this Consultation Paper because some of the themes that it raises are similar to those in the previous chapter. We also think it is helpful to understand that a change to the model of security of tenure could be accompanied by a change to the scope of the Act.

WHAT IS MEANT BY "SCOPE"?

4.5 As has been explained elsewhere, the 1954 Act protects business tenancies.[86] However, the position is more complicated than that.

4.6 Of particular importance is that section 43 of the 1954 Act prevents certain types of tenancy (that might otherwise be considered business tenancies) from benefiting from the protection afforded by the Act. Examples of the types of tenancy that are excluded

---

81 For more details of the models under consideration, see para 3.4 above.

82 See para 3.4(2) above.

83 See para 4.6 below.

84 See para 4.7 below.

85 See para 4.20 below.

86 See Appendix 1, paras 1.2 and 1.3 below.

from the protection of the Act are: agricultural holdings;[87] farm business tenancies;[88] mining leases;[89] certain leases of licensed premises;[90] and leases the primary purpose of which is to grant "code rights" to electronic communications operators.[91] Broadly speaking those are exclusions based on the use made of the premises and we call them "Use Excluded Tenancies" in this chapter.

4.7 There is another important restriction on the scope of the 1954 Act in addition to the Use Excluded Tenancies; tenancies granted for six months or less are generally excluded from the Act, so cannot benefit from the security of tenure afforded by it.[92] We call these tenancies "Duration Excluded Tenancies" in this chapter.

4.8 We say Duration Excluded Tenancies are "generally" excluded from the 1954 Act because there are exceptions to that general exclusion. The first is where the tenancy contains a provision for renewing it, or extending it, beyond six months. The second is where the tenant has been in occupation for a period exceeding 12 months.[93]

4.9 Bearing in mind the above, we can say that the 1954 Act applies to business tenancies *except for Use Excluded Tenancies and Duration Excluded Tenancies*; for the purposes of this chapter, we say that is the Act's current "scope".

4.10 Because the Use Excluded Tenancies are not within the current scope of the 1954 Act they cannot, under any circumstances, benefit from the security of tenure that it affords. It follows that the model that underpins the Act – currently the contracting-out model – is irrelevant to those tenancies (and so it is meaningless to talk about, or consider, contracting out such tenancies).

4.11 The position with the Duration Excluded Tenancies is more complicated. As explained above, it *is* possible for a tenancy granted for less than six months:

(1) to have security of tenure where the tenancy gives to the tenant a right to a new tenancy or an extension of the existing tenancy; or

(2) to acquire security of tenure where the tenant, in fact, stays in occupation for more than 12 months.

---

87 1954 Act, s 43(1)(a).

88 1954 Act, s 43(1)(aa).

89 1954 Act, s 43(1)(b).

90 1954 Act, s 43(1)(d).

91 1954 Act, s 43(4), and see para 4.21 and following below.

92 1954 Act, s 43(3). We note that periodic tenancies – for example, one that lasts from week to week, or from month to month – will have protection under the 1954 Act and that such tenancies cannot be contracted out from that protection. If the model we recommend following this consultation remains one based on contracting out, we are likely to consider this issue in our second Consultation Paper.

93 The second exclusion – where a tenant has been in occupation for a period exceeding 12 months – might arise where, for example, a succession of three-month tenancies has granted.

We do not explore this complication any further in this chapter, but may do so in our second Consultation Paper, depending on the recommendation we make regarding the model that should underpin the 1954 Act.

THE INTERNATIONAL PERSPECTIVE

4.12 Having considered the current scope of the 1954 Act, and before going on to consider the potential for its reform, we consider the international perspective.

4.13 In Appendix 3 we have set out brief summaries of the way in which business tenancies are protected, if at all, in some other jurisdictions. The *nature* of the protection afforded in those jurisdictions differs significantly and is not relevant here. However, it is useful to consider some examples of how the *scope* of the protection has been approached.

(1) In the Netherlands, protection is given to a limited class of business tenants based on the use made of the premises. Uses that are protected include hotels, retail, cafes and campsites.[94]

(2) In Scotland, protection is for shops only.[95]

(3) In South Australia and the Australian Capital Territory, tenants of shops in retail shopping centres have enhanced protection, and in South Australia protection in those centres does not apply if the rent is greater than a specific amount.[96]

(4) In the Republic of Ireland, tenants qualify for protection only if they (or their predecessor) have been in occupation for five years, and in the Netherlands and France, protections are conferred on certain tenants if their initial tenancy is for a period of at least two years or three years (respectively).[97]

4.14 Based on the jurisdictions we consider in Appendix 3, it can be said the 1954 Act has a wide scope. The starting point for the 1954 Act is that *all* business tenancies are protected, *unless* they are in the limited class of tenancies that are *not* protected. Elsewhere, for example, in the Netherlands and Scotland, the starting point is that *no* business tenancies are protected *unless* they are in the limited class of tenancies that *are* protected.[98]

4.15 In addition, it will be seen that the possibilities for protecting, or not protecting, tenancies based upon their characteristics is wide. For example, in South Australia, greater protection is given to shops that are within shopping centres than those outside (a criterion based on the *location* of the premises), but only where rent does not exceed a certain amount (a criterion based on the *terms* of the tenancy).

---

94 See Appendix 3, para 3.23.

95 See Appendix 3, para 3.23.

96 See Appendix 3, para 3.31.

97 See Appendix 3, paras 3.8, 3.17 and 3.23.

98 We note that the protection afforded in those regimes is also different from that under the 1954 Act.

THE POTENTIAL TO REFORM THE SCOPE OF PART 2 OF THE 1954 ACT

4.16 If the current contracting-out model of security of tenure were to remain, it would be possible to reform the current scope of the 1954 Act by doing one of the following.

(1) Adding, or removing, tenancies from the list of Use Excluded Tenancies based on the use made of the premises.

(2) Changing what causes a tenancy to be a Duration Excluded Tenancy (for example, removing, or changing the current general requirement that a tenancy be granted for a duration of six-months or longer to fall within the scope of the 1954 Act).[99]

(3) Excluding tenancies from the protection afforded by the Act based on characteristics of the tenancy or premises other than use, for example, it might be possible to exclude tenancies based upon:

(a) the internal floorspace of the premises;

(b) where the premises are situated;[100] or

(c) the level of the rent payable under the tenancy.[101]

4.17 As explained elsewhere,[102] the same would be true for two other models: mandatory security of tenure and a model based on contracting in (the possibilities do not arise in a model where there is no statutory security of tenure). However, it is possible that the considerations influencing what, if any, change might be made to the 1954 Act's scope would be different.

4.18 We explore that possibility by way of an example. It has been suggested to us that the parties to leases of energy production sites – for example windfarms – because of the significant capital investment involved, may prefer to obtain security of tenure by way of bespoke contractual provisions rather than relying on the one-size-fits-all provisions of the 1954 Act. We cannot say whether that is universally true, but, for the purposes of this example, we assume that it is. Those involved in the energy production sector may have different views about the scope of the 1954 Act depending upon which model underpins the 1954 Act, which we explore below.

(1) Contracting-out model: if the model underpinning the 1954 Act were retained so that contracting out is necessary to avoid a tenant having security of tenure, then the parties can choose to exclude leases of windfarms from that protection and create their own bespoke contractual protections, as they wish. However, if

---

99 The position with Duration Excluded Tenancies is more complex than suggested in this paragraph; see para 4.8 and footnote 93 above.

100 An example of the location being relevant to scope is that set out at para 4.13(3), where, in certain Australian states, protection is, in part, linked to whether a shop is situated in a retail shopping centre.

101 See, for example, para 4.13(3) above.

102 See para 4.2 above. Furthermore, as mentioned in that paragraph, if the conclusion were to be reached that the underlying model of the 1954 Act should be changed to one where there is no statutory security of tenure, it does not make sense to talk about changing the Act's scope.

all leases of windfarms are currently contracted out, then consultees within that sector may argue for leases of windfarms to be excluded from the scope of the 1954 Act in order to avoid the unnecessary cost, time and risk of contracting out.[103] They may, however, regard those issues as minor and prefer to retain the option of taking a protected lease in some cases, so prefer for leases of windfarms to remain within the scope of the 1954 Act.

(2) Mandatory security of tenure model: if the model underpinning the 1954 Act were reformed to provide for mandatory security of tenure, it would no longer be possible for landlords to contract out of its protection. Leases of windfarms would therefore benefit from security of tenure under the 1954 Act, but those in that sector may not regard the Act's regime as appropriate and/or be concerned about how a mandatory regime might conflict with the bespoke contractual mechanisms that they tend to use. It would be theoretically possible to alter the scope of the 1954 Act to exclude leases of windfarms, thereby leaving the parties to negotiate their own bespoke arrangements if security is considered necessary.

(3) Contracting-in model: if the model underpinning the 1954 Act was reformed to provide for a contracting-in model, then the default would be that tenancies of business premises do not benefit from security of tenure. While it would be theoretically possible to alter the scope of the 1954 Act to exclude leases of windfarms, it seems unlikely to be considered necessary by those in the sector (because all that would be required, to avoid leases of windfarms having security of tenure under the 1954 Act, would be to avoid contracting in those leases).

POTENTIAL BENEFITS OF REFORMING SCOPE

4.19 There are several reasons why reform of the scope of the 1954 Act might be considered. Those reasons, to a large extent, arise because the 1954 Act takes a one-size-fits-all approach; almost all tenancies of premises that are used for business purposes are within the scope of the 1954 Act. We consider some possible reasons to reform scope below.

Competing regimes

4.20 One reason for excluding certain types of tenancy from the protection of the 1954 Act is that there exists another regime that performs a similar function. It is one of the reasons for certain types of tenancy to be Use Excluded Tenancies.

4.21 For example, the Electronic Communications Code (the "ECC") is a regime that makes provision to protect electronic communications infrastructure that forms part of an operator's network. The code is contained in the Communications Act 2003, as amended by the Digital Economy Act 2017, and is based in part on work undertaken by the Law Commission.[104] The Law Commission's consultation on the ECC highlighted consensus that dual protection under the ECC and the 1954 Act was

---

[103] See para 3.123 above.

[104] See https://lawcom.gov.uk/project/electronic-communications-code/.

unacceptable.[105] Instead, leases covered by the ECC should fall within the 1954 Act regime, or the ECC, but not both.

4.22 The solution was to exclude from the protection of the 1954 Act tenancies "the primary purpose of which is to grant code rights within the meaning of the [ECC]".[106]

4.23 We highlighted at paragraph 4.6 above that such tenancies are one of the Use Excluded Tenancies and are, therefore, excluded from the scope of the 1954 Act. It follows that they cannot benefit from the security of tenure that the 1954 Act gives to business tenancies generally.

4.24 If, in considering the questions in this chapter, consultees believe that there is a competing statutory regime that has not been adequately catered for in the 1954 Act, then we would welcome their views on whether and how it might be addressed.

Unwanted or unnecessary protection

4.25 The existence of a competing regime is arguably a case of "unwanted" protection. However, there may be other, more general situations in which the parties to tenancies believe the 1954 Act is going too far.

4.26 The hypothetical example that we gave at paragraph 4.18 – leases of windfarms – might be one such instance. In these cases, it is arguable that the existing contracting-out model serves only as an irritation (and possible risk) to have to contract out of the Act's protection. Moreover, a mandatory protection model might be actively, and unavoidably, problematic.

Too much protection

4.27 There may be circumstances in which it is felt that the 1954 Act gives too much protection. We have, for example, heard it suggested that the protection afforded by the Act can represent a risk to landlords on short-term tenancies; the Act already excludes Duration Excluded Tenancies, but the point at which protection is given could be adjusted. So, for example, the Act could exclude from its protection tenancies of (say) less than 12 months or two years or five years, rather than the existing six months.

4.28 In addition to possible problems caused to landlords, we note that tenants who wish to take short-term tenancies with no intention of staying in the premises for the longer term, for example those setting up "pop-up shops", may also regard the current contracting-out model as problematic, causing cost, delay and bureaucracy before they can start to trade.

4.29 It is possible that other circumstances exist in which the one-size-fits-all approach of the Act is considered to be operating to give too much protection to tenants. That might be the case if, for example, the protection has had the effect of distorting a

---

105 See The Electronic Communications Code (2013) Law Com No 336, para 6.60.

106 See the 1954 Act, s 43(4) and The Electronic Communications Code (2013) Law Com No 336, para 6.83.

market or restricting competition.[107] If that is correct, then it may be exacerbated under a model that provides for mandatory protection, but not necessarily alleviated under a model that provides for contracting in.

Too little protection

4.30 In some sectors, or for some tenancies with certain characteristics, it might be argued that the protection afforded by the 1954 Act is inadequate.

4.31 Take, for example, leases of key infrastructure.[108] Such leases are no doubt complex and heavily negotiated, and any lease of such premises may involve unique considerations; not least that it may be impossible to find alternative premises if a landlord successfully opposes the grant of a renewal lease, and that enormous capital investment by the tenant might be required to bring the sites into operation.

4.32 We anticipate all parties to such leases to be well represented when the lease is negotiated, and that, if security of some form is necessary, they may prefer to put in place bespoke mechanisms to renew the lease (where the landlord has no, or limited grounds, to recover the premises if the tenant wishes to remain in occupation), rather than rely upon the provisions of the 1954 Act, leaving contracting-out of the 1954 Act as an administrative hurdle.

POTENTIAL DISADVANTAGES OF REFORMING SCOPE

4.33 Reform of the scope of the 1954 Act could have disadvantages depending on the reform, or combinations of reform, that are made. In the text that follows we refer to a deliberately complex and unrealistic hypothetical example (the "Complex Example") in which the Act is reformed to exclude from its scope retail tenancies which have any of the following characteristics.[109]

(1) The gross internal area of the premises is 90 square metres or more.

(2) The premises are situated within a town centre.

(3) An initial rent of more than £40,000 is payable per year.

---

[107] We also note that the Office of Rail and Road ("the ORR") recently undertook a market study evaluating the effectiveness of competition in the railway station catering market. In its final report, it explained that 24% of station catering outlets are currently let on protected leases. In the view of the ORR, protected leases in the railway catering sector represent a barrier to competition because they "tend to foreclose parts of the market and make them non contestable…" (see the Office of Rail and Road, "Railway Station Catering Market Study" (June 2024), p 7 – available at https://www.orr.gov.uk/railway-station-catering-market-study). From the conclusions expressed by the Office of Rail and Road in the report, it is possible that it would regard the Act as providing too much protection in the case of tenancies of catering premises situated at railway stations. We have no information regarding the views of tenants of such premises.

[108] See the hypothetical example – leases of windfarms – that we gave at para 4.18.

[109] The Complex Example is both unrealistic and hypothetical, it therefore does not need a policy explanation to underpin it (in other words, we do not need to explain the reason for the Complex Example having come into being). However, for the sake of completeness, the Complex Example may have come about as a consequence of it being concluded that retail premises generally should not be within the scope of the Act, but accepting that smaller, out of town, retailers should continue to fall within the scope. We do not suggest that any such policy underpinning is correct or justified and we have no view on that point.

4.34 In other words, the result of the Complex Example is that the only retail premises that would be within the scope of the Act are those that are (1) outside of town centres, (2) have less than 90 square metres gross internal area, and (3) have a rent of £40,000 or less per year.

Complexity

4.35 Altering the scope of the 1954 Act to exclude tenancies would have the effect of increasing the complexity of the Act. Landlords, tenants and their advisors would need to be aware of each instance of different treatment, making decisions and advice more costly, time-consuming and prone to error. It could also risk litigation if there is a later debate about whether a tenancy was in or out of the scope of the Act.

4.36 The concern above exists now with the Use Excluded Tenancies. It would, however, increase if more tenancies were added to the list of Use Excluded Tenancies, and it could increase *significantly* if tenancies were to be excluded from the scope of the Act based on characteristics other than their use.

4.37 Taking the Complex Example, the parties and their advisors would need to be aware of the multiple factors that would cause a tenancy to fall within or outside of the protection of the Act. A lack of, or mistaken, understanding regarding one of the factors – for example, neglecting to consider the internal size of the premises – could cause a tenancy to be protected, or unprotected, where one or both parties expected the position to be the opposite.

Uncertainty and litigation risk

4.38 Similar to the complexity risk mentioned above, exclusions from protection may increase the risk that parties are unsure about whether a tenancy has protection or not, and require litigation to settle the point.

4.39 Taking the Complex Example again, it is possible that, after several years and multiple alterations to the premises (with the landlord's consent), the tenant may argue that their tenancy has protection because the premises, as originally let, were, in fact, exactly 89 square metres (rather than 91 square metres as the parties had assumed).

4.40 The end result of a disagreement may be that both parties incur significant time and expense to settle the status of a tenancy, which could have been avoided had the scope of the 1954 Act been kept simple. The potential for uncertainty may lead to increased transactional costs – for example, parties taking steps to contract out of security a tenancy that they think is already excluded to cater for the possibility of their understanding being wrong.

4.41 The risks of uncertainty and litigation might be possible to mitigate through careful definition and drafting in a reformed 1954 Act. For example, in the Complex Example, "town centre" might be defined (perhaps by reference to planning principles) with a view to giving the term clarity. However, while it might be possible to bring greater certainty, doing so may exacerbate the problems caused by complexity, as discussed above.

Unintended consequences

4.42 The greater the number of exclusions from the protection of the Act, the greater the risk of unintended consequences.

4.43 The Complex Example might have been intended to avoid adverse consequences for tenants of smaller retail units in out-of-town locations,[110] but it might also cause a landlord / developer:

(1) not to let such premises to retail tenants;

(2) to construct units larger than they otherwise would (leading to a shortage of smaller units); and/or

(3) to focus the development of units within town centres.

4.44 If that were to happen then the effect of enacting the Complex Example could be to damage the interests of those whom the provision was intended to benefit by reducing the availability of premises that they would prefer to rent.[111]

4.45 In addition, we note that some characteristics of tenancies may be difficult to exclude without (or with only limited risk of) unintended consequences. For example, the £40,000 cap on the rent in the Complex Example may have a number of effects, including that:

(1) it may cause landlords to charge a higher initial rent (to avoid a tenancy benefiting from protection);

(2) it may be incompatible with, or cause litigation in respect of, rent-free periods and/or some modern rental models (there may be questions about whether a tenancy has or has not been protected where it has, say, a six-month rent-free period at the start of the tenancy, followed by a turnover rent that, in fact, results in a first year rent of £100,000).

Loss of resilience

4.46 We explained above that the 1954 Act has proved resilient to changes in the commercial leasehold market.[112]

4.47 We believe that the greater the degree of complexity – and different treatment for different types of tenancy – the greater the risk that the Act's resilience will be damaged; tightly focussed changes to scope that are targeting specific issues in today's market may not be appropriate for tomorrow.

---

110 See n 109 above.

111 See also Appendix 2, para 2.37 below for an explanation of how unintended consequences arose from the 1954 Act as originally enacted.

112 See para 3.71 above.

Loss of choice

4.48 Where the model underpinning the Act is one based on contracting out or contracting in, removing certain types of tenancy from the possible protection of the Act could remove a potentially valuable and well understood "tool" from the parties.

4.49 Taking a theoretical example, it might be argued that the tenants of supermarket premises are, generally speaking, able to negotiate their own bespoke contractual security provisions, if required, and that the protection afforded by the 1954 Act is therefore not needed. However, where security is desirable, the parties may prefer to take the "off the shelf" protection afforded by the Act and, in doing so, save the cost and time negotiating something, such as a contractual option, to achieve the same effect.

Potential arbitrary outcomes

4.50 The Complex Example contains a number of criteria that can be answered in a binary fashion: the premises either are, or are not, used for retail; the gross internal area of the premises either is, or is not, less than 90 square metres.[113] The Use Excluded Tenancies and Duration Excluded Tenancies are also binary in nature.

4.51 The use of binary tests to establish whether a tenancy can have protection under the 1954 Act helps to give the parties certainty. Alternative tests that are sometimes found in the law – for example, a test based on whether or not it is "reasonable" for a tenant to have the protection of the Act – would lack certainty and, we believe, damage the commercial leasehold market.

4.52 However, tests that are binary in nature can yield arbitrary outcomes because they necessarily have a cut-off point. That is already the case with, say, Duration Excluded Tenancies, where a tenancy granted for five months has no protection, while a tenancy granted for seven does. However, arbitrary outcomes may increase if there are further exclusions from the Act. Taking the Complex Example, a tenant of premises that has a floorspace of 89 square metres can benefit from protection, but the tenant of premises that has a floorspace of 90 square metres cannot. We do not suggest that, if changes to scope are warranted, then binary tests are inappropriate, rather we highlight the need for care, and to be aware that arbitrary outcomes may follow.

4.53 In addition, whatever principled reason underlies such an exclusion – perhaps a desire to provide statutory protection to smaller businesses while letting the market dictate outcomes for larger businesses – the binary tests may not effectively identify the target group. For example, large businesses may take tenancies of small units, and small businesses may take tenancies of larger units.

---

[113] We note that, while each of the criteria in the Complex Example can be answered in a binary fashion, there may still be debate about what the answer is – see para 4.39 above.

Cumulative impact

4.54 We have focussed on the Complex Example in setting out above the disadvantages of reform to the scope of the 1954 Act. The Complex Example was hypothetical and intended to highlight, and exaggerate, the points being made.

4.55 However, while the Complex Example is extremely unlikely to be enacted, we note that the disadvantages of reforming the scope of the 1954 Act may become more relevant, and pose greater risks, with each exclusion that is enacted. So, for example, a new exclusion adding to the class of Use Excluded Tenancies may result in fewer disadvantages than adding that exclusion together with one based on the floorspace of premises.

DISCUSSION AND CONCLUSION

4.56 In our work leading up to this Consultation Paper some stakeholders have raised the importance of the protection afforded by the 1954 Act to various tenants and types of tenant. In comparison, we have heard less about any need to reform the Act's scope.

4.57 However, despite the lack of a widespread call for such reform, we regard its possibility as an important point to raise – and to raise now – in order to gauge whether there is appetite for reform in the marketplace. Moreover, as we explain below, there is a particular need to consider it if there is appetite for a return to a mandatory security of tenure model. It follows that, at the end of this chapter, we ask some general questions about the desirability of reform to the scope of the 1954 Act.

4.58 However, while reforming the scope of the 1954 Act might technically be possible, we do not think it should be undertaken lightly.

4.59 In our view, of the various reasons we have highlighted above for excluding tenancies from the scope of the 1954 Act,[114] we believe the most compelling is where there is a competing regime. The existence of two competing regimes can create uncertainty and complexity for those subject to them. As we concluded in our work on the Electronic Communications Code, we believe there are clear benefits in avoiding two overlapping regimes performing a similar function. We also believe that, where there are two such regimes, the most appropriate approach will generally be to exclude the protection of the 1954 Act – which applies generally to business tenancies – to enable the competing, tailored regime to operate unfettered.

4.60 We also believe it may be easier to make an argument to change an existing exclusion (for example the point in time at which a tenancy becomes a Duration Excluded Tenancy) if it is thought that the exclusion as it currently exists is no longer working.

4.61 However, in the absence of a competing regime or a change to an existing exclusion, the threshold for reforming the scope of the 1954 Act to exclude further types of tenancy, or tenancies with certain characteristics, is considerably higher.

---

[114] See para 4.19 and following above.

CONSULTATION QUESTIONS

Consultation Question 4.

4.62 We invite consultees' views as to whether the existing scope of the 1954 Act is appropriate. In particular, we invite consultees' views as to whether:

(1) the extent of the Use Excluded Tenancies is appropriate;

(2) the extent of the Duration Excluded Tenancies is appropriate; and

(3) there are other types of business tenancy (or business tenancies with certain characteristics) that should be excluded from the scope of the 1954 Act.

4.63 We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

Consultation Question 5.

4.64 We invite consultees' views as to whether our assessment of the potential benefits and disadvantages of reforming the scope of the 1954 Act is correct.

THE IMPACT OF REFORM

Consultation Question 6.

4.65 We invite consultees' views, together with evidence wherever possible, as to what impact a change to the scope of the 1954 Act would have:

(1) on the parties to tenancies and their advisors; and

(2) on the commercial leasehold market.

EQUALITY IMPACTS

4.66 In Chapter 3 and in this chapter of this Consultation Paper, we ask what, if any, impact changes to the model of security of tenure[115] and/or the scope[116] of the 1954 Act would have on the parties to tenancies, their advisors and the commercial leasehold market.

---

115 See para 1.28 and para 3.4 above.

116 See para 1.29 and para 4.5 above.

4.67 However, we are also interested in whether any of the possible changes we discuss in this Consultation Paper would affect groups or individuals with a characteristic that is protected under the Equality Act 2010. These characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.[117] Although these characteristics have legal protection, there are other ways that proposed changes to the law may have impacts on groups or members of groups that do not necessarily fall within the ambit of a particular protected characteristic. Consideration of the impacts on these groups is also important.

4.68 We ask a general question below about potential equality impacts. Consultees may wish to address equality impact issues as they arise throughout the paper, in relation to issues and questions that we raise, or more generally in response to the question below. The purpose of this question is to encourage consultees to alert us to any equality impacts that they think may exist. Consultees do not need to repeat material here that has been included in their responses to other questions.

Consultation Question 7.

4.69 We invite consultees to tell us if they believe, or have evidence or data to suggest, that changes to the model of security of tenure, or the scope of the 1954 Act, could result in advantages or disadvantages to certain groups or to individuals based on certain characteristics (with particular attention to age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation).

[117] Equality Act 2010, s 4.

Chapter 5: Consultation Questions

5.1 In this chapter, we bring together into one place the consultation questions that we ask in Chapters 1, 3 and 4.

Consultation Question 1.

5.2 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.

Paragraph 1.57

Consultation Question 2.

5.3 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:

(1) mandatory security of tenure;

(2) no statutory security of tenure (abolition);

(3) contracting-in (so that a tenancy only has statutory security of tenure if the parties opt into a statutory scheme); or

(4) contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Paragraph 3.127

Consultation Question 3.

5.4 We invite consultees' views, together with evidence wherever possible, as to what impact a change to the model of security of tenure will have:

(1) on the parties to tenancies and their advisors; and

(2) on the commercial leasehold market.

Paragraph 3.128

Consultation Question 4.

5.5 We invite consultees' views as to whether the existing scope of the 1954 Act is appropriate. In particular, we invite consultees' views as to whether:

(1) the extent of the Use Excluded Tenancies is appropriate;

(2) the extent of the Duration Excluded Tenancies is appropriate; and

(3) there are other types of business tenancy (or business tenancies with certain characteristics) that should be excluded from the scope of the 1954 Act.

5.6 We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

Paragraph 4.62

Consultation Question 5.

5.7 We invite consultees' views as to whether our assessment of the potential benefits and disadvantages of reforming the scope of the 1954 Act is correct.

Paragraph 4.64

Consultation Question 6.

5.8 We invite consultees' views, together with evidence wherever possible, as to what impact a change to the scope of the 1954 Act would have:

(1) on the parties to tenancies and their advisors; and

(2) on the commercial leasehold market.

Paragraph 4.65

Consultation Question 7.

5.9 We invite consultees to tell us if they believe, or have evidence or data to suggest, that changes to the model of security of tenure, or the scope of the 1954 Act, could result in advantages or disadvantages to certain groups or to individuals based on certain characteristics (with particular attention to age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation).

Paragraph 4.69

Appendix 1: The current law

INTRODUCTION

1.1 What follows is a brief summary of the main provisions of the 1954 Act. The summary does not set out the law in detail, or its various nuances.[118]

TENANCIES TO WHICH THE 1954 ACT APPLIES

1.2 The 1954 Act applies to any tenancy which satisfies the following conditions:

(1) The premises are occupied by the tenant (or a group company) for the purposes of its business. "Business" has a wide meaning, and includes trades, professions and the activities carried on by a charity;[119]

(2) It is a periodic tenancy, or a tenancy for a fixed term with a duration of at least six months; and

(3) It is not otherwise excluded from the protection of the Act.[120]

1.3 Every tenancy satisfying those conditions falls within the scope of the 1954 Act. Protection under the 1954 Act is the default position. Accordingly, tenancies within the scope of the 1954 Act will be "protected tenancies" (that is, they will benefit from security of tenure), unless they have been "contracted out" following a specified statutory procedure: see paragraph 1.4 below.

"CONTRACTING OUT" OF SECURITY OF TENURE

1.4 If the parties agree that a business tenancy should not have security of tenure under the 1954 Act, then they can "contract out" of security. The requirements to contract out are as follows.

(1) Before the tenancy is entered into, the landlord has served a warning notice on the tenant ("a warning notice") which sets out the implications of entering into a business tenancy that does not benefit from security of tenure. The warning notice must be in a prescribed form (or substantially in that form).

(2) The tenant must sign a declaration in a prescribed form confirming that it understands the consequences of not having security of tenure. If the warning

---

118 For more detail, see for example M Haley, *Renewal of Business Tenancies* (3rd ed 2022); K Reynolds and W Clarke, *Renewal of Business Tenancies* (6th ed 2022); G Webber and D Dovar, *Business Premises: Possession and Lease Renewal* (7th ed 2023); D Sawtell and D Falkowski, *A Practical Guide to the Landlord and Tenant Act 1954: Commercial Tenancies* (2nd ed 2021); T Aldrige QC (Hon), R Brown, R Bagwell and T Graham, *Aldridge Leasehold Law* (ed 2024); Lewison J, N Dowding KC, P Morgan, M Rodger KC and E Peters KC: *Woodfall: Landlord and Tenant* (2024).

119 1954 Act, s 23.

120 1954 Act, ss 43 and 43ZA, exclude various tenancies from the scope of the Act, including tenancies of agricultural holdings, farm business tenancies, and mining leases. See also para 4.5 and following above.

notice is served less than 14 days before the tenancy is entered into, the declaration must be a statutory declaration, signed in the presence of (usually) a solicitor. The solicitor must be one who is not involved in the grant of the tenancy.

(3) The tenancy itself must include a reference to the agreement to exclude security of tenure, to the warning notice, and to the tenant's declaration.[121]

1.5 Provided those requirements are satisfied, then the tenancy will not have security of tenure under the 1954 Act. If the parties do not follow these steps, or if they make a mistake in complying with them, then the default position will apply and the tenancy will be protected.

WHAT DOES IT MEAN TO HAVE SECURITY OF TENURE?

1.6 The length of time that a tenant is granted possession of a property is referred to as the "contractual term". It might be a fixed term (for example, six months, or 15 years), or it might be a repeating periodic term (for example, a weekly, monthly or annual tenancy).

1.7 A tenant with security of tenure under the 1954 Act is given a right to remain in possession of the premises after the expiry of the contractual term of the original tenancy, unless the landlord can show a permitted reason to remove them. The mechanism used to give a tenant security of tenure has three principal elements:

(1) the original tenancy continues after the expiry of the contractual term ("the continuation tenancy");

(2) both the landlord and the tenant can request a renewal tenancy, which will replace the continuation tenancy; and

(3) the landlord can seek to terminate the continuation tenancy, and oppose the grant of a renewal tenancy, in order to recover possession of the premises.

1.8 We explain those elements in more detail below.

Continuation of business tenancies after expiry of the contractual term

1.9 Ignoring the 1954 Act, as a matter of contract law, the tenant's right to remain at the premises ends when the contractual term of a tenancy expires.[122]

1.10 But if a business tenancy is protected, then after the expiry of its contractual term the tenancy will continue under section 24 of the 1954 Act until it is terminated in accordance with the Act. The tenancy will only continue under section 24 if the tenant (or a group company) is, at the end of the contractual term, occupying the premises for its business purposes. We refer to the tenancy that continues under section 24 as the "continuation tenancy". The continuation tenancy is on the same terms as the

---

[121] 1954 Act, s 38A; Regulatory Reform (Business Tenancies) (England and Wales) Order 2003, schs 1 and 2.

[122] In relation to a periodic tenancy (e.g. a weekly, monthly or annual tenancy), the contractual term expires after the landlord has served a "notice to quit" which brings the repeating pattern of the periodic tenancy to an end.

original tenancy. Accordingly, the level of rent remains the same (unless either party seeks an "interim rent": see paragraph 1.41 below), and the obligations on both the landlord and the tenant under the original tenancy continue to apply during the continuation tenancy.

1.11 The 1954 Act does not prevent the tenancy from being terminated by forfeiture.[123] For example, the landlord may forfeit the original tenancy and the continuation tenancy for non-payment of rent or other breach of covenant.[124]

1.12 When the contractual term of the tenancy expires, or at any point while the tenancy continues under section 24, the tenant can decide to terminate the tenancy. Where a tenancy is continuing under section 24, the tenant must give at least three months' notice to the landlord to terminate it.[125]

1.13 We go on to explain the options that are available to the landlord and the tenant, assuming that the tenant wishes to remain in occupation of the premises.

The landlord's options when the contractual term of the tenancy expires

1.14 The landlord may be content for the tenant to continue to occupy the premises and for the terms of the original tenancy to continue, so may take no action at all. In this case, the tenancy will continue under section 24 unless and until the tenant seeks a renewal tenancy.

1.15 Alternatively, the landlord may want to recover possession of the premises, or to grant a renewal tenancy to the tenant which may give the opportunity to increase the rent or change the terms on which the tenant occupies the premises. To do so, the landlord must serve a notice on the tenant under section 25 which terminates the tenancy on a specified date (which must be between six and 12 months from when the notice is served).[126] The notice must state either:

(1) that the landlord is opposed to the grant of a renewal tenancy, and the ground(s) on which it opposes a renewal tenancy (see paragraph 1.33 below); or

(2) that the landlord is willing to grant a renewal tenancy, and set out its proposals for the renewal tenancy, including the proposed level of rent.[127]

1.16 There is no requirement for the tenant to serve a counter-notice. The section 25 notice will terminate the tenancy on the specified date, unless certain steps are taken before that date: see paragraph 1.23 and following below.

---

123 Forfeiture is the legal term for the action taken by a landlord to terminate a tenancy where the tenant has not complied with their obligations.

124 1954 Act, s 24(2).

125 1954 Act, s 27(2).

126 1954 Act, s 25.

127 1954 Act, s 25(8).

The tenant's options when the contractual term of the tenancy expires

1.17 The tenant may be content for the terms of the original tenancy to continue, so may take no action at all. In this case, the tenancy will continue under section 24 unless and until the landlord either seeks a renewal tenancy, or seeks to terminate the tenancy and oppose the grant of a renewal tenancy (as explained in paragraph 1.15 above and paragraph 1.33 and following below).

1.18 Alternatively, the tenant may want to obtain a renewal tenancy. To do so, the tenant must serve a notice on the landlord under section 26 seeking a renewal tenancy, specifying the date on which it is to commence (which must be between six and 12 months from when the notice is served), and setting out its proposals for the new tenancy, including the proposed level of rent.[128]

1.19 If the tenant serves a notice on the landlord under section 26 requesting a renewal tenancy, but the landlord wishes to oppose its grant, the landlord must within two months serve a counter-notice setting out the ground(s) on which it opposes a renewal tenancy (see paragraph 1.33 below).[129] If the landlord does not wish to oppose the grant of a new tenancy, it does not need to serve a counter-notice.

1.20 The section 26 notice will terminate the tenancy on the specified date, unless certain steps are taken before that date: see paragraph 1.23 and following below.

Tenancies with a break clause or option to renew

1.21 A tenancy may contain a break clause which allows either or both parties to terminate the tenancy early, usually provided that certain conditions are satisfied (for example, that a notice exercising the break clause is served by a particular date). The landlord under a protected tenancy can exercise a break clause but the tenancy will still continue under section 24 unless terminated in accordance with the 1954 Act. Accordingly, a landlord under a protected tenancy with the benefit of a break clause will need to satisfy both (a) the conditions of the break clause, and (b) serve a notice under section 25 of the 1954 Act seeking to terminate the tenancy and establish a statutory ground to oppose the grant of a new tenancy (on which see paragraph 1.33 below).

1.22 Conversely, a tenancy may contain an option for the tenant to renew the tenancy. If it is a protected tenancy, then the tenant will be able to seek a renewal tenancy pursuant to its contractual right, or a renewal tenancy pursuant to its statutory right.

Action required before the date specified in the section 25 or section 26 notice

1.23 After a notice has been served under section 25 or section 26, the tenant might decide not to pursue a claim for a renewal tenancy. If that is the case, the tenant need not

---

[128] 1954 Act, ss 26(2) and (3). A tenant can only apply for a renewal tenancy if the original tenancy was granted for a fixed term of over one year: s 26(1). If the original tenancy was a periodic tenancy or granted for a term of one year or less, the tenant cannot apply for a renewal tenancy and must instead wait for the landlord to serve a notice under section 25.

[129] 1954 Act, ss 26(6), 29(2) and 30(1).

take any action, and the tenancy will terminate on the date specified in the section 25 or section 26 notice.[130]

1.24 If the tenant wants a renewal tenancy, the parties may reach agreement on the terms of a renewal tenancy before the date specified in the section 25 or section 26 notice. If no renewal tenancy has been entered into by that date, then an application must be made to court, or the parties must agree in writing to an extension of time.[131] If they fail to do so, then the tenancy will terminate and the tenant will have lost the right to a renewal tenancy.

1.25 An application to court may be made by the tenant, seeking a renewal tenancy.[132] If the landlord opposes the claim, it is referred to as an "opposed renewal claim". If the landlord agrees to the grant of a renewal tenancy albeit the parties do not agree the level of rent or other terms, then it is referred to as an "unopposed renewal claim".

1.26 Alternatively, an application to court may be made by the landlord.[133] The landlord's application will be either (a) seeking the termination of the tenancy (and no renewal tenancy) based on one or more grounds of opposition (an "opposed renewal claim"), or (b) seeking a determination of the terms of a renewal tenancy (an "unopposed renewal claim").

Potential for the parties to reach agreement

1.27 The parties are free to reach an agreement about the tenant's future occupation of the premises at any point. The parties might agree that the continuation tenancy will end and the tenant will vacate, or the parties might agree that the tenant will be granted a renewal tenancy, and they can agree between them the terms of that renewal tenancy. The parties can reach their own agreement before or during any court proceedings.

Court applications: unopposed and opposed renewal claims

1.28 As explained at paragraphs 1.25 and 1.26 above, where an application is made to court under the 1954 Act, the claim will either be an "unopposed" or an "opposed" renewal claim.

Unopposed renewal claims

1.29 In unopposed renewal claims, there is no disagreement between the parties that the tenant is entitled to a renewal tenancy, but there is disagreement as to some or all of the terms of that renewal tenancy. In the absence of agreement between the parties during the course of the court proceedings, the court will make a decision about the terms that are in dispute. Usually the parties will have agreed some (even a majority)

---

130 1954 Act, ss 25(1) and 26(5). The date specified in a landlord's notice under s 25 is the date on which the tenancy is to come to an end. By contrast, the date specified in a tenant's notice under s 26 is the date for the renewal tenancy to commence, so s 26(5) provides that the tenancy terminates *immediately before* the date specified in the notice.

131 1954 Act, ss 29A and 29B.

132 1954 Act, ss 24(1) and 29(1).

133 1954 Act, ss 24(1) and 29(2).

of the terms of the renewal lease, leaving only some in dispute for the court to determine.

1.30 The 1954 Act sets the principles that the court must apply in deciding the terms that remain in dispute. In summary:

(1) the premises under the renewal tenancy should be the same as the premises under the original tenancy that are occupied by the tenant for its business purposes;[134]

(2) the duration of the renewal tenancy is to be what the court considers to be reasonable, up to a maximum of 15 years;[135]

(3) the other terms of the tenancy are to be determined by the court, having regard to the terms of the original tenancy and all relevant circumstances;[136] and

(4) the rent is to be based on the open market rental value of the premises.[137]

1.31 Accordingly, there is not a clear single "right" answer that the court will reach: there is usually a range of potential outcomes from a contested court hearing, which will depend on the court's assessment of the parties' respective evidence and arguments, and on its exercise of discretion.

1.32 The level of rent will often be the most controversial matter to be resolved. Sometimes the parties will appoint professional valuers to advise them, to conduct the negotiations on their behalf and, if the dispute proceeds to litigation, to provide the court with expert evidence concerning the level of rent. In providing advice and undertaking negotiations, valuers will be guided by their client's wishes, by the legal principles in the 1954 Act, by the principles of valuation practice in what is commonly referred to as "the Red Book",[138] and by the potential outcome(s) of court proceedings. If the dispute about rent is to be resolved by the court, the parties' valuers will often provide the court with written and oral expert evidence in which they explain their opinion as to what the market rent is for the premises. When giving such expert evidence, valuers must put to one side the interests of their client and are instead required to comply with their duties to the court, including a duty to give an objective unbiased opinion.[139]

Opposed renewal claims

1.33 In opposed renewal claims, there is a disagreement as to whether the tenant is entitled to a renewal tenancy. A landlord can only oppose the grant of a renewal

---

134 1954 Act, s 32.

135 1954 Act, s 33.

136 1954 Act, s 35.

137 1954 Act, s 34.

138 RICS Valuation – Global Standards (November 2021), available at https://www.rics.org/profession-standards/rics-standards-and-guidance/sector-standards/valuation-standards/red-book. This edition is effective from 31 January 2022 until 31 January 2025.

139 Civil Procedure Rules 1998, Part 35 and its Practice Direction.

tenancy (and terminate the continuation tenancy) if it can establish one or more of the grounds in section 30(1) of the 1954 Act. Those grounds are:

(1) ground (a): the tenant has failed to comply with repairing obligations in the original tenancy;

(2) ground (b): the tenant has persistently delayed in paying rent;

(3) ground (c): the tenant has committed substantial breaches of its obligations under the original tenancy, or for any other reason connected with the tenant's use or management of the premises;

(4) ground (d): the landlord has offered suitable alternative accommodation to the tenant;

(5) ground (e): the sub-letting of the property by an intermediate landlord is uneconomic;

(6) ground (f): when the existing tenancy comes to an end, the landlord intends to demolish or reconstruct the premises which could not be undertaken without taking back possession; and

(7) ground (g): when the existing tenancy comes to an end, the landlord intends to occupy the premises itself.

1.34 In the absence of agreement between the parties during the course of the court proceedings, the court will make a decision about whether or not the landlord has established one or more grounds of opposition. To resolve that dispute, the court may require expert evidence, for example, about the prospects of obtaining planning permission for the landlord's proposed re-development.

1.35 If the landlord successfully establishes a ground of opposition (or the tenant concedes), then the tenancy will terminate around three months later (subject to any alternative agreement between the parties) and there will be no renewal tenancy.[140] If the landlord has relied on grounds (e), (f) or (g), then the landlord will be required to pay compensation to the tenant. Compensation is calculated based on the rateable value of the premises.[141]

1.36 If the landlord fails to establish a ground of opposition (or the landlord concedes the opposition claim), then the claim will continue as an unopposed renewal claim, so the court will determine the terms of the renewal tenancy in the absence of agreement between the parties: see paragraph 1.29 above.

Dispute resolution

1.37 Court proceedings in opposed and unopposed renewal claims involve various procedural stages, during which the parties will usually negotiate and often reach

---

[140] 1954 Act, s 31(1). The precise date depends on whether the court has made a decision after a trial and whether there is an appeal against the decision: see 1954 Act, s 64.

[141] 1954 Act, s 37(2), and the Landlord and Tenant Act 1954 (Appropriate Multiplier) Order 1990 SI 363 of 1990.

agreement (particularly in unopposed renewal claims). If the parties do not reach agreement, the court proceedings will culminate in a final hearing when the court will hear evidence and arguments from the parties and make a final decision.

1.38 The parties may agree to use alternative forms of dispute resolution to resolve their dispute, such as mediation (where a third party seeks to facilitate agreement between the parties) or arbitration (where the parties by agreement appoint an expert to decide the dispute between them).[142]

THE RENEWAL TENANCY

1.39 Once all of the provisions of the renewal tenancy have been agreed or determined by the court or other form of dispute resolution, either:

(1) the renewal tenancy must be executed by the parties;[143] or

(2) the tenant (but not the landlord) can decide not to enter into the renewal tenancy (for example, if the court determined that the renewal tenancy should be on particular terms that the tenant is not willing to accept), in which case the tenancy will come to an end.[144]

1.40 When a renewal tenancy has been executed by the parties, it will then become the tenancy by virtue of which the tenant occupies the premises. The renewal tenancy will itself benefit from security of tenure, unless the parties agree otherwise and contract out of protection. The tenancy will continue for its contractual term and, after the contractual term expires, it will continue under section 24 (assuming the tenant remains in occupation for business purposes) and the renewal cycle as set out above will start again.

INTERIM RENT

1.41 The continuation tenancy lasts from the expiry of the contractual term of the original tenancy until the grant of the renewal tenancy. During that period, the terms of the original tenancy continue to apply. In relation to the rent, however, it is possible for either party to apply for a different level of rent – called an "interim rent" – to be paid between (a) six months after the section 25 or section 26 notice was given,[145] and (b)

---

142 There is a bespoke arbitration scheme for 1954 Act claims – Professional Arbitration on Court Terms ("PACT"). It can be used to resolve disputes concerning the following matters: duration of a new lease; rent or interim rent; drafting; repair; service charge; alienation; break clauses; other terms of the new tenancy; or detailed drafting of the provisions to be included in the new tenancy. It is voluntary and was established in 1997. From 2004, it has been possible to use PACT without first initiating court proceedings. As such, it can be commenced after service of a section 25 notice or a section 26 request. If it is started after proceedings have started, those proceedings can be stayed pending the outcome of the arbitration. For more, see "PACT – Lease Renewal Disputes," on the website of the Royal Institute of Chartered Surveyors: https://www.rics.org/dispute-resolution-service/drs-services/pact-lease-renewal-disputes.

143 1954 Act, s 36(1).

144 1954 Act, s 36(2). The tenant must apply for the court's order to be revoked within 14 days of the order being made.

145 1954 Act, s 24B. The date from which interim rent is payable is not the actual date specified in the section 25 or section 26 notice (which can be any date between six and 12 months after the notice is given), but

the date on which the renewal tenancy is entered into (or, if there is no renewal tenancy, the date on which the continuation tenancy ends). There are complicated provisions concerning the calculation of interim rent, and any dispute about the level of interim rent will be determined by the court or other form of dispute resolution.[146]

instead is the earliest date that *could have been* specified in the notice, which will always be six months after the notice is served.

146 1954 Act, ss 24A to 24D.

Appendix 2: The legislative history of Part 2 of the Landlord and Tenant Act 1954

INTRODUCTION

2.1 In this chapter, we summarise the legislative history of the 1954 Act. A number of historic reports recommending reform, and historic legislative measures, influenced what became the 1954 Act. That historic information is useful in understanding how and why the Act came to be enacted, and the length of time over which some of its concepts have developed. At the end of the chapter, we provide some information about the two previous projects examining the 1954 Act undertaken by the Law Commission.[147]

THE SELECT COMMITTEE ON TOWN HOLDINGS 1889

2.2 Calls for statutory protection of business tenants can be traced to recommendations made by the Select Committee on Town Holdings in 1889 ("the 1889 Select Committee").[148] The Committee considered various reforms to leasehold property law, including what protection business tenants should have when their tenancy expires.

2.3 The Committee reported that tenants made two complaints:

(1) that having made improvements to their premises, at the expiry of their tenancy they must either give up the property without any compensation for those improvements or pay an increased rent reflecting the value of those improvements; and

(2) in respect of goodwill, in many cases it is "practically confiscated by the landlord, who takes advantage of the fact of the tenant having worked up a good business, in order to obtain on a renewal of the lease a rent higher than the market value, and that the tenant is induced to pay such rent, in consequence of the great injury that would ensue to his business if he had to quit".[149]

2.4 The 1889 Select Committee considered that landlords often regarded the value of improvements made by tenants as being their rightful property upon the expiry of the tenancy, and that rents were commonly raised in consequence of those improvements.[150] In respect of goodwill, the Committee thought that the value of goodwill did not generally result in an increased rent on renewal. However, the Committee concluded that landlords sometimes took "undue advantage" and that on

147 See also Chapter 1, para 1.13 and following.

148 Report from the Select Committee on Town Holdings (12 July 1889) ("Select Committee Report 1889").

149 Select Committee Report 1889, p 11.

150 Select Committee Report 1889, p 11.

renewal a tenant's goodwill gave the landlord "considerable power to settle the terms of such renewal in his own favour".[151]

2.5 The Committee recommended that, in respect of future tenancies and subject to various conditions, compensation should be paid to business tenants for any increase in the letting value of the premises attributable to the tenant's improvements.[152] The Committee did not recommend any scheme of compensation for loss of goodwill on the termination of a business tenancy.

THE COMMITTEE ON THE INCREASE OF RENT AND MORTGAGE INTEREST (WAR RESTRICTIONS) ACTS

2.6 The Committee on the Increase of Rent and Mortgage Interest (War Restrictions) Acts ("the 1920 Rent Committee") was established to consider the continuing application of various rent restrictions legislation which had been implemented since the start of the First World War. The Committee was concerned primarily with rent control for residential property. It reported in March 1920.[153]

2.7 The 1920 Rent Committee reported hearing complaints that landlords were charging business tenants "exorbitant" rents. However, the Committee said that the issue should not be addressed by rent control (with which the Committee was concerned) but rather by consideration of continuity of tenure, compensation for improvements and compensation for disturbance. The Committee expressed its "fullest sympathy with the grievances of tenants of business premises who without good and sufficient cause are dispossessed and deprived of the goodwill attaching to these premises" and said that the issue should be investigated further, but the concerns were outside the Committee's terms of reference.[154]

THE INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS) ACT 1920

2.8 The Increase of Rent and Mortgage Interest (Restrictions) Act 1920 came into force on 2 July 1920, and included measures "based almost entirely on the recommendations" of the 1920 Rent Committee.[155]

2.9 When the Act was first introduced to Parliament, Government had followed the recommendations of the 1920 Rent Committee and excluded business tenancies from its scope. The scope was increased during the bill's passage: rent controls and protections against eviction were extended to business tenants, subject to exceptions.[156] However, those provisions were time limited and expired on 24 June 1921.

---

151 Select Committee Report 1889, pp 11-12.

152 Select Committee Report 1889, pp 12-13 and 40.

153 Report of the Committee on the Increase of Rent and Mortgage Interest (War Restrictions) Acts (31 March 1920) Cmd 658 ("Rent Committee Report 1920").

154 Rent Committee Report 1920, para 13, and p 13 recommendation (7).

155 *Hansard* (HL) 24 June 1920 vol 40, col 815.

156 Increase of Rent and Mortgage Interest (Restrictions) Act 1920, ss 1-5 and 13. See also *Hansard* (HL), 24 June 1920 vol 40 col 818.

THE SELECT COMMITTEE ON BUSINESS PREMISES 1920

2.10 The inclusion of business tenants in the 1920 Act led to the creation of the Select Committee on business premises in June 1920 ("the 1920 Select Committee").[157] The Committee reported in December 1920.[158]

2.11 The Committee concluded that most landlords did not act harshly towards their tenants, but that in a "substantial number of cases, tenants have been compelled to submit to what appears to be an unconscionable increase in rent in order to retain possession of their business premises" and "in a number of cases they have been dispossessed of business premises without being given any option to retain them on fair terms". In these cases, landlords had "taken full advantage" of the market conditions and caused tenants hardship owing to the loss of their goodwill.[159]

2.12 The Committee was critical of the expansion of the 1920 Act to include business tenants and recommend that its expiry date – set for June 1921 – not be extended further.[160] The Committee considered that increasing the supply of business premises was the "true remedy" for the current problems.[161] Owing to concerns about disincentivising investment in future building, the Committee did not recommend any permanent scheme of security of tenure or compensation when tenants vacated.[162] Instead, the 1920 Select Committee recommended a time-limited right for existing business tenants to apply to a tribunal, which would have a discretion to order either an extension of their tenancy or alternatively compensation.[163] The right would only be available to tenants of premises that had been built before April 1919.[164] The Committee also recommended further consideration be given by a panel of experts to the issues it was considering.[165]

2.13 In February 1921, the Prime Minister stated that the 1920 Select Committee's recommendations would not be implemented and that the protection of business tenants under the 1920 Act would therefore be allowed to lapse in June 1921.[166]

---

157 *Hansard* (HL), 24 June 1920 vol 40 col 818.

158 Report from the Select Committee on Business Premises (14 December 1920) ("Select Committee Report 1920").

159 Select Committee Report 1920, para 4 and 5.

160 Select Committee Report 1920, para 6-13.

161 Select Committee Report 1920, para 20.

162 Select Committee Report 1920, para 16, 18 and 22-24.

163 Select Committee Report 1920, para 26 and 27. The Committee recommended the measures last until June 2023 in the first instance: para 25.

164 Select Committee Report 1920, para 33.

165 Select Committee Report 1920, para 24.

166 *Hansard* (HC) 28 February 1921 vol 138 col 1401-1402.

THE LANDLORD AND TENANT ACT 1927

2.14 The Landlord and Tenant Act 1927 introduced two rights for business tenants to claim compensation from their landlord when the contractual term of their tenancy expired.[167]

2.15 First, subject to various conditions, business tenants were given the right to claim compensation for improvements that they had made and which had increased the letting value of the premises.[168]

2.16 Second, business tenants were given a right to claim compensation for goodwill that had become attached to the premises owing to the tenant carrying on a trade or business there.[169] To qualify for compensation:

(1) the tenant had to have been carrying on the trade or business for five or more years; and

(2) the attached goodwill must have resulted in the premises being capable of being let at a higher rent than would have been the case without it.

2.17 The right to compensation for goodwill was subject to a number of exceptions and conditions. One such exception was that a landlord did not have to pay compensation where they offered a renewal tenancy at a rent to be determined by the tribunal (failing agreement between the parties). The level of rent was to be determined based on what a willing landlord and tenant would agree, but disregarding the value of any goodwill which had become attached to the premises.[170]

2.18 In the alternative to claiming compensation, it was possible for the tenant to claim a renewal tenancy of the premises if it could show that the compensation payable for loss of goodwill would not properly compensate the tenant. The tribunal had the power to grant a renewal tenancy on such terms and at such rent as it considered reasonable, disregarding the value of any goodwill attached to the premises.[171]

THE LEASEHOLD COMMITTEE (1948-1950)

2.19 The Second World War resulted in the destruction of many buildings. After the war, there was a high demand for, and low supply of, business premises. The Leasehold Committee was formed in 1948 to consider (amongst other things) whether business tenants should have security of tenure and/or whether rents should be controlled, and reform of the regime governing compensation for improvements.

---

167 When explaining the reasons for the measures, the Home Secretary referred back to the recommendations that had been made by the 1889 Select Committee (on which see Appendix 2, paras 2.2 to 2.5 above): *Hansard* (HC), 7 April 1927 vol 204 col 2309-2310.

168 Landlord and Tenant 1927, ss 1-3.

169 Landlord and Tenant Act 1927, s 4.

170 Landlord and Tenant Act 1927, s 4(1)(b).

171 Landlord and Tenant Act 1927, s 5.

2.20 The Leasehold Committee was initially chaired by Lord Uthwatt and published an interim report in 1949.[172] Following Lord Uthwatt's death, Lord Justice Jenkins was appointed as his successor and the Committee published its final report in 1950.[173] There were notable differences between the recommendations in the interim report and the final report. In addition, both reports reflected the views of the majority of the Committee's members, but they were accompanied by minority reports from individual members of the Committee who took different views.

2.21 In its interim report in 1949, the Committee considered that the first purpose of its enquiry was to consider, in the current sellers' market, the extent to which landlords were relying on their superior bargaining power "to take advantage of those whose livelihoods may depend on securing or retaining accommodation".[174] The Committee concluded that there was no general abuse, but that some landlords were unfairly exploiting their position.[175] The Committee said that "a sitting tenant is in a vulnerable position" and that they needed protection against the risk of "unreasonable disturbance".[176] The Committee concluded that compensation was an ineffective solution because it does not compensate tenants for the loss they actually suffer, and because it does not provide a "real answer to the problem of the business tenant wishing to trade": business tenants occupy premises in order to trade, not "to be compensated for being prevented from doing so".[177] The Committee said that business tenants were primarily concerned with security of tenure rather than seeking rent control, and the Committee rejected any suggestion of creating a general scheme of rent control.[178]

2.22 The Committee recommended:

(1) the creation of a temporary right for business tenants to renew their tenancies at a fair market rent;[179]

(2) the scheme should last only for the duration of the exceptional market conditions;[180]

(3) the scheme should be available to all business tenants (subject to exceptions) rather than being limited to a particular class of business tenants;[181]

---

172 Leasehold Committee Interim Report on Tenure and Rents of Business Premises (9 March 1949) Cmd 7706 ("Leasehold Committee Interim Report 1949"). See p 2 for the Committee's terms of reference.

173 Leasehold Committee Final Report (7 June 1950) Cmd 7982 ("Leasehold Committee Final Report 1950").

174 Leasehold Committee Interim Report 1949, para 27.

175 Leasehold Committee Interim Report 1949, para 33.

176 Leasehold Committee Interim Report 1949, para 34-36.

177 Leasehold Committee Interim Report 1949, para 37-38.

178 Leasehold Committee Interim Report 1949, para 32 and 41-45.

179 Leasehold Committee Interim Report 1949, para 47, 52, 68 and 70.

180 Leasehold Committee Interim Report 1949, para 47.

181 Leasehold Committee Interim Report 1949, para 48-49.

(4) new buildings should be excluded from the scheme;[182]

(5) the grounds on which a landlord should be able to oppose a renewal tenancy should not include a desire by the landlord to occupy the premises itself;[183]

(6) parties should only be able to contract out of protection if there are good reasons and the tribunal grants dispensation;[184] and

(7) the scheme should sit alongside the existing rights to compensation under the 1927 Act.[185]

2.23 In relation to point (2) above, some members of the Committee considered that the recommendations should be permanent on the basis that a landlord's interest in property was one of investment and a tenant's interest was in occupation, meaning that, so long as the landlord's investment interest is protected, there is no unfairness if the tenant continues to enjoy possession.[186]

2.24 The interim report was accompanied by two minority reports. One suggested that the period of peak demand had passed and did not consider any shortage to be sufficiently widespread or serious so as to justify the creation of a scheme of security of tenure.[187] The second agreed with the majority that there was a sellers' market, but noted various potential dangers from introducing a statutory scheme and concluded that the extent and gravity of the problem did not justify the creation of the scheme.[188]

2.25 In its final 1950 report, the Committee made different recommendations. The Committee said that its interim report had set out its recommended emergency measures for the period of scarcity, but that in due course new building should bring about a recovery from that shortage of business premises. Accordingly, its final recommendations were founded on "the assumption that the supply of business premises is generally-speaking adequate to the demand".[189]

2.26 The Committee remained of the view that compensation under the 1927 Act for loss of goodwill was inadequate and that business tenants needed security of tenure: business tenants generally want to remain at the property and use their goodwill to further their business, not be compensated for a loss of goodwill.[190] The Committee reported criticisms of the operation of the compensation regime in the 1927 Act, for example, that it was too easily avoided, that it was very difficult for tenants to satisfy the criteria, that it did not fully compensate a tenant for their losses, and that

---

182 Leasehold Committee Interim Report 1949, para 92.

183 Leasehold Committee Interim Report 1949, para 65.

184 Leasehold Committee Interim Report 1949, para 86.

185 Leasehold Committee Interim Report 1949, para 38.

186 Leasehold Committee Interim Report 1949, paras 46 and 65.

187 Minority report of Sir Edward Gillett: Leasehold Committee Interim Report 1949, p 36.

188 Minority report of Sir Edward Herbert: Leasehold Committee Interim Report 1949, p 37-40.

189 Leasehold Committee Final Report 1950, paras 115 and 116. See also paras 143, 144 and 154, the latter referring to the Committee's intention to design a scheme for "normal times".

190 Leasehold Committee Final Report 1950, para 123.

compensation levels were uncertain and depended on the use to which the landlord put the premises after the tenant vacated.[191]

2.27 The Committee rejected expansion of the compensation regime and instead recommended that business tenants should have a right of renewal, but only if they could demonstrate that their business would be "adversely affected by refusal to renew", and that the financial loss is "sufficiently substantial to make it reasonable to order" a renewal tenancy against the landlord's will, which we refer to as the "renewal criteria".[192] The Committee further recommended that:

(1) the scheme should be permanent;[193]

(2) all buildings (including new buildings) should be within its scope;[194]

(3) it should only apply if a tenant had been in occupation for 3 years;[195]

(4) the grounds on which a landlord should be able to oppose a renewal tenancy should include a desire by the landlord to occupy the premises itself, provided it had owned the freehold for at least 5 years;[196]

(5) parties should only be able to contract out of protection if there are good reasons and the tribunal grants dispensation;[197]

(6) the regime for compensation for loss of goodwill in the 1927 Act should sit alongside the regime for renewal.[198]

2.28 The Committee also made recommendations to reform the regime for compensation for improvements in the 1927 Act,[199] and those recommendations were implemented in Part 3 of the 1954 Act.

2.29 The final report was again accompanied by two minority reports, this time from different authors. One report argued that there should be a general right to claim a renewal tenancy *without* a requirement to satisfy the renewal criteria recommended by

---

191 Leasehold Committee Final Report 1950, paras 122-141.

192 Leasehold Committee Final Report 1950, paras 144-151 and 155-156.

193 Leasehold Committee Final Report 1950, paras 8 and 143.

194 Leasehold Committee Final Report 1950, para 198.

195 Leasehold Committee Final Report 1950, para 177.

196 Leasehold Committee Final Report 1950, paras 163-169.

197 Leasehold Committee Final Report 1950, para 189.

198 Leasehold Committee Final Report 1950, para 207.

199 Leasehold Committee Final Report 1950, paras 274-306.

the majority.[200] The second minority report similarly argued against those renewal criteria, but said that the scheme should only be temporary in the first instance.[201]

LEASEHOLD PROPERTY (TEMPORARY PROVISIONS) ACT 1951

2.30 Government stated that it wanted further time to consider the Leasehold Committee's interim and final reports[202] and, as an interim measure, the Leasehold Property (Temporary Provisions) Act 1951 ("the 1951 Act") was passed. The 1951 Act provided business tenants of shops with a temporary right to apply for a one-year extension of their tenancy.[203]

PART 2 OF THE LANDLORD AND TENANT ACT 1954

2.31 In January 1953, Government published a White Paper responding to the two reports of the Leasehold Committee and outlining its legislative proposals.[204] Government agreed with the Leasehold Committee that security of tenure was required, but did not agree with the entirety of either of the Committee's majority reports.[205] Government concluded that:

> the landlord of business premises, when an existing tenancy comes to an end, should have the right to resume possession himself if he requires the premises for the purpose of his own business or for the purpose of a scheme of redevelopment. If, however, he does not require the premises for himself for one of these purposes, he is entitled as landlord to a fair contemporary market rent for the premises – neither more nor less; and if the sitting tenant is willing and able to pay that rent and to enter into other reasonable terms of tenancy, then the sitting tenant has a greater right than any alternative tenant to the tenancy on those terms. …
>
> Such a scheme would be in general conformity with the present normal practice of good landlords. The landlords' legitimate interests would be fully preserved, while the sitting tenant who wished to continue in the premises could not be forced to outbid the fair market rent as the price of doing so.[206]

2.32 Government set out its proposals that:

(1) there should be a general right to security of tenure, without the tenant having to establish any particular renewal criteria – so adopting the approach in the

---

200 Minority Report of Mr Hale and Mr Ungoed Thomas: Leasehold Committee Final Report 1950, p 126, paras 11-20.

201 Minority Report of Mr Selwyn Lloyd: Leasehold Committee Final Report 1950, p 157, paras 3, 7(ii), (v) and (vi), and 8.

202 *Hansard* (HL) 24 April 1951 vol 171, cols 442 and 443.

203 1951 Act, ss 10-15.

204 Government Policy on Leasehold Property in England and Wales (January 1953) Cmd 8713 ("1953 White Paper"). Government's conclusions on business tenancies are set out at paras 39-53.

205 1953 White Paper, para 42.

206 1953 White Paper, paras 43 and 44.

1949 interim report rather than the 1950 final report, but on a permanent rather than temporary basis;[207]

(2) the landlord should be able to resume possession on certain grounds, including if the landlord required the premises for its own business – so adopting the approach in the 1950 final report rather than that in the 1949 interim report;[208]

(3) compensation for loss of goodwill should only be available if the landlord opposed a renewal tenancy on particular grounds (for example, where the landlord intended to develop, but not where the tenant had breached its covenants);[209] and

(4) for simplicity, that compensation should be calculated as the amount of the rateable value for the premises, unless the tenant had been in occupation for over 14 years in which case compensation should be twice the rateable value.[210]

2.33 The 1954 Act as enacted closely followed the conclusions reached in the 1953 White Paper.

THE LAW COMMISSION'S REVIEWS OF THE 1954 ACT

2.34 Since the passing of the 1954 Act, the Law Commission has undertaken two previous projects reviewing the workings of the Act. Those projects led to reports published in 1969 and 1992.

2.35 Subsequent reforms based on those recommendations have maintained the underlying approach to the protection of business tenants as enacted in 1954, namely providing business tenants with the right to seek a renewal tenancy subject to the landlord's ability to oppose renewal on specified grounds. But recommendations made in the Commission's reports led to important changes to the workings of the 1954 Act which have, broadly speaking, resulted in the security of tenure regime that is seen today. We summarise briefly key aspects of those two projects below.

The 1969 Report

2.36 In 1969 the Law Commission published a report in which we concluded that, on the whole, the 1954 Act "worked well", and made 12 recommendations to reform the 1954 Act.[211] Key recommendations included:

(1) enabling landlords to apply to court for a rent to be payable during the course of the renewal proceedings – known as "interim rent";

---

207 1953 White Paper, para 43. The decision also followed the approach in the Minority Report of Mr Hale and Mr Ungoed Thomas: see para 2.29 above.

208 1953 White Paper, para 43.

209 1953 White Paper, paras 48-49.

210 1953 White Paper, para 50.

211 Report on the Landlord and Tenant Act 1954 Part II (1969) Law Com No 17, para 1.

(2) regulating various mechanisms – for example, agreements to surrender – that might have been used to circumvent the protection afforded to tenants by the 1954 Act;

(3) extending the duration of tenancies to which the 1954 Act does not apply from three months to six months; and

(4) enabling a court to grant a new tenancy of part of the premises where the landlord was successful in objecting to the grant of a tenancy in respect of another part.

2.37 Arguably the most significant recommendation was for a new procedure allowing parties to contract out of the protection of the Act. That recommendation (along with the recommend to increase the minimum duration of a tenancy to qualify for security of tenure from three to six months) was made because of a concern that landlords would "be reluctant to effect a temporary letting if [they] thereby [risked] having to oppose a tenant's claim for a new tenancy under the Act when the time comes".[212] The procedure implemented involved the parties making a joint application to the court for it to "authorise an agreement" to exclude the protection of the Act.

2.38 The Law of Property Act 1969 implemented all but one of the Commission's recommendations (some with modifications) as well as other reforms proposed by Government.

The 1992 Report

2.39 In November 1985, following a review of the 1954 Act, the Parliamentary Under-Secretary of State announced that Government had concluded that no legislative changes would be sought to the 1954 Act. He said that the comments received on consultation supported the view that the Act "still works satisfactorily, and that the balance of rights between both parties to business lettings – particularly where small businessmen are involved either as tenants or landlords, is being maintained".[213]

2.40 Subsequently, the Law Commission carried out a second review of the 1954 Act. In its 1988 Working Paper, the Commission agreed with Government's conclusion "that the balance which the Act strikes between the interests of landlords and those of tenants is broadly right".[214] The project was therefore a review of technical defects within the Act.

2.41 In 1992, the Law Commission published its final report,[215] which set out 43 recommendations for reform. General principles guided the work, prompting a focus on improving existing procedures under the 1954 Act rather than making significant changes to the law. In summary, the guiding principles were that:

---

212 See the Report on the Landlord and Tenant Act 1954 Part II (1969) Law Com No 17, para 32.

213 Written Answer, *Hansard* (HC), 20 November 1985, vol 87, col 245W.

214 Part II of the Landlord and Tenant Act 1954 (1988) Working Paper No 111, para 1.6.

215 Business Tenancies: A Periodic Review of the Landlord and Tenant Act 1954 Part II (1992) Law Com No 208.

(1) the overall balance between landlord and tenant was generally regarded as fair and should be maintained;

(2) the renewal procedure was familiar to professional advisors and to major property owners; and

(3) it should not be necessary to take court proceedings routinely.[216]

2.42 A key change recommended by the Law Commission was to change the process by which tenancies are contracted out of the protection of the 1954 Act. In the report, the Commission highlighted that consultees "were generally agreed that the [court based] process did not afford a real scrutiny of the circumstances, fairness or integrity of applications" and that it was "satisfied that applications to the court to approve agreements [to contract out were] not an effective filter to prevent the abuse of what is generally assumed to be the landlord's dominant position".[217]

2.43 While the contracting out procedure ultimately enacted was different from that which the Law Commission recommended, the principle of a procedural basis for contracting out was accepted and remains part of the law today.

2.44 Almost all of the recommendations made by the Commission were, subject to some modification, enacted. The recommendations were enacted through the use of a regulatory reform order.[218] The current law, reflecting the 1954 Act as subsequently amended, is summarised in Appendix 1.

---

216 Business Tenancies: A Periodic Review of the Landlord and Tenant Act 1954 Part II (1992) Law Com No 208, para 1.9.

217 Business Tenancies: A Periodic Review of the Landlord and Tenant Act 1954 Part II (1992) Law Com No 208, para 2.17.

218 See the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003. A regulatory reform order is a type of statutory instrument, made under the Regulatory Reform Act 2001, which permits ministers to amend laws to remove burdens that met certain prescribed criteria and by following a certain procedure. The 2001 Act has been largely repealed by the Legislative and Regulatory Reform Act 2006, which enabled legislative reform orders.

Appendix 3: The law in other countries

INTRODUCTION

3.1 Throughout the world, countries take different approaches to protecting business tenants' occupation of their premises. In some jurisdictions, as in England and Wales, business tenants have rights of renewal at the end of their tenancy; in some, business tenants enjoy alternative forms of protection; and in others, there is no statutory protection, and renewal must be negotiated between the parties.

3.2 In this appendix, we briefly discuss the approaches of seven jurisdictions. These jurisdictions take different approaches and offer differing levels of protection to business tenants. The regimes governing business tenancies in these jurisdictions are often quite different from the 1954 Act.

3.3 We start by describing the approach in Northern Ireland and the Republic of Ireland, which is very similar to the security of tenure regime in England and Wales. We then discuss Scotland, which has a more limited regime specifically for shops. Next, we consider some European countries (Civil Code jurisdictions) and Australia (a common law jurisdiction), where business tenants are given different types of protection ranging from minimum tenancy terms to preferential rights to take renewal tenancies. We finish with New Zealand, a common law jurisdiction, where business tenants have no statutory protection.

NORTHERN IRELAND

3.4 Northern Ireland has a statutory scheme giving business tenants a right to a renewal tenancy which is similar to the scheme in the 1954 Act.[219] Any business tenancy which exceeds nine months is protected.[220] As the original tenancy approaches its expiry, the renewal procedure can be triggered by either the landlord serving a notice to terminate the original tenancy or the tenant making a request for a new tenancy.[221] The terms of the new tenancy are to be agreed by the parties themselves, or determined by the Lands Tribunal if the parties cannot agree.[222] The grounds on which a landlord may oppose the grant of a renewal tenancy are broadly similar to the grounds in the 1954 Act.[223] The requirement on landlords to pay compensation when

---

219 Business Tenancies (Northern Ireland) Order 1996 ("1996 Order"). The definition of "business" broadly matches the definition in the 1954 Act: 1996 Order, art 2(2).

220 A tenancy is also protected where the period of occupation of the current tenant, including any occupation by a previous tenant who was engaged in the same business as the current tenant, exceeds 18 months: 1996 Order, art 4(1)(c).

221 1996 Order, arts 6 and 7.

222 1996 Order, arts 17(1)(b), 18(2) and 19(1).

223 1996 Order, art 12.

opposing a renewal tenancy is also similar to the 1954 Act, albeit the basis of calculation is different.[224]

3.5 A significant difference between the scheme in Northern Ireland and the 1954 Act is the absence of contracting-out.[225] Following the introduction of contracting out in England and Wales,[226] the Law Reform Advisory Committee for Northern Ireland ("LRAC") considered whether contracting out should be available in Northern Ireland.[227] The LRAC concluded that, even with safeguards, "contracting out would become the norm, and [the statutory scheme] would quickly become meaningless. The prohibition against contracting out is at the heart of the legislation and we recommend strongly that it remains there."[228] However, the statutory scheme does permit agreements to surrender a tenancy at a future date, provided that the tenant is already in possession of the premises and the agreement is approved by the Lands Tribunal.[229]

3.6 The Northern Ireland Law Commission has recommended reforms which would enable contracting out in the case of "complex business transactions". A tenancy would be exempt where both parties' solicitors provide "a joint certificate that the lease formed part of a suite of contractual documentation for a complex transaction", and both solicitors agreed the requirements for contracting out were met.[230] That recommendation has not been implemented.

REPUBLIC OF IRELAND

3.7 The Republic of Ireland has a statutory scheme giving business tenants a right to a renewal tenancy which is broadly similar to the scheme in the 1954 Act.[231] The grounds on which the landlord can oppose a renewal tenancy are framed differently, but they cover similar situations to the 1954 Act.[232]

3.8 There are three notable differences between the scheme in the Republic of Ireland and that in the 1954 Act. First, in order to obtain a renewal tenancy, a tenant (or their predecessor(s)) must have been in occupation of the premises wholly or partly for

---

224 In both cases, compensation is calculated based on a specified "multiplier" of the rateable value of the premises, with the multiplier varying depending on how long the tenant has been in occupation of the premises. In England and Wales, the multiplier is one x the rateable value if the tenant has been in occupation for less than 14 years, and two x the rateable value if more than 14 years. In Northern Ireland, the multipliers are: 0.31 for occupation of less than five years; 0.63 for occupation of five to ten years; 0.94 for occupation of 10-15 years; and 1.26 for occupation of more than 15 years.

225 1996 Order, art 24.

226 See para 1.14, Appendix 1 para 1.4, and Appendix 2, para 2.37.

227 Business Tenancies Report No 1 (1994) LRAC No 2. HMSO.

228 Business Tenancies Report No 1 (1994) LRAC No 2 HMSO, para 3.5.9.

229 1996 Order, art 25.

230 Business Tenancies (2011) NILC No 9, paras 5.1 to 5.11.

231 Landlord and Tenant (Amendment) Act 1980 ("1980 Act"). The definition of "business" is wide comprising "any trade, profession or business, whether or not it is carried on for gain or reward, any activity for providing cultural, charitable, educational, social or sporting services, and also the public service and the carrying out by [various public authorities] of any of their functions": 1980 Act, s 3.

232 1980 Act, s 17.

business purposes for a continuous period of five years.[233] Under the 1954 Act, there is no such requirement for continuous occupation: a business tenant will qualify for protection provided their tenancy was granted for a duration of at least six months or is a periodic tenancy, and provided that they are in occupation of the premises for business purposes at the expiry of the contractual term of the tenancy.[234]

3.9 Second, the duration of a renewal tenancy is a period of 20 years or such shorter term as the tenant may specify (save that the tenant cannot specify a duration of less than five years unless the landlord agrees).[235] By contrast, the 1954 Act gives the court a discretion to decide on the duration of the renewal tenancy taking into account the arguments of both the landlord and the tenant, and the maximum duration that can be ordered is 15 years. In the Republic of Ireland, therefore, renewal tenancies can be for longer periods than under the 1954 Act, and the tenant has much more control over how long that period is than under the 1954 Act.

3.10 Third, it is possible to contract out of the statutory scheme, but the process is different from the 1954 Act because there is no formal procedure to contract out.[236] What is required is for the tenant to "[renounce] in writing, whether for or without valuable consideration, his or her entitlement to a new tenancy" and for the tenant to have received independent legal advice in relation to the renunciation.

SCOTLAND

3.11 Generally, Scottish law does not have any statutory regulation of commercial tenancies. However, the Tenancy of Shops (Scotland) Act 1949 ("1949 Act") provides some security for certain business tenants. Additionally, Scottish common law provides for the doctrine of "tacit relocation" which operates to extend automatically the duration of a tenancy for one year unless notice to terminate has been served.

3.12 The 1949 Act only applies to tenants of "shops" which is defined as any premises where any retail trade or business is carried on.[237] The courts will evaluate the character of the business to determine whether or not the premises qualify as a "shop" with sale by retail being one of the key indicators.

3.13 The 1949 Act allows tenants of shops to apply to court, within 21 days after service of a notice of termination, for a renewal of their tenancy for up to one year.[238] The tenant can re-apply for subsequent one-year extensions of the tenancy.[239] The grounds on which the Sheriff may dismiss the application for an extension of the tenancy are

---

233 1980 Act, s 13(1)(a) and s 3(1) (definition of "predecessors in title"). Temporary breaks in occupation can be disregarded: s 13(2). The right to a new lease is also available where tenants have occupied the premises for 20 years continuously, whether or not for business purposes (s 13(1)(b)) or where the tenant's improvements comprise more than half of the letting value of the premises (s 13(1)(c)).

234 See Appendix 1, para 1.2.

235 1980 Act, s 23(2).

236 1980 Act, s 17(1)(a).

237 Tenancy of Shops (Scotland) Act 1949, s 3(2), referring to provisions in the Shops Acts, 1912 to 1936.

238 1949 Act, s 1(1).

239 1949 Act, s 1(4).

broadly similar to the grounds in the 1954 Act.[240] There is an additional ground available where greater hardship would be caused by renewing the tenancy for a further year than refusing to do so.[241]

3.14 The Scottish Law Commission ("SLC") consulted on the 1949 Act in their 2018 Discussion Paper.[242] This paper consulted on a variety of topics relating to commercial leasehold and discussed the challenges relating to termination of commercial leases in Scotland. In the 2022 report that followed the discussion paper, the SLC concluded that it would be necessary to produce a further discussion paper focussed exclusively on the 1949 Act.[243] That discussion paper was published in April 2024 and it proposes four possible reforms of the 1949 Act: retention, repeal, replacement, and reformation.[244]

3.15 Aside from the 1949 Act, a tenancy may be extended by the doctrine of "tacit relocation", which is part of the Scottish common law inherited from Roman law. In the leasehold context in Scotland, tacit relocation describes the extension of a tenancy beyond its termination date by operation of law. Tacit relocation arises when neither party has taken the necessary steps to terminate the tenancy, and the tenant remains in possession.[245] The tenancy continues on all its previous terms, apart from those relating to duration and any terms incompatible with extension.[246] Either party may terminate the lease by giving notice. It is unclear whether it is possible to contract out of tacit relocation.[247]

3.16 The SLC has recommended the replacement of the existing common law doctrine of tacit relocation with a new statutory regime for the "automatic continuation" of leases.[248] Its proposals have not yet been implemented.

FRANCE

3.17 In France, unless a commercial tenancy is for less than three years (on which see paragraph 3.21 below), it must be for a minimum duration of nine years, and it must allow for the landlord or the tenant to terminate the tenancy on each third anniversary – which, for brevity, we refer to as a "break clause".[249] The tenant may exercise the

---

240 1949 Act, s 1(3).

241 1949 Act, s 1(3)(f).

242 Discussion Paper on Aspects of Leases: Termination (2018) Scot Law Com No 165.

243 Report on Aspects of Leases: Termination (2022) Scot Law Com No 260, para 7.34.

244 Discussion Paper on Aspects of Leases: Tenancy of Shops (Scotland) Act 1949 (2024) Scot Law Com No 177, para 7.5.

245 Discussion Paper on Aspects of Leases: Termination (2018) Scot Law Com No 165, para 2.5.

246 *Commercial Union Assurance Co v Watt & Cumine* [1964] SC 84.

247 Report on Aspects of Leases: Termination (2022) Scot Law Com No 260, para 2.8.

248 Report on Aspects of Leases: Termination (2022) Scot Law Com No 260, para 2.57; and Leases (Automatic Continuation etc.) (Scotland) Bill.

249 Code de Commerce, arts L.145-4 and 9.

break clause for any reason simply by giving six months' notice to the landlord.[250] The landlord can only exercise the break clause if it needs to undertake construction works, and it must give six months' notice to the tenant.[251] Both parties can also agree to an early termination.[252]

3.18 At the expiry of the contractual term of the tenancy, the tenant has a right to renew the tenancy so long as they have complied with their obligations.[253] The tenant's request must be made within six months of the termination date of the tenancy.[254] If the tenant requests renewal, the landlord must give notice of its refusal to grant a new tenancy within three months, failing which the renewal is deemed to be accepted.[255] If the landlord refuses renewal, it will usually be required to pay an eviction indemnity to the tenant.[256] Alternatively, before any request for renewal has been made by the tenant, the landlord can terminate the tenancy by providing six months' notice, and the landlord will usually be required to pay an eviction indemnity to the tenant.[257]

3.19 An eviction indemnity is a payment to cover the loss sustained by the tenant by reason of the eviction. The amount is based on the value of the business, any normal moving costs, as well as the transfer costs and duties payable for a business of the same value, unless the landlord can prove that the loss is less. There are two exceptions to the requirement to pay an eviction indemnity, namely where:

(1) there is a serious and legitimate reason which means renewal should not take place; or

(2) there is a need to demolish the premises for health and safety reasons.[258]

---

250 Code de Commerce, art L.145-9. Notice must be given by registered letter or by a notification of a commissioner of justice (a document prepared by a judicial officer, known as an 'acte extrajudiciaire').

251 Code de Commerce, arts L.145-4, 9, 18, 21, 23-1, 24. Such works include construction, rebuilding or raising the height of a building, converting ancillary residential premises, converting a commercial building to residential use, property restoration, or demolition as part of an urban renewal project. Notice must also be given by a notification of a commissioner of justice. Aside from termination in accordance with the break clause, the landlord can also follow a process to terminate a tenancy at any point if the tenant has breached its obligations: art L.145-41.

252 Directorate of Legal and Administrative Information (Prime Minister), Ministry of Justice, *Resilier Un Bail Commercial* (23 Sept 2022): https://entreprendre.service-public.fr/vosdroits/F31707#:~:text=et%20le%20bailleur).-,Bailleur,cas%20de%20faute%20du%20locataire.

253 For example, obligations concerning registration, and ownership of the business: Code de Commerce, arts L.145-8 and L.145-1.

254 Code de Commerce, art L.145-10.

255 Code de Commerce, art L.145-10.

256 Code de Commerce, art L.145-14.

257 Code de Commerce, arts L.145-9 and L.145-14. Terms purporting to waive or cap the eviction indemnity are void under art L.145-15.

258 Code de Commerce, art L.145-17.

3.20 If no request for renewal has been made by the tenant, and no notice of termination is provided by the landlord, then the tenancy automatically continues.[259]

3.21 It is possible to agree a shorter tenancy of no longer than three years.[260] By taking a shorter tenancy, the parties are not subject to the normal rules regarding minimum duration, renewal and eviction indemnity. However, if the tenant remains in possession following the expiry of the tenancy, then there will be an automatic continuation of the tenancy entitling the tenant to a minimum term of nine years and the right of renewal and right to an eviction indemnity under the main regime set out above.[261]

3.22 In summary, therefore, business tenants in France enjoy some protection, but it is different from protection under the 1954 Act. Unless a lease is for three years or less, French law gives tenants protection by ensuring that they have a minimum term of nine years. There is no such requirement in England and Wales. In addition, while French law allows landlords to terminate a tenancy on the expiry of its contractual term, it requires the payment of compensation to indemnify the tenant for the value of the business, moving costs, and any transfer costs and duties, unless specific grounds are made out.

THE NETHERLANDS

3.23 In the Netherlands, unless a tenancy is for less than two years (on which see paragraph 3.26 below), business tenants of hotels, retail, restaurants, cafes and campsites are entitled to a minimum tenancy duration of 10 years, subject to a break clause operable after an initial period of five years.[262] The tenant can exercise the break clause for any reason, whereas the landlord can only do so if it can show that the tenant has not conducted itself appropriately, or that the landlord needs the property urgently for personal use over a prolonged period.[263]

3.24 If, at the end of the ten-year term, the landlord gives notice to terminate the tenancy, the court will undertake a balancing exercise to decide whether to enforce the notice, or to permit the continuation of the tenancy. However, in some circumstances, the court will enforce the termination of the lease regardless of the outcome of the balancing exercise. These circumstances include the two grounds set out above in paragraph 3.23, as well as additional grounds including where the tenant does not accept a reasonable offer to enter into a new tenancy, and where the landlord wants to change the use of the premises in accordance with a land use plan.[264] Even where

---

259 Directorate of Legal and Administrative Information (Prime Minister), Ministry of Justice, *Prolongation ou renouvellement du bail commercial* (1 Jan 2023): https://entreprendre.service-public.fr/vosdroits/F22854#:~:text=Lorsqu%27aucune%20des%20parties%20(c,nouveau%20contrat%20de%20bail%20commercial.

260 Code de Commerce, art L.145-5.

261 To convert the possession into a new commercial lease, there must be a period of one month of further possession by the tenant from the expiry date of the short-term lease: art L.145-5.

262 Civil Code (Netherlands), book 7, arts 290 and 292.

263 Civil Code (Netherlands), book 7, art 296(1)(a)-(b).

264 Civil Code (Netherlands), book 7, art 296(3)-(4).

the court enforces termination, the landlord may be ordered to pay the tenant compensation for moving expenses and settling-in costs.[265]

3.25 At the end of the 10-year term, if the landlord has not given notice to terminate the tenancy, the tenancy continues.[266] The tenancy can be terminated in the same way as set out in paragraph 3.24 above.[267]

3.26 There are two limited possibilities for contracting out of these protections. The first option is to agree a tenancy for a duration of no more than two years.[268] Such short leases do not benefit from renewal rights nor do landlords have to pay compensation to tenants at their expiry. However, if the short tenancy continues past its termination date, it becomes a standard tenancy with a minimum term and with rights to renewal and compensation as set out above, unless the court authorises a derogation from the law.[269] The second option is to obtain an authorised derogation from the outset. This is only granted if the derogation does not "damage the elementary rights" of the tenant, or if the tenant's position is comparable to that of the landlord and the tenant therefore does not require the protection of the law.[270]

3.27 Besides the rules outlined above, there are protections from eviction which apply to all businesses apart from retail. To effect eviction from leased premises, the landlord must give notice of the eviction to the tenant. Subject to exceptions, the obligation of the tenant to vacate the premises is automatically suspended for two months from the date of eviction specified in the notice, and, during this two-month period, the tenant can request the court to extend the suspension for a year.[271] When deciding a request, the court will weigh the tenant's interests in staying in the leased premises against the landlord's interests in having the premises vacated.

AUSTRALIA

3.28 In Australia, there are no general statutory protections for business tenancies which apply at the federal level, but there are protections at state level relating to (a) business tenancies being for a minimum duration, (b) the landlord being required to inform the tenant of whether it is willing to grant a renewal tenancy, and/or (c) rights for certain business tenants to renewal tenancies.

3.29 In most Australian states, there are rules on minimum durations for commercial and retail tenancies, usually subject to exceptions for short tenancies of less than six months or one year. For example, in the Australian Capital Territory, if a lease is

---

265 Civil Code (Netherlands), book 7, art 297(1).

266 It continues indefinitely unless the parties have agreed that it should continue for a fixed term: Civil Code (Netherlands), book 7, art 300.

267 Civil Code (Netherlands), book 7, art 300(3)

268 Civil Code (Netherlands), book 7, art 301(1).

269 Civil Code (Netherlands), book 7, art 301. If the short lease exceeds a period of two years, then the lease is converted by operation of law into a standard lease with a minimum term of 10 years, from which the already-expired two years are deducted.

270 Civil Code (Netherlands), book 7, art 291.

271 Civil Code (Netherlands), book 7, art 230a (1)-(9). Upon the request of the tenant, this extension may be granted two more times, each time for a maximum period of one year.

granted for fewer than five years, commercial and retail tenants have a right to extend the term to five years, unless the tenant has received independent advice on the matter.[272] There are similar provisions in the Northern Territory, South Australia, Tasmania and Victoria.[273] Western Australia has slightly different and more complex provisions on minimum commercial tenancy durations and on contracting out.[274] The states which do not set minimum lease durations are New South Wales and Queensland.

3.30 In all Australian states, there is a regime requiring landlords to inform tenants of their intentions at the end of the tenancy.[275] In two states, the regime is only triggered when the tenant makes a request for a statement from the landlord.[276] For example, in Western Australia, the tenant may make its request within 12 months of the expiry date of the tenancy. The landlord must then reply within 30 days of receiving the request. If the landlord intends to grant a renewal tenancy, the statement must set out its proposed terms (other than rent). If the landlord fails to give the statement in the 30 day timeframe, the expiry date of the tenancy is extended by a period equal to the period of non-compliance by the landlord.[277] In the other six states, landlords are required to give notice of their intentions, regardless of whether the tenant has made a request.[278] For example, in New South Wales, the landlord must inform the tenant if it intends to offer a renewal or extension of the tenancy not less than six months or more than 12 months before the termination of the tenancy. If the landlord fails to inform the tenant in that time, and if the tenant requests it, the tenancy is extended by a period of six months starting from when the tenant receives the landlord's notification.[279]

3.31 In South Australia and the Australian Capital Territory, the duty on landlords to inform tenants of their intentions (summarised in paragraph 3.30 above) is enhanced in

---

272 Leases (Commercial and Retail Act) 2001, s 104. The provision does not apply to tenancies of less than six months under s 12(2)(c).

273 For the Northern Territory, see the Business Tenancies (Fair Dealings) Act 2003, s 26. For South Australia, see the Retail and Commercial Leases Act 1995, ss 20B and 20K. For Tasmania, see the Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998, s 10(3) to 10(4). For Victoria, see the Retail Leases Act 2003, s 21.

274 The relevant law in Western Australia is found in the Commercial Tenancy (Retail Shops) Agreements Act 1985, s 13.

275 The law in Western Australia is found in the Commercial Tenancy (Retail Shops) Agreements Act 1985, s 13B. The law in Victoria is the Retail Leases Act 2003, s 64. The law in South Australia is found in the Retail and Commercial Leases Act 1995, s 20J. The law in New South Wales is found in the Retail Leases Act 1994, s 44. The law in the Australian Capital Territory is found in the Leases (Commercial and Retail) Act 2001, s 107. The law in Tasmania is the Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998, s 29. The law in Queensland is the Retail Shop Leases Act 1994, s 46AA. The law in the Northern Territory is the Business Tenancies (Fair Dealings) Act 2003, s 60.

276 Western Australia and the Australian Capital Territory.

277 Commercial Tenancy (Retail Shops) Agreements Act 1985, s 13B. The other state with a similar system is the Australian Capital Territory.

278 New South Wales, Northern Territory, Queensland, South Australia, Tasmania and Victoria.

279 Retail Leases Act 1994, s 44.

respect of shops in "retail shopping centres",[280] who are given preferential rights on renewal. The regime does not provide security of tenure since there is no *entitlement* to a renewal tenancy. Rather, it is a "right of first refusal" providing that any potential tenancy that the landlord is willing to grant must first be offered to the sitting tenant before it can be offered to any other new tenant:

(1) in South Australia, tenants in retail shopping centres are protected if their rent is no more than A$400,000 per year, which is approximately £205,000 per year.[281] Landlords must offer sitting tenants preferential rights of renewal on terms that are no less favourable than those of any proposed new tenancy to a new tenant.[282] If the landlord does not make an offer or commence negotiations, and the sitting tenant has requested an extension, the tenancy will continue until six months after an offer is made by the landlord, or the negotiations are commenced.[283] If the sitting tenant has been prejudiced by the landlord's failure to comply with the rules on offering a renewal tenancy, the tenant may apply to the Small Business Commissioner for mediation, and/or to the court for a renewal tenancy. However, the landlord can refuse to offer the sitting tenant a new lease if one of the grounds of opposition apply. These grounds include where the landlord seeks a change in tenancy and to allow possession by the landlord (provided that the landlord is not undertaking the same sort of business as the tenant).[284] It is also possible to contract out of these protections.

(2) in the Australian Capital Territory, the system is similar. Tenants of shops in shopping centres have preferential rights of renewal, subject to exclusions, and it is possible to contract out of the protections.[285]

3.32 The table below summarises the protections that are given to business tenancies in the different Australian states.

State/territory	**Minimum duration**	**Duty on landlords to inform tenants of its intentions**	**Renewal tenancies for retail tenants**
Australian Capital Territory	Yes	Yes	Yes
New South Wales	No	Yes	No
Queensland	No	Yes	No

280 There are no equivalent enhanced protections in New South Wales, Western Australia, Victoria, Queensland, Northern Territory and Tasmania.

281 Retail and Commercial Leases Act 1995 (SA), s 4(2)(a), read alongside s 3(1a)(a). The conversion to Sterling is based on the Bank of England daily spot exchange rates as at 13 November 2024, available at https://www.bankofengland.co.uk/boeapps/database/Rates.asp?Travel=NIxAZx&into=GBP.

282 Retail and Commercial Leases Act 1995 (SA), ss 20D and 20E(2)(a).

283 Retail and Commercial Leases Act 1995 (SA), s 20G(1).

284 Retail and Commercial Leases Act 1995 (SA), s 20D(3).

285 Leases (Commercial and Retail) Act 2001 (ACT), ss 108 and 111.

Northern Territory	Yes	Yes	No
South Australia	Yes	Yes	Yes
Tasmania	Yes	Yes	No
Victoria	Yes	Yes	No
Western Australia	In certain circumstances	Yes	No

NEW ZEALAND

3.33 New Zealand does not give business tenants any statutory right to a renewal tenancy. The renewal of a tenancy at the end of the contractual term is a matter for negotiation between the parties.[286] If the tenant remains in possession of the premises with the landlord's consent at the end of the tenancy, then the tenancy continues and is terminable by either party on 20 working days' written notice.[287]

[286] Paul Calder (Duncan Cotterill), *Commercial Real Estate in New Zealand: Overview*.

[287] Property Law Act 2007, s 210. This section only applies if the parties have not otherwise agreed, expressly or by implication, that the tenant may remain in possession for some other period.

Appendix 4: Business tenancies survey: the use and impact of the 1954 Act

As we explain in paragraphs 1.59 to 1.62 of this Consultation Paper, we ask all consultees (and any others, even if they do not respond to our consultation) to respond to a survey about the current operation of the 1954 Act and its impacts on the commercial leasehold market. The survey is available at: https://consult.justice.gov.uk/law-commission/business-tenancies-survey. We encourage you to read and respond to the survey online, but, for information, the questions that we ask in the survey are set out below.

SECTION 1: ABOUT YOU

It would be helpful to know the name of your organisation, but if you would prefer to complete this survey anonymously please leave these details blank.

1. What is your name: _____

2. What is the name of your organisation? _____

3. Are your responding to this survey in a personal capacity, or on behalf of an organisation?
□ Personal capacity
□ On behalf of an organisation
□ Other (please specify) _____

4. What is your email address: _____

5. Are you:
□ a landlord (or predominantly a landlord)
□ a tenant (or predominantly a tenant)
□ both a landlord and a tenant
□ a professional (legal, property or other professional)
□ a representative organisation
□ none of the above (please specify) _____

SECTION 2: THE MARKET CONTEXT: DETAILS OF THE BUSINESS TENANCIES YOU KNOW ABOUT

In Section 2, we ask different questions depending on whether the respondent is (a) a landlord (or predominantly a landlord), (b) a tenant (or predominantly a tenant), (c) both a landlord and a tenant, (d) a legal, property or other professional, (e) a representative organisation, or (f) any other respondent.

Section 2(a) Questions for respondents who are landlords (or predominantly landlords)

1. How many employees does your business have?
□ None
□ 1-9
□ 10-49
□ 50-249
□ 250 or more

2. How many business tenancies do you hold (as landlord)? (If you do not know the exact figure, please give an approximation.) _____ (*number*)

3. Where in England and Wales are your business tenancies primarily located? (Select all that apply.)

□ North West
□ North East
□ Yorkshire and the Humber
□ Wales
□ West Midlands
□ East Midlands
□ East of England
□ South West
□ South East
□ London

4. What type of business is carried out from the premises by your tenant(s)? (Select all that apply.)

□ Administrative and support services
□ Agriculture
□ Arts, entertainment, leisure & recreation
□ Charity
□ Construction
□ Education
□ Financial, professional, scientific and technical services
□ Health and social care
□ Hospitality
□ Information and communication
□ Infrastructure & utilities (e.g. electricity, gas, water supply, sewerage.)
□ Manufacturing
□ Other service activities
□ Public administration and defence
□ Real estate
□ Retail and wholesale
□ Transport and storage
□ Other (*please specify*): _____

5. Of the business tenancies you hold, how many are contracted out of the 1954 Act? (If you do not know the exact figure, please give an approximation.) _____ (*number*)

6. Of the business tenancies you hold, how many contain contractual options to renew?

□ All □ Some □ None □ Don't know

If you answered "all" or "some", why did you use contractual options? _____

7. Of the business tenancies you hold, what is their average duration? ____ (*years*)

If the average duration is less than 12 months, please give your answer in months here _____ *(months)*

8. In your experience, has the duration of business tenancies changed over time? If so, how? _____

Section 2(b) Questions for respondents who are tenants (or predominantly tenants)

1. How many employees does your business have?

□ None □ 10-49 □ 250 or more
□ 1-9 □ 50-249

2. How many business tenancies do you hold (as tenant)? (If you do not know the exact figure, please give an approximation*.)* _____ (*number*)

3. Where in England and Wales are your business tenancies primarily located? (Select all that apply.)

□ North West
□ North East
□ Yorkshire and the Humber
□ Wales
□ West Midlands
□ East Midlands
□ East of England
□ South West
□ South East
□ London

4. What type of business do you carry out from the premises? (Select all that apply.)

□ Administrative and support services
□ Agriculture
□ Arts, entertainment, leisure & recreation
□ Charity
□ Construction
□ Education
□ Financial, professional, scientific and technical services
□ Health and social care
□ Hospitality
□ Information and communication
□ Infrastructure & utilities (e.g. electricity, gas, water supply, sewerage.)
□ Manufacturing
□ Other service activities
□ Public administration and defence
□ Real estate
□ Retail and wholesale
□ Transport and storage
□ Other (*please specify*): _____

5. Of the business tenancies you hold, how many are contracted out of the 1954 Act? (If you do not know the exact figure, please give an approximation.) _____ (*number*)

6. Of the business tenancies you hold, how many contain contractual options to renew?

□ All □ Some □ None □ Don't know

If you answered "all" or "some", why did you use contractual options? _____

7. Of the business tenancies you hold, what is their average duration? _____ (*years*)

If the average duration is less than 12 months, please give your answer in months here _____ *(months)*

8. In your experience, has the duration of business tenancies changed over time? If so, how? _____

Section 2(c) Questions for respondents who are both landlords and tenants

1. How many employees does your business have?

□ None □ 10-49 □ 250 or more
□ 1-9 □ 50-249

2. Questions about your business as a landlord

As a landlord, how many business tenancies do you hold? (If you do not know the exact figure, please give an approximation.) _____ (*number*)

As a landlord, where in England and Wales are your business tenancies primarily located? (Select all that apply.)

□ North West
□ North East
□ Yorkshire and the Humber
□ Wales
□ West Midlands
□ East Midlands
□ East of England
□ South West
□ South East
□ London

As a landlord, what type of business is carried out from the premises by your tenant(s)? (Select all that apply.)

□ Administrative and support services
□ Agriculture
□ Arts, entertainment, leisure & recreation
□ Charity
□ Construction
□ Education
□ Financial, professional, scientific and technical services
□ Health and social care
□ Hospitality
□ Information and communication
□ Infrastructure & utilities (e.g. electricity, gas, water supply, sewerage.)
□ Manufacturing
□ Other service activities
□ Public administration and defence
□ Real estate
□ Retail and wholesale
□ Transport and storage
□ Other (*please specify*): _____

Of the business tenancies you hold as landlord, how many are contracted out of the 1954 Act? (If you do not know the exact figure, please give an approximation.) _____ (*number*)

Of the business tenancies you hold as landlord, how many contain contractual options to renew?

□ All □ Some □ None □ Don't know

If you answered "all" or "some", why did you use contractual options? _____

Of the business tenancies you hold as landlord, what is their average duration? ____ (*years*)

If the average duration is less than 12 months, please give your answer in months here _____ *(months)*

3. Questions about your business as a tenant

As a tenant, how many business tenancies do you hold? (If you do not know the exact figure, please give an approximation.) _____ (*number*)

As a tenant, where in England and Wales are your business tenancies primarily located? (Select all that apply.)

□ North West
□ North East
□ Yorkshire and the Humber
□ Wales
□ West Midlands
□ East Midlands
□ East of England
□ South West
□ South East
□ London

As a tenant, what type of business do you carry out from the premises? (Select all that apply.)

□ Administrative and support services
□ Agriculture
□ Arts, entertainment, leisure & recreation
□ Charity
□ Construction
□ Education
□ Financial, professional, scientific and technical services
□ Health and social care
□ Hospitality
□ Information and communication
□ Infrastructure & utilities (e.g. electricity, gas, water supply, sewerage.)
□ Manufacturing
□ Other service activities
□ Public administration and defence
□ Real estate
□ Retail and wholesale
□ Transport and storage
□ Other (*please specify*): _____

Of the business tenancies you hold as tenant, how many are contracted out of the 1954 Act? (If you do not know the exact figure, please give an approximation.) _____ (*number*)

Of the business tenancies you hold as tenant, how many contain contractual options to renew?

□ All □ Some □ None □ Don't know

If you answered "all" or "some", why did you use contractual options? _____

Of the business tenancies you hold as tenant, what is their average duration? ____ (*years*)

If the average duration is less than 12 months, please give your answer in months here _____ *(months)*

4. In your experience, has the duration of business tenancies changed over time? If so, how?

_____

Section 2(d) Questions for respondents who are professionals (legal, property or other professionals)

1. Are you:

□ a legal professional (e.g. solicitor, barrister, legal executive)
□ a property professional (e.g. surveyor, valuer, letting agent)
□ Other (*please state*) _____

2. Do you act:

□ primarily for landlords
□ primarily for tenants
□ for both landlords and tenants
□ not applicable

3. Of the business tenancies that you deal with, approximately what proportion of them are contracted out of the 1954 Act? Please give your answer as a percentage. _____ (*percentage*)

4. Of the business tenancies that you deal with, how many contain contractual options to renew?

□ All □ Some □ None □ Don't know

If you answered "all" or "some", why are contractual options used? _____

5. Of the business tenancies that you deal with, what is their average duration? ____ (*years*)

If the average duration is less than 12 months, please give your answer in months here _____ *(months)*

6. In your experience, has the duration of business tenancies changed over time? If so, how? _____

Section 2(e) Questions for respondents who are representative organisations

1. Questions about your members who are landlords

Approximately how many members do you have who are landlords? _____ (*number*)

Please tell us any information you have about the size of your landlord members, and how many business tenancies they hold.

_____

Where in England and Wales are your landlord members primarily located? (Select all that apply.)

□ North West
□ North East
□ Yorkshire and the Humber
□ Wales
□ West Midlands
□ East Midlands
□ East of England
□ South West
□ South East
□ London

What type of business is carried out from your landlord members' premises by their tenant(s)? (Select all that apply.)

□ Administrative and support services
□ Agriculture
□ Arts, entertainment, leisure & recreation
□ Charity
□ Construction
□ Education
□ Financial, professional, scientific and technical services
□ Health and social care
□ Hospitality
□ Information and communication
□ Infrastructure & utilities (e.g. electricity, gas, water supply, sewerage.)
□ Manufacturing
□ Other service activities
□ Public administration and defence
□ Real estate
□ Retail and wholesale
□ Transport and storage
□ Other (*please specify*):
_____

Of the business tenancies your members hold as landlords, approximately what proportion of them are contracted out of the 1954 Act? Please give your answer as a percentage.
_____ (*percentage*)

Of the business tenancies your members hold as landlords, how many contain contractual options to renew?

□ All □ Some □ None □ Don't know

If you answered "all" or "some", why are contractual options used? _____

Of the business tenancies your members hold as landlords, what is their average duration? ____ (*years*)

If the average duration is less than 12 months, please give your answer in months here _____ *(months)*

2. Questions about your members who are tenants

Approximately how many members do you have who are tenants? _____ (*number*)

Please tell us any information you have about the size of your tenant members, and how many business tenancies they hold.

_____

Where in England and Wales are your tenant members primarily located? (Select all that apply.)

□ North West
□ North East
□ Yorkshire and the Humber
□ Wales
□ West Midlands
□ East Midlands
□ East of England
□ South West
□ South East
□ London

What type of business do your tenant members carry out from their premises? (Select all that apply.)

□ Administrative and support services
□ Agriculture
□ Arts, entertainment, leisure & recreation
□ Charity
□ Construction
□ Education
□ Financial, professional, scientific and technical services
□ Health and social care
□ Hospitality
□ Information and communication
□ Infrastructure & utilities (e.g. electricity, gas, water supply, sewerage.)
□ Manufacturing
□ Other service activities
□ Public administration and defence
□ Real estate
□ Retail and wholesale
□ Transport and storage
□ Other (*please specify*): _____

Of the business tenancies your members hold as tenants, approximately what proportion of them are contracted out of the 1954 Act? Please give your answer as a percentage. _____ (*percentage*)

Of the business tenancies your members hold as tenants, how many contain contractual options to renew?

□ All □ Some □ None □ Don't know

If you answered "all" or "some", why are contractual options used? _____

Of the business tenancies your members hold as tenants, what is their average duration? ____ (*years*)

If the average duration is less than 12 months, please give your answer in months here _____ *(months)*

3. In your experience, has the duration of business tenancies changed over time? If so, how? _____

Section 2(f) Questions for respondents who identify as none of the above

1. What is your interest in business tenancies? _____

2. Of the business tenancies that you have experience of, approximately what proportion of them are contracted out of the 1954 Act? Please give your answer as a percentage. _____ (*percentage*)

3. Of the business tenancies that you have experience of, how many contain contractual options to renew?
□ All □ Some □ None □ Don't know

If you answered "all" or "some", why are contractual options to renew used? _____

4. Of the business tenancies that you have experience of, what is their approximate average duration? ____ (*years*)

If the average duration is less than 12 months, please give your answer in months here _____ *(months)*

5. In your experience, has the duration of business tenancies changed over time? If so, how? _____

SECTION 3: THE EFFECT OF THE 1954 ACT ON THE MARKET AND ITS FINANCIAL CONSEQUENCES

Questions for all respondents

1. The effect of the 1954 Act on rent

In your experience, does the decision to contract out a tenancy from the 1954 Act affect the rent payable?
□ Yes □ No □ Sometimes
Any other comments _____

If "yes" or "sometimes", does contracting out:
□ significantly increase the rent □ slightly decrease the rent
□ slightly increase the rent □ significantly decrease the rent
Any other comments _____

2. The effect of the 1954 Act on willingness to rent

In your experience, does the existence of the 1954 Act affect the willingness of landlords to let premises?

□ Yes □ No □ Sometimes

Any other comments_____

If "yes" or "sometimes", does the 1954 Act make landlords:

□ significantly less willing to let premises □ slightly more willing to let premises

□ slightly less willing to let premises □ significantly more willing to let premises

Any other comments _____

3. Financial consequences of the 1954 Act

In your experience, what are the approximate average financial costs (of lawyers, surveyors, or other professionals) of taking the required steps to contract out a tenancy from the 1954 Act? _____ (*Approximate average cost in pounds*)

In your experience, are there other additional costs or disadvantages (financial or otherwise) caused by the process that must be followed to contract out a tenancy from the 1954 Act?

_____

4. Costs and disadvantages of renewing protected and unprotected tenancies

The following questions ask about the differences between the costs of renewing business tenancies when they are unprotected compared to when they are protected.

What are protected and unprotected tenancies?

*We use the word "**protected**" to refer to tenancies which have the protection of the 1954 Act. We use the word "**unprotected**" to refer to tenancies which do not have the protection of the 1954 Act (e.g tenancies which are contracted out).*

In your experience, approximately how much does it cost (in terms of professional fees) to renew an unprotected business tenancy? _____ (*Approximate cost in pounds*)

In your experience, approximately how much does it cost (in terms of professional fees) to renew a protected business tenancy? _____(*Approximate cost in pounds*)

In relation to renewals of protected tenancies, what difference does it make to the costs if the renewal claim is opposed or unopposed? _____

What do we mean by opposed and unopposed claims?

*We use the word "**opposed**" to refer to a claim where the landlord objects to granting a renewal tenancy on a specified ground (e.g. redevelopment of the premises). We use the word "**unopposed**" to refer to a claim where the landlord agrees to grant a renewal tenancy subject to agreeing the terms of that tenancy.*

Any other comments on the financial or other costs/disadvantages of renewing unprotected business tenancies as opposed to renewing protected business tenancies?

_____

5. Time taken to renew protected and unprotected tenancies

The following questions ask about the differences between the time taken to renew business tenancies when they are unprotected compared to when they are protected.

> *What are protected and unprotected tenancies?*
>
> *We use the word "**protected**" to refer to tenancies which have the protection of the 1954 Act. We use the word "**unprotected**" to refer to tenancies which do not have the protection of the 1954 Act (e.g. tenancies which are contracted out).*

In your experience, what is the average time taken to renew an unprotected business tenancy? Please express your answer in days. _____

In your experience, what is the average time taken to renew a protected business tenancy? Please express your answer in days. _____

In relation to renewals of protected tenancies, what difference does it make to the duration of a renewal claim if the claim is opposed or unopposed? _____

> *What do we mean by opposed and unopposed claims?*
>
> *We use the word "**opposed**" to refer to a claim where the landlord objects to granting a renewal tenancy on a specified ground (e.g. redevelopment of the premises). We use the word "**unopposed**" to refer to a claim where the landlord agrees to grant a renewal tenancy subject to agreeing the terms of that tenancy.*

Appendix 5: Glossary

5.1 The following table explains how certain terms are used in this Consultation Paper.

1954 Act	The statutory provisions in Part 2 of the Landlord and Tenant Act 1954 giving business tenants security of tenure.
Break clause	A right that is set out in a tenancy agreement that enables the landlord and/or tenant to terminate the tenancy before it would otherwise expire. A break clause may have conditions that must be met before it can be exercised.
Business tenancy	A tenancy where the premises are occupied by the tenant for the purposes of a business. See also section 23 of the Landlord and Tenant Act 1954.
Continuation tenancy	Where a tenancy that is granted for a fixed term has security of tenure expires, section 24 of the 1954 Act provides that it does not end as it otherwise would. Instead it continues until it is terminated in accordance with other provisions of the Act. Where that happens, the tenancy is often called a “continuation tenancy”.
Contracted-out tenancy	Where the parties have agreed that a business tenancy should not benefit from security of tenure under the 1954 Act and have followed the statutory process for excluding security of tenure, then we refer to their tenancy as a "contracted-out tenancy". (The tenancy still falls within the scope of the 1954 Act, and so would have benefitted from security of tenure by default had the parties not agreed to exclude security).
Contractual term	The duration of a tenancy as set out in the tenancy agreement. For example, a tenancy might indicate the duration is five years from 1 January 2025. See also “Term”.
Freehold	An estate in land which lasts forever.
New tenancy	A tenancy entered into where the landlord and tenant have no pre-existing relationship in respect of the premises. Contrast “renewal tenancy”.
Opposed renewal	Where a tenant has security of tenure under the 1954 Act and seeks a renewal tenancy when their protected tenancy comes to an end, the landlord may object to the grant of the renewal tenancy on certain grounds set out in the 1954 Act. Where the landlord does so the renewal claim by the tenant is an “opposed renewal”. Contrast “unopposed renewal”.
Option	A tenant’s contractual right to have another lease granted to it is often called an “option”. The option can be contained in the original lease or it can be contained in a document ancillary to it.
Periodic tenancy	A tenancy that is by reference to a certain period of time, but has no specific end date. For example, a weekly periodic tenancy exists from week to week.
Protected tenancy	A business tenancy that benefits from security of tenure under the 1954 Act. In Chapter 3, the term is used more widely to refer to a business tenancy that benefits

	from statutory security of tenure, irrespective of which model for security applies (see paragraph 3.21 above). Contrast “unprotected tenancy”.
Renewal tenancy	A tenancy granted to the same tenant (a sitting tenant), either under the 1954 Act, pursuant to a contractual option or voluntarily. Contrast “new tenancy”.
Security of tenure	The legal right under the 1954 Act for a business tenant to renew their tenancy when it would otherwise come to an end, allowing them to remain in their premises.
Sitting tenant	Where premises are already occupied by a tenant (during the contractual term or in any period during which a tenancy that has security of tenure continues under section 24 of the 1954 Act when it would otherwise expire), then the tenant is referred to as a “sitting tenant”.
Term	Depending on the context the “term” of a tenancy can mean its duration (for example, ten years from and including 1 January 2024), or a specific provision of the tenancy (for example a term of the tenancy dealing with whether the landlord or the tenant should keep the premises repaired).
Turnover rent	A model where the amount of rent payable by the tenant under a tenancy is based on the turnover of the tenant’s business, rather than being a specific sum of money.
Unopposed renewal	Where a tenant has security of tenure under the 1954 Act and seeks a renewal tenancy when their protected tenancy comes to an end, the landlord may object to the grant of the renewal tenancy on certain grounds set out in the 1954 Act. Where the landlord does not do so, the renewal claim by the tenant is an “unopposed renewal”. Contrast “opposed renewal”.
Unprotected tenancy	A business tenancy that does not have security of tenure under the 1954 Act. In Chapter 3, the term is used more widely to refer to a business tenancy that does not benefit from statutory security of tenure, irrespective of which model for security applies (see paragraph 3.22 above). Contrast “protected tenancy”.
Vacant possession	The state of a property where the previous occupier has ceased their occupation and removed themselves and their belongings. Where a landlord has vacant possession of a property it is then available to be let to another tenant.