

1954 ACT CONSULTATION:

WHAT ARE THE OPTIONS FOR
SECURITY OF TENURE?



 **ADDLESHAW
GODDARD**

MORE IMAGINATION **MORE IMPACT**



PRIVATE AND CONFIDENTIAL



Should a statutory scheme of security of tenure exist and if so, how should it operate?

We set out pros and cons of the four security of tenure models proposed by the Law Commission. The outcome of the consultation is likely to depend on the extent to which the market currently uses the statutory scheme for security of tenure under the Landlord and Tenant Act (LTA 1954). We therefore provide details on how you can have your say, by responding to the consultation.

OPTION 1: ABOLITION OF SECURITY OF TENURE

FOR

- Lack of use in some sectors.
- Avoids the costs and delays associated with the contracting-out process and potentially adverse consequences of mistakes.
- Perception that LTA 1954 may not be well understood by global investors and that it discourages investments in the commercial property market.
- Elimination of cost, bureaucracy and delay associated with statutory security of tenure
- Security of tenure could be dealt by contractual right to renew.
- Contents of the lease better represents the rights of the parties.

AGAINST

- Regular use in some sectors.
- May be possible to amend LTA 1954 to reflect modern market conditions and leasing practices.
- LTA 1954 provides "off the shelf" security of tenure model.
- Could disincentivise tenant investment in premises which may impact upon growth of businesses.
- Impact (including on value) of abolition on market is difficult to predict.
- Loss of standardised system may increase costs as contractual rights to renew are drafted from scratch and will vary between leases.
- Considerable confidence/familiarity with current regime will be lost.
- LTA 1954 provides for occupation beyond contractual expiry.

OTHER CONSIDERATIONS

- Tenants would only have a right to a new tenancy upon contractual expiry if:
 - The Landlord agreed to it; or
 - The Tenant had a contractual right to renew.
- Landlords would have increased flexibility with:
 - Certainty as to contractual expiry date;
 - Freedom to develop or otherwise use the premises after contractual expiry, without the risk of expensive litigation; and
 - Ability to modernise leases and replace underperforming tenants.
- No longer able to negotiate a higher rent for protected lease.
- Reduction in tenant protection (especially for small businesses) – loss of goodwill and greater relocation costs.
- Increased uncertainty for tenants and therefore less incentive to invest in properties.

OPTION 2: CONTRACTING-IN MODEL

FOR



Retains flexibility to have protected and un-protected tenancies.



Retain "off the shelf" security of tenure model, so saves time and cost of drafting contractual right to renew.



If the consultation concludes that most leases are contracted-out of security of tenure, it will save time and costs if there were a change to a contracting-in model.

AGAINST



Would be a significant change in the market, although perhaps less impactful than other models.



Contracting-in to a statutory regime is unusual. A government/industry standard form contractual option could achieve same goal.



If the consultation concludes that most leases have protection, it makes sense to maintain the status quo so that only the minority of leases go through the contracting-out process.



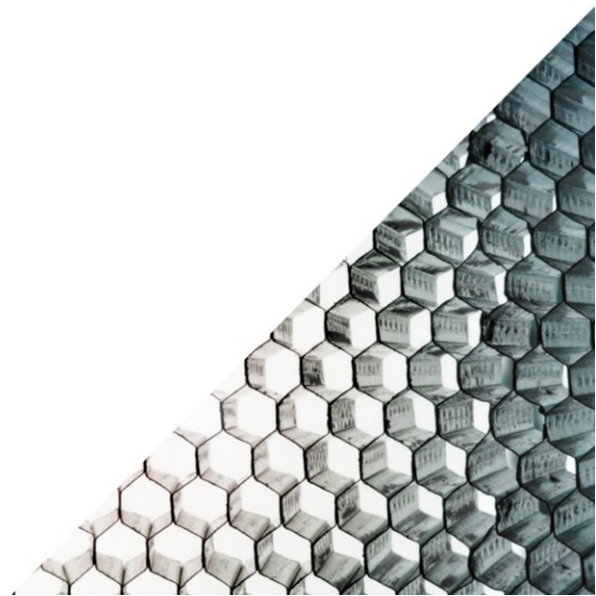
The cost/time of contracting-in may be a disincentive to use the statutory regime.



Adverse consequences of mistakes in the contracting-in process.

OTHER CONSIDERATIONS

- The default position is that tenancies are not protected and as such the model is more advantageous to landlords.
- Tenants may feel in weaker negotiating position having to request security of tenure.
- Tenants cannot acquire rights inadvertently, i.e. by occupying for an extended period informally or remaining in occupation after a tenancy expires.
- For those not aware of 'security of tenure' they are less likely to be made aware of it.
- Offers tenants less protection than contracting-out model.
- Offers landlords more flexibility than contracting-out model.



OPTION 3: CONTRACTING-OUT MODEL

FOR

- Retains flexibility to have protected and un-protected tenancies.
- Retains "off the shelf" security of tenure model, so saves time and cost of drafting contractual right to renew.
- Will continue the status quo, therefore avoid uncertainty in the market.
- The process of contracting-out may be changed, which may make it more streamlined, quicker and cheaper.
- If the consultation concludes that most leases are protected, it makes sense for contracting-out to continue so that only the minority of leases go through the contracting-out process.

AGAINST

- If the consultation concludes that most leases are contracted-out of security of tenure, it will save time and cost to change to a contracting-in model.
- There is a case for reform. Any current issues may remain.
- Partial reform, such as amendments to contracting-out process, may only cause confusion – the opportunity to make impactful changes and adapt to modern market conditions may be lost.
- Adverse consequences of mistakes in the contracting-out process.

OTHER CONSIDERATIONS

- The default position is that tenancies are protected and as such the model is more advantageous to tenants.
- For those not aware of 'security of tenure' they are more likely to be made aware of it via a contracting-out procedure than a contracting-in procedure.
- Offers tenants more protection than contracting-in model.
- Offers landlords less flexibility than contracting-in model.

OPTION 4: MANDATORY SECURITY OF TENURE

FOR



Market simplification and removal of time and costs associated with contracting-in/contracting-out process.



Avoids potentially adverse consequences of mistakes in the contracting-in/contracting-out process.

AGAINST



Previous operation of such a regime disincentivised landlords from offering short term/flexible tenancies (or indeed, any tenancy at all) due to fear of not being able to get vacant



Potential decrease in amount of space made available to business tenants as a result.



Removal of choice and lack of flexibility when negotiating terms of leases.



Impact (including on value) of mandatory security of tenure on market is difficult to predict.



Modern market conditions and leasing practices may not sit well with mandatory security of tenure e.g.

- Surplus vacant commercial space in sectors such as retail;
- Long-term shift to shorter term leases and more frequent renewals; and
- Greater proliferation of turnover rents.



More rigid and inflexible model might prove less resilient over time as market conditions and practices evolve.



Greater statutory intervention in the commercial leasehold market may be undesirable.

OTHER CONSIDERATIONS

- Greater protection for tenants.
- Reduced flexibility and negotiating position and increased risks for landlord, particularly where landlord:
 - Wishes to take back the premises at contractual expiry to carry out redevelopment; and/or
 - Wants to grant co-terminus leases for estate management reasons.



SCOPE

The consultation also considers the tenancies to which the LTA 1954 applies and whether more tenancies should be excluded.

FOR REFORMING THE CURRENT SCOPE OF THE ACT



Reform could seek to address the overlaps with other statutory regimes, reducing complexity and uncertainty for parties subject to more than one regime.

Reform could seek to exclude tenancies where there is too much protection, or it is unwanted or unnecessary e.g. short-term or periodic tenancies.

Reform could seek to better reflect modern usage of the LTA 1954, by excluding purpose groups or types of tenancy where security of tenure routinely contracted-out.

AGAINST REFORMING THE CURRENT SCOPE OF THE ACT

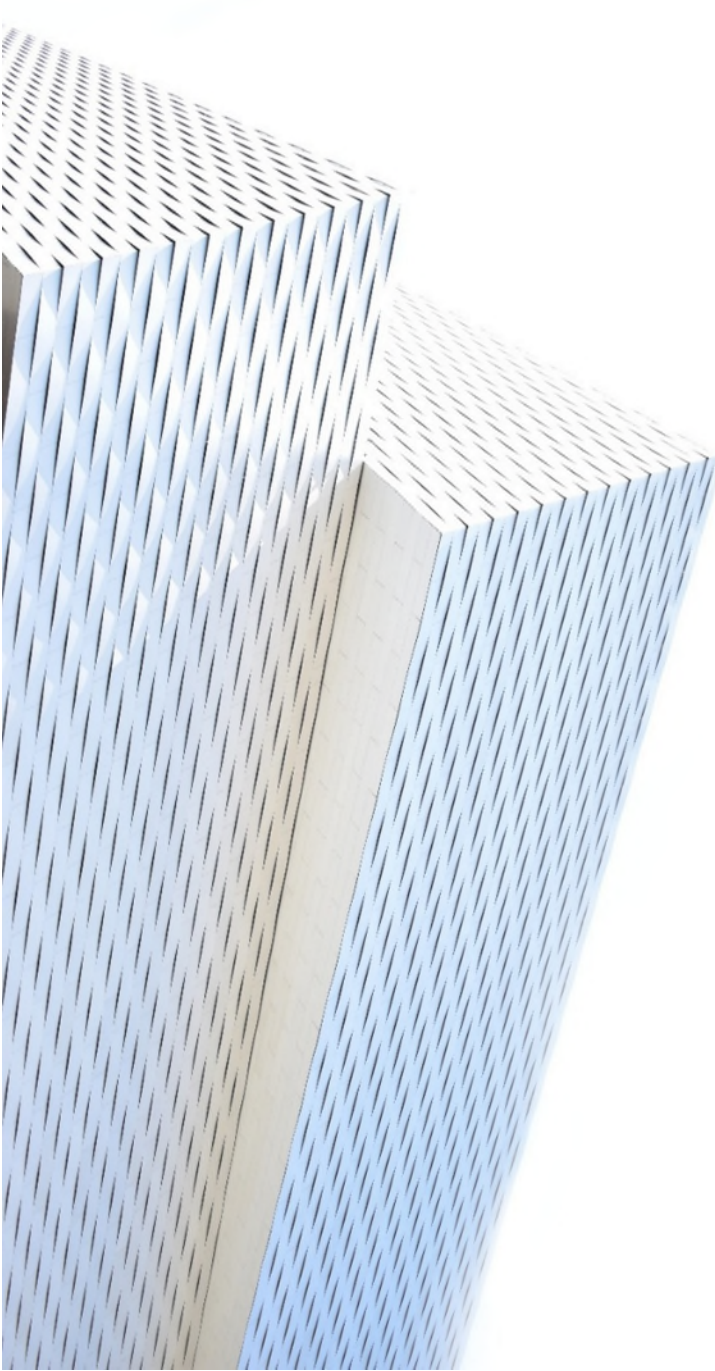


May increase uncertainty and complexity if more exclusions are added, resulting in more costly decision-making, advice and increasing the risk of error and litigation.



May increase the risk of unintended consequences e.g. a reduction in flexibility in lease negotiations.

Greater complexity may damage the Act's resilience and ability to adapt to the changing market. Focused changes that are relevant today may not be appropriate for tomorrow.

May increase the risk of arbitrary outcomes with binary tests for exclusions. Binary tests that have a cut-off point e.g. a level of rent or floor space, may mean that minor differences in tenancies result in significantly different legal outcomes.



THE CONSULTATION

- [Business Tenancies 1 Consultation Summary - Law Commission](#) 
- [Business Tenancies 1 Consultation Paper - Law Commission](#) 

You can respond to the consultation [HERE](#).

The deadline for responses to the first consultation is **19 February 2025**.

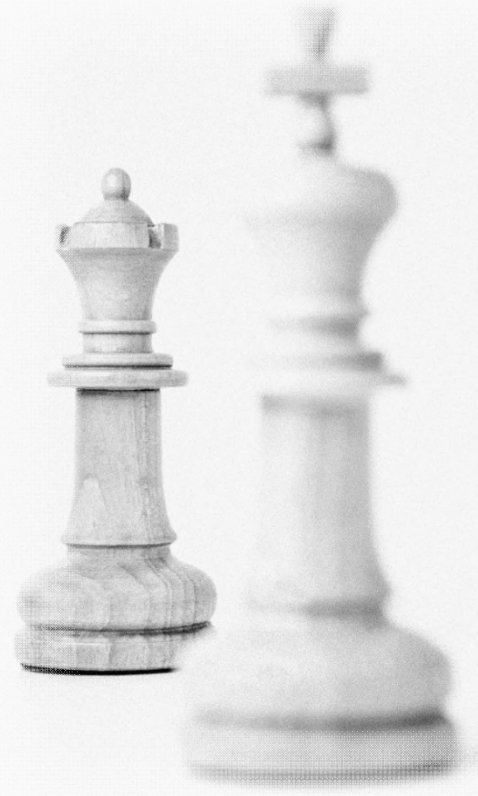
THE RIGHT TO RENEW

The LTA 1954 gives business 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.

BACKGROUND TO THE REFORM

In 1954, commercial rental space was scarce due to wartime bomb damage. The LTA 1954 introduced a right for business tenants to renew their leases or be compensated if the landlord wants the premises for its own occupation or redevelopment.

The LTA 1954 was last amended in 2003. However, the lettings market has changed a lot since then: the global financial crisis, the rise of internet shopping and the COVID 19 pandemic. The Law Commission is now asking the industry if the LTA 1954 still serves a worthwhile purpose.



STAGE 1 CONSULTATION

The Stage 1 consultation explores four models for security of tenure. The Law Commission's position is neutral. It does not recommend any one model and seeks feedback on whether and to what extent there is still an appetite for landlords or tenants to enter tenancies which provide security of tenure.

Views are requested on which model should operate and why, and what impact a change to the model of security would have on landlords, tenants, advisors and the commercial leasehold market generally.

In tandem with the consultation, the Law Commission seeks to develop a better understanding of the current operation of the Act and its impact on the commercial leasehold market. To this extent, it is asking all consultees, regardless of whether they have responded to the consultation or not, to [complete a survey](#) to provide industry insight e.g. on issues such as costs and timescales.

STAGE 2 CONSULTATION

Once the outcome of the first consultation is clear, the Law Commission plans a follow-up consultation to address the functional issues of how a reformed regime will operate. For example, if the current opt-out scheme of security is retained, reform could be expected to address known difficulties and may consider replacing the formal notice and statutory declaration with a simpler procedure.

It is expected to focus on possible changes to landlords' grounds for opposing a renewal, the terms of a renewal lease and streamlining the lengthy and expensive litigation process.

REFORM IN SCOPE

Changes to the scope of the LTA 1954 only become relevant if some security of tenure regime is retained. Here, the consultation addresses the types of tenancy that currently fall outside of the regime, which are set out in [section 43](#) LTA 1954 such as "Use Excluded Tenancies" and "Duration Excluded Tenancies". The consultation paper asks if there should be any changes made to these categories.

One likely area for reform may be the current minimum tenancy term required for the LTA 1954 to apply, which is currently set at six months. This means that many short-term tenancies need to go through the cumbersome 'contracting-out' procedure. Extension of this minimum term could be a meaningful improvement for landlords and tenants alike.



Responses can also be submitted by email to: <mailto:BusinessTenancies@lawcommission.gov.uk>
or by post to: Business Tenancies Team, Law Commission, 1st Floor, 52 Queen Anne's Gate, London, SW1H 9AG.

MORE IMAGINATION MORE IMPACT

addleshawgoddard.com