

THE 1954 ACT – PROS, CONS AND POTENTIAL REFORM

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Contents

- A (brief) history of the 1954 Act and the key policy considerations which have made it what it is so far
- Key issues of contention and the Law Commission's rationale for review
- Insights into the consultation responses so far
- Consultation – Part Two
- What could be changed and how this might impact the market

A Brief History of the Landlord and Tenant Act 1954

- A shortage of commercial property after the Second World War led to commercial tenants having very little negotiating power. Security of tenure was introduced by Part II of the Act to address this problem and provide tenants with more security to allow them to invest in and build their businesses.
- One of the key concepts driving this was the idea of “**goodwill**” – goodwill that attached to the tenant’s business in a particular location, generated and built by the tenant. One of the primary purposes of the Act was to protect this goodwill and, further, to protect tenants against the cost of relocating their businesses unnecessarily.
- To achieve this, the Act confers on business tenants a statutory right to remain in their premises following the contractual expiry of the lease. The tenant may call for a renewal lease of the premises on terms which are governed by the Act. If the landlord wishes to obtain possession, it can only do so on the basis of limited statutory grounds, which may ultimately need to be proven in Court. The tenant may also be entitled to compensation for the termination of the lease.

How the Act operates – the basics

- A lease protected by the Act will not expire at the end of the contractual term if the tenant is in business occupation of the premises..
- Instead, the tenant can remain in occupation on the same terms as the contractual lease. If neither landlord nor tenant takes any action, this situation can continue indefinitely (“holding over”).
- The landlord can terminate the ongoing statutory tenancy by serving between 6 and 12 months’ notice (**a section 25 notice**). This notice may not expire any earlier than the contractual termination date. The notice must state whether the landlord opposes renewal. If not, the landlord must propose new lease terms.
- The tenant can call for a new tenancy by serving its own notice (**a section 26 request**). If the landlord wishes to oppose renewal, it must serve a counter notice within 2 months.
- The tenant can also serve notice to quit (**a section 27 notice**) at any time, giving at least 3 months’ notice.

How the Act operates – the basics

Grounds of opposition (section 30(1) of the Act):-

- (a) The premises are in disrepair;
- (b) There are persistent arrears of rent;
- (c) Other breaches of covenant by the tenant;
- (d) The landlord has offered suitable alternative accommodation;
- (e) The tenancy was created by a subletting of part, and the landlord requires the whole;
- (f) Landlord's intention to redevelop;
- (g) Landlord's intention to occupy the premises itself.

Grounds (a), (b), (c) and (e) are **discretionary** – even if they are proven, the Court has discretion to grant a renewal lease anyway.

Grounds (d), (f) and (g) are **mandatory** – the Court must grant possession if the ground is proven.

Statutory compensation is payable if possession is granted on grounds (e), (f) or (g). This will be the rateable value of the premises or x2 the rateable value if the tenant has been in occupation for over 14 years.

Key practical points

- Unless both landlord and tenant are very motivated and co-operative, the process of both renewal and termination can be extremely drawn out.
- For renewals:
 - The tenant has ongoing protected occupation, so is under no pressure to give up possession;
 - There is usually a dispute over the appropriate level of rent and the key terms of the renewal lease. Legal questions can arise as to how the Act will affect the position and expensive expert evidence may be required which can cause delay.
- For terminations:
 - The tenant will usually resist termination, meaning that the question as to whether the landlord can prove one of the statutory grounds must go to trial;
 - It can take 12-15 months to get to trial on these issues, sometimes longer, and ballpark costs for a trial on redevelopment grounds (the most common ground) are usually in excess of £150,000.

Contracting Out

- Any agreement to contract out of the Act will be invalid unless the contracting out procedure is followed (as set out in the *Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 (SI 2003/3096)*).
- Statutory declaration procedure:
 - Landlord serves a warning notice less than 14 days before the completion of the lease/exchange of agreement for lease/commencement of occupation.
 - Tenant responds with a statutory declaration to acknowledge.
- Advance notice procedure:
 - Landlord serves a warning notice 14 days or more before the completion of the lease/exchange of agreement for lease/commencement of occupation.
 - Tenant responds with a simple declaration to acknowledge.
- Must be validly served.

Pros and Cons of the Act

- Security for tenants provides reassurance to invest in the premises (and the business) for the long term
- For tenants – rent on renewal is governed by the Act on terms which are usually beneficial for the tenant
- Contractual expiry date doesn't become a "hard stop" – it can suit both parties to have a degree of flexibility
- Any renewal or termination is "policed" by the Court, reducing unreasonable behaviour
- If the current lease terms are suitable and uncontroversial, renewal can be straightforward

- Development and repurposing of premises can be inhibited – statutory grounds for termination are limited and inflexible
- Compliance with the Act imposes an additional administrative burden, cost and often delay
- The framework of the Act can struggle to keep up with modern developments in the market – for example turnover rents, green lease clauses
- Increasing Court delays impact timescales around both renewal and obtaining vacant possession
- The market "doesn't like the Act" – most new commercial leases are contracted out

Law Commission Review

- Announced as part of the Government's Anti-Social Behaviour Action Plan with a remit to consider the workings of the Act and options to reform
- Key considerations are:-
 - Creating a framework that is used rather than opted out of
 - Supporting efficient use of space in high streets and town centres
 - Ensuring legislation is fit for today's commercial market, taking into account other priorities such as "net zero" and "levelling up" agendas
 - Fostering a productive and beneficial commercial leasing relationship between landlords and tenants



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Law Commission Review

○ Consultation Part One

"We have heard that the Act is not working well for landlords or tenants. Those affected by the Act report that aspects of the law are burdensome, unclear and out-of-date. There is concern that parts of the Act are standing in the way of modern commercial practices. This is causing unnecessary cost and delay for both landlords and tenants, and preventing commercial space from being occupied quickly and efficiently.

Often, landlords and tenants entering into business tenancies decide to contract out of the Act, meaning that tenants do not have the right to renew that the Act would otherwise give them."

- 4 models of security of tenure:-
 - No security of tenure
 - Contracting in
 - Contracting out
 - Mandatory security of tenure



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Consultation Responses



Consultation Responses

Switch to a contracting-in model.

"This will facilitate desirable redevelopment and refurbishment work and reduce the administrative burden for the majority of occupiers to whom security of tenure does not currently apply."

Exclude tenancies of 5 years or less from the Act.

"...to remove the administrative burdens on such leases and the uncertainty regarding when licences to occupy can become protected leases."



Consultation Responses

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Consultation Responses

Switch to a contracting-in model.

"We believe that radical changes are not required and that the 1954 Act only requires minor modifications."

Suggest that leases for 7 years or more should be automatically contracted-in.

"[this] would be supportive of smaller businesses and less of a deterrent to small business start ups."

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Consultation Responses



Consultation Responses

Switch to a contracting-in model.

"The primary reason for this is business efficacy. The majority of leases that we encounter are contracted out..."

The current requirement that contracting out can only apply to a tenancy for a term certain should be removed.

Refers to the legal problem caused by *London Borough of Newham v Thomas-Van Staden* [2008].



Consultation – Part 2



Law Commission

Reforming the law

Impact of Change

- Cost
- Timescales
- Flexibility
- Development and sustainability
- Competition
- Investment
- Certainty





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