Law Commission
Reforming the law

Business Tenancies: the right to renew

Summary of Consultation Paper 2: modernising security of tenure

Our consultation

Who are we?	The Law Commission of England and Wales is an independent body established by statute to make recommendations to the Government to reform the law in England and Wales.
What is it about?	The legal right for business tenants to obtain another tenancy when their existing tenancy ends, subject to the landlord being able to oppose that on a limited number of grounds. The right is known as "security of tenure". Where the right applies it enables tenants to remain at their property, when they might otherwise have to leave.
What are we doing?	Conducting a public consultation on reforms to the detailed operation of security of tenure, including: which tenancies qualify for protection, contracting out of protection, the grounds for opposing renewal tenancies, the rent and other terms of renewal tenancies, and the way disputes are resolved.
Why are we consulting?	We are seeking views on whether the law needs to change. Consultation is essential to our work. We want any recommendations we ultimately make to have as strong an evidence base as possible.
Who do we want to hear from?	We would like to hear from as many stakeholders as possible, including business tenants, landlords, representative groups, property professionals, judges, academics, researchers, and members of the public.
Where can I find the Consultation Paper?	The full Consultation Paper is available on our website: https://lawcom.gov.uk/project/business-tenancies-the-right-to-renew.
When is the deadline?	The deadline for responses is 16 September 2026.
Are there other consultations?	In parallel to this consultation, we are running another consultation on overcoming barriers to commercial leasehold transactions, addressing specific aspects of the Landlord and Tenant Act 1987 and the Landlord and Tenant (Covenants) Act 1995. That consultation is available at: https://lawcom.gov.uk/project/commercial-leasehold.

What happens next?	After reviewing all responses, we will publish our recommendations about whether the law should change in a final report. It will be for the Government to decide whether to implement our recommendations.
How to respond	We encourage you to submit your response to the Consultation Paper using the online form available at: https://consult.justice.gov.uk/law-commission/business-tenancies-consultation-2. If possible, please use this method. Otherwise you can respond to us: • by email to: BusinessTenancies@lawcommission.gov.uk. • by post to: Business Tenancies Team, Law Commission, 1st Floor, 52 Queen Anne's Gate, London, SW1H 9AG. For further information about how the Law Commission conducts its consultations, and our policy on the confidentiality and anonymity of consultees' responses, please see page ii of the Consultation Paper.

Key definitions

- **business tenant:** a person or organisation that rents property from a landlord for their business.
- **contract out:** when a landlord and tenant agree that a new business tenancy is not going to benefit from security of tenure, and follow a set procedure to exclude it, they are said to "contract out" of security of tenure.
- **new tenancy:** a tenancy entered into where the landlord and tenant have no pre-existing relationship in respect of the premises. Contrast "renewal tenancy".
- **protected tenancy or protected tenant:** a tenancy or tenant benefitting from security of tenure.
- **renewal tenancy:** a tenancy granted to the existing tenant, which runs on after the existing tenancy ends.
- **section 25 or 26 notice:** a notice served under section 25 (by the landlord) or section 26 (by the tenant) of the Landlord and Tenant Act 1954, initiating the processes under that Act to claim or oppose a renewal tenancy.
- **security of tenure:** the legal right under the Landlord and Tenant Act 1954 for business tenants to obtain another tenancy when their existing tenancy ends, subject to the landlord being able to oppose that on a limited number of grounds.

Introduction

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

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

Our project is about business tenants – people or organisations that rent property from a landlord for their businesses.

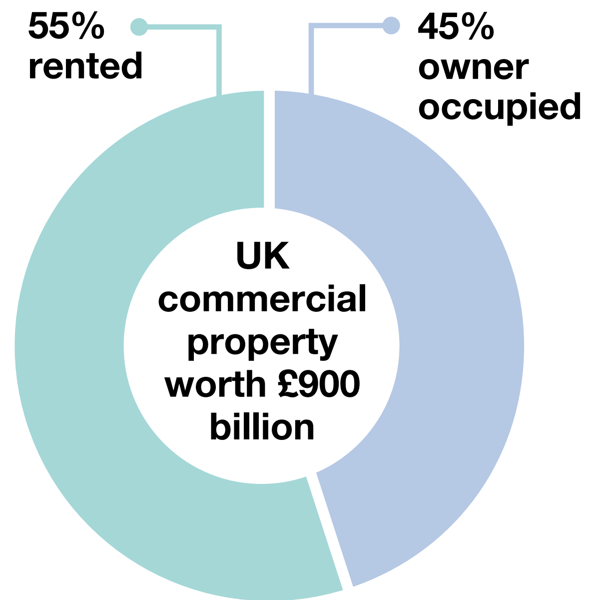
Security of tenure under the Landlord and Tenant Act 1954

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

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

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

The significance of the 1954 Act



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

The 1954 Act is part of the bedrock of the commercial leasehold market. It can have far-reaching impact for both landlords and tenants of business premises.

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

Agreeing business tenancies: how does it work in practice?

Entering into new business tenancies

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

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

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

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

Entering into renewal business tenancies

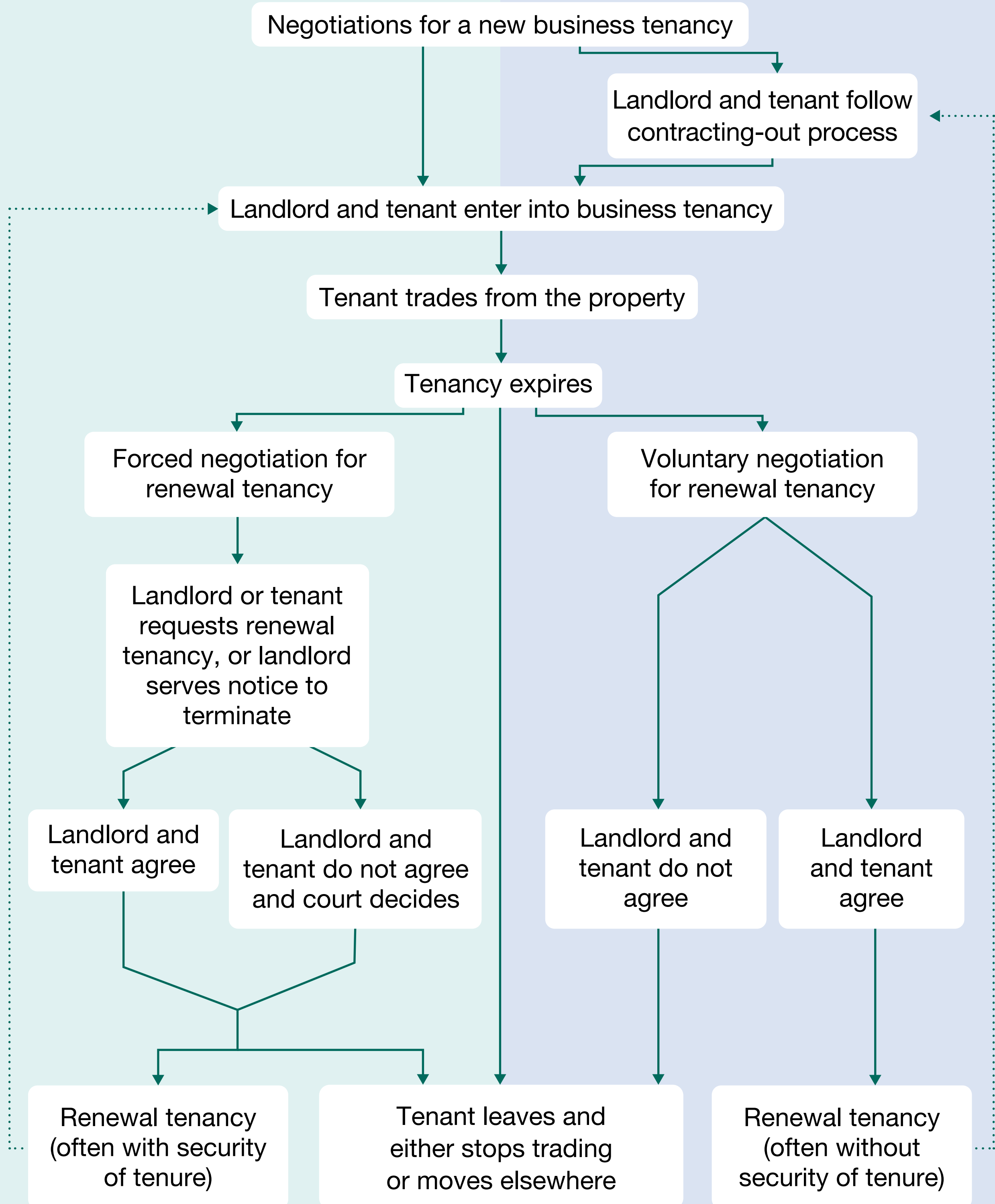
As a tenancy reaches its expiry date:

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

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

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

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


Entering into and renewing business tenancies:
the differences between having, and not having, security of tenure
Business tenancies with security of tenure
Business tenancies without security of tenure
Negotiations for a new business tenancy
Landlord and tenant follow contracting-out process
Landlord and tenant enter into business tenancy
Tenant trades from the property
Tenancy expires
Forced negotiation for renewal tenancy
Voluntary negotiation for renewal tenancy
Landlord or tenant requests renewal tenancy, or landlord serves notice to terminate
Landlord and tenant agree
Landlord and tenant do not agree and court decides
Landlord and tenant do not agree
Landlord and tenant agree
Renewal tenancy (often with security of tenure)
Tenant leaves and either stops trading or moves elsewhere
Renewal tenancy (often without security of tenure)

Our project

In our first Consultation Paper (published in November 2024), we tested the 1954 Act's foundations. After analysing consultation responses, we published our provisional conclusions in June 2025, including that:

- the current approach of giving tenants security of tenure by default, subject to the ability to contract out, is the right model for the modern commercial leasehold market; and
- the threshold for excluding short tenancies from protection, currently set at 6 months, should be increased.

Our second Consultation Paper (which this document summarises) takes those conclusions as its starting point and considers the detailed operation of the scheme.

We have heard that the 1954 Act is not working smoothly, and does not work well for landlords or tenants. Those who are affected by the Act report that aspects of it are burdensome, unclear and out-of-date. There is concern that it may be standing in the way of modern commercial practices, causing unnecessary cost and delay for all concerned, and preventing commercial space from being occupied quickly and efficiently.

Our Consultation Paper explores the breadth of the regime established in the 1954 Act. In doing so we ask questions and make provisional proposals. We do that with a view to making recommendations for reform that will address many problems with the Act, and modernise security of tenure, so that it:

- is widely used, easy to use, clear, and beneficial to both landlords and tenants; and
- supports the efficient use of commercial premises now and in the future.

In formulating the provisional proposals and questions set out in the Consultation Paper, we have borne in mind that, at its heart, the 1954 Act protects tenants and their businesses. However, it is also necessary to balance the interests of tenants and landlords.

The Consultation Paper is detailed, and – across 13 chapters – we ask just under 70 questions, not all of which are summarised here. Instead, this Summary sets out, at a high-level, a chapter-by-chapter overview of some key provisional proposals we make and consultation questions we ask. We include cross-references to chapters and consultation questions ("CQs") in the full Consultation Paper, to help consultees navigate between this Summary and the Consultation Paper. Before responding, consultees are encouraged to read our full Consultation Paper, or the relevant parts of it.

We invite consultees to respond to all the questions in the Consultation Paper, or as many as they are able. Our work benefits from hearing from as broad a range of perspectives and experiences as possible, and we welcome receiving as much or as little information as consultees feel able to contribute.

The law in Wales

Our consultation covers the law in England and in Wales. Under the Government of Wales Act 2006, the power to change the law in Wales is "devolved" and exercised by the Senedd (the Welsh Parliament), unless a topic is "reserved" to the UK Parliament.

It is not clear whether any reforms to the 1954 Act would be devolved to Wales. Nevertheless, we want to consult stakeholders about reform of the 1954 Act in Wales specifically.

We invite consultees to tell us about any particular considerations or experiences in Wales, which consultees think are relevant to potential reform of the 1954 Act (**CQ 64**).

Relationship to other Law Commission work

This project runs alongside another Law Commission project, called "Commercial Leasehold: overcoming barriers to transactions". That project examines specific issues affecting commercial leasehold transactions that arise from two pieces of legislation: the Landlord and Tenant Act 1987 and the Landlord and Tenant (Covenants) Act 1995. We have also published a Consultation Paper in that project, together with a summary, which can be found at https://lawcom.gov.uk/project/commercial-leasehold.

Both projects share the objective of improving commercial leasehold law and are being progressed in tandem, with the intention that our final recommendations will be presented together.

Where we refer to the Consultation Paper in this Summary, it is a reference to the Consultation Paper "Business Tenancies: the right to renew - modernising security of tenure".

Qualifying criteria: the types of tenancy that can have security of tenure (Chapter 2)

Under the current law:

- fixed-term tenancies granted for 6 months or less cannot benefit from security of tenure ("the duration threshold"), unless the tenant has already been in occupation for 12 months;
- any written fixed-term tenancy can be contracted out;
- periodic tenancies – which continue on a rolling basis (for example, weekly, monthly or yearly) – are always protected (in other words, they always benefit from security of tenure); and
- periodic tenancies cannot be contracted out.

We make proposals for reform to remove anomalies and confusion, and to avoid tenants gaining or losing protection unintentionally.

We distinguish between new tenancies (granted to someone who is not already in occupation of the property) and renewal tenancies (granted to someone who already occupies the property under a tenancy or another arrangement).

New tenancies

New fixed-term tenancies:
We provisionally propose that the duration threshold be increased from 6 months, to give greater flexibility in the short-term lettings market. We ask for views on two options:

- **Option A:** tenancies would only be protected if granted for more than 2 years; or
- **Option B:** tenancies would only be protected if granted for more than 1 year (**CQ 7**).

New periodic tenancies:
We provisionally propose excluding all new periodic tenancies from protection (**CQ 1**).

Renewal tenancies: existing protected tenants

Where an existing tenant already has a protected tenancy and is granted a renewal tenancy (whether it is fixed-term or periodic, and regardless of its length), we provisionally propose that the renewal tenancy should also be protected (**CQ 3**).

Renewal tenancies: existing unprotected tenants (or occupiers)

Renewal fixed-term tenancies:
We discuss whether a fixed-term tenancy below the duration threshold should be protected if the tenant has already been in occupation for some time. Under Option A (which sets the duration threshold at 2 years), we provisionally propose that prior occupation should be taken into account as under the current law, but with some modification to the operation of the rules. Under Option B (which sets the duration threshold at 1 year), we provisionally propose that prior occupation should be ignored (**CQ 7**).

Renewal periodic tenancies:
As with new periodic tenancies, we provisionally propose excluding all renewal periodic tenancies from protection (**CQ 6**).

The table on the next page summarises the current law and the two options for reform. We ask consultees whether they prefer Option A or Option B.

All tenancies capable of being contracted out

We set out above the default rules for which tenancies would be protected under Option A and Option B. We provisionally propose that any new or renewal tenancy (provided it is in writing) should be capable of being contracted out (**CQ 2** and **CQ 4**).

Type of tenancy	Current Law	Option A	Option B
	New tenancy		
Fixed-term	Over 6 months: **protected** Up to 6 months: **unprotected**	Over 2 years: **protected** Up to 2 years: **unprotected**	Over 1 year: **protected** Up to 1 year: **unprotected**
Periodic (express)	**Protected** (cannot contract out)	**Unprotected**	**Unprotected**
Periodic (implied)	**Protected** (cannot contract out)	**Unprotected**	**Unprotected**
	Renewal tenancy		
Fixed-term	Over 6 months: **protected** Up to 6 months: - **protected** if tenant has been in occupation for 12 months; - otherwise **unprotected**	Over 2 years: **protected** Up to 2 years: - **protected** if tenant already has a protected tenancy; - **protected** if tenant will have been in occupation for 2 years; - otherwise **unprotected**	Over 1 year: **protected** Up to 1 year: - **protected** if tenant already has a protected tenancy; - otherwise **unprotected**
Periodic (express)	**Protected** (cannot contract out)	- **Protected** if tenant already has a protected tenancy - Otherwise **unprotected**	- **Protected** if tenant already has a protected tenancy - Otherwise **unprotected**
Periodic (implied)	**Protected** (cannot contract out)	**Unprotected**	**Unprotected**

Contracting out of security of tenure (Chapter 3)

Landlords and tenants can agree to contract out of security of tenure, provided they follow a prescribed statutory process. The current process requires multiple documents to be produced in advance of the tenancy being entered into: the landlord must serve a prescribed warning notice on the tenant explaining the implications of foregoing security of tenure, and the tenant must then sign a declaration. If, as is often the case, the warning notice is served less than 14 days before the tenancy is completed, a statutory declaration is required, which means the tenant must locate an independent solicitor who must also sign the declaration.

A new contracting-out process

We provisionally propose a new contracting-out procedure, under which contracting out would take place within the tenancy agreement itself (**CQ 8**). Our proposals are designed to streamline the current procedure and to reduce uncertainty about whether tenancies have been validly contracted out, without compromising the protection the process offers to tenants.

Under our proposed new procedure, in order to contract out:

- a prescribed warning notice (in similar terms to the current warning notice) would be included in the tenancy itself, rather than being served by the landlord separately; and
- the use of statutory declarations would be abolished. Instead, the tenancy would include a prescribed declaration signed by the tenant, confirming that they have read and understood the terms of the warning notice.

We consult on how the warning notice and declaration might be prominently displayed within the tenancy, to ensure tenants realise their importance.

Addressing problems with common commercial transactions

We are aware that the current contracting-out process can be difficult to operate within some common leasehold arrangements under which the parties agree that they will enter into a tenancy in the future. Such arrangements include agreements for lease, options to renew and guarantees (which we refer to generally as "agreements").

We make provisional proposals designed to address the problems currently encountered with such agreements. Under our new proposed contracting-out procedure, any future tenancy resulting from such agreements would be contracted out in the same way as any other tenancy: in other words, by the inclusion of the prescribed warning notice and declaration in the tenancy itself.

In addition, the agreements themselves would need to include prescribed wording explaining that any future tenancy would be contracted out (**CQ 9**).

Other issues

We address two other issues in this chapter.

- **The Thomas van Staden trap:** As noted above, we provisionally propose that it should be possible to contract out all written tenancies within the scope of the Act, not just those with a fixed term. We consider this provisional proposal would address the "**Thomas van Staden trap**", which currently results in tenancies inadvertently being protected when the parties intend them to be contracted out (**CQ 10**).
- **Unauthorised subtenancies:** We ask consultees whether the law should be changed so that unauthorised subtenancies can no longer attract security of tenure where they are granted out of an unprotected headlease (**CQ 11**).

Agreements to surrender and agreements for future renewal tenancies (Chapter 4)

Landlords and tenants may enter into an agreement to surrender a tenancy, bringing it to an end consensually before its contractual expiry date. Currently, in order to enter into a valid agreement to surrender a protected tenancy, landlords and tenants must undertake a procedure, similar to the contracting-out process, before the agreement is entered into. We refer to this process as a "validation process", to avoid confusion with the contracting-out process.

We consider three main issues in this chapter relating to the validation process:

- We consult on whether the validation process should be removed altogether, so that all agreements to surrender protected tenancies would be valid without the need to undertake any formalities under the 1954 Act (**CQ 16**).
- If the validation process is retained, we provisionally propose that it should be streamlined so that it mirrors our proposed new contracting-out procedure (**CQ 12**). Under our provisional proposal, prescribed wording would be included within the agreement to surrender, rather than the current exchange of warning notices and declarations taking place in advance of the agreement being entered into.
- Finally, we consult on whether, if the validation process is retained, it should be applied to surrenders of protected tenancies, as well as agreements to surrender (**CQ 16**).
- We also consider section 28 of the 1954 Act, which disapplies the 1954 Act in some circumstances where the parties enter into an agreement to grant a future tenancy. We consult on what purpose this section of the Act is serving, what problems it is causing, and whether it needs reform or repeal (**CQ 17**).

The renewal tenancy (Chapter 5)

When a tenant is entitled to a renewal tenancy, the landlord and tenant are free to negotiate the provisions of that tenancy and will usually reach agreement. Where the parties do not agree the rent, the duration, the premises to be let, and other terms of the renewal tenancy, then the court will decide those provisions. The court has a discretion, and the 1954 Act sets the principles that the court must apply when deciding the disputed provisions.

This chapter provides an introduction to the two chapters that follow: Chapters 6 and 7 ask questions about whether the law concerning the other terms of the renewal tenancy, and rent payable, should be changed.

The other terms of the renewal tenancy (Chapter 6)

When the court decides the other terms of the renewal tenancy (i.e. provisions other than the rent, the duration and the premises to be let), the court must have regard to the provisions of the original tenancy and to "all relevant circumstances". The leading decision about how the courts approach this exercise is **O'May v City of London Real Property Co Ltd ("O'May")**.

We are aware of concerns that the approach established in **O'May** can prevent terms being included in renewal tenancies that reflect changes in market conditions and business practices, because those terms were not included in the original tenancy.

We discuss possible options for reform which include:

- **A "market-based" approach:** changing the current law so that any other terms of the renewal tenancy determined by the court are based on those typically agreed between tenants and landlords in the market.
- **A "guided" or "presumptive" approach:** supplementing the current law with a direction that the court must determine the other terms of the renewal tenancy having regard to one or more specified factors, or presuming a particular type of term should be included.

Each of the possibilities that we consider comes with its own problems. In addition, our view is that a key benefit of the current law is that it is flexible and resilient enough to deal with a wide range of tenancies and potential terms. We provisionally conclude that the current law should be retained (**CQ 18**).

Environmental terms

Modern commercial tenancies may contain terms with an environmental and sustainability focus, for example relating to the sharing of data on energy efficiency and obligations to cooperate in relation to the environmental performance of the building.

The court can already consider these factors when deciding the terms of a renewal tenancy. However, in the light of the concerns raised by stakeholders, we consider whether courts should be expressly guided to treat environmental matters as a "relevant circumstance" when deciding the terms of a renewal tenancy. We consult on two different approaches:

- **A narrow approach:** the scope of the "relevant circumstance" that the court should consider could be limited to the regime in the Minimum Energy Efficiency Standards ("MEES") regulations and its underlying policy of bringing buildings up to certain minimum standards; or
- **A wide approach:** the scope of the "relevant circumstance" that the court should consider could be concerned more generally with environmental and sustainability concerns (**CQ 19**).

The rent under the renewal tenancy, and during the continuation tenancy (Chapter 7)

Our consultation addresses several issues concerning the rent payable under a renewal tenancy and during the "continuation tenancy", which is linked to how the commencement date of the renewal tenancy is set. We use "continuation tenancy" to refer to a protected tenancy where the tenant remains in occupation of the premises following the contractual expiry date (but without any renewal tenancy yet completed). During this time, the tenancy is continued by the 1954 Act, rather than coming to an end.

Whether protected tenants should receive the equivalent of a "rent-free fit-out period" on renewal

In the open market, new tenants may negotiate an initial rent-free period to allow time for fitting out the premises. There is uncertainty about whether protected tenants should receive equivalent treatment on renewal. Protected tenants can argue that they should pay the same as any new incoming tenant would pay, whereas landlords can argue that the existing protected tenant does not need a fit-out period so treating them as a new incoming tenant gives an unfair windfall.

We ask whether protected tenants should benefit from an equivalent rent-free fit-out period, and how the law could be clarified to achieve that outcome (**CQ 20**).

Facilitating "turnover rents" and other rental models

Traditionally, the rent under a business tenancy will be a fixed amount. "Turnover rents" – where the rent is based on the revenue generated from the premises – have become more common. However, the current law does not clearly cater for turnover rents, or other alternative rental models, in renewal tenancies. There is uncertainty concerning:

- whether turnover rents can be imposed on renewal;
- when a renewal tenancy can switch to, or from, a turnover rent;
- how to set the different components of a turnover rent, such as the percentage of the tenant's revenue that is payable; and
- the operation of the rules for setting the rent (known as the "valuation assumptions"), such as ignoring the tenant's goodwill, which do not fit with turnover rents.

We ask whether, and how, the court should make decisions about the inclusion of turnover rents (and other alternative rental models) in renewal tenancies (**CQs 21 to 26**).

Rent payable during the continuation tenancy ("interim rent") and the commencement date of the renewal tenancy

Under the current law:

- the renewal tenancy will commence after the rent and other terms have been agreed, or decided by the court. The rent is assessed based on the open market value on the date on which the renewal tenancy starts. Since that is a future and often unknown date, there is some artificiality and uncertainty in the process.
- a different level of rent – known as an "interim rent" – may be payable between (a) the expiry of the original tenancy (or, if later, 6 months after a section 25 or 26 notice is given), and (b) the start of the renewal tenancy. There are various bases for calculating interim rent, which are complicated, confusing and can lead to inappropriate outcomes for both landlords and tenants.

We set out two options for reform.

Option A: one fixed valuation date, with the renewal tenancy being backdated to commence on that date. This would largely remove the need for any rules about interim rent and aim to bring greater certainty.

Option B: retain two valuation dates (one for interim rent, and one for the renewal tenancy) but simplify the basis on which interim rent is assessed. This would preserve the structure of the current law, but make valuation easier to understand and operate, and remove the inappropriate outcomes under the current law.

We ask consultees whether they prefer Option A or Option B (**CQ 27**).

The grounds to oppose a renewal tenancy (Chapter 8)

When a protected tenancy expires and the tenant wishes to remain in the premises, the landlord can oppose the grant of a renewal tenancy by relying on a limited number of grounds, commonly referred to by the letters A to G.

Ground A
That the tenant has failed to comply with repairing obligations in the existing tenancy.

Ground B
That the tenant has persistently delayed in paying rent.

Ground C
That the tenant has committed substantial breaches of its obligations under the existing tenancy, or for any other reason connected with the tenant's use or management of the premises.

Ground D
That the landlord has offered suitable alternative accommodation to the tenant.

Ground E
That the sub-letting of the property by an intermediate landlord is uneconomic.

Ground F
That the landlord intends to redevelop the premises.

Ground G
That the landlord intends to occupy the premises itself.

Grounds A to E

We make no proposals to reform Grounds A to E although we seek consultees' views on whether they are operating appropriately in practice (**CQ 35**).

Ground F (redevelopment by the landlord)

We are aware of dissatisfaction with the operation of Ground F, which applies when the landlord intends to redevelop the premises.

The meaning of "intention"

The landlord must establish that they have a firm, settled and unconditional intention to undertake redevelopment works. In 2018, the Supreme Court concluded that the landlord's intention cannot be conditional on whether the tenant would have left the premises voluntarily at the end of the tenancy. Taking into account the underlying protective function of the 1954 Act for tenants, and the disadvantages of reform on this issue, we provisionally conclude that the law should not be changed.

Expanding the scope of works under Ground F

Redevelopment work under Ground F includes demolition, reconstruction and substantial works of construction. Some stakeholders consider Ground F to be narrowly worded and its scope to be inadequate. There are concerns that modern construction methods, such as refurbishment and retrofitting, are potentially excluded from Ground F and that it cannot be relied on to carry out energy efficiency works to comply with the MEES regulations.

We invite views on three options for reform:

- **Option 1:** Expanding the categories of works under Ground F to include modern construction methods, and including a purpose or motive filter – for example, providing that those works can be relied on by the landlord only where they are being undertaken for an environmental purpose, or to comply with planning regulations.
- **Option 2:** Expanding the categories of works under Ground F to include modern construction methods, but without including any purpose or motive filter.
- **Option 3:** Replacing all categories of works under Ground F with a single "substantial works" test (**CQ 36**).

We also invite consultees' views on the interaction between the options for reform to Ground F and the MEES regulations and whether it would be appropriate to refer specifically to the MEES regulations in Ground F (**CQ 37**).

Ground G (occupation by the landlord)

We discuss three issues concerning Ground G.

- **Occupation of part:** we consider and discount three options to cater for situations where, in relying on Ground G, a landlord intends to occupy only part of the premises.
- **Alterations to the premises:** the court has previously decided that Ground G is not satisfied where the landlord intends to demolish and reconstruct the premises before occupying. We provisionally propose changing the law so that landlords can make alterations to the premises before occupying under Ground G (**CQ 38**).
- **The landlord undertaking the same business as the tenant:** we consider three options to address the situation where a landlord successfully relies on Ground G and then uses the premises to undertake the same business as the tenant, benefitting from the tenant's goodwill. Each option has disadvantages and it is unclear whether any of the options would avoid further problems arising. We invite consultees' views as to whether reform is needed and, if so, how the law could be changed to address the issue (**CQ 39**).

Compensation for tenants when a protected tenancy ends (Chapter 9)

If the landlord opposes a renewal tenancy on Grounds E, F or G, the tenant is entitled to compensation. Compensation is usually equal to the property's "rateable value", which is the estimated annual market rental value, set by the Valuation Office. The level of compensation is doubled for tenants who have occupied the premises for 14 years or more. The parties can agree that compensation will not be payable, but any such agreement is only valid if the tenant has been in occupation of the premises for less than 5 years when the tenancy ends.

Our provisional view is that compensation should continue to be based on a simple and certain measure, as under the current law, but we ask whether the measure of compensation should be set by reference to the rent under the tenancy, rather than the rateable value (**CQ 40**).

We also ask whether a single threshold of 14 years should be retained for the higher rate of compensation, or whether there should be stepped bands so that the amount of compensation gradually increases the longer the tenant has been in occupation (**CQ 41**).

We ask whether landlords and tenants should continue to be able to exclude compensation where the tenant has been in occupation for less than 5 years, and whether that threshold should be increased or decreased (**CQ 45**). If it continues to be possible to agree to exclude compensation, we provisionally propose that excluding the right should be done transparently in a way that mirrors the (reformed) requirements for contracting out (see the summary of Chapter 3 at page 12 above) (**CQ 46**).

Dispute resolution (Chapter 10)

The 1954 Act encourages landlords and tenants to agree what is to happen when a protected tenancy ends. If, however, agreement cannot be reached, there must be some way for disputes to be resolved.

We review how disputes under the 1954 Act are currently dealt with and consider options for reform to enable more efficient resolution. We consider disputes that arise in both unopposed renewals (where the landlord does not oppose the grant of a renewal tenancy) and opposed renewals (where the landlord opposes the grant of a renewal tenancy on one or more of the grounds we refer to earlier).

Resolving disputes judicially

We consider the appropriate forum for resolving disputes judicially – in other words, which court or tribunal should handle disputes under the 1954 Act.

Currently almost all disputes are dealt with by the county courts, but we are aware of concerns about this approach, including about costs and delay, about a lack of judicial specialism in commercial landlord and tenant matters, and about a lack of legal precedent.

We consult on three options for reform, asking consultees which, if any, they prefer:

- **Option 1:** making greater use of the High Court to deal with higher value and more complex disputes.
- **Option 2:** transferring all disputes to the tribunal.
- **Option 3:** splitting the jurisdiction for disputes between the court and the tribunal, with some disputes remaining in the court system and some being transferred to the tribunal (**CQ 47**).

We set out in the table below some possible pros and cons of each of these options.

	Pros	Cons
Option 1: greater use of High Court	• Access to expertise of High Court judges for more complex / high-value cases • High Court decisions more widely reported and create legal precedent • Change could be applied to both unopposed and opposed renewals • Jurisdiction remains unified within the court – not split between courts and tribunal	• Limited change – majority of disputes would remain in county court • No valuer or other property professional on the decision-making panel • Unclear whether it would reduce cost and delay for disputes overall
Option 2: all disputes moved to tribunal	• Potential for shorter timelines to trial, at lower cost • Cases heard by panel including specialist judge and property professional (such as a valuer) • Jurisdiction remains unified – all disputes heard in tribunal	• May be less well suited for opposed renewals, which can be complex • As is largely the case now, high-value claims may be dealt with by same forum as lower value claims • Like county court decisions, tribunal decisions are not widely reported and do not create legal precedent
Option 3: split jurisdiction between court and tribunal	• May allow claims to benefit from the strengths of different forums: for example, unopposed renewals in tribunal, opposed renewals in court • Divides claims between court and tribunal, reducing the caseload for each forum	• Split jurisdiction is likely to add complexity and cost, and cause confusion, particularly where the landlord's ground of opposition fails or the landlord withdraws its opposition (so an opposed renewal becomes an unopposed renewal)

We also consult on whether the introduction of a bespoke pre-action protocol, standard case management directions or prescribed costs sanctions (akin to those contained in the Civil Procedure Rules, Part 36) would enable more efficient resolution of disputes (**CQs 48 to 50**).

Greater use of ADR

We consider whether there is a greater role for alternative dispute resolution ("ADR") in resolving disputes under the 1954 Act. We use the term "ADR" to cover a wide range of processes intended to facilitate the resolution of disputes without judicial determination in a court or tribunal. Such processes include arbitration, expert determination, mediation and early neutral evaluation. Using ADR can result in disputes being resolved more quickly and cheaply than if disputes are determined judicially at trial.

We consult on the following options for reform:

- Giving each party the right to elect to refer the dispute to a form of non-determinative ADR, such as mediation or early neutral evaluation. Under this option, if the parties did not settle the dispute as part of the ADR process, it could still be determined by the court or tribunal (**CQ 51**).
- Taking an approach similar to that taken by the Electronic Communications Code to promote the greater use of ADR – for example, by requiring section 25 and 26 notices to include a reference to the possibility of resolving disputes through ADR (**CQ 52**).

Identity of the parties (Chapter 11)

The registration gap

Where registered property is sold, there is a period of time between completion of the sale and registration of the sale at HM Land Registry, known as the "registration gap". During the registration gap, the seller remains the legal owner while the buyer acquires an equitable interest. The existence of the registration gap can create problems where notices must be served by or on the legal owner, particularly in transactions involving leasehold property. Contractual and other workarounds are common and generally effective but they can increase cost and delay, introduce confusion, and may represent a trap for the unwary. These problems arise in a variety of contexts; they are not specific to the 1954 Act.

The registration gap in the context of the 1954 Act

We are aware that, as in other contexts, the registration gap can cause problems under the 1954 Act, particularly when notices need to be served by landlords or tenants during the registration gap.

We are not, however, convinced that there is a way to improve the current law that does not have significant downsides.

To help us determine whether to recommend reform, we invite consultees to tell us:

- what problems the registration gap causes in practice in the context of the 1954 Act;
- whether there are any other 1954 Act-specific issues arising out of the registration gap which we have not identified; and
- whether they consider reform is desirable, particularly bearing in mind it will introduce inconsistency between the 1954 Act and other legal frameworks (**CQ 54**).

We also identify, and ask for views on, a number of potential options to address the issue of the registration gap, including:

- **Option 1:** allowing 1954 Act notices to be served by and on equitable owners, as well as legal owners, during the registration gap.
- **Option 2:** allowing any steps under the 1954 Act to be taken by equitable owners, as well as legal owners, during the registration gap.
- **Option 3:** mandating the provision of information by the legal owner to the existing landlord or tenant explaining that a sale or assignment of their interest has taken place (**CQ 55**).

Procedure for claiming or opposing a renewal tenancy (Chapter 12)

We consider five main issues concerning the procedure for claiming or opposing a renewal tenancy.

First, we provisionally propose allowing landlords to serve a section 25 notice on tenants who are out of occupation. Under the current law it is not clear that landlords are able to do so (**CQ 57**).

Second, we consider those tenants who, despite having a protected tenancy, cannot currently serve a section 26 notice seeking a renewal tenancy. We refer to such tenants as "Precluded Tenants" and they include tenants with a periodic tenancy. The number of Precluded Tenants could reduce if our other proposed reforms are taken forward, in particular our proposal to exclude many periodic tenants from protection. Nonetheless, we ask consultees whether all tenants with a protected tenancy should be capable of serving a section 26 notice (**CQ 58**).

Third, we look at tenants' ability to give notice to terminate continuation tenancies (under section 27(2) of the 1954 Act). Under the current law, there is ostensibly no maximum period of notice (or "cap") which must be given under this provision. We provisionally propose the introduction of a cap and ask whether it should be 6 or 12 months (**CQ 59**).

Fourth, we consider the consequences of non-compliance with procedural requirements under the 1954 Act, specifically missing deadlines to issue proceedings and serving invalid notices. We do not propose any change to the current law.

Fifth, we consider tenants' ability to bring protected tenancies to an end at their contractual expiry date. Under the current law, a tenant need simply cease occupation by that date for their protected tenancy to come to an end. Although that can cause practical difficulties for landlords, we do not propose the introduction of any requirement for tenants to take particular steps (such as serving notice) to bring their tenancies to an end.

Other issues (Chapter 13)

In Chapter 13, we consider a number of issues, including:

- **The requirement that a tenant is "in occupation" for its business:** we are aware of concerns that some business tenants cannot benefit from security of tenure because the nature of their business consists of granting occupation of the premises to others. We ask consultees whether the current law causes difficulties in practice (**CQ 60**).
- **Large-scale and complex redevelopments:** we invite consultees' input regarding any specific challenges that arise in large-scale and/or complex developments (**CQ 61**).
- **The interaction between the MEES regulations and the 1954 Act:** we invite consultees to tell us whether the co-existence of the MEES regulations and security of tenure under the 1954 Act creates problems in practice (**CQ 62**).
- **Other reforms not considered in the Consultation Paper:** we ask consultees to tell us if there are any other reforms to the 1954 Act that we should consider (**CQ 63**).
- **Wales:** we invite consultees to tell us about any particular considerations or experiences in Wales in relation to reform of the 1954 Act (**CQ 64**).
- **Transitional arrangements:** we invite consultees to consider what transitional arrangements would be required in respect of protected tenancies that already exist at the time our recommended reforms are implemented (**CQ 65**).
- **Impact:** we ask consultees about the potential financial and other impacts of our provisional proposals (**CQ 66** and **CQ 67**).

Conclusion

We encourage consultees to read the full chapters in the Consultation Paper on the topics of interest to them, and to respond to all or any of the questions in the paper.

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

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