Business Tenancies: the right to renew Consultation Paper 1: models of security of tenure (Law Commission Consultation Paper 266, published 19 November 2024)

Responses to the consultation paper

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INTRODUCTION

1.1 The Law Commission is conducting a project on *Business Tenancies: the right to renew.* It examines Part 2 of the Landlord and Tenant Act 1954 ("the 1954 Act"), which gives business tenants the right to renew their tenancies when they would otherwise come to an end, a right known as "security of tenure". Most business tenants automatically have the right to renew under the 1954 Act unless, before any lease is granted, the landlord and tenant agree that the right to renew should not apply. In order to do that – by a process known as "contracting out" – various formalities must be followed.

1.2 The Commission's first consultation paper, *Models of security of tenure*, was published on 19 November 2024 and the consultation closed on 19 February 2025.[1] In the consultation, we asked key questions about possible options to reform Part 2 of the 1954 Act. In particular, we considered the pros and cons of the current "contracting-out" model of security of tenure and considered three potential alternative models:

(1) mandatory security of tenure;

(2) abolition of security of tenure; and

(3) a contracting-in model.

1.3 We also sought views on whether or not the types of business tenancy which can benefit from security of tenure – the Act's scope – are the right ones.

1.4 In addition to the questions in our first consultation paper, we conducted a short survey to help us understand the impact of the 1954 Act on the current commercial leasehold market.

1.5 We received 164 responses to the first consultation paper from a variety of stakeholders through Citizen Space (an online portal for consultations) as well as by email and post.

1.6 This document sets out a complete compilation of all responses that we received to the first consultation paper, save for confidential responses as explained in more detail below.

A note about responses that were not provided through Citizen Space

1.7 The email and postal responses that we received were uploaded by us to Citizen Space for the purpose of preparing a comprehensive compilation of all responses. Although many of these consultees provided direct responses to the questions in our consultation paper, some sent a more general response. Where we received such responses, we have split the response and uploaded it to Citizen Space according to the questions that we asked in the consultation paper, endeavouring to allocate sections of each response to the most appropriate question in the consultation paper. In some cases, the text is either repeated in response to multiple questions, or is

[1] Law Commission Consultation Paper 266, available at https://lawcom.gov.uk/project/business-tenancies-the-right-to-renew/.

placed in response to one question only. As a consequence, the text of these responses may appear to be out of order in this compilation.

Confidential and anonymous responses

1.8 Most consultees were content for us to publish their names and their responses. However:

(1) some consultees requested that we keep their response confidential, but were content to be named as consultees ("category (1)");

(2) three consultees requested that we keep parts of their response confidential, but were content to be named as consultees and were content for other parts of their response to be published ("category (2)");

(3) one consultee requested that we treat their response as anonymous, so were content for their response to be published but did not want it to be attributable to them by name ("category (3)"); and

(4) one consultee requested that their response be treated as both anonymous and confidential ("category (4)").

1.9 The table of contents above gives a list of all consultees, including those in categories (1) and (2), but excluding those in categories (3) and (4).

1.10 The published responses in this document:

(1) exclude the responses from consultees in category (1);

(2) exclude the confidential parts of the responses from consultees in category (2);

(3) include the response of the consultee in category (3) without naming them; and

(4) exclude the response of the consultee in category (4).

List of consultees

1.11 Consultees whose responses are included in this document are:

(1) F Hinds Ltd

(2) Guild 750 Ltd

(3) Quilter Plc

(4) Pressure Coolers Limited

(5) SSP Group plc

(6) Costa Coffee

(7) GXO Logistics

(8) Next plc

(9) The Works Stores Limited

(10) Gareth Lloyd-King, Specsavers Optical Superstores Limited, Personal capacity

(11) River Island Clothing Co Limited

(12) Cellnex UK Limited

(13) Aldi Stores Limited

(14) Evoke plc

(15) Crown Paints Ltd

(16) Halfords Group PLC

(17) Boots UK and Boots Opticians

(18) Virgin Media 02

(19) The Guinness Partnership

(20) Bruntwood Management Services Limited

(21) Heineken UK

(22) Punch Pubs & Co

(23) Admiral Taverns Limited

(24) British Land

(25) Dominic Ketteringham, Hillview Real Estate, Personal capacity

(26) Jeremy, Chg, Personal capacity

(27) Dillington Estate

(28) The Lulworth Estate

(29) Colin Rayner, WT Lamb Holdings ltd, Personal capacity

(30) Trenitalia c2c Limited (trading as c2c), registered number 07897267

(31) Tom Ellams, Pradera Lateral, Personal capacity

(32) The Howard de Walden Estate

(33) Mileway

(34) The Arch Company

(35) Indurent

(36) TT Group

(37) Hammerson PLC

(38) Network Rail Infrastructure Ltd

(39) Church Commissioners for England

(40) Landsec

(41) Tony, HSL, Personal capacity

(42) Griffon Group

(43) The Port of Dover

(44) Valor Real Estate Partners

(45) Shaftesbury Capital PLC

(46) Bolingbroke Limited

(47) Trafalgar Gate Properties

(48) Basingstoke and Deane Borough Council

(49) [Anonymous]

(50) Paul Wigham, All Our Bars Limited, Personal capacity

(51) Steve Nicholson, Altermans Solicitors, Personal capacity

(52) James Gray, Halfords Group Plc, Personal capacity

(53) NHS Wales Shared Services Partnership

(54) National Grid Electricity Transmission plc

(55) Central England Co-operative

(56) J Sainsbury Plc

(57) Stonegate Group

(58) Greene King Ltd

(59) The Co-operative Group

(60) The Office Group

(61) British Independent Retailers Association (BIRA)

(62) Guardians of the Arches

(63) British Retail Consortium

(64) NWSSP -SES

(65) ACS (The Association of Convenience Stores)

(66) Commercial Tenants Association

(67) Booksellers Association

(68) Royal Institution of Chartered Surveyors (RICS)

(69) British Beer & Pub Association

(70) CAMRA

(71) Institute for Revenues, Rating and Valuation

(72) Association of Real Estate Funds (AREF)

(73) British Property Federation (BPF)

(74) City of London Law Society's Land Law Committee

(75) Central Association of Agricultural Valuers

(76) NFU

(77) Country Land and Business Association

(78) Property Managers Association

(79) Property Litigation Association

(80) Law Society of England and Wales

(81) Propertymark

(82) UKHospitality

(83) Kim Lewison, Lord Justice of Appeal HM Courts and Tribunals Service, Personal capacity

(84) Railway Delivery Group Ltd

(85) HDG Limited

(86) [Not Answered]

(87) Office of the Pubs Code Adjudicator (PCA)

(88) Office of Rail and Road

(89) Epwin Group PLC

(90) Tim Rowcliffe-Smith FIRRV, Personal capacity

(91) Jonathan Hewitt, Personal capacity

(92) Rachel Watkin (District Judge), Ministry of Justice, Personal capacity

(93) Guy Pewter, G+S, Personal capacity

(94) Tim Garratt, Blackstar Advisory, Personal capacity

(95) Robert N Smith, Levy Real Estate, Personal capacity

(96) [Not answered], Personal capacity

(97) Everett Tomlin Lloyd & Pratt

(98) Gethin Parry, Pearce & Co (Chertsey) Ltd, Personal capacity

(99) Michael Anthony Harvey, Nantes Solicitors Limited, Personal capacity

(100) Elizabeth Rhodes, Historic England, Personal capacity

(101) Rupert Barnes, Personal capacity

(102) Navneet Jhawar, BPP University, Personal capacity

(103) Avison Young

(104) Mr A S Hyman

(105) Adam Schofield, Hicks Baker, Personal capacity

(106) Gowling WLG (UK) LLP

(107) PETS AT HOME PLC

(108) Michael Large, Setfords Solicitors, Personal capacity

(109) Stephen Shapiro, LB Camden, Personal capacity

(110) Trowers & Hamlins

(111) Pinsent Masons LLP

(112) Paul John Raeburn, Raeburn Realty Limited, Personal capacity

(113) BCLP

(114) Ward Hadaway LLP

(115) Mark Barley, Womble Bond Dickinson (UK) LLP, Personal capacity

(116) Camilla Lamont, Landmark Chambers, Personal capacity

(117) Maggie Stobo, MFS Resolution, Personal capacity

(118) Ashurst LLP's Real Estate Dispute Resolution team

(119) Geoffrey Pentecost, JLL, Personal capacity

(120) Howard Thompson, H W Thompson & Co, Personal capacity

(121) James Portugal, James Portugal Ltd, Personal capacity

(122) Victoria Quinn, Wilkin Chapman LLP, Personal capacity

(123) Nigel Madeley, Personal capacity

(124) Osborne Clarke LLP

(125) NHS Wales Shared Services Partnership - Legal & Risk Service

(126) Stephens Scown LLP

(127) David Farrington, Glenny LLP, Personal capacity

(128) Field Seymour Parkes LLP

(129) Michael Lever, Personal capacity

(130) CMS Cameron McKenna Nabarro Olswang LLP

(131) Pieter Boodt, Russell-Cooke LLP, Personal capacity

(132) Richard Dell, Moore Allen and Innocent, as head of Commercial Property for the firm

(133) Ian Campbell, SHW, Personal capacity

(134) Tom Seabrook, Gunnercooke LLP, Personal capacity

(135) Nick Gardner, Time Retail Partners, Personal capacity

(136) Capital Law Limited

(137) Pradera Lateral

(138) Transport UK

(139) Revantage Real Estate Limited

(140) Steven Redshaw, Pradera Lateral, Personal capacity

(141) Stone King LLP

(142) Blackstanniland Ltd

(143) Christopher Jessel, Personal capacity

(144) Martin Kidd, Vokins Chartered Surveyors, Personal capacity

(145) Derek Bruce, City St George's, University of London, Personal capacity

(146) Ratcliffes Chartered Surveyors

(147) Shoosmiths LLP

(148) Hogan Lovells

(149) Niall Helferty, Kuits Solicitors, Personal capacity

(150) A V Barker, Personal capacity

(151) Falcon Chambers

1.12 Consultees who provided confidential responses (category (1)) were:

(1) E Lindsay, Pound Redeemed, Personal capacity;

(2) DHL GBS UK Limited;

(3) Halfords Group plc;

(4) Tom Hubbard & Andrea Planchant, DWF Law LLP, Personal capacity;

(5) New Look;

(6) Lush;

(7) Sunningdale Golf Club;

(8) Grosvenor Property UK;

(9) URW;

(10) Arqiva;

(11) EE; and

(12) Lauren Hewings, Smith Partnership Solicitors, Personal capacity.

RESPONSES TO CONSULTATION PAPER 1

F Hinds Ltd

Role: a tenant (or predominantly a tenant)

If landlord or tenant:

Number of employees: 250 or more

Regions: North West, North East, Yorkshire and the Humber, Wales, West Midlands, East Midlands, East of England, South West, South East, London

Sector(s): Retail and wholesale

CQ1 – 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.

N/A

CQ2 – 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.

Model choice: Mandatory security of tenure;

Reasons

- Investment by tenant often substantial with paybacks over long periods, 10 years plus

- Time to build a business inc. goodwill often cannot be rebuilt easily elsewhere

- certainty important when recruiting short and long term through course of a business, longevity important for success

- Lack of security could put off investment in certain locations, as tenants worry about certainty of occupation

CQ3 – 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 parties and their advisers

1. as above, tenants easily removed from premises and/or forced to negotiate longer terms, increasing long tenant rental liabilities

2. Possibly longer leases, possibly higher rents

(2) on the commercial leasehold market

Unknown to a large extent although LLs with more power to remove tenants at the end of leases could lead to an inflation in lease length, overexposure of tenants to long rent liabilities, a decline in leased property as uncertainty in high value areas limits demand

CQ4A – 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.

N/A

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

N/A

CQ5 – 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.

N/A

CQ6 – 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

N/A

(2) on the commercial leasehold market

N/A

CQ7 – 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).

As previously answered, losing security will damage tenants as dilutes their current standing vs strengthening LLs position, particularly at the beginning and end of lease negotiation

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Guild 750 Ltd

Role: a tenant (or predominantly a tenant)

If landlord or tenant:

Number of employees: 250 or more

Regions: North West, North East,Yorkshire and the Humber, Wales, West Midlands, East Midlands, East of England, South West, South East, London

Sector(s): Retail and wholesale

CQ1 – 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.

Landlord would have refused a lease renewal if the premises lease was outside the 1954 Act

CQ2 – 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.

Model choice: Mandatory security of tenure;

Reasons

Landlords tend to be in a stronger negotiating position when letting premises.

Landlords tend to use no security of tenure situations to 'persuade' tenants to agree to higher rents at renewal - on threat of losing the premises and giving unsatisfactory / no compensation - Tenant loses their investment in the premises and may suffer high closing down costs (eg. staff / relocation)

Tenant can lose goodwill - no compensation

CQ3 – 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 parties and their advisers

Tenants will be thrown out of premises.

May be 'persuaded' to agree longer lease terms

(2) on the commercial leasehold market

Rents will increase at renewal (or not reduce when the market suggests that they should decrease eg. Cribbs Causeway lease renewals in c.2013).

Tenants will lose potentially profitable premises at the whim of a landlord

CQ4A – 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.

1. Yes

2. Yes, for an initial tenancy but where a lease is renewed - then should automatically be 'Included' within the scope of the 1954 Act.

3. Don't know

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

No

CQ5 – 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.

CQ6 – 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

(2) on the commercial leasehold market

Rents would effectively be higher than otherwise because landlords could 'hold out' for tenants to accept a higher rent in order to retain their (profitable) premises

CQ7 – 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).

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

A lot of the problem (timing / cost) of lease renewals is that the ultimate arbiter is the Court system - which is very costly and currently back-logged . Some parties effectively 'refuse' to negotiate, knowing / hoping that their adversary will not be able to afford the cost or wait (having to pay to high or low rent until case heard).

Solution :- take the Court out of the equation so that renewals to be determined by an arbitrator (or panel of) with decision binding on the parties (similar to rent review arbitrator)

Quilter Plc

Role: a tenant (or predominantly a tenant)

If landlord or tenant:

Number of employees: 250 or more

Regions: North West, West Midlands, South East, London

Sector(s): Financial, professional, scientific and technical services

CQ1 – 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.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

The current system seems to work well, giving tenant's a general ability to obtain security of tenure but allowing landlords flexibility, especially for shorter leases or in special circumstances to grant contracted out tenancies. To not have security as a tenant could be extremely disruptive to our ability to conduct our business and also costly due to moving costs

CQ3 – 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 parties and their advisers

No significant impact as no change to current model

(2) on the commercial leasehold market

As above

CQ4A – 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.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

CQ6 – 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

(2) on the commercial leasehold market

CQ7 – 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).

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Pressure Coolers Limited

Role: a tenant (or predominantly a tenant)

If landlord or tenant:

Number of employees: 10-49

Regions: London

Sector(s): Manufacturing

CQ1 – 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.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

Business tenants need protection from parasitical landlords whose only interest is to maximise profit

CQ3 – 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 parties and their advisers

None of your 4 options is really good enough. There is a crisis of lack of business and industrial rentals space especially in large urban areas.Nobody seems to care. Small and medium businesses are essential to the economy and employment, they are its very life blood. No government seems to give a fig for them.

The only sensible model will be a Right To Buy for all businesses with leases. So any commercial tenant can force the landlord to sell to them at a negotiated price, to be set by a commission if not otherwise agreed. This would allow business property to go back to those who actually use it rather than the rentier capitalist parasite class.

(2) on the commercial leasehold market

It should be strictly illegal to convert business and commercial property to residential. This has devastated the supply of business property. In London, almost the only company which rents out smaller spaces is now The Arch Company and even they have been ramming up their rents which they can get away with because of lack of supply elsewhere. And the only reason their properties have not been made into residences is because it is illegal being so close to railways.

Businesses must be given proper protection from evil landlords and given the Right To Buy. I would love to buy and have tried to buy the property which my business currently occupies

(23,000 sq ft of warehouse plus an acre of land in London SE28 postcode) but of course Peabody will never sell it because they think they know better. They are just another evil parasitical landlord, one of many I have experienced.

CQ4A – 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.

Virtually all landlords now force tenants to opt out of the L&T 1954 act. The landlord usually holds the whip hand (in London ALWAYS because of lack of supply) and can force the incoming tenant to accept whatever terms they wish.

This must be stopped. Your option 4 (forced security of tenure) is the best of the 4, but not good enough. We need a business Right To Buy for all commercial and business tenants.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

No

CQ5 – 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.

Your assessment is too favourable to the evil parasite landlords. Land and property owners must be forced to give decent terms to tenants and tenants MUST be given the Right To Buy all business property. It's a no brainer.

CQ6 – 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

Hopefully you can improve the rights of tenants. But it will probably get torpedoed in Parliament by the army of rentier land owners especially the Tories.

(2) on the commercial leasehold market

Give all business owners a Right To Buy any leased commercial property. It is the only way forward.

CQ7 – 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).

In Bulgaria, business do already have the right to buy commercial properties which they occupy. Its a great idea. Also ensure legislation that the property cannot subsequently be made into residential otherwise those same business owners will become lazy rentier capitalists instead.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

-

SSP Group plc

Role: a tenant (or predominantly a tenant) I am a solicitor working as an in-house property lawyer in a tenant retailer.

If landlord or tenant:

Number of employees: 250 or more

Regions: North West, North East, Yorkshire and the Humber, Wales, West Midlands, East Midlands, East of England, South West, South East, London

Sector(s): Hospitality, Retail and wholesale

CQ1 – 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.

None. Our Welsh leases are protected tenancies and we view them as exactly the same as English leases.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

The current model works well and it is a known entity. We think this strikes the fairest balance between landlords and tenants on renewal. Approximately 55% of our UK leases are protected business tenancies. We do not agree that security of tenure is an outdated concept: this is just landlords and their advisors agitating to try to scrap tenant protections to give themselves a better bargaining position/ability to increase rents to above a market level by taking advantage of a tenants established goodwill and capital investment. We strongly agree with the statement at paragraph 2.28 that during negotiations for a protected renewal tenancy, the potential for the landlord to take advantage of the sitting tenant is significantly reduced. We do not agree that a contracting in model or contractual options can replace a contracting out model fairly as where such right is optional rather than automatic, it has to be bought from the landlord (in the form of a premium or a higher rent). We consider the current contracting out model strikes a fair balance between the rights of tenants and landlords. It provides a flexible and cost-effective route to:

- protect the ability of tenants' businesses to operate from their existing premises and prevents the landlord from extracting non-market rents;

- secure open market rents for landlords, while ensuring tenants keep their buildings occupied and maintained (and business rates paid);

- incentivise the tenant business to invest for the longer term – even in challenging commercial conditions.

We strongly agree with paragraph 3.84 that the existence of statutory security of tenure gives tenants more confidence to invest in their premises and in their business because they have greater confidence that their business will not be forced to move without good reason and that abolishing statutory security of tenure would disincentivise investment, harming growth amongst certain businesses.

CQ3 – 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 parties and their advisers

If security of tenure was abolished or a contracting in model were adopted, the biggest impact would be on existing protected tenancies and their renewal. How would tenants be compensated for the removal of their valuable protected property rights, established goodwill and capital investments made on the assumption of having a long term lease asset? We strongly agree 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/Human Rights Act 1998.

(2) on the commercial leasehold market

Mandatory security of tenure or abolition of security of tenure will have a significant impact on the market, swaying it in favour of tenants in the former case or landlords in the latter case. A contracting in model or reliance on contractual options cannot simply replace a contracting out model fairly as where such right is optional rather than automatic, it has to be bought from the landlord (in the form of a premium or a higher rent). We strongly agree with paragraph 3.84 that the existence of statutory security of tenure gives tenants more confidence to invest in their premises and in their business because they have greater confidence that their business will not be forced to move without good reason and that abolishing statutory security of tenure would disincentivise investment harming growth amongst certain businesses.

CQ4A – 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.

As to 1) and 2) we consider the existing scope of the 1954 Act is appropriate as to use and duration exclusions.

With regard to footnote 107 of the Consultation Paper, we are a major tenant of catering premises in railway stations and we do not consider protected leases in the railway catering sector represent a barrier to competition or provide too much protection. Leases for new outlets are now typically concluded outside of the 1954 Act (rail landlords will not offer protected tenancies on new units as a blanket policy) and the total number of existing protected leases is decreasing through natural attrition (following redevelopment or

surrender of loss making units). We are a specialist in the travel catering and retail space, where the railway station landlords own/operate nearly all the units from which we wish to operate (i.e. we cannot simply walk away from a negotiation and move our business to a nearby unit owned by another landlord). Security of tenure ensures our lease renewal negotiations are fairer and balanced, protecting us from the landlords extracting non-market rents and uncommercial terms, it also gives us greater security to invest in a unit as we know that – provided that the lease is complied with and the landlord does not invoke its break rights (e.g. to redevelop) – we can secure a renewal of the lease and recoup capital over a time period which exceeds the initial term of the lease.

As to 3) we can really only respond as a tenant of shops (with ancillary offices and warehousing) and have no views as to whether other types of tenancy should be included or excluded.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

It is our view that should security of tenure be abolished or a contracting in model be adopted, existing protected tenancies should continue under the current model indefinitely.

CQ5 – 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.

We are in broad agreement. One point with which we disagree is the assumption that protected leases are slower and more expensive to renew. As the terms of the lease will usually follow the existing lease except for reasonable modernisation this can make the process of lease renewal of a protected lease quicker than for a 'contracted-out' lease as agents and lawyers will not dwell on negotiating unnecessary changes to the lease as ultimately these have to be reasonable and justifiable. The cost of contracting out (i.e. procuring a statutory declaration) is also negligible.

CQ6 – 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

Please refer to our answer to Question 3

(2) on the commercial leasehold market

Please refer to our answer to Question 3

CQ7 – 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).

No.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

N/A

Costa Coffee

Role: a tenant (or predominantly a tenant)

If landlord or tenant:

Number of employees: 250 or more

Regions: North West, North East, Yorkshire and the Humber, Wales, West Midlands, East Midlands, East of England, South West, South East, London

Sector(s): Hospitality, Retail and wholesale

CQ1 – 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.

We hold a substantial property portfolio across both England and Wales. We would be concerned if a different approach emerged in Wales to the one which exists in England. Consistency is important to avoid such complexity and to ensure properties can be managed efficiently and under one legal basis.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

The paramount objective must be to ensure that the existing model of security of tenure is not undermined by the review and is retained. Our own data shows that 91% of the Costa estate is 'Inside the Act' in England and Wales

Retaining the existing contracting-out model, plays a fundamental role in ensuring the continued viability of modern retail investment, for those tenants who wish to advocate this route of occupation.

[REDACTED]

With any 'good' Landlord & Tenant relationship, we collaborate closely with our landlords which allows them to flag early any plans linked to re-development, and thus avoid commercial risk.

The Legal Dimension: The current contracting-out model has been in place for more than 50 years. It is well understood, stable and effective. There is, however, considerable scope for the detail of the legislation to evolve to ensure that it is effective in delivering the needs of modern tenants and landlords.

As identified in the October 2016 submission, one area to improve is the process of Contracting Out, would be the option to remove the 'Stat Dec' and the £5 cash payment.

We would advocate a system that where both parties are professionally represented that the need for the stat dec is removed under any reforms.

At a recent round table discussion, it was highlighted that for independent and smaller retailers it is often the case that landlords do not offer security of tenure for leases. There was a strong view that a better landlord/tenant relationship can only be achieved with retention of security of tenure and enhanced protections should be put in place to ensure that that this is equally available to all tenants, irrespective of their market position.

It was also noted that smaller retailers may not have the resource or capability to engage with professionals and understand the protections available to them.

The risk of a tenant losing any commercial protection is far greater with an opt-in model than an opt-out approach. This would potentially compel many companies to incur increased litigation costs or related expenditure at the time when they would have traditionally renewed.

Impact of Ending a Contracting Out Model: Moving to a contacting-in model would fundamentally undermine the stability which arises from the current approach, eroding the certainty which enables our business to construct the business case to make the necessary investment. The resulting reduction in protection would materially undermine a tenant's ability to ensure they obtained security of tenure as part of their lease negotiations. In addition, as observed in the consultation document, under a contracting-in model there is a clear risk that smaller businesses may be left unaware even of the existence of the potential for a protected tenancy. In such circumstances, the tenancy will, by default, be outside the statutory scheme and the landlord would not need to go through any meaningful process to contract out of security of tenure.

We believe that the overwhelmingly dominant position which landlords would then occupy would mean that, for many prospective tenants, there would be little possibility of securing a protected tenancy. Even were this possible, it is also apparent that it will be vastly more expensive and cumbersome under a contracting-in model to grant a protected tenancy than under the current approach.

Our experience in Scotland, where there is no security of tenure is instructive, illustrating the practical difficulties which arise for tenants without adequate legislative protections. The following issues as commonplace:

- Failure of landlords to engage with meaningful dialog ahead of leasing expires, especially when rents have dropped in the market. There has been a significant correction in rental values post Covid19, which we have managed to secure in England & Wales. In Scotland this is proving more difficult, given if agreement cannot be reached, the only way to rebase would be to service notice, close and relocate.

- The inability to rebase rent to market rents via any form of arbitration or expert determination.

- The inability to seek any form of interim rent, whilst negotiations and undertaken by the parties. This can mean that tenants can be overpaying for properties for many years ahead, when they have goodwill invested in a specific location, and loyal employees.

- Lease Renewal Terms which have been agreed between the parties, for landlords then at the '11th hour' to renegue on those terms , meaning that you either accept their demands, for example to double the Rent or you having to exit within 41 days.

- Being held to 'ransom' by a landlord, who have aggressively purchased multiple retail parks in England, Wales, and Scotland. It was clear that if we did not agree to continue to pay the passing rents on properties in England & Wales (inside the act with the ability to negotiate market rents which should have rebased), then we would be at risk of not be offered the chance to remain in stores on those parks in Scotland where no security of tenure exists.

- Tacit Relocation only allows an existing tenant to hold over for a further 1 year. This limits any investment in these stores and the long-term viability of these towns and communities.

We would challenge the assumption, set out in the consultation document, that under a contracting-out model, the parties incur additional costs and delay in granting unprotected tenancies rather than protected tenancies because they go through a statutory contracting out processes. This is not borne out by the reality, which sees little procedural complexity and/or cost. By contrast, a contracting-in procedure could be contentious from the start with additional upfront costs.

It is also important to remember the impact on colleagues of the uncertainty which arises at the end of a lease. A store closure requires a minimum of six months to manage effectively. Our experience of operating in Scotland has shown the adverse impact this can have on our colleagues.

CQ3 – 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 parties and their advisers

For the purpose of this question, we have primarily focused on the potential impact of moving away from a contracting-out model to a contracting-in model. This is in view of the fact that these seem to be the only models likely to receive serious consideration. Obviously were serious consideration being given to a move to abolish all security of tenure in law, the effects outlined below would be further magnified.

From the perspective of our business, any change to the model of security of tenure would have extremely serious and negative implications. As set out in the answer to Question 2, the evidence clearly shows that our estate has a high utilisation of security of tenure. Almost 91% of our stores are inside the Act, with this integral to our business.

Impact on Parties to Tenancies: Changing the existing approach to a contracting-in model would represent an extremely significant reduction in the protections for tenancies compared to the existing approach. The reversal of the current position, to introduce a position where tenants do not have security of tenure unless they contract into a statutory scheme, would inevitably leave tenants in a much weaker position in any contract negotiation. This would undermine the certainty of retailers looking to take on new retail space and harm the viability of existing property strategies.

It is also inevitable that it would be significantly more expensive and complicated to grant protected tenancies under a contracting-in model because parties would need to go through a statutory procedure to do so. This would entail delays to the speed at which a tenancy could be entered into and commence. The resulting impact would be extremely likely to mean that landlords would in practice be unwilling to offer protected tenancies. In practice that would mean that a move to a contracting-in model would materially undermine the use of security of tenure.

As already noted above and the issues faced in Scotland, if this approach were adopted in England & Wales there would be significant and substantial harm to the commercial property market, and the viability of retailing moving forward. The ability to seek short term leases with security of tenure, has allowed Tenants to both regularly invest and rebase rents over the last 10-12 years instead of being forced to seek much longer terms. Where Rent Reviews remain upwards only, meaning in a falling market tenants could be locked into paying overly inflated rents for many years if no security of tenure were available

(2) on the commercial leasehold market

Any move to weaken the ability of retailers to obtain security of tenure would inevitably gravely undermine the viability of retailers' utilisation of physical retail space. We are keenly aware from other live policy discussions, for example in relation to changes to Business Rates, of the significance which changes to arrangements relevant to property costs can have for the viability and utilisation of properties. It is clear that even marginal changes can have significant repercussions for the viability of properties. Following the recent Budget, which saw significant additional employment and other costs impacting the industry, a number of retailers have announced reductions in their planned store portfolios arising directly from that decision. Any change to the contracting out model would be expected to precipitate much more serious impacts for the viability of retail property portfolios and the accompanying investment models which underpin them.

Changes in accounting rules requires Costa to report on our full lease length liability and rent commitments on the balance sheet. The removal of security of tenure is likely to mean that we may be forced to seek longer lease terms, resulting in greater balance sheet exposure, and potentially less free cash to invest in store growth and job creation.

CQ4A – 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.

We would strongly oppose any change to increase the scope of the Use Excluded Tenancies to include any properties used by retailers in their commercial activities.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

As stated above we would strongly oppose any change to increase the scope of the Use Excluded Tenancies to include any properties used by retailers in their commercial activities. Our own evidence supports the narrative that protected tenancies remain vitally important to our business and current operating model and are very much current standard practice in the Retail Sector .

This will allow for future investment in our estate, job creation and the ability for our business to rebase rents where values continues to fall in certain locations.

We remain sceptical on who is pushing the agenda for proposed reform to the 1954 Act, and any suggestions that it is now widespread practice for leases to be excluded from security of tenure is untrue in the Retail Sector. Our own evidence supports this with only a limited number of stores being held Ex Act (>9%), in extremely specific markets linked to the travel sector (Air & Rail), and a small number of shopping centres.

Our experience of dealing with landlords at lease expiry on Ex Act lease renewals is not a fair or balanced one in negotiation. There must also be some appreciation that there are some landlords who have questionable business ethics, values, and behaviours. Having a statutory framework to ensure that the courts can step in if required to bring both parties to the table is very much needed and must be retained.

In my own experience of practice over 24 years, I have only ever had to use the statutory process at court twice.

Where I represented Boots V Goldpine Estates Ltd (2014) the court awarded an offset order to cover the interim rent payment due to Boots where the landlord had clearly made no provision to repay. This resulted in a 4.5 year of Rent-Free period on a 5-year lease term. Without the 1954 Act we would not have been able to crystallise this sum, nor complete a new lease for the premises, as the landlord used persistence delaying tactics to avoid the interim rent payment.

We are deeply concerned that, in illustrating the potential disadvantages of reforming the scope of the Act, that the Law Commission has chosen a 'complex example' based around the exclusion of larger, town centre retailers from the scope of the Act. We recognise that this has been included purely for the purposes of illustration, but we would emphasise in the strongest terms that any approach which would seek to remove retail properties from the scope of the Act would be opposed by Costa and the wider retail industry. The breadth of disadvantages identified in the document in relation to the 'complex example' are accurate and effectively illustrate the harm that would result.

We dispute the view, intimated in the document, that security of tenure gives tenants a stronger negotiating position than landlords at renewal. This is fundamentally incorrect. Instead, security of tenure acts to level the strength of the negotiating position, without which the tenant's position would be materially inferior to the landlord.

We do not believe that the current contracting out approach can be viewed as 'going too far' in relation to the types of properties we occupy.

It is notable that the basis on which rents, and lease lengths are agreed at renewal is not really discussed in the section looking at advantages and disadvantages. These are based on comparable market transactions, so outcomes should not be biased in the direction of either party. This is a fairer way to set the rent for a sitting tenant than not having protection and being in a very weak negotiating position. It is also noted that determining the rent via an arbitrator/expert has significant advantages as a speedier and less costly means of resolution than through the courts.

While this section broadly provides a reasonable summary of the advantages and disadvantages, the level of severity of the differing models is not adequately considered. Losing security of tenure would result in far more damage to tenants' interests than any perceived damage to landlords' interests from keeping security. The costs and delay of agreeing rents and contracting out are mentioned as a negative issue, however, these are far less significant than the potential impact of losing the right to security of tenure.

It also appears clear that the effect of having to agree lease extension options in the event of the loss of security of tenure needs to be considered in greater detail. The weaker negotiating position of the tenant would mean that lease extension options could be agreed 10-15 years before they come into effect or are taken up. These lease lengths and other terms may not be appropriate in the future. There is also a risk that rents agreed to reset to market value in the future, instead may be an upward only reviews at that point. This means in turn that rents cannot be re-based. This contrasts with a lease which has security of tenure, which permits rents to move up or down correctly reflecting market value. The resulting lack of security of tenure would be inflationary.

CQ6 – 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

Our evidence has been set out above in earlier questions. However, it was noted that the 1954 protects many elements of a tenant's occupation but fundamentally is a barrier to there being a ransom on the rent payable. Were the model underpinning the Act to change, considerable expense could result from the use of advisors for curating, creating, and running the disputes. Retailers are likely to suffer as a result of the need to incur costs whilst any changes in law were worked through. This would put additional pressure on an already stretched industry.

(2) on the commercial leasehold market

Our evidence has been set out above in earlier questions. However, it was noted that the 1954 protects many elements of a tenant's occupation but fundamentally is a barrier to there being a ransom on the rent payable. Were the model underpinning the Act to change, considerable expense could result from the use of advisors for curating, creating, and running the disputes. Retailers are likely to suffer as a result of the need to incur costs whilst any changes in law were worked through. This would put additional pressure on an already stretched industry.

CQ7 – 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).

No issues have been identified in relation to the areas raised by this question.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

None

GXO Logistics

Role: a tenant (or predominantly a tenant)

If landlord or tenant:

Number of employees: 250 or more

Regions: North West, North East, Yorkshire and the Humber, Wales, West Midlands, East Midlands, East of England, South West, South East, London

Sector(s): Transport and storage

CQ1 – 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.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

The vast majority of our 180 leasehold sites are protected tenancies. We rely on the security this provides to be able to invest significant capex in our buildings and operations. A contracting out model provides the presumption that a lease of a reasonable duration will be protected and therefore we usually are able to secure a protected lease where we require one. The ability to choose to contract out is useful where we require a short or flexible term and the landlord would be unwilling to grant this as a protected tenancy.

CQ3 – 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 parties and their advisers

Landlords will have enormous leverage with catastrophic consequences on Tenants businesses if security of tenure is not easily available.

A contracting in method will lead to Tenants having to pay for the privilege of a protected tenancy or being refused outright.

All leases being protected will lead to a lack of flexibility for both landlords and tenants and stifle development

(2) on the commercial leasehold market

All leases being protected will likely lead to longer lease lengths and a reduction in flexibility

No security of tenure will lead to a lack of investment

CQ4A – 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.

1. I am not familiar with why certain uses are excluded, in the absence of any good reason why not then all tenancies should be under the opting out method

2. 6 months seems a sensible duration. There is still the ability to negotiate a contracted out lease for shortish leases of 1-2 years so I see no reason to change the statutory duration.

3. None

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

I believe the contracting out model is the only viable model

CQ5 – 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 current benefits of the 1954 act are crucial to our business and the contracting out model is the best option in our opinion. We welcome any changes that improve the workings and efficiency of the current model

CQ6 – 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

(2) on the commercial leasehold market

CQ7 – 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).

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Next plc

Role: a tenant (or predominantly a tenant)

If landlord or tenant:

Number of employees: 250 or more

Regions: North West, North East, Yorkshire and the Humber, Wales, West Midlands, East Midlands, East of England, South West, South East, London

Sector(s): Retail and wholesale

CQ1 – 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.

No specific Welsh issue.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

The current system works for Next plc albeit the administration could be improved and streamlined.

The benefit of security of tenure is of great importance to our business to allow for investment in our store portfolio and staff.

CQ3 – 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 parties and their advisers

A change would result in Next being unable to invest in their store portfolio with the same confidence that exists currently.

The transitional period would be very complicated for both landlords and tenants from both an administrative burden but also cost wise.

There is a risk that Landlords will have a monopoly on the market for example in a shopping centre forcing rents higher than the open market or may also seek to leverage deals in other locations in order to retain a succesful store in another.

(2) on the commercial leasehold market

As above Landlords may have a monopoly on the market especially in shopping centres / retail parks and be able to control the market and increase rents beyond open market levels.

They will also be able to leverage deals on other centres - ie renew at this rent here and elsewhere otherwise they will terminate one or both of the leases.

CQ4A – 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.

1. N/A for Next

2. No comment for Next

3. No - retail leases should absolutely not be excluded from the scope of the 1954 Act

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

No

CQ5 – 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 proposal to reform the scope appears to be in favour of Landlords to the detriment of Tenants and is unnecessary and is strongly opposed.

Any approach which would seek to remove retail properties from the scope of the Act would be wholly opposed.

CQ6 – 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

Longer leases with more breaks would have to be entered into to try to give occupiers the term certainty that they require which will result in more SDLT being payable at lease completion.

As above there is a risk of Landlord having a monopoly in the market

Without the certainty of security of tenure there would be a reduction in the amount of investment made in the store portfolio.

There would be be significant costs and disruption during any transitional period.

(2) on the commercial leasehold market

As above.

CQ7 – 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).

No specific impact.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

We agree with the comments and response made by the British Retail Consortium (BRC) on this subject.

The Works Stores Limited

Role: a tenant (or predominantly a tenant)

If landlord or tenant:

Number of employees: 250 or more

Regions: North West, North East, Yorkshire and the Humber, Wales, West Midlands, East Midlands, East of England, South West, South East, London

Sector(s): Retail and wholesale

CQ1 – 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.

none known that have been treated differently to England

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

The current model whilst not perfect is believed to give the fairest balance to both Tenant and Landlord, it is utilised and is generally well understood and effective. The other proposals are not deemed to be beneficial for the below reasons:

Mandatory security of tenure may stop both Landlord and tenant having the ability to have flexible leases and therefore restrict lettings.

No statutory security of tenure would stop tenants expansion and investments into properties as good will built over the lease term would be at risk and business models are only viable on a continued ability to trade from a location or compensatory element if Landlord wishes to develop/occupy. The majority of our portfolio is not excluded from the provisions currently and we therefore do utilise this for business continuity.

Contracting in procedure would tip the balance to a Landlord in negotiations as the base starting point would be different and likely an opportunity to be taken by Landlord to offset the request for security of tenure with another point of negotiation.

CQ3 – 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 parties and their advisers

As above:

Mandatory security of tenure may stop both Landlord and tenant having the ability to have flexible leases and therefore restrict lettings.

No statutory security of tenure would stop tenants expansion and investments into properties as good will built over the lease term would be at risk and business models are only viable on a continued ability to trade from a location or compensatory element if Landlord wishes to develop/occupy

Contracting in procedure would tip the balance to a Landlord in negotiations as the base starting point would be different and likely an opportunity to be taken by Landlord to offset the request for security of tenure with another point of negotiation.

(2) on the commercial leasehold market

If the tenants ability to have security of tenure was removed or modified this would weaken our ability to expand and utilise retail space which could lead to significant repercussions for the use of such properties.

CQ4A – 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.

it is not believed it would be beneficial to extend the Use Excluded Tenancies to retail etc as this would have an effect as mentioned previously on the utilisation of properties.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

see above response regarding extending the scope

CQ6 – 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

response is the same as set out in earlier replies to questions

(2) on the commercial leasehold market

response is the same as set out in earlier replies to questions

CQ7 – 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).

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Gareth Lloyd-King, Specsavers Optical Superstores Limited, Personal capacity

Role: a tenant (or predominantly a tenant)

If landlord or tenant:

Number of employees: 10-49

Regions: North West, North East, Yorkshire and the Humber, Wales, West Midlands, East Midlands, East of England, South West, South East, London

Sector(s): Retail and wholesale

CQ1 – 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.

No particular considerations should be given to Wales as consistency is needed between England and Wales. While an established alternative legal system exists in Scotland this has been in place for hundreds of years, is based on well established principles and the Scottish market as development to account for the differences.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

Having security of tenure is key to business having confidence in their future in a building, this confidence is key to investment in those buildings that are held under the tenancy. This investment is key to reviving the high streets of the UK and/or investing in new office environments and/or making investment in industrial operations. That is to say confidence generates investment, investment generates jobs, jobs generate economic growth.

Furthermore the removal of the automatic right to renewal will put tenants at a serious disadvantage in negotiations. At the moment in reality it is for the landlord to demonstrate why they want to exclude the lease, the tenant can then consider their options knowing they can look elsewhere for a property if they are not convinced by the landlord's reasoning.

Small businesses will be particularly impacted by the removal of security of tenure if this is the option selected as a result of the review. Smaller business frequently dont have access to the data and advice that larger businesses do to counter a landlords during negotiations. Larger businesses are usually represented and have access to knowledge of what is going on in market, these means they can say to the landlord with confidence that there are alternatives in the market in order to get the landlord to reconsider there requirement for security, if it isnt automatically granted. Likewise if you move away from an opt out system more small businesses will be at threat when it comes to lease renewal without realising it. Tenants, particularly small businesses, are in a very weak position at renewal if they dont have security of tenure. Conversely landlord are in a strong position to put pressure on the tenant without the recourse or threat of the matter going to court.

CQ3 – 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 parties and their advisers

A change to the current regime, if it reduces or removes security, will have a massive negative impact for occupiers of the commercial properties. If protection is reduced or removed altogether then confidence and investment will be significantly dented. This will make tenants less likely to invest, less likely to be able to effectively plan for the future. This has the potential to reduce the quality of the offering to public and employees use occupy commercial property.

Looking from a landlord's prospective, the law already gives them to option to refuse a tenancy on a number of grounds and these are sufficient for what landlords want to achieve.

(2) on the commercial leasehold market

The impact on the commercial leasehold could be substantial. Landlords, who predominantly want good quality tenants who pay rent, will see a reduction in their rent values as businesses will have less confidence to pay higher rents particularly as most leases are now less than 7 years. They will also have less well maintained assets for the same reason.

The lack of automatic right renewal will also open up the market and tenants to more abusive actions by landlords who can abuse their position in terms of the rent. At present the automatic right to renewal stops a landlord from using eviction as a tool to get a tenant to agree to pay an inflated rent. If this is removed unscrupulous landlords, of which there are plenty outside prime locations/city centres, will simply demand a rent of their choice and impose this on the tenant (the like it or lump it approach to negotiations). If tenant cant pay the new rent they have to write off investments they have made, close their business and start over.

CQ4A – 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.

Having excluded tenancies is not necessary provided all parties are informed of the legal framework in place relating to the commercial properties. The ease with which parties can contract out means that written tenancies (regardless of length) dont need to be excluded by the provisions of the act.

The current types of business tenancy that do not fall within the remit of the 54 act but are still business tenancies should remain that way. That being said residential tenancies should take elements of the 54 act and consider incorporating them into the ASTs. One example of this is that currently ASTs only typically last for 12 months and many mortgage

companies require this. Given that renting is now becoming the long term arrangement for many in society, ASTs should be able to be granted for longer even if there were periodic breaks in them and the option to mutually agree a renewal ahead of expiry.

Farm Business Tenancies should be governed by the existing legislation as the 54 Act was designed for the letting of business premises in a landlord and tenant type setting where as most farm tenancies tend to be less clear on items plus they frequently involve dwellings.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

My answer to the above would be the same if an act that offered mandatory protection were brought in. IT would still need to have the option to exclude which would then effectively bring it back to where the current 54 act is.

CQ5 – 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 assessment is correct however the disadvantages as you have labelled them are not to do with Part 2 of the act itself, they are more to do with specific process or procedures in the act. The essence of part 2 and the automatic right to renewal is perfectly adequate for modern commercial property transactions.

In relation to your comment on page 50 of the consultation document about how wide spread contracting out is, I would suggest it is not wide spread. Most occupiers will occupy on leases inside the 54 act, anyone who has contracted out should have got advice and entered into that contract knowingly. From a retail prospective, the vast majority of leases are inside the act and the main ones that arent are for locations such as shopping centres or outlets. In these instances tenants know that they are getting when they sign the lease and can adjust their business plan to reflect this. Also broadly speaking these locations are occupied by large multiple occupiers who are nearly always well represented and advised.

CQ6 – 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

Changing the scope of the 54 could have significant impact on all parties involved. The tenancies not current covered by the act have their own legislation which has developed over many years and in most cases subject to amendment.

To try and widen the scope of the 54 would mean trying to apply it to these other tenancies or trying to make them fit (square peg in a round hole springs to mind).

(2) on the commercial leasehold market

The commercial leasehold market would be unlikely to be impacted if the scope changed, provided that it was only the scope. Anyone working within the commercial leasehold market would continue to work with the legislation it would be others who would need to adjust to it.

CQ7 – 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).

I dont believe that any changes to the 54 Act would specifically impact any of these groups. It may however provide less protection in the event of a renewal where the landlord holds particular views in relation to any of these groups. While they would not be able to explicitly use their prejudice as a reason not offer security or renewal a lease, if there is no protect and no legal system then it given then they may see this as reason not to undertake the transaction.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

River Island Clothing Co Limited

Role: a tenant (or predominantly a tenant)

If landlord or tenant:

Number of employees: 250 or more

Regions: North West, North East, Yorkshire and the Humber, Wales, West Midlands, East Midlands, East of England, South West, South East, London

Sector(s): Retail and wholesale

CQ1 – 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.

There are no considerations or experiences which are particularly relevant to Wales but not to the rest of the consultation area.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

i) Mandatory – this is undesirable for both landlords and tenants. Although on the face of it tenants would benefit there would be significant interference with the free market which is bound to have consequences. One of these consequences is that landlord's investment in the property market is certain to be reduced. Landlords need to be able to redevelop, reconfigure and invest, and tenants benefit from their ability to do so. With mandatory security that investment is unlikely to happen. The supply of property may well be restricted as landlords become reluctant to let in locations where they have future plans to redevelop.

On this basis every lease renewal would be a 1954 Act renewal which would increase cost, time and confrontation. When the typical lease term was 15 years this would have been less of an issue but as shorter terms, and in particular 5 years, are now the norm and as 1954 renewals take considerable time to resolve there would effectively be never ending 1954 Act renewals. This would be a significant burden to both parties in terms of both time and cost.

Mandatory security of tenant would fetter the market and stifle investment and innovation.

ii) No statutory security – this would mark a change in the negotiating position of landlords and tenants with significant benefit to the landlord and significant disadvantage to the tenant.

Landlords will argue that the lack of security works in Scotland but there's no doubt tenants are at a disadvantage being left open to landlord monopolies and exploitation. Landlords can dictate the terms of new leases by threatening to take a property back at lease end. This also works as a disincentive to investment for several years before a lease expiry as an occupier will be well aware that the landlord could take a property back without any need for

compensation. This in turn is a disincentive to a tenant considering environmental improvements as these may only benefit the landlord at the end of the lease term.

The increase in the costs of fitting out makes relocation unviable in many instances and, as a result, if a landlord chooses to take a property back at the end of a lease the tenant may well not open elsewhere. If they do choose to relocate this would come at an environmental cost given the need for demolition and refitting, all of which involves an increase in carbon emissions.

The reduction in investment in retail locations would have a broader economic and environmental impact.

There are also instances of landlords who own properties in Scotland and England/Wales which are let to the same occupier using the threat of taking back a property in Scotland to get the terms they want in England/Wales.

There's a suggestion in the consultation that the parties could agree bespoke options to renew as an alternative to the lack of security however this would be difficult to achieve as landlords in major centres won't willingly give up their future negotiating position by granting an option unless there's some considerable benefit. Equally, tenants won't necessarily want to be committed for a long term without flexibility.

There's also a suggestion that guidance notes and professional standards could "…provide a better understanding of the alternative ways in which security could be provided to tenants …" for example by options to renew, and "…could improve fairness in the market, as well as reducing costs…". Guidance notes and professional standards without any obligation are unlikely to be beneficial to tenants especially for smaller tenants who aren't professionally advised.

iii) Contracting in - Once again the negotiating position of landlords will be strengthened significantly. In practical terms it will be more difficult for a tenant to get a protected tenancy. Landlords are already trying to take leases outside the Act and if the default position is that there's no security, they'll be even less likely to give security. For the majority of tenants there will be no prospect of having a protected lease.

Even if a lease is contracted in there'll be no guarantee of security for a subsequent lease. This will again hamper investment as occupiers will have no guarantee of future occupation.

In practical terms there is little difference between a contracting in model and no statutory security. In

both cases the balance of power would shift significantly in the landlord's favour .

It's also worth noting that smaller tenants who are not advised might not be aware of their ability to ask for a protected tenancy. It's not in the landlord's interest to tell them and in these cases, the tenancy will, by default, be outside the statutory scheme. The landlord would not need to go through any meaningful process to contract out of security of tenure.

This would be a significant change from the current position and the broader market consequences are unknown.

iv) Contracting out – this model has been in place for 70 years, with amendment and updating to reflect changes in the property market. It is well understood and effective, giving tenants the confidence to invest and confidence that they will not be exploited by landlords. There is nothing to indicate that this model is no longer effective although there is scope for considerable process changes to streamline the operation of the Act and free up court time.

The contracting out model means that landlords are not dominant in negotiation, providing a level playing field and giving the tenant confidence that the lease terms will be a reasonable compromise for both parties. It also gives more vulnerable tenants greater protection than on a contracting in basis as a positive decision needs to be made to contract out. The process of contracting out is straightforward and doesn't add significantly to cost or time.

Retaining the contracting out model removes the risk of undesirable change to the market, maintains stability and enables occupiers to invest whilst retaining the landlord's ability to get possession.

There are no compelling reasons to move to a different model and considerable value in retaining the current model which plays a fundamental role in ensuring the continued viability of modern retail investment.

CQ3 – 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 parties and their advisers

Retail is the UK's largest private sector employer, contributing over £100bn annually to GDP and employing three million people. Retail businesses already pay 55% of their profits in business taxes and operate on tight margins of 3% to 5%, leaving little room to absorb additional costs.

Any fundamental change to the 1954 Act would introduce uncertainty which would inevitably reduce investment and recruitment within the retail sector placing further strain on an already over burdened industry. This would have an impact on employment, business growth and viability and hence the tax contributions that support national and local government.

We strongly support the retention of the existing contracting-out model. It provides both parties with necessary flexibility while maintaining a fair balance between landlords and tenants. Having said that, there is scope for improvements to streamline the process, remove traps for the unwary and reduce the cost burden on both parties.

Mandatory security – this will significantly increase the burden in terms of cost and time. As lease terms are now routinely 5 years and every renewal would be a 1954 Act renewal there would be a need for additional resource, whether in house or external. This would increase costs and create a more confrontational process. Unless the process for renewals is significantly changed it would also create uncertainty for both occupier and landlord whilst the terms of a new lease are agreed,

No statutory security – this would significantly weaken the negotiating position of tenants and leave landlords dominant. This creates uncertainty for tenants as they will have no ability to apply pressure and bring matters to a conclusion. They will be at the whim of landlords.

Contracting in – as in question 2, changing the default position would benefit landlords and disadvantage tenants. There's a growing move amongst landlords to reduce the number of protected leases and this will strengthen their position with the likelihood that they will be unwilling to offer protected tenancies. Less well advised tenants may be unaware of their ability to request a protected tenancy. Tenants and their advisers will be in a weaker position.

Contracting out – no changes as this is the current position

(2) on the commercial leasehold market

The impacts of any changes on the commercial leasehold market are difficult to predict and there will inevitably be unintended consequences.

Mandatory security – as described above this is likely to limit landlord investment in the property market with a general negative impact on retail locations and the wider economy. Fettering the market will stifle investment and innovation.

No statutory security - As above, investment by tenants would be limited with a knock on effect on retail in general and the broader economy. A strong retail sector will not come from handing all the power to landlords. The likelihood is that shopping locations will become polarised with the top tier locations surviving but with more limited investment, and weaker locations suffering with significantly reduced investment and more empty units.

Contracting in model - A contracting in model will materially reduce the use of security of tenure as landlords will be unwilling to grant leases with security. The impact will be similar to the removal of all statutory security.

Contracting out – no changes as this is the current position.

CQ4A – 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.

1. Use Excluded Tenancies - it is critical for the retail sector that there are no changes to the definition of Use Excluded Tenancies which could result in any properties occupied or used by retailers falling outside the scope of the 1954 Act. If this was the case the effect would be the same as the impact of removing statutory security with the consequences outlined previously.

2. Duration Excluded Tenancies - there are no reasons to change the current criteria. Any extension in the length of leases covered by this provision would have the effect of removing statutory security with the consequences outlined previously.

3. Other types of business tenancy that should be excluded from the 1954 Act - none as far as we are concerned. The critical point for the retail sector, and the broader economy, is that

the properties occupied and used by retailers, regardless of the size and nature of the property, fall within the 1954 Act and have statutory protection.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

Regardless of the model for the 1954 Act, for the reasons already given it is critical that all properties used and occupied by retailers, regardless of the size and nature of the property, have statutory protection.

CQ5 – 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 reforming the scope of the 1954 Act has been dealt with in the previous questions and I would refer you to those answers.

Although some of the consequences of reforming the scope of the Act are foreseeable there will inevitably be unintended consequences. There is a considerable concern that the choice of example to illustrate the potential disadvantages of reform relates to excluding larger, town centre premises which would have a significant detrimental impact on retailers. The use of arbitrary criteria to determine what is excluded creates considerable scope for argument, and there are a range of disadvantages, all of which are outlined in the consultation paper and given an indication of the harms that would result.

CQ6 – 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

1. Use Excluded Tenancies - changing to the definition of Use Excluded Tenancies so that properties occupied or used by retailers fall outside the scope of the 1954 Act would have the effect of removing statutory security.

This would significantly weaken the negotiating position of tenants and leave landlords dominant. This creates uncertainty for tenants as they will have no ability to apply pressure and bring matters to a conclusion. They will be at the whim of landlords.

2. Duration Excluded Tenancies - Any extension in the length of leases covered by this provision would have the effect of removing statutory security.

As above, this would significantly weaken the negotiating position of tenants and leave landlords dominant. This creates uncertainty for tenants as they will have no ability to apply pressure and bring matters to a conclusion. They will be at the whim of landlords.

(2) on the commercial leasehold market

The impact of changing the scope to exclude properties used and occupied by retailers would have the same effect as removing statutory security.

Investment by tenants would be limited with a knock on effect on retail in general and the broader economy. A strong retail sector will not come from handing all the power to landlords. The likelihood is that shopping locations will become polarised with the top tier

locations surviving but with more limited investment, and weaker locations suffering with significantly reduced investment and more empty units.

There are also likely to be further unintended consequences which put the retail sector at risk.

CQ7 – 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).

No issues have been identified.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Cellnex UK Limited

Role: a tenant (or predominantly a tenant)

If landlord or tenant:

Number of employees: 250 or more

Regions: North West, North East, Yorkshire and the Humber, Wales, West Midlands, East Midlands, East of England, South West, South East, London

Sector(s): Information and communication, Infrastructure and utilities (e.g. electricity, gas, water supply, sewerage.), Telecommunications Infrastructure Provider

CQ1 – 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.

From Cellnex UK's perspective as a telecoms infrastructure provider, there are no particular considerations or experiences that we think are relevant to potential reform to the model or scope of security of tenure in Wales – we do not see any reason for different provisions to apply in Wales than those which are applicable in England and indeed our preference is for the same provisions to apply across England and Wales.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

Considerations relating to changes to the model of security of tenure are less important for Cellnex UK's core business (Cellnex UK benefits from protection under the Electronic Communications Code 2017 (ECC) and so is able to seek renewals pursuant to the ECC, however, while a significant proportion of renewals still need to be pursued under the 1954 Act, the upcoming reforms to the ECC (via the outstanding elements of the PSTI Act 2022) will streamline the 1954 Act renewal process for Cellnex UK). The current contracting out model has been in use for a significant period of time. It is well established and understood within the commercial property market. A system of contracting out of security of tenure retains the flexibility for landlords and tenants to enter into either protected or unprotected leases. This would mean the system maintains its versatility to changes in the commercial property market.

A contracting out model would be seen as more advantageous to tenants as it provides more protection to tenants since the default position is for security of tenure to apply. Tenants would therefore feel more confident in requesting security of tenure when entering lease negotiations with landlords – there would be a degree of equalisation of bargaining positions on this point.

In terms of time and cost, because of the additional time and cost that would be incurred in contracting out, it is possible this could result in more protected leases being granted to tenants. Furthermore, those vulnerable or less well-informed tenants would always come to know of the existence of security of tenure by virtue of the contracting out warning notice.

We do not think Cellnex UK's experience regarding the prevalence of contracting out will assist the Law Commission, since almost all of our leases benefit from statutory protection under the ECC regime so different considerations have been applied to other business tenants. Since the reforms of the ECC there will no longer be the potential of dual protection from both the ECC and the 1954 Act. Therefore we are unable to draw helpful conclusions on whether or not the retention of a contracting out model would better reflect the state of the market.

In Cellnex UK's opinion the current model of contracting out of security of tenure remains the most favourable system and results in a fairer balance in the relative bargaining positions of a landlord and a tenant.

CQ3 – 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 parties and their advisers

The retention of the current contracting out model would be seen as more advantageous to tenants as it provides more protection to tenants since the default position is for security of tenure. Tenants would therefore feel more confident in requesting security of tenure when entering lease negotiations with landlords – there would be a degree of equalisation of bargaining positions on this point. There would still be flexibility for landlords and tenants to enter into either protected or unprotected leases. With a streamlining of the contracting out process, we do not see any negative impact.

(2) on the commercial leasehold market

A retention of the contracting out model (but with a simplification of the contracting out process) would have the least impact and would maintain the status quo.

CQ4A – 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.

Considerations relating to changes to the scope of the 1954 Act are less important for Cellnex UK's core business in light of the fact that all new telecoms agreements will fall outside of the scope of the 1954 Act, however Cellnex UK's general thoughts are below.

1. In Cellnex UK's opinion, the extent of Use Excluded Tenancies as currently exists is appropriate, particularly in light of the upcoming Electronic Communications Code reforms, which will result in 1954 Act renewals of telecoms agreements being transferable to the First Tier Tribunal. This will help to unlock a lot of the time delay currently being experienced in the court system.

2. In Cellnex UK's opinion, the extent of the Duration Excluded Tenancies as currently exists is appropriate.

3. In Cellnex UK's opinion, the current scope of business tenancies excluded from the 1954 Act is sufficient. To try and limit the scope further by reference to matters such as square footage let would make the system overly complex and open to disputes arising.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

1. In the event of a system of mandatory security of tenure being adopted, Cellnex UK's responses to parts 1, 2 and 3 would not differ.

2. In the event that security of tenure was abolished altogether, Cellnex UK's response to part 1 would not differ, however our responses to parts 2 and 3 would become irrelevant.

3. In the event of either a contracting in model being implemented, or the existing contracting out model being retained, Cellnex UK's responses to parts 1, 2 and 3 would not differ.

CQ5 – 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.

Considerations relating to changes to the scope of the 1954 Act are less important for Cellnex UK's core business in light of the fact that all new telecoms agreements will fall outside of the scope of the 1954 Act, however Cellnex UK agrees with the basic principles of the Law Commission's assessments of the potential benefits and disadvantages of reforming the scope of the 1954 Act.

Cellnex UK believes any reforms to the scope of the Act should be unambiguous and simple to implement and not be reliant on factors that could be open to differences in interpretation (and therefore disputes, leading to additional costs being incurred by the parties and yet more pressure being put on the court system).

Any changes should also not lessen the protection afforded to tenants under the Act, as that could undermine the very reason the legislation was enacted in the first place.

CQ6 – 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

Considerations relating to changes to the scope of the 1954 Act are less important for Cellnex UK's core business in light of the fact that all new telecoms agreements will fall outside of the scope of the 1954 Act and therefore Cellnex UK is not in a position to be able to provide helpful comments on how the changes outlined would affect parties to tenancies and their legal advisors.

(2) on the commercial leasehold market

Cellnex UK is not in a position to be able to comment on how the changes outlined above would affect the commercial leasehold market.

CQ7 – 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).

Whilst Cellnex UK has no evidence to support our position, the retention of the current model reduces disadvantages because of the default position being that of security of tenure.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

1. Ensure any reforms do not make it easier for landlords to remove tenants. While legacy communications sites sit under the 1954 Act regime rather than the Electronic Communications Code (ECC), it is critical to the public interest in access to communications and to the investment models of infrastructure providers and operators that security of tenure is not reduced. The levels of investment for a communications site are very high in comparison to the rents paid and therefore security to remain at the end of the lease is critical.

2. It is not easy for communications sites to be relocated and significant costs are incurred in doing so.

3. Network stability is key, especially in delivery on the Government's digital economy agenda.

4. Significant changes to the 1954 Act are likely to lead to additional litigation proceedings as parties seek to interpret provisions (as seen with the ECC). This could significantly increase the pressure on an already clogged up court system.

Proposed reforms:

The following reforms address technicalities in the current regime which lead to inequities or inefficiencies:

1. Remove the need to contract out on agreements to surrender

2. Remove the Van Staden trap

3. Ensure periodic tenancies can be renewed by a tenant serving a s.26 notice

4. Streamline / simplify the contracting out process (no need for statutory declaration?)

5. Address issues with registration gaps

We look forward to expanding on these points in future consultations.

Cellnex UK has not supplied any data because we do not believe any such data will be helpful for the Law Commission's purposes due to the application of the Electronic Communications Code 2017 to our sites and security of tenure provided for contracted out leases.

Aldi Stores Limited

Role: a tenant (or predominantly a tenant)

If landlord or tenant:

Number of employees: 250 or more

Regions: North West, North East, Yorkshire and the Humber, Wales, West Midlands, East Midlands, East of England, South West, South East, London

Sector(s): Retail and wholesale

CQ1 – 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.

The respondent occupies, and operates its business from, a large number of leasehold premises across Wales and England and it does not believe that there are any particular considerations or experiences in Wales which would merit a divergence of approach to reform of, or the model or scope of, security of tenure in Wales relative to that in England. Indeed, the complexity created by a divergent approach would likely create many more problems than a harmonised approach. A harmonised approach provides clarity and consistency which the respondent believes is essential to the successful running of any business which operates in both England and Wales.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

The respondent invests significant capital expenditure in each of the many leasehold premises it operates across England and Wales. Security of tenure is of paramount importance to protect not only that investment but also the goodwill, reputation and staff levels established by the respondent throughout the terms of its leases. Mandatory security of tenure, as envisaged by the LTA 1954 in its original form, is the most robust and appropriate way to provide this protection. In the respondent's view, as a minimum it is essential that the existing contracting-out model is retained.

Were security of tenure to be unavailable then this could materially undermine some retailers' investment models and prejudice their ability to continue to invest in property in England and Wales and to employ a greater number of staff.

Even an opt-in model would significantly undermine the respondent's ability to provide security of employment to its staff given the more dominant position it would give to landlords in the negotiation of terms for a lease, not to mention the increased time and cost involved in going through a contracting-in process every time it is required. That increased cost would affect the majority of stores the respondent takes leases of.

In the respondent's experience, an absence, or even dilution, of the availability of security of tenure is likely to reduce the available supply of leasehold premises, thus strengthening the

position of landlords and unfairly increasing market values, particularly in desirable locations such as the London market.

The consultation refers to an argument that a mandatory security of tenure regime is unnecessary when the alternative of a contractual option to renew in a lease exists. However, in the respondent's considerable experience (having negotiated a significant number of store leases in the UK) this argument holds little weight in practice given that any contractual security is a matter for negotiation with landlords who, in the respondent's own experience, will often seek to avoid or heavily fetter any such provisions to allow them to take a more aggressive approach at lease renewal.

If a decision were taken to change the current model, it is the respondent's belief that it would cause a fundamental upheaval in an already stable market which would stifle growth. The respondent does see that changes to the current model could be beneficial but working within the current system and would be pleased to offer its suggestions in the proposed Stage 2 of this Consultation.

For the reasons above the respondent would be firmly against any fundamental change to the current system.

CQ3 – 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 parties and their advisers

In the respondent's view the impact would depend on the nature of the change.

A mandatory security of tenure regime or the complete abolition of security of tenure would simplify the position for parties and their advisors and it would cut down on the time and cost involved in negotiating the security of tenure position and in dealing with any contracting-in or contracting-out process. However, the respondent does question whether either of those models is a realistic proposition in practice and it reiterates that is fundamentally opposed to the abolition of security of tenure for the reasons specified in the reply to question 2.

A contracting-in model would have the twin disadvantages of (i) putting tenants to a significant detriment in their negotiating position with landlords comparative to the current position (especially for those tenants not able to afford legal advisors who will likely not even know of the procedure, unless landlords were forced to flag it) and (ii) increasing the time and cost implications for parties of negotiating the security of tenure position and in dealing with any contracting-in process. Given that the majority of the respondent's leases benefit from security of tenure, to contract-in that amount of leases would cause an immediate delay and cost increase and this extra tenant cost would be reflected in the wider retail market where the respondent believes that the number of businesses benefitting from security of tenant is at the high 80-90% level).

A change to the model of security of tenure would create inconsistency and uncertainty for landlords and tenants, at least in the short to medium term, which would need to be addressed by way of appropriate transitional provisions and invariably mean that matters will become more protracted.

(2) on the commercial leasehold market

Again, in the respondent's view the impact would depend on the nature of the change but any change is likely to create uncertainty and complexity at least on a transitional basis.

A model that lessens the availability of security of tenure will inevitably lead to reduced occupation by tenants of physical space on any sort of a long term basis. Consequently, investment by tenants in premises and staff will also be significantly reduced, leading to a fall in growth.

Conversely, a model that favours security of tenure will inevitably lead to greater investment in premises and staff by tenants.

CQ4A – 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.

The respondent is satisfied that the scope of Use Excluded Tenancies and Duration Excluded Tenancies as currently provided for in the LTA 1954 is appropriate and the respondent sees no compelling reason to deviate. Indeed, deviation may well cause further unwelcome and unnecessary complexity.

Whilst it recognises that the Complex Example given at paragraph 4.33 is deliberately complex and unrealistic, the respondent would be firmly opposed to a model which uses as its parameters matters such as extent and location of demise, or indeed a model which seeks any form of removal of retailers from the scope of the security of tenure provisions of the LTA 1954. This position is adopted for the reasons noted in other responses and to avoid further unnecessary complication.

If a mandatory exclusion of security of tenure regime or a contracting-in regime were introduced then the whole nature and scope of Use Excluded Tenancies and Duration Excluded Tenancies would need to be reconsidered and reformed. This would create further complexity and uncertainty and is yet another reason to avoid a move to either of those regimes.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

See above response.

CQ5 – 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 respondent broadly agrees with your assessment. In particular, the disadvantages associated with the Complex Example are correctly identified and of fundamental importance.

However, the theoretical example at paragraph 4.49 is disputed. Specifically, your statement that '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' is incorrect. The respondent is a supermarket business with experience of negotiating hundreds of commercial tenancies and the respondent is only too aware that this statement is not borne out by the facts and that landlords will often oppose the inclusion of contractual security provisions.

CQ6 – 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

The respondent reiterates its comments above in relation to the unnecessary added complexity, time and cost that would be experienced by parties and the market generally and also in respect of its experience of negotiations with commercial landlords around the acceptance of contractual options. Any diminution in the security of tenure afforded to retail tenants would inevitably reduce growth and investment in premises and staff.

(2) on the commercial leasehold market

See above response.

CQ7 – 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).

The respondent would simply comment that the inevitable effect on its existing estate that would result from any diminution in the security of tenure afforded to retail tenants is likely to lead to a reduction in employment opportunities for that element of the population typically seeking employment in the retail sector. Depending on location, certain groups may be more heavily disadvantaged.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

N/A

Evoke plc

Role: a tenant (or predominantly a tenant)

If landlord or tenant:

Number of employees: 250 or more

Regions: North West, North East, Yorkshire and the Humber, Wales, West Midlands, East Midlands, East of England, South West, South East, London

Sector(s): Arts, entertainment, leisure and recreation, Gambling.

CQ1 – 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.

As for UK.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

We are a large corporate tenant operating circa, 1,300 shops in England, Scotland and Wales under the William Hill brand.

We believe that although the current model of security of tenure that has the ability to opt out remains the best approach as this is a long-accepted tenet of UK property law. Considering the other three options:-

- Abolishing security of tenure - we believe this would be disproportionately advantageous to landlords and would remove a protection that has been in place historically

- Contracting in - for large corporate tenants such as ourselves, administratively this model would not work and would result in excessive and unnecessary administration work.

- Mandatory security of tenure - our view is that parties always need the opportunity to choose how they proceed.

CQ3 – 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 parties and their advisers

While the current model works, reforms are necessary when it comes to agreeing the content of the renewal lease as the impact on the parties is that often, one or both parties cling to obsolete, dated and unnecessary terms resulting in excessive legal negotiations resulting in needing several extensions and, for tenants, often to proceedings simply to protect their 1954 Act rights.

As well unduly complicating the legal process this simply results in a process fraught with friction and cost, it clogs up the court system and places an onerous burden on both parties to comply with court directions, for us this is almost a full time role dealing with such renewals.

We believe that the solution most beneficial to the commercial leasehold market as a whole is a hybrid approach to modernization based on either having a UK agreed standard lease or clauses that parties could accept on a pick and mix basis.

(2) on the commercial leasehold market

The larger implications on the market as a whole follow on from the above as it is likely all corporate occupiers have similar issues, when viewed as a whole the result is a huge amount of wasted time, cost and court capacity.

With all businesses about to be hit with the upcoming NI and minimum wage increase, having to pay these costs may be the difference between them being able to continue to trade or close leading to yet more empty shops on the already depleted high street.

In addition to measures above, we would also advocate:-

- a restriction reducing the maximum term a court can award from 15 years to 10 years to increase flexibility with potential to reduce this even further to 5 years for certain sectors including retail.

- removing the need for serving notice as well as the declaration as it is repetitive; and

- having a mandatory process to refer renewals where the parties cannot agree on terms to ADR with cost penalties for parties that do not comply.

CQ4A – 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.

Our only view on Use Excluded Tenancies are for telecoms leases as these are potentially relevant to our business, these should continue to be mandatorily excluded.

For Duration Excluded Tenancies either a tenancy for less than 6 months is excluded or not as the current uncertainty means we cannot rely on their being so and opt for the prudent approach of a contracted out tenancy to avoid this uncertainty.

Licenses for less than 1 year should also be excluded, these allow flexibility.

Also concessions and franchises should be automatically excluded.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

No, this would not change our views.

CQ5 – 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.

We would oppose a minimum rent for tenancies to be protected as the great majority of retailers rents nationally would be below £40k per annum so bringing this into play would effectively cause a two tier market which would add unnecessary complexity and rob tenants of a long standing right so unduly benefitting landlords.

As stated above there needs to be a mechanism to reduce the resilience to change arising out of renewals especially on new lease terms. it may be that statutory guidance is needed on a standard renewal lease/ key terms/concepts that are modernization although we appreciate the practical difficulties of this.

It would be helpful if the scope of reform could be extended to considering these points which affect all commercial tenants and arise out of the 1954 Act:-

1. Agreeing the renewal lease content - this area is desperately in need of reform and it may be that a statutory or industry body framework is the solution. While parties to a renewal are entitled to modernization, the key issue is what this looks like. Often both parties refuse to deviate from the current lease regardless of how out of date or obsolete clauses are with the only solution being to ask a court to decide what is modernization. Even for a large tenant as we are this is not usually commercially viable as it is extremely expensive and time consuming. The impact is preserving outdated leases rather than progressing to new standardized terms making the market more difficult to understand and preventing flexibility.

2. Contracting out process - the current process whilst a huge improvement on needing a court order could further be streamlined by removing the need for serving notice as well as the declaration as it is repetitive.

3. Lease term - introduce a restriction reducing the maximum term a court can award from 15 years to 10 years to increase flexibility with potential to reduce this even further to 5 years for certain sectors including retail.

CQ6 – 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

See above, if standard lease terms/concepts/standard lease were to be adopted this would hugely reduce the friction, time, cost and court time of negotiating lease renewals under the 1954 Act current regime.

(2) on the commercial leasehold market

As above.

CQ7 – 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).

Experience of the struggle to modernize lease terms as within our portfolio as detailed above.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

None.

Crown Paints Ltd

Role: a tenant (or predominantly a tenant)

If landlord or tenant:

Number of employees: 250 or more

Regions: North West, North East, Yorkshire and the Humber, Wales, West Midlands, East Midlands, East of England, South West, South East, London

Sector(s): Other service activities, Trade Counter sales

CQ1 – 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.

1954 L&T Act covers England and Wales and my recommendation is for this to remain the same.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

The current model works well for occupiers with either small or large leasehold portfolios. In dealing with 140 leasehold properties in England and Wales, the system works well, although the opposed lease renewal mechanism could be improved to be more efficient and cost effective.

CQ3 – 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 parties and their advisers

Uncertainty for long term occupation and futureproofing of business if security of tenure model was removed

(2) on the commercial leasehold market

Uncertainty in the commercial property market, likely to result in further inflated rents

CQ4A – 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.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

CQ6 – 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

(2) on the commercial leasehold market

CQ7 – 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).

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Halfords Group PLC

Role: a tenant (or predominantly a tenant)

If landlord or tenant:

Number of employees: 250 or more

Regions: North West, North East, Yorkshire and the Humber, Wales, West Midlands, East Midlands, East of England, South West, South East, London

Sector(s): Administrative and support services, Other service activities, Retail and wholesale

CQ1 – 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.

We see no difference between England and Wales, with the exception of Business Rates

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

My background is 5 years in commercial property private consultancy and then more than a decade "in house" as an estates surveyor working in both retail and industrial (small box, multi let) property.

I would be concerned about a two-tier market emerging; well advised tenants having full knowledge of the legalities/options available to them, and either self representing or poorly advised tenants unaware of what protection legislation may offer them. While not all landlords are well advised either, it is still a tenant who is most typically on the weaker side of a negotiation. At least with the current position and tenant will benefit from the protections offered by existing legislation, and if they are giving up their rights, the current health-declaration clearly advises and allows an informed choice.

I have listened to views of solicitors, landlords and other tenants at events held by the Law Commission, at private events held by commercial property solicitors, and in my role as committee member of the Property Managers Association; I have not heard any compelling argument to move away from the current system.

Complaints raised in the renewal process are not really a result of the 54 Act and certainly not a result of a statutory right to renewal. Frustrations and delay lie with the court process (length of time and expense) and reliance on the interpretation of case law ("reasonable modernisation"...) when negotiating the terms of the renewal lease. The proposed changes do not address these frustrations.

CQ3 – 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 parties and their advisers

[REDACTED]

(2) on the commercial leasehold market

TIME TAKEN TO NEGOTIATE/RENEW LEASES: Through interpretation and application of the 1954 Act, the courts have established a set of "modern leasing principles" (my own terminology) which commercial property solicitors widely accept as standard. It gives tenants confidence when managing/acquiring/renewing, that modern leases are on broadly similar (and FAIR) terms. The removal of 1954 Act protections would throw the floor open to significant movement towards a more tenant friendly or landlord friendly position - I would anticipate that lengths of time taken to renew leases is significantly increased, and professional fees along with it.

CQ4A – 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.

1. No change needed

2. Short extensions under Covid highlighted a problem with the 6 month rule

3. During consultation, it was interesting to hear from public bodies as landlords. TFL/Network Rail discussed their position of trying to balance the ability to maintain/develop the network with the public image of forcing their tenants "outside the act" and the reputational problems which could occur if tenants felt they were being treated unfairly. Similarly, having worked with local authority portfolios during my time in private practice, I could see times when it may be beneficial for councils to have greater control over their property portfolio. SUGGESTION: That public bodies are excluded from the scope of the 1954 Act. Telecoms already are!

3. Similar to telecoms, if a charging network to support EVs is to be achieved, legislation will be required to enable this. It is not the 1954 Act that is preventing Halfords from installing EV charging points - it is the leases themselves.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

none

CQ5 – 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.

I have not heard from any of my peers, landlords, solicitor contacts, investors or stakeholders any need to consider reform. I recall hearing that a consultation at a property conference perhaps 7 or 8 years ago. There was confusion as to why then, and there is confusion as to why now.

The conflict between Telecoms and the 1954 Act is noted.

CQ6 – 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

[REDACTED]

(2) on the commercial leasehold market

TIME TAKEN TO NEGOTIATE/RENEW LEASES: Through interpretation and application of the 1954 Act, the courts have established a set of "modern leasing principles" (my own terminology) which commercial property solicitors widely accept as standard. It gives tenants confidence when managing/acquiring/renewing, that modern leases are on broadly similar (and FAIR) terms. The removal of 1954 Act protections would throw the floor open to significant movement towards a more tenant friendly or landlord friendly position - I would anticipate that lengths of time taken to renew leases is significantly increased, and professional fees along with it.

LANDLORD MONOPOLY/FORCED RENT INCREASES: Looking at the retail warehousing or shopping centre markets, a few "big" landlords dominate the market. While many are interested in maintaining affordable, fair rents with stable tenants, this is not the modus operandi for all operators.

It is interesting to note that Realty Income (an American owned property investor, who entered the UK market just a few years ago) now owns around 70% of retail parks in SCOTLAND. It will be interesting to see what happens to rents as tenants find themselves with no security, no rights to "fair" rents, and no choice.

CQ7 – 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).

The statutory right to renewal removes all ability for a landlord to treat a tenant unfairly based on prejudice. Removing or reducing the right for a tenant to renew could well disadvantage those with a protected characteristic.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

N/A

Boots UK and Boots Opticians

Role: a tenant (or predominantly a tenant)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s): Retail and wholesale

CQ1 – 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.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

I am writing on behalf of Boots UK and Boots Opticians to share our response to the Law Commission's consultation on Business Tenancies as part of the wider review of Part 2 of the Landlord and Tenant Act 1954 ("1954 Act"). Our response to the survey questions is also attached. Additionally, Boots has contributed to, and fully supports, the response submitted by the British Retail Consortium (BRC).

I would like to highlight the following points in relation to our response:

• 90% of our leases are inside the 1954 Act so from a business perspective we are keen to retain security of tenure, but we have also taken an objective view about what is best for bricks and mortar retail.

• Different sectors will have different needs and approaches, but we would underline the importance of the retail sector to the UK economy, and the need for the legislative framework to support the high street.

• In order to foster a viable and sustainable future for bricks and mortar retail, we believe that the legislative framework should encourage investment (from tenants and landlords) and environmental improvements to properties whilst creating fairness and parity between the contracting parties.

• Disrupting the cornerstone of the commercial property market in England and Wales could have far-reaching unintended consequences at a time when bricks and mortar retail is already facing significant challenges, including the heightened cost pressures stemming from Autumn Budget 2024.

• The 1954 Act currently provides a framework to be operated within, and the market can regulate itself as some tenancies are protected and others are not. Against a backdrop of properties changing hands, it ensures that all landlords are required to operate in the same

way and generally allows for fairness and balance in negotiations between landlord and tenant.

• Any fundamental shift would require all key terms of institutional leases to be reviewed as it is unlikely that tenants would be prepared to take on as much responsibility for a property without security of tenure.

• Although the fundamental principle of security of tenure is as important today as it was when the 1954 Act came into force, we strongly support improvements to some of the processes which sit behind it. For example, there are several which are overly complex, bureaucratic and in part rely on an over-burdened Court system. Simplification of some of these processes would create a fairer landscape for unrepresented tenants to navigate as well as speeding up matters which would bring welcome certainty to all parties.

• Given that landlords are frequently only granting new leases on a contracted out basis, hopefully such process changes would encourage landlords to work within the framework of security of tenure with confidence whereby protected leases on new lettings would once again be the norm.

• This important piece of legislation needs to dovetail with the wider regulatory framework as well as being fit for the future. We therefore encourage the Law Commission to look back when seeking to move forward and consider the previous reviews of this legislation together with the reasons for prior recommendations - many of which remain relevant, perhaps even more so given the changing nature of retail and the wider UK economic landscape.

I trust these points are helpful as you consider the consultation responses and next steps with the review. Please contact me if you have any questions or require any further information.

CQ3 – 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 parties and their advisers

(2) on the commercial leasehold market

CQ4A – 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.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

CQ6 – 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

(2) on the commercial leasehold market

CQ7 – 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).

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Virgin Media 02

Role: a tenant (or predominantly a tenant)

If landlord or tenant:

Number of employees: 250 or more

Regions: North West, North East, Yorkshire and the Humber, Wales, West Midlands, East Midlands, East of England, South West, South East, London

Sector(s): Retail and wholesale, Transport and storage, corporate offices, data centres, hubs, storage warehouse.

CQ1 – 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.

No comment.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

Executive Summary

Virgin Media O21 ("VMO2") welcomes the opportunity to engage with the Law Commission on its review of the Landlord and Tenant Act 1954 (the "Act" or "1954 Act"). VMO2 is one of the largest telecommunications providers and network operators in the UK.

VMO2 is a significant user and advocate for the statutory framework the Act provides. Our estate includes 20 offices, over 300 retail stores, and over 400 technical sites that house our network infrastructure, the vast majority of which are under leases protected by the 1954 Act. Security of tenure affords vital protections for companies like VMO2, who provide the UK with critical national infrastructure. We strongly oppose the proposal to change the current contracting-out model within the Act.

Key Points

A. Current Contracting-out Model

We view that the 1954 Act and current model of contracting-out works well for the UK. It allows for flexibility and provides the right balance on protecting both landowners' and tenants' interests.

We recognise there are some minor administrative challenges with elements of the Act – such as the contracting-out process – that should be modernised. Accordingly, we welcome the opportunity to simplify the current contracting-out process, recognising (for example) that the majority of leases are now signed digitally. We believe these improvements would further

streamline and enhance the existing contracting-out framework, which is effective and understood by all in the market.

The current model is established, equitable, and effective:

• Established – The Act has been in place for seven decades and is a well-understood, deeply embedded part of UK commercial property law. It provides certainty and stability, underpinned by extensive case law, which has created a clear and predictable framework for both tenants and landlords.

• Equitable – The Act ensures a fair balance between landowners and tenants. Landowners have substantial protections, including the right to reclaim leases for redevelopment, whilst tenants are safeguarded against unfair eviction and exploitative renewal terms. Security of tenure levels the playing field and prevents landlords from leveraging tenants' dependence on a location to extract excessive rents.

• Effective – The existing model supports business stability, investment, and long-term strategic planning. This is particularly critical for capital-intensive industries like ours, where relocation is costly, complex, and operationally disruptive. It also ensures landlords engage in lease renewal discussions rather than deliberately stalling to maintain rental income without providing lease security.

B. OTHER MODELS – Contracting-In or removing security from leases of five years or less

Diminishing security of tenure through moving to a contracting-in model – or indeed, abolishing security of tenure completely (including with respect to leases of five years or less) – would not only be detrimental to VMO2, but we believe it would also unleash disruption and have a destabilising effect on the commercial real estate market.

Concerns over the Act's limitations are often unfounded or mischaracterise the issue at hand. The 1954 Act does not impede redevelopment or modernisation. Landowners have a clear and robust legal pathway to take back leases for the purposes of redevelopment. Many modern leases also contain green lease clauses, which allows landowners to manage and improve the sustainability of their properties through a collaborative approach with tenants. Likewise, claims the current model heaps heavy administrative burden on parties is a mischaracterisation. The processes and frameworks flowing from the Act clearly preferences renewal on a consensual basis, with going to court a means of last resort. However, renewal on a consensual basis requires both parties to be reasonable and pragmatic about the rent and terms of a renewed lease. Adopting this approach is within the gift of landlords and tenants. Other sources of "administrative burden" are often processes that protect tenants' rights and prevent exploitation. These concerns, in our view, amount to a self-interested attempt to reduce business tenants' protections rather than address genuine inefficiencies.

Likewise, we do not believe that moving away from the current contracting-out model will spur widespread investment from landowners into improving the sustainability of their buildings. If the argument is that a large volume of leases now have terms of five years or less, then the critical question is: over the past five years, what proportion of the relevant buildings have undergone material investment to improve sustainability, energy efficiency and net zero targets? Without clear evidence, such arguments remain speculative and unsubstantiated.

Additionally, for proponents of change to the current 1954 Act model, what specific, tangible benefits and investment commitments are they prepared to offer and be held accountable for – it would be helpful to understand the case for this.

Accordingly, we would urge the Law Commission to ask for empirical data – as any claim that materially changes a functioning legal framework towards a new (potentially highly disruptive model) model should be substantiated by case studies and economic analyses, not mere assumptions.

In our view, while there will always be exceptions (e.g. high-value buildings in prime locations) the data is unlikely to substantiate the broader claim that reducing/removing security of tenure will lead to widespread reinvestment across the real estate sector.

C. Impact of changes to the Current Model

As such, we view that changing the model by abolishing security of tenure or shifting to a contracting-in model will have serious negative consequences.

There could be a plethora of unintended and unforeseen market consequences from changing the existing model. Whilst the Law Commission's consultation document demonstrates thorough consideration, we question whether there a material issues within the market that would justify such a disruptive change and the repercussions it could unleash.

Specifically, it would create an imbalance of power between landlords and tenants, causing market volatility, which in turn will have a chilling effect on business tenant investment in sites and properties:

• Imbalance of power - Removing security of tenure would place businesses at the mercy of landlords, significantly weakening tenants' negotiating power, leaving them susceptible to much higher rental costs and more onerous terms. This would be particularly detrimental to businesses with high relocation costs.

• Market volatility – Weakening tenant protection will likely lead to inconsistent lease negotiations and more unpredictable rents, discouraging businesses from making long-term commitments and increasing site churn. This instability not only affects tenants but can also create negative economic and social consequences for local communities. For example one impact of excluding security from leases of five years or less would be that occupiers might be forced to take longer leases to secure legal protection, leading to higher financial commitments, increased lease liabilities on balance sheets, and greater exposure to rent fluctuations over time. Conversely in such a market businesses with shorter leases could be forced to relocate more frequently, leading to disruption, loss of customers, and increased operational costs.

• Chilling effect on investment – Market volatility and uncertainty about tenancies will have a chilling effect on investments in site-specific infrastructure, technological advancements, or general improvements. This upheaval will do little to provide the stability for investors and UK businesses to focus on growth and innovation. More specifically, higher turnover in commercial properties could create instability in rental values and increase vacancy rates in some areas (further frustrating the governments "levelling up" agenda).

• Unintended Acceleration of Market Polarisation – Larger tenants with stronger bargaining power may still secure protected leases (and are better equipped to absorb the risk of shorter leases), while smaller businesses and independent retailers could be disproportionately disadvantaged, worsening inequality in the market. Likewise, in wealthier, high-demand areas, landlords may still offer longer, protected leases to attract strong tenants. However, in less affluent areas, landlords could shift entirely to short-term, unprotected leases, making it harder for businesses to establish stability, discouraging long-term investment, and leading to a cycle of decline.

• Increased litigation – A shift towards unprotected leases and a new 54 Act model would lead to more disputes over renewal terms, rent negotiations, and lease expiries, increasing legal costs for both landlords and tenants.

In summary, after multiple periods of acute economic instability in recent years in the UK, and at a time when growth and innovation is the stated national ambition, we believe that maintaining the established model is the best way to provide the much-needed stability that will underpin investment.

For a company such as Virgin Media O2, whose data centres, warehouses, retail stores, and offices fall within the framework of the 1954 Act, security of tenure is extremely important.

Diminishing security of tenure through moving to a contracting-in model – or indeed, abolishing security of tenure completely – would not only be detrimental to VMO2, but we believe it would also unleash disruption and have a destabilising effect on the market. We also recognise that, despite our own disinclination towards contracting out, a move to mandatory security of tenure within legislation may limit the flexibility for both parties involved.

As such, we strongly oppose any change to the current model, which is well-established, provides an equitable balance of rights for tenants and landowners, and works effectively for the UK.

Established law and principles

As a piece of legislation, the Landlord and Tenant Act 1954 has stood the test of time relatively well. The principles and processes flowing from the Act, including the security of tenure model, are well-established and widely understood by occupiers and landowners. Additionally, given the Act has been in place for seven decades, a wealth of case law has been built up, which provides certainty and clarity for all parties.

• Redevelopment (ground f)

For example, where VMO2 has sought to renew a protected lease and had this opposed by the landlord with evidence of its redevelopment intentions (planning permission and other relevant commercial information having been provided demonstrating the necessary preparation for intended works), we have never prevented or hindered the landowner from recovering their building nor has there ever been a case that has gone to a court hearing where we have contested the landowner wishing to take back their property.

The 1954 Act's principles are sufficiently clear and robust that, as an occupier, we simply proceed to agreeing a timely exit. Landlords using their redevelopment rights to take back a lease has occurred for many sites across our estate and – thanks to the well-established nature and clarity provided by the Act – there has never been any reason for us to unduly prevent a landowner from recovering their property.

• Cost and timeframe to renew under the Act

Likewise, the established nature of the Act means parties understand the cost and timeframes associated with renewals in different scenarios.

We do not believe that complaint about such costs and timeframes are adequate grounds for materially changing the model given the instability it could generate. Firstly, under the existing model, the cost and time of renewal can be managed and minimised where landowners adopt a pragmatic and reasonable approach to renewal (including terms and rents), which will allow for proceeding on a consensual basis without the need to use the court process.

As above, where there is proper evidence to support a redevelopment claim to take back the lease, we believe the majority of occupiers will adopt the approach of VMO2 and accept the right afforded to landowners within the Act.

Secondly, renewal under any model would have administrative requirements (time, cost, and involvement of third parties such as solicitors etc.). However, in removing the recognised and familiar framework to regulate those renewal discussions, we view that it would likely create additional burden and cost – including additional litigation into the court system – which would introduce uncertainty and disrupt the market for occupiers and landowners alike.

After multiple periods of acute economic instability in recent years in the UK, and at a time when growth and innovation is the stated national ambition, we believe that maintaining the established model is the best way to provide the much-needed stability that will underpin investment.

Equitable

The existing model (or even with a shift to mandatory security of tenure) landlords still receive significant protection under the 1954 Act. There is a wide range of grounds for opposing renewal of protected leases, which ensure landlords can make cogent and rational commercial decisions about their properties, such as redeveloping or making upgrades (for example, to modernise the building and improve its energy efficiency). As detailed above, where a protected lease renewal has been contested with the correct evidence, VMO2 proceeds with exiting the site. As such, we do not believe there are legal barriers to preventing renewal for redevelopment purposes.

• Green Lease provisions and Improving Building Sustainability

VMO2 is cognisant that many landowners may be seeking to redevelop or upgrade their properties with energy sustainability goals in mind. We think this is commendable and is supported by the existing model; 1954 Act case law supports that where modernisation of leases is needed this should be allowed.

Accordingly, green leases clauses are now accepted across all modern leases. In VMO2's experience, it is incredibly common to have green lease clauses and contractual provisions wherein occupiers and landlords work collaboratively to consider and improve the energy efficiency of the building.

To reiterate, the right for landowners to reject a lease renewal on the ground of redevelopment and invest in upgrading the property to make it greener exist today. In our view, there is little proof to suggest changing the model will spur landowners or significantly change the commercial incentive to invest in making properties more sustainable. We certainly do not see this evidence in Scotland, where the security of tenure framework does not exist.

In addition, we believe that the current framework is equitable for both parties from a financial perspective. The current model does not financially detriment landlords; it allows them to renew at a current and fair market rate.

• Protecting occupiers' investment in a particular building/location

In parallel, security of tenure also protects tenants against the imposition of unfair renewal terms and from being put into a financial "ransom" position. Landlords often know that the majority of tenants want to remain in situ to avoid the operational challenges of relocation and to protect the investment they have made in the site.

For example, VMO2 invests considerably in our retail outlets – from store design and fit out to employee training, retail units are expensive undertakings. This becomes wasted cost if landlords are able to exploit our desire to remain in situ at the point of renewal and impose exorbitant rents, which forces our hand to end the agreement. A secondary effect is that it diminishes the incentive for tenants to invest in the location. Security of tenure prevents landlords from exploiting the business tenant's dependence on the location and allows for a more level playing field when negotiating.

Overall, we believe the Act and statutory frameworks therein provide a good balance between protecting landowners' and tenants' rights.

Effective

The current model is extremely effective because it supports and provides stability for businesses, which is essential for growth, investment and strategic planning. Security of tenure is critical for businesses like VMO2, and as such the vast majority of our business tenancies are under the 1954 Act.

• Critical national infrastructure and operational stability

Firstly, security of tenure contributes towards operational stability. Data centres house vital network infrastructure that cannot be easily relocated. It's not a case of simply shutting down and reopening elsewhere; a careful and complex migration process must be planned and executed in phases. In a worst-case scenario, issues with relocation could threaten business continuity and lead to network service disruption. In the best-case scenario, it is still a protracted and financially onerous undertaking.

As we note in our survey response, the planning for relocation can take up to three to five years. Unlike standard commercial properties, the supply of suitable sites for data centres is limited. There are very particular criteria for data centre sites, such as needing to be within our network footprint to ensure high quality connectivity, access to reliable and high-capacity power supply, far from physical security risks and environmental hazards (e.g. flood zones), sufficient space for infrastructure and cooling capacity, and more. Once we find a suitable site, complete technical planning, and move to execution phase, we often have to run two sites in parallel to ensure no disruption – requiring two sets of rent to be paid. This process demands significant internal resource and is extremely costly.

Moreover, the current framework is an effective way of ensuring landlords to come to the negotiating table. Our data centres have often been in situ for a long period of time and landlords regard us a safe and stable occupier, which results in low motivation to engage in the renewal process, as the landlord knows they will continue to obtain rental income. VMO2, on the other hand, cannot afford for our leases to be out of contract, given the buildings contain network infrastructure that is vital to our business' functioning. Indeed, it is part of the critical national infrastructure of the UK. We need to ensure the longevity and stability of the leases and thus are highly motivated to renew. In a number of cases, we have been obligated to instigate the 1954 Act processes to compel the landlord to engage.

Once we issue proceedings and put in placer a timetable to renew, the landlord does begin to engage. Without the statutory framework, it is highly likely many of our leases would lapse post contract termination, with the landlord still receiving rent and VMO2 having no recourse to bring the landlord to the table for a reasonable negotiation to extend the lease.

• Level playing field in a downward rental market

Additionally, the statutory framework of the Act provides a vital impetus for landlords to engage particularly in a downward rental market. In such circumstances, landowners can have a tendency to hold off renewing leases in order to maintain the higher rental income stream for the interim negotiation period. Whilst VMO2 is of course well placed to secure the best legal advice, we believe this "gaming" of the system often creates an unfair advantage for landlords who have deeper pockets and are able to artificial create a market (particularly in the context of retail parks and shopping centres) to their advantage. The current model is an effective way of incentivising landowners to engage and prevent tenants from being disproportionately and unfairly disadvantaged.

Ultimately, the protections and legal recourse afforded by the statutory framework better supports businesses in their long-term strategic planning, which is a necessary part of shoring up investor confidence in the UK and is particularly important for capital-intensive and long investment cycle sectors like telecommunications.

<u>CQ3 – We invite consultees' views, together with evidence wherever possible, as to what impact a change to the model of security of tenure will have:</u>

<u>(1) on parties and their advisers</u>

As we have set out above, complete abolition or a shift to a contracting-in model would be immensely detrimental to our business.

• Reduced bargaining power for tenants

If security of tenure were abolished, it would introduce significant uncertainty and instability. Without a guaranteed right to renew leases, many business tenants would be at the mercy of landlords (particularly smaller businesses or those for whom relocation is most difficult), who could either refuse to extend tenancies or impose excessive rent increases and onerous terms at the end of each lease term. Thus, removing security of tenure leaves business tenants in a weaker negotiation position, which undermines their long-term planning ability. As above, this unpredictability is particularly concerning for sites like data centres, which are extremely complex to relocate. It also leaves business tenants unable to bring landowners to the negotiating table when they are deliberately seeking to protracting the process, leaving tenants in positions of great uncertainty.

• Risks associated with Contracting-In model – increased uncertainty

Likewise, we believe moving to a contracting-in model would also have negative outcomes for business tenants. It would place the burden on companies to negotiate security of tenure for every lease individually, likely increasing legal complexity and administrative costs in the long-term. Whilst this is navigable for larger businesses, smaller and learner organisations may struggle.

Additionally, as with abolition, changing the model to contracting-in skews the balance of power in favour of landlords. Even under the current model, landlords in prime locations have stronger negotiating power and can often require businesses to contract out. If the model is changed and businesses can no longer point to the established benefits of the statutory framework, this imbalance will be greatly exacerbated.

VMO2's major concern is that changing the model, in such a way that diminishes business tenants' negotiating power and increases instability, will impact the investment decisions of businesses. Uncertainty about tenancies will hamper investments in site-specific infrastructure, technology, or general improvements. Also, the resulting higher rental costs and less favourable terms, as a likely by product of the change, will make it less likely that business can expand or upgrade facilities. Ultimately, we view that it would have a destabilising effect on growth and innovation ambitions of UK businesses.

<u>(2) on the commercial leasehold market</u>

The fundamental impact from abolition of security of tenure (and/or removal of security from leases of five years or less) or a requirement for tenants to contract in is increased uncertainty for businesses.

A number of resultant market level impacts may flow from this, including:

• Higher rents – the reduction in bargaining power for business tenants could lead to higher rents or more volatile rents across the market.

• Reduced investment – businesses will be less willing to invest in site-specific improvements if a right of renewal is more precarious.

• High churn – given businesses would be disincentivised to invest and landlords would be incentivised to maximise rents, the market could become more volatile and see much greater rates of churn.

All of these changes could have a knock-on detrimental impact to local economies. Reduced investment from business and higher churn may leave local areas in a worse-off position, and there is little guarantee that any increased rents extracted by landlords would be reinvested into the buildings.

In addition to the above, there could be a plethora of unintended and unforeseen market consequences from changing the existing model. Whilst the Law Commission's consultation document demonstrates thorough consideration, we question whether there a material issues within the market that would constitute such a disruptive change and the repercussions it could unleash.

Likewise, we do not believe that abolishing security of tenure or shifting to a contracting-in model will spur huge investment from landowners into improving the sustainability of their buildings. As we have previously set out, the ability to take back a lease for redevelopment purposes, including making investments in the building's green credentials, is possible under the current model. Redeveloping refurbishing, and modernising buildings are all possible under the current model. It allows for this whilst also providing protection for tenants. A change in the model to do away with this protection would be deeply regrettable.

CQ4A – 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.

VMO2 believes that the scope of the 1954 Act is appropriate. In particular, we view that telecommunications infrastructure as an example of Use Excluded Tenancies, and their being covered under the Electronic Communications Code, is logical and there is no rational for this to be changed.

We also believe that the six-month period is appropriate for Duration Excluded Tenancies. We do not believe that this period should be increased.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

VMO2 has no specific comments, but we encourage – and are confident the Law Commission will undertake – careful consideration of unintended consequences.

In particular, we would urge the Law Commission to ask for empirical data demonstrating that moving away from the current Contracting-In model would lead to increased investment in sustainability, improving Net Zero commitments and/or levelling-up efforts by landlords. Any claim to the contrary should be substantiated by case studies or economic analyses, not mere assumptions.

CQ6 – 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

No comment.

(2) on the commercial leasehold market

No comment.

CQ7 – 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).

We believe there are equalities considerations to note; a shift towards a more volatile commercial leasehold market (where landlords can extract higher rents at renewal) could lead to the closure of retail sites that are no longer financially sustainable. This could disproportionately impact certain groups, particularly elderly and vulnerable customers, who often prefer in-person services or discussion.

Similarly, in-person services through a retail presence can support those who are digitally excluded, a characteristic which can often intersect with protected characteristics (such as age or disability) and vulnerabilities. VMO2 has invested in making 300 of our retail stores into National Databank Hubs, where people experiencing data poverty can access free mobile data, texts, and calls to help keep them connected (see more on this initiative here: https://news.virginmediao2.co.uk/virgin-media-o2-to-connect-even-more-people-this-christmas-as-all-o2-stores-become-national-databank-hubs/).

In the face of unsustainable increases in rent, businesses must be able to make sound commercial decisions, but a contraction in retail presence brought on by increased market instability may more heavily disadvantage certain groups. We encourage the Law Commission to include this within their considerations.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Abolishing security of tenure from leases of five years or less

It is important to note that the vast majority of VMO2s retail store leases in England & Wales and Northern Ireland are (a) five years or less and (b) within the protection of the 54 Act. There are only a small number of exceptional stores (less than 10) that are contracted out of the 54 Act.

Accordingly, we are deeply concerned with any suggestion that security of tenure should be automatically excluded from leases of five years or less. In our view this would be a disastrous change that would cause significant disruption to an otherwise functioning real estate market. While the commercial real estate landscape has evolved, one key reason

occupiers have over time accepted shorter leases (of five years or less) is thanks to the reassurance provided by the statutory framework with consequent legal protections.

If the law were to mandate that leases of five years or less fall outside the Act, landlords could exploit this by increasingly shifting leases towards shorter terms, leaving tenants with diminished security and negotiating power. This would undermine stability in the market, forcing occupiers to choose between accepting greater uncertainty or committing to longer leases with significant financial and operational drawbacks.

As landlords secure greater commercial leverage, the market will turn towards a duo market with overall a great deal less flexibility or choice for occupiers. Conversely, tenants might also be pushed into longer leases to secure tenure and protect the goodwill generated from a specific location, or to avoid a ransom scenario at the end of the lease term.

However, there is a financial impact of forcing occupiers into longer leases. Owing to the new financial accounting rules when renewing a lease, an occupier is now required to account for the entire term as debt on its balance sheet, regardless of any break rights. This impacts our balance sheet and introduces financial risk in relation to other borrowings.

Likewise, longer leases result with occupiers having to pay higher Stamp Duty Land Tax on leases (irrespective of any early break right) as well as land registry fees and other consequent land registry administrative obligations and burdens.

The risk with a Contracting-in model from an occupier perspective

While complexity is often cited as the drawback of contracting out, the same issue applies to contracting-in, with the added risk now shifting to the tenant. The 1954 Act was designed to protect tenants from exploitation and to preserve their investment in building a business, brand, and goodwill at a location. Shifting to contracting-in is at odds with the purpose of the Act. Additionally, it will increase the risk that errors in paperwork could be exploited during the renewal process which goes against the principles of the 1954 Act and furthermore is likely to result in a new wave of uncertainty and litigation in the market as parties adapt to any new rules and processes. We are unclear as to the gains and merits of bringing about such a wide-ranging disruption into a well-functioning commercial real estate market.

Additionally, where the norm is contracting-in, the impact is likely to be felt most by smaller retailers and businesses who may not be legally represented and will not be aware of the protections available to them.

Even to more sophisticated and well-advised occupiers such as VMO2 we would anticipate that landlords would use the contracting-in option as a commercial tool to secure concessions or other potential onerous terms as trade-offs.

The Guinness Partnership

Role: a landlord (or predominantly a landlord)

If landlord or tenant:

Number of employees: 250 or more

Regions: Yorkshire and the Humber, South West, South East, London

Sector(s): Administrative and support services, Charity, Health and social care, Hospitality, Retail and wholesale,

CQ1 – 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.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

The balance of power is heavily tipped in favour of the Landlord when negotiating a new lease. If a business tenancy benefits from having security of tenure then this helps provide the Tenant with some grounds for negotiation when it comes to lease renewal. This is particularly important for Tenants who may have built up successful businesses in a particular location. Landlords are not obliged to negotiate when a lease is unprotected, which they can use as leverage to maximise income and disregard any wider social or economic benefits the Tenant provides.

The current system enables Landlords and Tenants to contract out, which may be for good reason. For example, a Landlord may seek flexibility not to renew a lease where a Tenant has not diligently observed its obligations under a lease or has been persistent nuisance to neighbours. Conversely, a Tenant may benefit from an incentive such as lower rent in exchange for contracting outside of the Act.

CQ3 – 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 parties and their advisers

The impact will vary depending upon the selected model should any change be implemented. These are accurately captured in the pros and cons section of your consultation material.

(2) on the commercial leasehold market

As above.

CQ4A – 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.

No comment.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

No comment.

CQ5 – 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.

Tour assessment of the potential impacts of changing the 1954 Act are accurate.

CQ6 – 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

No comment.

(2) on the commercial leasehold market

No comment.

CQ7 – 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).

We have no evidence that suggests individuals of certain characteristics would be disadvantaged by changes to the 1954 Act.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

We suggest that there are other areas of Landlord and Tenant Law that are in greater need of modernisation. In particular correctly serving break notices can be notoriously difficult to navigate, particularly for tenants who do not have the knowledge or resource to employ legal advisers to help them comply with a break clause. This can in some cases be used by Landlords to adopt what might be considered underhanded tactics to challenge a break notices and "keeping a tenant on the hook".

On the Landlord side, ensuring the right steps are taken to enact forfeiture can also be confusing. This again can be problematic where a landlord does not have the resource to employ legal advisors to interpret a contract.

In both of the above cases, simplification of Landlord and Tenant Law and making it more user friendly for both Landlord and Tenant would be a welcomed step in the right direction.

Bruntwood Management Services Limited

Role: a landlord (or predominantly a landlord)

If landlord or tenant:

Number of employees: 250 or more

Regions: North West ,Yorkshire and the Humber, West Midlands

Sector(s): Administrative and support services, Arts, entertainment, leisure and recreation, Charity , Construction, Education, Financial, professional, scientific and technical services, Health and social care, Hospitality, Information and communication, Manufacturing, Other service activities, Public administration and defence, Real estate, Retail and wholesale; There are a large number of uses carried on at Bruntwood Group properties – our portfolio covers the following sectors: offices, retail, leisure and laboratory / life sciences. We have over 800 employees and there are over 100 buildings in our portfolio.

CQ1 – 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.

Bruntwood Group does not have any properties in Wales and we therefore do not comment on any particular considerations or experiences that may be relevant to properties in Wales

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

Bruntwood Group believes the current model of contracting-out should continue to apply. Although there may be reasons for reforming some aspects of the 1954 Act, we believe that:

(i) the current contracting-out model works in a broadly satisfactory manner;

(ii) the 1954 Act is well drafted, has 'stood the test of time' and its operation/applicability is generally well understood by those operating within the commercial leasehold market;

(iii) the vast majority of our tenants enjoy the benefit of security of tenure conferred by the 1954 Act and we have not found this to be detrimental to the operation of our business. Approximately 90% of the headline rent generated from our properties is paid by tenants whose leases are 'inside' the 1954 Act;

(iv) the automatic security of tenure conferred by the 1954 Act protects commercial tenants who are not particularly sophisticated and / or familiar with the potentially significant consequences of leasing business premises without rights to renew their lease at term expiry;

(v) the availability of security of tenure encourages tenants to invest in their premises as they have clear visibility regarding their entitlement to renew at term expiry;

(vi) any alternative system that might replace the current model could have unintended consequences which might disrupt the functioning of the commercial leasehold market. We note that the 1954 Act itself had to be reformed in 1969 (to allow contracting-out) because

the security of tenure it originally provided for all tenants was believed to be discouraging landlords from leasing premises in some parts of the market (such as premises that were earmarked for future redevelopment).

As a final point, given the statutory requirements on landlords to improve the environmental performance of their buildings, we have seen commentary that:

(i) a contracting-in model would assist landlords in obtaining vacant possession of buildings to carry out works to improve their EPC ratings; and

(ii) due to the entitlement of tenants to renewal leases on substantially equivalent terms as their previous leases, landlords struggle to include 'green' provisions into 54 Act protected leases at renewal (hindering landlords' efforts to improve environmental performance).

Bruntwood Group believes these are issues that could be dealt with by reforming the current contracting-out model (rather than justifying a move to a contracting-in model)

CQ3 – 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 parties and their advisers

Bruntwood Group believes it is difficult to predict what impact a change to the model of security of tenure will have, given the range of options that are currently being mooted as potential alternatives to the current contracting-out model.

With regards to the parties to tenancies and their advisors, any changes are likely (even if for a limited period only) to create a sense of uncertainty in the commercial leasehold market while both landlords, tenants and their advisors familiarise themselves with any changes and their potential consequences. Uncertainty of this nature is, in our view, unlikely to be conducive to the prompt and smooth completion of leasehold transactions (and is therefore unlikely to benefit the commercial leasehold market).

(2) on the commercial leasehold market

Bruntwood Group believes it is very difficult to predict the consequences that a change to the model of security of tenure will have on the commercial leasehold market where the changes to the model of security of tenure are not yet known.

Our 'best guesses' or 'headline' thoughts making the following assumptions are:

1. If security of tenure is removed (or its availability is significantly reduced) then:

(i) contractual options to renew may become more commonplace. Tenants with strong covenants and quality advisors are likely to use their bargaining power to demand contractual options to renew their leases (to replace the statutory protection that was previously available to them). In certain sectors of the market (e.g. food retailers) contractual options to renew are often already required by tenants (and where a lease is inside the 1954 Act) to prevent the landlord from defeating a request for a renewal lease by relying on a 1954 Act ground for possession.

(ii) the terms of leases are likely to be extended with tenants demanding longer terms with more frequent breaks – the longer terms will make good the 'notional' loss of security of tenure with frequent break rights providing the flexibility that is required by modern commercial tenants.

(iii) a reduction in the availability of security of tenure may discourage tenants from investing in their premises.

Each of the above outcomes could create consequential issues for landlords (for example, affecting the landlords' ability to regain vacant possession of their premises and the valuation of landlords' reversionary interests).

2. If mandatory security of tenure is introduced with no option to contract-out, meanwhile use leases are likely to become uncommon as landlords will not allow tenants to obtain security of tenure over sites earmarked for development (increasing voids and holding costs for landlords and removing stock from the market).

3. More generally, any move away from the current contracting-out model may create confusion and uncertainty regarding the consequences for tenants who currently occupy their business premises with the benefit of 1954 Act protection.

If the model is changed, we believe the assumptions tenants have made regarding their ability to renew at term expiry may no longer be valid. This could have significant consequences for the businesses operating from such premises in terms of potential loss of accrued goodwill and write-offs of investment made in those premises (e.g. substantial fitting-out costs specific to their operational requirements)

CQ4A – 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.

Bruntwood Group believes the existing scope of the 1954 Act is broadly appropriate.

We believe the current extent of Use Excluded Tenancies is appropriate and is well understood.

We believe the current extent of Duration Excluded Tenancies, could be extended: the current position with tenancies that are granted for six months or less being generally excluded from the Act could be changed to a more significant period (of between say twelve months and two years) before the tenancy will automatically benefit from security of tenure.

The current six month period can create an administrative burden for landlords as tenants frequently remain in occupation after expiry of the initial six month period with the risk for landlords of unintended security of tenure being acquired by the tenant.

An extension to the six month period would also be helpful in the context of 'meanwhile use leases' on sites intended for redevelopment (where a landlord would be less exposed to the risk of a tenant inadvertently gaining security of tenure)

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

Our views above are based on the premise that the 1954 Act will broadly continue to apply. If this does not turn out to be the case then we would need to reconsider our stated position

CQ5 – 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.

Bruntwood Group believes your assessment is broadly correct but would like to share the following observations in addition to the pros and cons of the four models that you identify and refer to:

1. No security of tenure – we are not convinced that this model would necessarily be the most beneficial for landlords. If tenants are able to circumvent the absence of statutory security of tenure via the use of contractual options to renew, landlords may find (counterintuitively) that they are less able to obtain vacant possession at term expiry.

In such circumstances, landlords could be contractually bound to grant new leases to tenants in circumstances where they could currently refuse by relying on the grounds of opposition contained in the 1954 Act. This could scupper landlords' re-development plans and also remove the current entitlement of landlords to refuse to grant renewal leases to tenants on the fault / non-fault grounds of the 1954 Act.

2. Contracting-in model – one advantage of moving to the contracting-in model you refer to is that it "would remove the cost and time currently required to contract-out." Our view is that (in the context of the total cost and time of completing a leasehold transaction) the cost and time required to contract-out is in fact de minimis and not a significant issue/burden for either landlords or tenants.

3. Contracting-in model – you refer to one disadvantage of this model as being that "It is not clear how widely used a contracting-in scheme would be." We would add that a contracting-in model might foster a two-tier system where sophisticated and well-advised tenants are much more likely to demand / benefit from contracting in, while less sophisticated tenants find to their cost that, due to a lack of understanding of the rules, they have failed to obtain security of tenure (and may suffer significant consequences as a result).

4. Mandatory security of tenure – we agree with the disadvantages you identify and would add that mandatory security would be detrimental to both landlords and tenants in the context of meanwhile uses of sites intended for redevelopment. In our experience, short-term leases excluded from the 1954 Act encourage the 'meanwhile' use of redevelopment sites while landlords are managing the development process (such as applying for planning consent, and securing funding and pre-lets). Such sites would risk being sterilised by a system of mandatory security of tenure.

CQ6 – 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

Bruntwood Group believes it is difficult to answer this question properly while the scope of any changes is not known. Our view is that the 1954 Act could be improved by making specific but limited changes to its scope. We hope that retention of the current contracting-out model is recommended by the Law Commission and, if that is the case, we will then be better placed to provide our views as to the potential impact that any changes to the scope of the 1954 Act may have.

(2) on the commercial leasehold market

Bruntwood Group believes it is difficult to answer this question properly while the scope of any changes is not known. Our view is that the 1954 Act could be improved by making specific but limited changes to its scope. We hope that retention of the current contracting-out model is recommended by the Law Commission and, if that is the case, we will then be better placed to provide our views as to the potential impact that any changes to the scope of the 1954 Act may have.

CQ7 – 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).

Bruntwood Group believes that tenants who may be financially challenged and/or with fewer opportunities to access legal advice are well served by the 1954 Act which gives security of tenure to almost all commercial tenants, unless they actively 'opt-out'. We believe that this model is likely to better serve commercial tenants from disadvantaged backgrounds and that removing the automatic entitlement to security of tenure may be a 'backward step' in tackling issues of inequality within the commercial leasehold market.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

As above

Heineken UK

Role: a landlord (or predominantly a landlord)

If landlord or tenant:

Number of employees: 250 or more

Regions: North West, North East, Yorkshire and the Humber, Wales, West Midlands, East Midlands, East of England, South West, South East, London

Sector(s): Hospitality

CQ1 – 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.

Heineken operates 72 pubs in Wales and has not encountered any specific issues suggesting a different approach is needed for Wales compared to England. It is preferable to have a unified approach across both regions to avoid unnecessary complexity and ensure consistency in legal frameworks.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

Our preference is to continue with the current contracting-out system but with some refinements to streamline the process. This could include broadening the scope of duration excluded tenancies to reduce administrative burdens and provide clearer guidelines for both landlords and tenants. This simple change would give maximum flexibility and reduce administrative cost and complexity.

In addition, if changing the current Act, consideration would need to be given to the interactions with other interconnecting legislation for example the statutory Pubs Code which contains extensive references to the current Act.

CQ3 – 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 parties and their advisers

We do not propose any fundamental changes to the existing framework. We support the view that security of tenure creates a stable environment for tenants, allowing them to invest in their premises with confidence. The ability to opt-out supports landlord investment and provides flexibility for proactive asset management, benefiting both tenants and other stakeholders. The framework should uphold these principles while removing unnecessary administrative and cost burdens.

(2) on the commercial leasehold market

CQ4A – 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.

We do not have a specific view on Use Excluded Tenancies but understand that they apply to specialised markets. The current scope of Duration Excluded Tenancies is appropriate but too narrow. The framework needs to support both tenant and landlord investment, which often correlates with the length of the tenancy. Tenants who invest in their premises need certainty of tenure to recover their investments, which longer leases and renewal rights provide. Conversely, shorter agreements often see landlords investing and actively managing the assets, with tenants having fewer obligations like repairs or benefiting from break clauses. We suggest that tenancies of 7 years or less should be excluded unless the parties agree to opt-in, while tenancies longer than 7 years should automatically opt-in with an option to opt-out.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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 assessments provided are broadly correct. We currently operate in a market where shorter agreements are often opted out of the 1954 Act. Automatically opting out for tenancies less than 7 years would significantly reduce costs and administrative burdens, making the process more efficient for all parties involved.

CQ6 – 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

We currently operate in a market where shorter tenancies are offered on an excluded basis. Our process involves the creation of over 200 new leases or renewals each year, which adds significant costs and time to the letting and renewing of leases for all parties involved.

(2) on the commercial leasehold market

CQ7 – 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).

There is no evidence to suggest any advantage or disadvantage to groups with certain characteristics under the current system.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Punch Pubs & Co

Role: a landlord (or predominantly a landlord)

If landlord or tenant:

Number of employees: 250 or more

Regions: North West, North East, Yorkshire and the Humber, Wales, West Midlands, East Midlands, East of England, South West, South East, London

Sector(s): Hospitality

CQ1 – 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.

No specific Wales considerations that we're aware of.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

Flexibility is essential which will encourage investment and partnership; pubs operate differently from other commercial properties, and any reform should acknowledge the distinct nature of the trade, including seasonal variations, community reliance and the impact on economic fluctuations.

This is our preferred option. It would be helpful if this is implemented in a way that lease documents can be validly executed electronically without need for a wet-ink statutory declaration style process which currently prevents full electronic execution in some circumstances.

CQ3 – 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 parties and their advisers

Model 1: For tied pubs, this would have a severely detrimental impact to landlords due to the effect of the Pubs Code - see above comment. (2) The market would have to move away from the leasehold model and towards managed/hybrid/franchise style agreements over time to allow parties to freely negotiate and to make long term plans allowing for growth and security, unless public houses becomes an excuded class (as per the original form of the 1954 Act)

Model 2: A "no security of tenure" model should have no particular negative impact on the market provided parties are free to negotiate terms which may include a tenant right to renew. This is perfectly workable and arguably the commercial leasehold market should not require state legislation as to freely negotiated terms. Commercial tenants should be well

advised but unless a commercial tenant is already aware of the concept of security of tenure it seems unlikely an assumption would be made to that effect. Advisors will need to be clear and should be capable of offering advice and negotiation of lease terms to ensure a commercial tenant understands what is on offer.

Models 3&4: These appear to largely reflect the existing position with an alternative method of including/excluding security of tenure rights and we do not see any significant impact on either individual parties or the leasehold market generally.

(2) on the commercial leasehold market

Model 1: Your paragraphs 3.33 to 3.35 inclusive apply, where you set out the demonstrably negative impact of mandatory security of tenure. This model is the only alternative (to the existing model) for which we have firm evidence. That evidence, whilst now quite historic, clearly identifies the significant negative impact on the commercial leasehold market to an extent the Law Commission at the time recommended a change. That recommendation was of course accepted by the Government at the time and relatively quickly implemented. The problems identified at the time all still apply today and we consider a move back to mandatory security of tenure would be a crushing blow to the market.

The hospitality market in particular would have to move away from the leasehold model and towards managed/hybrid/franchise style agreements over time to allow parties to freely negotiate and to make long term plans allowing for growth and security, unless public houses becomes an excuded class (as per the original form of the 1954 Act)

CQ4A – 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.

(1) This appears appropriate currently

(2) We consider this appropriate currently although an extension to 12 months would be helpful for operational purposes

(3) Currently appropriate,. Extending this is only applicable if Model (1) was adopted in which case public houses (and no doubt many other sectors) would wish to be excluded.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

Under model 1 we would require public houses to be a Use Excluded class. Mandatory security of tenure is unworkable within a sector already subject to a Code (Pubs Code etc Regulations 2016) which includes enhanced rights which apply to tenants with security of tenure.

CQ5 – 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.

(1) adding/removing etc: Reform is possible and we would wish to further consider the impact this might have on the hospitality industry should public houses be excluded under the existing contracting-out model. In principle we would have no objection on the basis commercial terms are freely negotiable but we need to consider the impact/interaction with the Pubs Code Regs 2016. (2) tenancy duration: we would support an extention from 6 to 12 months to introduce greater flexibility in short term tenancies. 12 month agreements are common in the sector and exclusion from the existing model would facilitate a speedier and more flexible process for landlords and tenants without any negative impact on either's rights. (3) Characteristic-based exclusion: this seems overly complex and difficult. An entirely new regime and mechanism with experts and advisors would be required to manage and "police" this. It would open up a potential for large-scale litigation where parties dispute measurements, situational assessment, and further room for rent review disputes.

CQ6 – 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

Could affect security and predictability of their business arrangements. While increased protection might provide stability, excessive restrictions could limit their ability to negotiate flexible and commercially viable agreements.

(2) on the commercial leasehold market

Expansion of the Act's protections could create additional complexities in managing our estates, potentially reducing the incentive for investment and limiting the ability to adapt to market conditions. Conversely, any reduction in protections, could impact tenants' confidence in taking on a pub.

CQ7 – 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).

We believe that there is no evidence to suggest any advantage or disadvantage to groups with certain characteristics under the current system.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Admiral Taverns Limited

Role: a landlord (or predominantly a landlord)

If landlord or tenant:

Number of employees: 50-249

Regions: North West, North East, Yorkshire and the Humber, Wales, West Midlands, East Midlands, East of England, South West, South East, London

Sector(s): Hospitality

CQ1 – 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.

Based on our experience with business premises located in Wales, we do not believe that there are any issues specific to Wales that are relevant to the potential reform of security of tenure.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

We believe that of the four proposed models, the current model of contracting-out would function best. It offers both landlords and tenants the flexibility to decide when not to make use of security of tenure using a relatively straight-forward and long-established process. A contracting-in model would ultimately end with the same result as the existing model, albeit with substantial redrafting of the Act required.

We do not believe that mandatory security of tenure or abolition would work successfully as models. As a large pub-owning business, we are regulated by the Pubs Code etc. Regulations 2016 which gives tied tenants (tenants that are required to purchase from their landlord some or all of their alcohol for sale from the property) the ability to request to be released from their drinks tie in return for paying a market rent – otherwise known as Market Rent Only or 'MRO'. This ability can be exercised when certain triggers are met, one of which is the renewal of an LTA-protected agreement where a S25 or S26 notice is served. By adopting either the mandatory security model or abolishing security completely, this would have significant unintended consequences. By varying the model using one of the aforementioned models, parts of the Pubs Code are at risk of being left inoperable in whole or in part which is likely to lead to confusion for both landlords and tenants covered by the Pubs Code.

Whilst our preferred model is the existing contracting-out model, we strongly suggest that the Law Commission considers the impact of changes to the model on existing legislation that makes reference to security of tenure, such as the Pubs Code. As one of six businesses

regulated by the Pubs Code, we are happy to discuss this issue further with the Law Commission should it be required.

In the event that the model is changed from the current model, we would also welcome clarity regarding how existing agreements in place are to be treated, including the enforceability of existing agreements and whether there will be a transitional period to allow a phased approach.

CQ3 – 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 parties and their advisers

If the model remains as is then we do not foresee any changes. Whilst a contracting-in model is likely to ease the administrative burden when compared to contracting-out, we do not believe that model is likely to cause any additional impact on the market or parties to a tenancy.

However, we believe that abolishing security will likely have a detrimental impact on the market and parties. Without any security of tenure tenants may be less inclined to invest in their property given the uncertainty of their tenure at the end of the term. This may then lead to longer lease terms being requested by tenants in an effort to secure a sufficient period in which to recoup their investment, with a risk that a tenant then overcommits to a longer lease than is needed. This therefore may impact on the landlord and their investment yield.

If mandatory security of tenure was chosen as a model, we foresee an increase in renewals via S25 or S26 notices, resulting an increase in Court proceedings and disputes if the parties are not able to amicably agree terms for renewal, together with the associated costs of embarking upon that process. In addition, if a landlord has future long-term plans for a property (such as redevelopment), if there is uncertainty regarding a landlord's ability to regain possession of the property the landlord may be less inclined to let the property in the short term, leading to more closed properties.

(2) on the commercial leasehold market

CQ4A – 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.

Whilst we consider the current scope of the Act to be appropriate, we believe that the potential reform of the Act should act as an opportunity to clarify grey areas and provide clarity for both landlords and tenants. There are often times when the parties can agree to contract-out of the Act but due to their conduct or minor drafting anomalies an LTA-protected agreement can be created instead, which was not the intention of either party.

We would also raise the example of long ground leases let by a landlord to a tenant, whose business is then to rent out a property built upon the land to their own subtenant. In that example, as the tenant under the long ground lease does not physically occupy for the purposes of the LTA, they do not have security of tenure and are not entitled to a renewal at the end of the term. Therefore, consideration should be given to scenarios such as this and whether tenants under long ground leases ought to have express security of tenure regardless of whether they physically occupy the premises.

Based on our experiences with the current contracting-out process, we believe that if contracting-out or contracting-in was chosen as a preferred model then the legal process should also be reviewed. We saw a number of challenges during the Covid-19 pandemic in ensuring that statutory declarations were sworn by a solicitor in writing – given the social distancing requirements and offices being shut, documents were not able to be sworn correctly. Since then, we have heard from a number of tenants that they struggle to find a solicitor to swear the declaration before, as they are neither a client or the solicitor does not consider it to be a reasonable use of their time. Given the rise in electronic document signing over the last few years, we would query whether this would be feasible to play a part of the contracting-out process. The option to sign a simple declaration is of course available, although this adds delay particularly when the parties are keen to enter into an agreement.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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 assessment appears to be correct but we would of course highlight the issues raised earlier in our response regarding the potential impact on pub-owning businesses regulated by the Pubs Code.

CQ6 – 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

As stated in our response to Q4, we consider the scope of the Act to be appropriate.

(2) on the commercial leasehold market

CQ7 – 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).

We do not believe that any changes in the security of tenure model will result in any advantages or disadvantages to certain groups or individuals based on certain personal characteristics.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

British Land

Role: a landlord (or predominantly a landlord)

If landlord or tenant:

Number of employees: 250 or more

Regions: North West, North East, Yorkshire and the Humber, Wales, West Midlands, East Midlands, East of England, South West, South East, London

Sector(s): Administrative and support services, Agriculture, Arts, entertainment, leisure and recreation, Charity, Financial, professional, scientific and technical services, Health and social care, Other service activities, Real estate, Retail and wholesale, Transport and storage

CQ1 – 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.

There are no particular considerations or experiences in Wales, that we are aware of, which are relevant to potential reform.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

As a responsible landlord, we do not think a statutory security of tenure regime is

necessary as we do not hold our tenants to ransom by threatening to evict them if they fail to pay above market rents. However, we are aware that this is not true of every landlord and so we appreciate that some tenants value the protection the Act affords. We therefore think the contracting out model is a workable compromise position between landlords and tenants, subject to some necessary updates. We have set out some of our proposed amendments below: we acknowledge these may be more applicable to the second Consultation Paper but feel that they provide helpful context in considering the application of security of tenure more broadly.

First, we think the contracting out process should be streamlined. The existing process is time-consuming and cumbersome. Instead, we think the process can and should be simplified by labelling a lease as either granted inside or outside the Act. It would not be necessary to go through the contracting out formalities such as a landlord serving a warning notice on their tenant and a statutory declaration would not need to be sworn in front of an independent solicitor. This approach would accelerate lease completions and simplify property management. We appreciate that part of the rationale for the contracting out process is to ensure that tenants are sufficiently aware of the important rights that they are agreeing to forgo. However, we do not believe that the current process effectively achieves these aims – in our experience most tenants are aware of their rights without the need for the contracting out process, which is often treated more like a box-ticking exercise.

Secondly, we think the scope of Duration Excluded Tenancies should be updated and we go into this in greater detail in our response to question 4 below.

In addition, we believe the opposition grounds in s.30(1) of the Act should be revisited, specifically in relation to ground (f), which allows a landlord to oppose a lease renewal if they intend to demolish or reconstruct the property and cannot reasonably do so without obtaining possession. It is hard for landlords to satisfy this opposition ground as the burden of proof as to the certainty of the intention and the ability to carry out the proposed development is high. Additionally, only certain works qualify e.g. subdivision works to divide a property would not qualify and neither would reconstruction works to part of a property. This significantly restricts a landlord's ability to refurbish and redevelop their property.

Fourthly, we have frequently experienced difficulties with the interpretation of "reasonable modernisation" on lease renewals under the Act. Introducing green lease provisions which aim to improve the environmental performance of a building, for example, can be challenging, especially if such provisions are not directly linked to legislative updates. Such provisions can be beneficial to both landlords and tenants, are in line with the government's green lease agenda and support sustainable property management.

In addition, turnover rents are becoming increasingly common in leases, and we do not think the current version of the Act is suitable for such arrangements. The Act's provisions for determining the rent payable on a renewal do not specifically refer to turnover rents, making it challenging to incorporate them into renewal leases and reform is needed to address this growing demand for turnover rents.

Finally, it is our view that the right to compensation based on the rateable value of the property should be revisited – this is arbitrary and does not strike a fair balance between the parties. Instead, we question whether there should be a statutory right to compensation at all given that it appears the right to compensation is not any more widely used by tenants now than in 1989 when the Law Commission reported that the right to compensation was little used by tenants and recommended its repeal.

We anticipate that the second Consultation Paper will provide a greater opportunity to expand on our proposals for these areas, but we have provided some high-level overview points given how instrumental they are to our current experience of the contracting out process/security of tenure more generally.

For the avoidance of doubt, we are strongly opposed to the introduction of mandatory security of tenure. This would be a radical change for which we do not believe there is any justificatory evidence base, and could have a highly disruptive impact on the commercial property market for both investors and occupiers.

<u>CQ3 – We invite consultees' views, together with evidence wherever possible, as to what impact a change to the model of security of tenure will have:</u>

<u>(1) on parties and their advisers</u>

As per our previous responses, we are not advocating for a change to the model, but for changes to the way that the contracting out process is managed. Figures from our portfolio indicate that, for leases with a start date from 2020 onwards, approximately two thirds of our lettings are currently contracted out, which gives an indication as to the current direction of travel. There is an argument that these figures make a case for going a step further and supporting a contracting in model: while we believe that either a contracting out or a

contracting in model would be workable, we are supporting a reformed version of the status quo for the reasons set out in our responses.

A strong argument for retaining a contracting out model is that the underlying principle is familiar to the parties, their advisors and the market, and is therefore likely to result in the least disruption.

Simplifying the procedure would also reduce the administrative burden on landlords and tenants, making it easier and less costly to manage lease renewals and property portfolios. In addition, reducing landlord costs associated with the process could lead to more competitive rental rates, potentially benefitting tenants financially. Simplified procedures would also increase transparency, making it easier for tenants to understand their rights and obligations.

Retaining a reformed contracting out model would also be beneficial to the parties' advisors as it would reduce the bureaucracy associated with the contracting out process, whilst not requiring either the parties or their advisors to have to understand and apply a completely new approach, thereby minimising the risk of misunderstandings or errors.

(2) on the commercial leasehold market

Please refer to our response above which also includes our analysis of the predicted impact the change to the model of security of tenure will have on the commercial leasehold market.

CQ4A – 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.

As stated in our response to question 1, our support for the continued use of the contracting out model is conditional on changes being made to the contracting out process and the scope of tenancies eligible for security of tenure.

We think a change in the extent of Duration Excluded Tenancies would be appropriate: in particular, we are advocating for office leases for a term of 10 years or less and retail leases for a term of 5 years or less to fall outside of the scope of the Act's security of tenure provisions. The current six-month duration criteria means that the vast majority of commercial leases are eligible for security of tenure. Given the significant advantages that tenants are afforded by security of tenure, we consider six months to be a disproportionately short lease length to attract such rights as default. A fairer balance between landlords and tenants would reflect that such rights should correlate to a tenant's occupation of the premises for a meaningful duration.

Increasing the duration threshold would also simplify the process for all parties in relation to the grant of short-term occupational interests. The risk of inadvertently granting security of tenure (despite neither the landowner or the occupier intending this) can lead to the need for

convoluted licensing arrangements (e.g. the grant of no more than two six-month licences of the same premises) or the need to spend time and money contracting out in circumstances that neither party believe should be required, but that the landlord must insist on for certainty.

In addition, we believe that it is generally accepted that longer lease terms tend to enhance the goodwill of a business by providing stability for the parties and attracting higher quality tenants who are willing to invest in the property. Our proposed change to the scope of Duration Excluded Tenancies encourages a move to this longer term/higher quality investment model, which is crucial for both landlords and tenants in maximizing the value and attractiveness of their commercial properties and boosting local economies, town centres and communities.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

If a different model for the 1954 Act is proposed our response to Question 4 would differ. We propose to elaborate on this in our response to the second Consultation Paper.

CQ5 – 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.

Save to the extent covered elsewhere in our responses, we broadly agree with the Law Commission's assessment of the potential advantages/disadvantages of reforming the scope.

CQ6 – 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

Our proposed change of scope would result in fewer leases falling inside the scope of the Act: this would simplify and streamline lease negotiations which in turn would speed up transactions and reduce the costs of completing a letting, of practical and economic benefit to both landlords and tenants. The same advantages would apply in the context of lease renewals, which would have the added benefit of removing significant burden from the Courts.

The Act as amended would also strike a fairer balance between the parties. For example, tenants in fast-paced industries would retain the ability to enter into agreements without long-term commitments and tenants who have been in occupation for longer periods of time will benefit from greater business stability and increased statutory protection. In return, excluding shorter term leases from the Act would give landlords more flexibility to manage their portfolios which would assist in helping them to maintain high occupancy rates. The change would bring greater proportionality to the strength security of tenure brings versus the length of a tenant's occupation.

The introduction of a threshold based on lease length would be straightforward to implement: Duration Excluded Tenancies would automatically be excluded from the Act which should make the contracting out process more straightforward for the parties.

As a result of our proposed change, the parties would benefit from increased certainty surrounding lease negotiations and security of tenure and their advisors would benefit from reduced bureaucratic and administrative burdens.

(2) on the commercial leasehold market

In terms of the commercial leasehold market, contracted out tenancies appear to be more common amongst retail and office leases with a term of five and ten years respectively. We believe that our proposed change in scope therefore reflects the current trend in the market and would save parties from the cost and delay associated with the contracting out procedure. The change could also create a more dynamic and flexible commercial leasing environment by reducing complexity and fostering a more transparent and adaptable market. Reducing the number of leases that come within the scope of the Act would make it easier for landlords to gain possession of their premises for redevelopment, refurbishment and sustainability purposes.

CQ7 – 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).

We are not best placed to comment on the impact the legislation could have on people who share a protected characteristic. We have shared our thoughts on the potential impact on businesses in our replies to questions 3 and 6.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

No further comments to add.

Dominic Ketteringham, Hillview Real Estate, Personal capacity

Role: a landlord (or predominantly a landlord)

If landlord or tenant:

Number of employees: 1-9

Regions: North West, Yorkshire and the Humber, West Midlands, South West, South East

Sector(s): Administrative and support services, Agriculture, Arts, entertainment, leisure and recreation, Charity, Construction, Education, Financial, professional, scientific and technical services, Health and social care, Hospitality, Information and communication, Infrastructure and utilities (e.g. electricity, gas, water supply, sewerage.), Manufacturing, Other service activities, Public administration and defence, Real estate, Retail and wholesale, Transport and storag,

CQ1 – 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.

CQ2 – 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.

Model choice: Contracting-in (so that a tenancy only has statutory security of tenure if the parties opt into a statutory scheme);

Reasons

The vast majority of leases granted have a maximum term certain of 3-5 years. As a result, it is not reasonable for the tenant to want or demand security of tenure so we end up contracting nearly all our leases out. This involves time and cost for both the landlord and the tenant.

CQ3 – 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 parties and their advisers

I believe that contracting in would save time on the vast majority of leases. This benefits both landlords and tenants. On average, I'd estimate a 2 day delay is typical upon completion of the legal documents for the tenant to complete the contracting out process.

(2) on the commercial leasehold market

The ability to transact more quickly and with less cost.

CQ4A – 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.

I would support keeping the security of tenure on leases of 10 years or more. This seems like a sensible balance.

The option to contract out would still be available and the perhaps the option to contract in on shorter leases could be added, although I'd suggest this adds additional red tape that is not required.

I would suggest specific Excluded Tenancies should be added such as car parking. We incur significant cost and effort having to carefully draft car parking licences to ensure they do not create protected tenancies. Clarity here would create significant savings for landlord and tenants on legal fees.

I do not believe that changes based on rent or floor area would be appropriate as there is too much variety across the regions. There is no reason why a 200 sft shop on a 20 year lease wouldn't want protection, but a 200 sft office on 1 year lease should not expect protection.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

If the current model of contracting out is retained, I'd suggest it only applies to leases of 10 years or more. ie. Any lease shorter than 10 years term certain would not be protected by the '54 Act. I would resist adding the option to contract in shorter leases as it adds additional red tape.

If the contracting in model is adopted, I do not believe changes would be required to excluded tenancies or duration.

CQ5 – 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.

I don't believe the loss of choice would be significant for the vast majority of tenants. They probably do not have a choice already as the landlord would refuse security of tenure on a shorter lease, if they have redevelopment plans, or if they feel the site could be redeveloped in the future.

CQ6 – 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

(2) on the commercial leasehold market

CQ7 – 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).

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Jeremy, Chg, Personal capacity

Role: a landlord (or predominantly a landlord)

If landlord or tenant:

Number of employees: None

Regions: North West

Sector(s): Financial, professional, scientific and technical services, Hospitality, Retail and wholesale

CQ1 – 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.

CQ2 – 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.

Model choice: Contracting-in (so that a tenancy only has statutory security of tenure if the parties opt into a statutory scheme);

Reasons

CQ3 – 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 parties and their advisers

(2) on the commercial leasehold market

CQ4A – 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.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

CQ6 – 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

(2) on the commercial leasehold market

CQ7 – 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).

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Dillington Estate

Role: a landlord (or predominantly a landlord)

If landlord or tenant:

Number of employees: 10-49

Regions: South West

Sector(s): Administrative and support services, Agriculture, Education, Financial, professional, scientific and technical services, Information and communication, Manufacturing, Retail and wholesale

CQ1 – 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.

CQ2 – 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.

Model choice: Contracting-in (so that a tenancy only has statutory security of tenure if the parties opt into a statutory scheme);

Reasons

Today 95% of our tenancies are opted-out. The process of opting out is a pain and is time-consuming, but essential for giving us the comfort needed to be willing to enter into these tenancies.

Our business is a single rural Estate with different buildings (and land) rented to tenants. Much of the property and land we use ourselves for the running of our own business (businesses even), but we are grateful to be able to use those assets we are not operating directly to house tenants and delighted to be able to support them.

However, as times change our business has and will continue to evolve and we anticipate the way we want to manage our assets, some of which are those rented out mentioned above, will also change. We have in fact never asked a tenant to leave, but the option to do so at the end of a multi-year tenancy is vital for the ongoing flexibility and resilience of our business.

Given the above, mandatory security of tenure would be an issue in the longer term and prevent us from renting out any buildings we anticipate a potential need for in the longer term.

The process of contracting out is bearable, but as we see it, an unecessary pain / cost.

I can understand that for some tenants the ability to opt-into security of tenure might be important and don't see a reason to prevent it (although presumably it could also be done through the use of renewal options).

Having a process that requires contracting-in would seem the right balance, allowing some flexibility to tenants for whom security is important, while removing the unecessary bureacracy of the current opting-out process.

CQ3 – 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 parties and their advisers

We use our own templates and do not generally use a solicitor when signing leases / notices, so in our case the impact on 1 is small.

(2) on the commercial leasehold market

I do not believe it will impact the market broadly, except perhaps to reduce some legal / professional fees, hopefully allowing time for these professionals to do something more useful and value-adding instead!

CQ4A – 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.

With a contracting-in option available the tenants and landlords should be able to negotiate the right solution for them in any cases that require security of tenure without the need to create additional complexity in the law. I would suggest that keeping the exceptions to a minimum is the way to go.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

No

CQ5 – 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.

Yes, I believe so

CQ6 – 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

See previous answer to the same question in the earier section

(2) on the commercial leasehold market

See previous answer to the same question in the earier section

CQ7 – 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).

None that have occurred to me

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Thank you for reviewing it

The Lulworth Estate

Role: a landlord (or predominantly a landlord)

If landlord or tenant:

Number of employees: 50-249

Regions: South West

Sector(s): Agriculture, Arts, entertainment, leisure and recreation, Charity, Hospitality, Retail and wholesale

CQ1 – 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.

CQ2 – 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.

Model choice: Contracting-in (so that a tenancy only has statutory security of tenure if the parties opt into a statutory scheme);

Reasons

Security of tenure has a significant impact on the capital value, income and longer-term management of a commercial asset.

Whilst security of tenure is positive for long-term property management, security of tenure should be the clear intention of both the Landlord and Tenant.

CQ3 – 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 parties and their advisers

We don't belive that moving from a contract-out model to contracting-in would have a significant impact on either of the parties.

The majority of our commercial leases are contacted-out, whilst also providing the leaseholder with breaks to permit them to bring the tenancy to an end prior to the expiration of the full term.

This has been an effective workable model for many years, although the simplicity of a contracting-in model would improve this.

(2) on the commercial leasehold market

We don't belive that moving from a contract-out model to contracting-in would have a significant impact on the commercial leasehold market, in our sphere of practice.

The majority of our commercial leases are contacted-out, whilst also providing the leaseholder with breaks to permit them to bring the tenancy to an end prior to the expiration of the full term.

The change of the model to contracting-in would not impact us on the availability of commercial leases.

CQ4A – 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.

We believe that the existing scope of the 1954 Act is appropriate including the current exclusions and the principle of Use Excluded Tenancies.

However the duration should be increased to 12 months to allow both Landlord and Tenant the flexibility of testing the suitabillity of the lease for a particular purpose, whatever that may be.

However, we consider that this period should be "reset" at the expiry of a term to ensure that this flexibility remains into a further term.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

No.

CQ5 – 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.

CQ6 – 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

(2) on the commercial leasehold market

CQ7 – 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).

The basis of a commercial lease is the ability of both the Landlord and the tenant to enter into sucj a contract.

From a Landlord's perspective this is governed primarily by the type of occupation proposed, i.e. a use that would be legal and not cause a nuisance to neighbours whether other leaseholders of the Landlord or not and the viability of the proposed of the proposed lease, i.e. the ability of the leaseholder to continue to pay the agreed rent.

In our view those other matters mentioned are irrelevant to any decision to enter into a lease, in as much as they would not affect the above.

The model would not affect this position.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Colin Rayner, WT Lamb Holdings ltd, Personal capacity

Role: a landlord (or predominantly a landlord)

If landlord or tenant:

Number of employees: 10-49

Regions: South East

Sector(s): Administrative and support services, Construction, Financial, professional, scientific and technical services, Infrastructure and utilities (e.g. electricity, gas, water supply, sewerage.), Manufacturing, Other service activities, Retail and wholesale, Transport and storage

CQ1 – 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.

No comment as we have no dealings in Wales

CQ2 – 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.

Model choice: Contracting-in (so that a tenancy only has statutory security of tenure if the parties opt into a statutory scheme);

Reasons

Getting tenants to contract out is time consuming, many dont wish to involve a solicitor due to delays and expense, getting them to complete simple declarations is a hassle, they forget to sign them or date them, or just ignore them until they are prompted.

Advising them they only have occupation for the term of their lease, with no automatic right of renenwal, and if they are unhappy about this they should go and discuss matters with a solicitor would be administratively easier and simpler for all. There should be a standard form that Landlords have to give to tenants explaining the above, as a condition of the lease, which tenants should sign and return, if they would like to have renewal rights. If this form is not signed by the tenant, the lease terminates on expiry with no renewal rights

I appreciate this is similar to what is currently in place, but their is a change of emphasis, to the tenant having to take the lead and do something to get renewal rights

CQ3 – 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 parties and their advisers

A far simpler procedure from a landlords viewpoint.

An easier and quicker option for tenants that want easy in / out terms.

Tenants who want longer periods of occupation would be far more likely to involve a solicitor in the leasing process and would recieve appropriate advice on the merits of contractin in.

(2) on the commercial leasehold market

simpler and more staight forward to administer and manage.

in terms of values i don't see much change supply and demand would still be the determining factor.

CQ4A – 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.

Most of our leases are now for 5 years or less, as this is what the market demands. The contracting in procedure as mentioned above would be appropriate for all of these. It is perhaps argueable if it would be appropriate for longer leases (say those that are registerable), but as these occupiers would be more likely to involve a solicitor in dealing with lease negotiations there is no reason why they should be uninformed or at a disadvantage because of it,

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

No I dont think it would

CQ5 – 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.

Your theretical assessments highlights some complexities, so what ever is decided upon has to be kept as straight forward as possible to avoid the stated complications. The current two tier contracting out procedure cannot be said to be straightforward in any event. If the current situation is to be kept, simplify it, likewise for any alternative system.

CQ6 – 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

it is considered that tthe option I have favoured would make matters clearer for all parties. Many tenants are currently unaware under the current legislation of the fact that they do have renewal rights, even if these are pointed out to them. Many others have no wish to do anything to safeguard these or will even approach a solicitor even if this is suggested to them and are happy to sign simple declarations to exclude the act. Taking the trouble to contract in would mean this would only be done if this was a fundamental issue to them. They would still recieve a warning notice, so they would be fully aware of this option and if contracting in had to be done via a solicitor, the potential for procedural error would be reduced.

(2) on the commercial leasehold market

As always the market would adjust accordingly, the effect would be negligible

CQ7 – 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).

it may slightly disadvatage occupiers who dont involve a solicitior in lease discussions, but this is no different than not doing so now

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Nothing to add it is all clear

Trenitalia c2c Limited (trading as c2c), registered number 07897267

Role: a landlord (or predominantly a landlord) Train Operating Company with tenants on the stations

If landlord or tenant:

Number of employees: 250 or more

Regions: East of England,

Sector(s): Transport and storage

CQ1 – 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.

CQ2 – 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.

Model choice: Contracting-in (so that a tenancy only has statutory security of tenure if the parties opt into a statutory scheme);

Reasons

Contracted-in tenancies tend to be tenant-friendly, while contracting out is landlord-friendly. Dealing with contract-in tenancies as a landlord reduces flexibility and can inhibit redevelopment plans. When the tenancy is contracted-in, when the lease expires, costs are higher, and the ability to negotiate is limited. An example of this is when there are turnover provisions within the lease, as there is no ability to review this, as it is a clause within the lease that automatically carries over.

The default position to simplify is to have all tenancies contracted-out unless the Landlord has a good reason to enter into a contracted-in tenancy.

CQ3 – 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 parties and their advisers

Under no circumstances do we enter into contracted-in tenancies. This policy has had no adverse impact on tenants. The rationale behind this stance is the negative consequences that protected tenancies can have when undergoing redevelopment and the dominance of certain retailers. A notable example of this is the WHS and Select Service Partner (SSP) partnership, which has significantly impacted regional stations. WHS, a brand that has been experiencing decline for several years, has seen its sales decline due to the changing preferences of consumers for obtaining reading material. The train companies have been unable to alter the product usage at stations, which aligns with current trends. In response, WHS has adopted a strategy of increasing prices, capitalising on its captive audience in these environments and generating substantial profits. This approach contrasts sharply with the High Street, where WHS no longer has the competitive edge and has subsequently put its business up for sale. Similarly, SSP has not made any significant investments in its

portfolio due to its dominance, resulting in poor stores and brands that are not aligned with contemporary trends.

While protected tenancies provide benefits to tenants, they have adverse effects on landlords and customers.

(2) on the commercial leasehold market

CQ4A – 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.

1. Use Excluded Tenancies

The current exclusions under the Act, including those relating to service tenancies and agricultural holdings, serve an important function in distinguishing between business and non-business tenancies. However, there are certain emerging business models—such as flexible co-working spaces and serviced office agreements.

2. Duration Excluded Tenancies

The exclusions based on tenancy duration provide necessary flexibility for short-term arrangements. However, in light of evolving commercial leasing practices, there may be merit in reviewing whether the current thresholds remain appropriate. For example, there is a rise of short-term and rolling tenancy agreements in retail and hospitality sectors.

3. Other Business Tenancies That Should Be Excluded

Should be considered whether business tenancies operating in highly specific contexts—such as pop-up shops, seasonal trading spaces, and certain digital or hybrid business models—should be explicitly excluded.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

The view would be the same as the Landlord has the ability to refuse a contract-in tenancy.

It could be argued that protected leases are not required under any circumstances, as the case is in Scotland.

CQ5 – 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 benefits and disadvantages of reforming the scope of the 1954 Act are correct.

CQ6 – 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

The impact on the environment of the stations would be limited, as contracted-in tenancies are not provided.

However, there is a benefit to not granting protection to a tenancy by mistake, as this can lead to unintended consequences.

(2) on the commercial leasehold market

Changes to the 1954 Act's scope would significantly influence the balance of power between landlords and tenants in the commercial leasehold market. A pro-tenant shift might provide business stability but discourage landlord investment, while a pro-landlord approach could encourage development but lead to greater tenant uncertainty. The specific impact would depend on the precise amendments made.

CQ7 – 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).

I have no evidence or data to suggest that any changes could result in advantages or disadvantages for certain groups or individuals.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Tom Ellams, Pradera Lateral, Personal capacity

Role: a landlord (or predominantly a landlord)

If landlord or tenant:

Number of employees: 10-49

Regions: North West, North East, West Midlands, East Midlands, East of England, South West, South East, London

Sector(s): Real estate

CQ1 – 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.

Not Answered

CQ2 – 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.

Model choice: Contracting-in (so that a tenancy only has statutory security of tenure if the parties opt into a statutory scheme);

Reasons

The Act was brought in to 'level the playing field' between landlords and tenants at a time when landlords had considerable power. That is no longer the case.

The default should be, as per any other contract, that the contract expires on the date set in the lease.

There is still some relevance of the 54 Act and it should not be totally abolished, therefore a contracting-in option makes most sense.

CQ3 – 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 parties and their advisers

(2) on the commercial leasehold market

CQ4A – 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.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

CQ6 – 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

(2) on the commercial leasehold market

CQ7 – 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).

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

The Howard de Walden Estate

Role: a landlord (or predominantly a landlord)

If landlord or tenant:

Number of employees: 50-249

Regions: London

Sector(s): Real estate

CQ1 – 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.

Left blank.

CQ2 – 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.

Model choice: Contracting-in (so that a tenancy only has statutory security of tenure if the parties opt into a statutory scheme);

Reasons

The vast majority of tenancies renewed or granted on our Estate are contracted out already. Circa 80% since January 2020 across office, medical and retail.

Avoids a protected tenancy being created inadvertently e.g. unconsented subletting.

Protection under the Act can be limited to the most relevant circumstances.

The benefit to a tenant of opting-in would be more appropriately reflected in the market price. i.e. a premium.

Legal completion for outside act tenancies are streamlined e.g. no declarations required. Tenants often complain of the complexity and time delay of statutory or simple declarations.

Improved business certainty for both parties at expiry.

Ease of possession at expiry including for sustainability improvements.

Removes s.34 (devalue all rent free) and more accurately reflects the market at renewal (e.g. disregard fitting out rent free) which is a more accurate reflection of reality when valuing the rent under the new lease.

Reduced cost at renewal.

Tenant still able to negotiate a protected tenancy if desired at outset.

The complexity of this statute automatically applying often requires professional property and or legal advice at the outset but more commonly at expiry. Often this is in the form of

advocacy which does not necessarily encourage amicable relations between the parties and can delay or frustrate agreement being reached at the expiry of a lease. The result is uncertainty for both parties financially and in terms of timescale which can be significant.

Clearly the issues associated with protected tenancies would persist under any existing protected tenancies if these are allowed to continue on.

CQ3 – 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 parties and their advisers

Assuming a change to "opt-in";

Improved clarity of the process to contracting parties to a lease.

Increased speed of negotiations and legal completion = cost saving to landlords and tenants for example in fees and void time.

Better value consultancy fees for clients.

Potential for a rental premium to emerge for protected tenancies.

Increased transparency for landlord pipeline refurbishment and redevelopment planning.

Tenants may request longer excluded tenancies with breaks.

Potential for increased requests for reversionary leases.

Reduced opportunity to borrow against leases.

Ease and simplicity for occupiers unfamiliar with UK law / unrepresented.

(2) on the commercial leasehold market

Assuming a change to "opt-in";

Increased market liquidity – occupational & investment.

Increased development opportunity / flexibility for landlords.

Market simplification.

Increased certainty for valuations & the investment market.

Increased sustainability opportunities.

Weakened tenant negotiating position.

Reduction of void periods – LL income / business rates / reduced insurance / speed of fit out – tenant business up and running.

Movement towards inclusive leases.

CQ4A – 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.

1. The Use that is most appropriate to be excluded in our opinion is office.

2. The Duration that is most appropriate to be excluded in our opinion is 10 years or less.

3. Other types of business tenancies that are most appropriate to exclude in our opinion include;

Telecommunications

Substations

Garages

Buildings including residential use

Buildings requiring sustainability works inc. Listed buildings

This forms part and parcel of Estate Management and the controlling of the mix of uses.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

No.

In all scenarios – whether the Act is retained or reformed, it is clear that this piece of statute is not appropriate for short term lettings and particularly in the case of offices.

CQ5 – 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.

Yes.

CQ6 – 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

A change of scope i.e. understood to mean a change to which type of tenancies the Act would or would not apply to depending on their characteristics.

This could complicate the overall leasing market by creating more nuances but simplify the markets in which the Act no longer applied e.g. reduced regulation = simplification = reduced cost.

The key impact could be reduced transparency as parties have to “re-learn” changes to statute and the issues that could flow from this including for example impact on value or process.

This has the potential for a higher incidence of professional advice being sought. In turn longer negotiation times for transactions and different terms being agreed, increased costs.

A potentially disproportionate impact on occupiers non-conversant with property compared to corporate landlords.

(2) on the commercial leasehold market

Amending an established piece of statute could undermine existing precedent and lead to a higher incidence of litigation.

A higher incidence of professional advice could produce drag in the market, slowing negotiations, transactional frequency, increasing costs.

A change of scope could lead to artificial distortions occurring in the market and lead to future cycles. For example if a specific use class with a lease of under 5 years were to be automatically excluded from the Act then tenants might decide to commit to a longer term certain for business certainty. This could lead to increased building investment values with that use class. This might encourage more development by landlords of such use class. Eventually this could lead to an over-supply in the sector and a subsequent decline in prices and rental values.

The impacts are curatable to a certain extent – showing potentially forecastable positive and negative externalities.

CQ7 – 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).

No.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Whether and how a change to the model of security of tenure would or could apply to existing tenancies that are already protected by the Act.

Mileway

Role: a landlord (or predominantly a landlord)

If landlord or tenant:

Number of employees: Not Answered

Regions: North West, North East, Yorkshire and the Humber, Wales, West Midlands, East Midlands, East of England, South West, South East, London

Sector(s): Administrative and support services, Financial, professional, scientific and technical services, Manufacturing, Other service activities, Retail and wholesale, Transport and storage

CQ1 – 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.

There is no difference in our experience of the security of tenure regime in Wales and therefore no special considerations. We think that consistency of regime is important for efficient property management of portfolios across England and Wales.

CQ2 – 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.

Model choice: Contracting-in (so that a tenancy only has statutory security of tenure if the parties opt into a statutory scheme);

Reasons

Mileway is the largest "last mile" real estate company in Europe. Our purpose is "to be Europe's leading provider of last mile logistics real estate, enabling businesses to thrive, driving sustainability forward and shaping the cities of tomorrow." Mileway's England and Wales portfolio comprises warehouses, distribution centres, manufacturing facilities, workshop, retail showrooms, creative spaces and any other type of logistics property in proximity to urban areas. Our occupiers range from large scale international logistics operators to small and medium sized business looking to scale their operation. Efficiency and certainty in our leasing transactions is key to providing premises for these businesses and their critical services to other businesses and consumers.

Security of tenure creates several transactional issues for Mileway and although instinctively abolishing security is attractive, we recognise there is a place for security of tenure and so have opted for the contracting-in model.

Approximately 69% of our tenancies are contracted-out from the security of tenure regime. The majority of the remaining tenancies have security and the position is uncertain on a very small number. Switching to a contracting-in model would remove the work associated with the contracting-out process on each letting transaction and significantly improve the speed and efficiency of the letting process overall.

In our experience, smaller tenants taking smaller premises are not aware of security of tenure as a concept. We would not offer it on small premises for short terms in any event meaning the process of contracting-out is an unnecessary burden. Where occupiers are not

represented, they usually undertake the simple declaration procedure where the need to wait 14 days is cumbersome and unnecessary. In some cases, additional work or documentation (usually a licence agreement - which is additionally confusing for the occupier) is required to allow access to premises before that period has expired which is unsatisfactory for all parties.

Tenants who want to invest significant capital into premises – particularly larger distribution centres – will expect security of tenure. This is normal in the market and it is not a significant issue in negotiation when the nature of the premises, occupier and tenancy justify it. It would make more sense if these transactions required an extra process to attach security to the letting rather than the current model where the higher volume, lower value transactions require the extra process. We do not think the current contracting-out process significantly influences occupiers or that they are particularly affected by the warning notice if they were not previously aware of the implications of not having security of tenure.

CQ3 – 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 parties and their advisers

The primary benefit to the parties and their advisers is to reduce the administrative burden prior to entering into a tenancy. It would also remove inconsistencies such as the highest risk for landlords accidentally giving tenants security of tenure (through a mistake in the process for example) being attached to the lowest value transactions.

It seems logical that a contracting-in process could be significantly simpler because if anyone needs a warning about the consequences of security tenure, it would be the landlord and in the majority of letting scenarios, the landlord is driving the transaction so will understand what terms it is offering. It seems likely that a contracting-in process would be simpler and less document intensive (although we acknowledge that would be a matter for the second part of the Law Commission's project).

Mileway does not use external advisors for leases where the occupier is unrepresented, the lease is less than seven years and the annual rent is less than £80k. If leases such as those did not need to be contracted-out because they did not have security of tenure as a result of the model, that would present a significant opportunity for us to operate more efficiently.

(2) on the commercial leasehold market

Mandatory security would be the most difficult regime for the market to adapt to. Particularly in the context of investment in redevelopment.

Abolishing security would lead to sophisticated occupiers insisting on contractual rights to renew – which in many cases would be agreed for longer term higher value transactions. However this would add delay to those lease negotiations and also result in inconsistency of the renewal process.

Maintaining a security of tenure regime (either contracting-out or contracting-in) is unlikely to impact the market in terms of values. However, we anticipate the market would welcome a simplified process, model choice and scope that reflected modern leasing arrangements.

CQ4A – 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.

We do not have any view on the existing range of use excluded tenancies. Beyond those, we do not think that use should be a factor in determining whether or not a tenancy has (or can have) security within our market. Use changes over time but use can also be complicated – especially in the sorts of premises within our portfolio. A relatively common example would be a warehouse with a retail counter or collection point which is a tiny fraction of the floorspace – but is it logistics or is it retail or mixed? Within our "logistics" parks there could be manufacturing, storage, office, gyms, wholesale etc. Different regimes applying to different premises would be difficult to manage effectively.

A use classification may lead to use being adapted to avoid the regime in a way that could affect value of the transaction and ultimately not use the space in the way that is most useful to the community (or local urban area) which it serves.

Size of premises is not a factor in current discussions about whether a lease should have (or be capable of having) security of tenure. Occupiers are more concerned with their business and the level of their investment in the premises and whether that needs protecting. Basing scope of regime on size of premises doesn't reflect the needs of the parties properly.

We support the suggestion that more short term leases could be brought within the category of duration excluded tenancies. Almost all leases of up to 5 years are contracted-out.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

Our views are based on the processes associated with granting leases so that they do not have security of tenure so our answer would differ depending on the model. If leases didn't have security then scope becomes less important.

CQ5 – 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.

This is correct – however greater weight should be given to the benefits of changing the scope to reflect market practice should be given if security of tenure remains the default going forwards.

CQ6 – 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

In our view leasing would become easier and problems associated with contracting-out would become less of an issue in day to day leasing and management.

(2) on the commercial leasehold market

CQ7 – 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).

We do not believe so.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Although these may be issues for the second part of the consultation project, we have particular concerns relating to:

(a) The Van Staden trap – and references to the term in the tenancy documents – and the windfall position of security of tenure for tenants due to this defect in documents.

(b) The 14 day cooling off period in the standard declaration procedure – which creates an unnecessary and complicated drag on transactions as explained previously.

(c) If some sort of notice and declaration procedure is to be retained, it would make sense for flexibility as to how this works – particularly if this could be done electronically or online in order to speed up the process and reduce the need for production of documents.

(d) The difficult interaction between the security of tenure regime and contractual rights to break leases. There may be commercial reasons (for example) why a lease break right needs to be included and if exercised, terminates the lease without the complexity of security of tenure regime - but that if the break is not exercised and the lease expires by effluxion of time, that security should apply. Consideration should be given to the possibility to allowing parties the freedom to take mid-tenancy contractual break rights out of the regime but with the parties still having the statutory renewal regime at the end of the term if that is what they want. (We acknowledge there are ways to achieve this using multiple documents – but those structures exist because the security of tenure regime is all or nothing).

The Arch Company

Role: a landlord (or predominantly a landlord)

If landlord or tenant:

Number of employees: 50-249

Regions: North West, North East, Yorkshire and the Humber, Wales, West Midlands, East Midlands, East of England, South West, South East, London

Sector(s): Administrative and support services, Arts, entertainment, leisure and recreation, Charity, Financial, professional, scientific and technical services, Health and social care, Hospitality, Manufacturing, Retail and wholesale, Transport and storage

CQ1 – 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.

We do not have any particular considerations to raise except that as an operator of a very large and actively managed portfolio of property in both England and Wales we are very strongly of the opinion that there should not be any difference in either model or scope in England and Wales. Consistency is important to the efficiency and cost effectiveness of managing our portfolio (and as a result the provision of space to (predominantly) SMEs).

CQ2 – 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.

Model choice: Contracting-in (so that a tenancy only has statutory security of tenure if the parties opt into a statutory scheme);

Reasons

The Arch Company's commercial property portfolio comprises approximately 24.8 million sq. ft. across approximately 5,300 rental spaces (our term for lettable units) of which approximately 3,600 are currently let. Each year, we grant over 400 new tenancies and renew approximately 70-90 tenancies.

The Arch Company provides more commercial space for small and medium sized business to rent than anyone else in the UK. We estimate that about 45% of our let rental spaces currently benefit from security of tenure. Since 2019, when Network Rail sold much of its commercial property portfolio to us, our new lettings do not benefit from security. This is because our portfolio interest is leasehold and the headlease terms set by Network Rail require any new occupational leases we grant to be contracted out.

These rental spaces include railway arches, former railway station buildings and parcels of land, many of which are in prime urban locations. Our customers' uses of their rental spaces is varied and reflects the vibrancy and dynamism of modern urban economies. By use class, 60% of our portfolio is for light industrial use which includes workshops; storage and distribution; and vehicle service and repair. The remainder of our portfolio is comprised of retail; food and beverage; office; leisure and car parking.

Commercial space in central urban locations such as London is in very short supply, particularly light industrial space which has reduced considerably over the last twenty years. We provide a space solution for startups and scale ups looking for suitable commercial premises to operate and grow their businesses. Our insights work with SMEs in London shows that a need for functional space is one of their key concerns. The size, relative affordability and versatility of arch spaces means they are well placed to meet this need. Our spaces typically cost between £15k - £50k so they are at the more affordable end of the market.

The feedback we receive from our customers show they value:

1) The speed of the letting process: our customers are generally keen to ensure that once they have decided to take a rental space, they can take occupation quickly to enable them to start operating their business as soon as possible;

2) The simplicity of the letting process: our customers commonly choose not to engage legal or professional advice in connection with their lettings, so would prefer a letting process which is simple for them to comply with; and

3) The cost-effectiveness of the letting process: our customers value a cost-effective letting process which enables them to lease a rental space on terms which are straightforward to understand, and without having to incur potential additional costs in dealing with legal processes (such as the existing contracting-out process where they are required to swear a statutory declaration if they want to avoid waiting for 14 days before completing the documentation).

Therefore, in relation to The Arch Company's customer base the proposed "contracting-in" model would likely suit our customers better as it would help meet the requirements of our customers by removing the need to undertake the contracting out process prior to letting. Our customers are often unrepresented and, in our experience, security of tenure is not a significant consideration for them. For the majority of our customers, long term location security is not part of their commercial thinking. Many of our customers prefer to have a shorter-term tenancy (often not more than 6 years in length) and do not intend to spend a significant amount of capital on fitting out their rental space.

In our experience the contracting-out process only causes (at best) delay and hassle; and (at worst) confusion with our customers. We commonly experience delays to new lettings due to errors or resistance on the part of our customers to visiting an independent solicitor to swear a statutory declaration when they have chosen to be unrepresented and are trying to minimise transaction costs. The time and cost incurred (on both sides) when the process is undertaken incorrectly (which is more likely with unrepresented customers) is significant across our letting activity.

Many of our SME customers have low upfront costs and do not invest significant capital into the premises - they just want somewhere to occupy quickly and simply. In our experience, customers do not change their mind or thinking when they receive the contracting-out warning notice, even if they previously had no detailed awareness of security of tenure. The fact there is no resistance to contracting out in this part of the market demonstrates to us that security of tenure is not a key consideration of customers who are looking at short term occupation with little capital investment in the premises.

In terms of the wider market and the parts of our portfolio occupied by businesses with more significant up-front capital expenditure, we recognise that they may expect security of tenure to protect that investment. We think that those customer concerns can be adequately addressed through contractual rights to renew (which is what we are limited to granting by our headlease) or through a "contracting-in" model. We recognise the advantages of a statutory framework for a renewal process which would avoid the time, cost and commercial negotiation involved in bespoke contractual rights to renew.

CQ3 – 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 parties and their advisers

In relation to The Arch Company's portfolio, a change to the model that removes the need to contract out tenancies would have an immediate positive benefit for us and our customers as it would simplify and speed up transactions. It would enable our customers to access our rental spaces (and therefore allow their businesses to commence trading) more quickly, more simply and avoid unnecessary or wasted costs associated with the current contracting-out process (and particularly where that process is undertaken incorrectly).

As set out in our comments on earlier questions, we do not think the majority of our customers would be materially prejudiced by a change in the model to "contracting-in", and we believe that adopting a simplified "contracting-in" model would enable our customers' businesses to thrive for the reasons set out above.

As the proportion of The Arch Company's portfolio that comprises protected tenancies is gradually reducing over time, the impact of a change of model on lease expiry (assuming that it would not be retrospective) is likely to be of lesser impact than other consultees.

(2) on the commercial leasehold market

The Arch Company operates in a part of the market where most customers are not significantly concerned with the concept of security of tenure (for the reasons set out above). In this part of the market, a change in the model would not (in our view) impact the availability of, demand for or value of space and would allow for a more dynamic market for SMEs to upscale/downscale at a pace which suits their business needs.

Moving to a "contracting-in" model would enable parts of the market where security of tenure was required to agree and opt-in.

CQ4A – 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.

The Arch Company believes that Duration Excluded Tenancies are appropriate. It gives us flexibility to grant very short-term occupation without security of tenure being a consideration – which for reasons already given is useful to our customers.

We would also prefer the length of Duration Excluded Tenancies to be increased. Our suggestion would be a term of 7 years to catch leases that are compulsorily registrable at HM Land Registry. Almost all customers taking leases of this length will be legally represented (to some extent) meaning that they are properly advised and more likely to undertake a contracting out process correctly. The market is already aware that 7-year terms are a tipping point for registration requirements so aligning security of tenure with that term length (and potentially the other triggers for compulsory registration of a lease) would be a more straightforward adjustment. As The Arch Company grants approximately 400 new tenancies a year and the majority of our customers do not request terms longer than 6 years, this would also fit with our experience of market demand.

We do not think that any other factors should determine the security of tenure position. In particular, any location-based factors would make managing the portfolio particularly difficult. Any physical factors would also present problems. For example, premises size is an inexact science in practice – with many measurements being "agreed" and measurement often being the source of disputes.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

No further comment, save that our preference for a longer Duration Excluded Tenancy is only relevant if the current model (contracting-out) or mandatory security of tenure is adopted.

CQ5 – 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 consultation paper does not flag that there is an opportunity and potential benefit of reforming scope to help simplify and speed up transactions in the market where the security of tenure regime is not adding anything.

As stated above, we strongly agree that introducing additional complexity would be a significant disadvantage of reforming scope. In the event that the present system of contracting out is retained, we would suggest that the process could be simplified to provide for a warning notice to be served at the same time the final tenancy is issued, with that being sufficient to contract out the tenancy.

Alternatively, if it is determined that it is desirable to retain some form of tenant's declaration then the current process could be modified so that a simple declaration could be signed by the customer at the same time as they sign the tenancy without the need for either a statutory declaration to be sworn or a 14 day "cooling-off" period being required.

CQ6 – 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

This is covered in the previous answer. As the majority of the tenancies we grant are flexible (for example including customer break options) a change to a “contracting-in” process would make the process more straightforward and cost-effective for customers.

(2) on the commercial leasehold market

This is covered in the previous answer.

CQ7 – 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).

We do not believe so, but we have not considered this in detail in the context of this particular legal reform.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Not applicable.

Indurent

Role: a landlord (or predominantly a landlord)

If landlord or tenant:

Number of employees: 50-249

Regions: North West, North East, Yorkshire and the Humber, Wales, West Midlands, East Midlands, East of England, South West, South East, London

Sector(s): Arts, entertainment, leisure and recreation, Manufacturing, Retail and wholesale, Transport and storage

CQ1 – 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.

Indurent has no particular comments in relation to security of tenure in Wales but in the interests of simplifying investment in and management of a portfolio across England and Wales, the security of tenure regime should be consistent across both jurisdictions.

CQ2 – 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.

Model choice: Contracting-in (so that a tenancy only has statutory security of tenure if the parties opt into a statutory scheme);

Reasons

Indurent is a leading developer and manager of industrial and logistics spaces across the UK with a large portfolio. We provide a wide range or buildings and spaces that drive economic growth by bringing jobs and investment to local communities. Our expertise and resources empower business of all sizes to thrive, and we take pride in playing a role in their success.

Indurent has 27 million sq ft of assets under management. Our occupiers are a mix of significant long term occupiers in strategic locations and small and medium sized businesses seeking shorter term and flexible space. We cater to all parts of the logistics market.

We think that there is a place in the market for security of tenure as long as landlords and occupiers have the freedom to choose whether or not security of tenure applies (i.e. contracting-in (our preference) or contracting-out but not mandatory security which would give no choice).

As a business, management time and financial cost associated with security of tenure is primarily around contracting-out prior to entering into a tenancy (which is the case for most tenancies where the premises are small (under 5,000 sq. ft.) or the term of the tenancy is short. These occupiers do not require security of tenure and do not question the fact it is not being offered. Occupiers taking leases of larger spaces for longer terms will expect security of tenure and we do not have any issue with occupiers having security of tenure in these circumstances. Although we have incorporated contracting-out into our letting process, the time and cost associated with the process is effectively wasted (for both us and the occupier).

Some of our space is offered to market on standard terms (effectively occupiers can "take it or leave it") and the vast majority of those tenancies are contracted out. Occupiers looking at that sort of space are predominantly small and medium sized businesses, many of whom are not represented by solicitors when entering into these transactions. In these cases, occupiers come to us for fast and easy access to logistics space in a convenient way. The contracting-out process is an obstacle to that. Although we have incorporated contracting-out into our process, it would not need to be undertaken if there was no security of tenure or these leases were out of scope.

Under the current regime, the time and cost of the process of contracting-out is attached to the smallest and shortest lettings which is disproportionate to those transactions. The impact of transferring the requirement for a process to the larger, longer lettings that have security would be minimal because those transactions are fully negotiated and already involve significant amounts of documentation.

CQ3 – 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 parties and their advisers

As stated in previous answer, we think the market needs the option to enter into leases that have or do not have security of tenure as the circumstances required (and the parties agree). A change to either no security or mandatory security would interfere with this market flexibility. A change to a contracting-in model would retain market flexibility and although it would mean two regimes operating in the market, we do not think that would materially complicate management or drive up transactional cost.

Contracting-in is unlikely to have an impact on the big occupiers who invest time and cost in leasing transactions – but it would remove an obstacle for smaller transactions where there is an opportunity to save time and cost.

(2) on the commercial leasehold market

Abolishing security of tenure would potentially drive up transaction costs on more significant lettings where contractual rights to renew would become more common. As each would inevitably negotiated on bespoke terms it would add time and cost to entering into transactions and carrying out due diligence when acquiring investment properties. Many different types of contractual rights to renew would make managing renewal processes inconstant.

Mandatory security of tenure (with no change in scope) would significantly interfere with short term flexible leasing models (of the type that make up a significant part of our portfolio).

CQ4A – 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.

Duration Excluded Tenancies are necessary for flexibility to grant very short term occupation without security of tenure. Although we have developed processes to contract-out tenancies, a clearer simpler process would benefit our letting processes and our speed to transaction with SME occupiers.

Regardless of the length of Duration Excluded Tenancy, we strongly believe that the cumulative length of occupation should be removed as a factor (i.e. section 43(3)(b) of the Act). Parties should be free to enter into as many consecutive short term arrangements in the knowledge that they will always be outside the security of tenure regime without the need to contract-out. This will enable providers like ourselves to simplify processes where occupiers want short term arrangements renewed at those intervals. We do not think that landlords would try and take advantage of this to avoid giving security of tenure as we think occupiers have access to enough straight forward deals in the market that they would question complicated arrangements with multiple renewals. The key point is to ensure that it is completely clear (for both parties) from the terms of the particular tenancy whether or not that tenancy needs to be contracted-out (or in) under the regime – removing the need to have knowledge of the length of previous occupation.

Introducing other factors into scope (e.g. use, location or size) would be administratively difficult and add a significant burden.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

Our views on scope apply to any model of security of tenure other than no security. this reflects our main concern to remove the requirements of excluding security from shorter term leases. If the contracting-in model was adopted, scope is still relevant because if shorter leases could not be contracted-in it would remove any need for this to be part of commercial negotiation in a part of the market where it should not be relevant.

CQ5 – 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.

We support the view that reform in the ways we have set out could potentially be beneficial to the efficiency and clarity of lease grant and termination in the market and would therefore be welcome. Reform that added complexity and confusion (by making security mandatory or having complicated tests for scope) would cause material problems to industry.

CQ6 – 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

This is covered in the previous answer.

(2) on the commercial leasehold market

This is covered in the previous answer.

CQ7 – 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).

Nothing to add.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

If the Law Commissions recommends that the current contracting-out regime is to be retained, we would hope particular consideration is given to reforming the process of contracting-out. Firstly consider whether the three requirements for contracting-out (notice, declaration and statement in lease) proportionate to the protection offered. In our view this could be reduced to one requirement – preferably a statement in the lease.

If the notice/declaration procedure is to be retained, we believe that the cooling-off period serves no purpose. We are not aware of any of our potential occupiers changing their mind about entering into a transaction in that time based on the notice. Removing the time period would enable greater simplification and faster transactions.

TT Group

Role: a landlord (or predominantly a landlord)

If landlord or tenant:

Number of employees: 50-249

Regions: North West, North East, Yorkshire and the Humber, Wales, West Midlands, East Midlands, East of England, South West, South East, London

Sector(s): Administrative and support services, Agriculture, Arts, entertainment, leisure and recreation, Charity, Construction, Education, Financial, professional, scientific and technical services, Health and social care. Hospitality, Information and communication, Infrastructure and utilities (e.g. electricity, gas, water supply, sewerage.), Manufacturing, Public administration and defence, Real estate, Retail and wholesale, Transport and storage

CQ1 – 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.

We own a large and varied portfolio across England and Wales (and Scotland) and are firmly of the view that a consistent model/ scope should apply in order to achieve efficiencies and cost effectiveness throughout our portfolio. As it stands, the different approach already adopted in Scotland causes issues, for instance, in that it is not possible to appoint the same professional advisors (eg. solicitors and property consultants), or to adopt “standard” documentation, across the portfolio.

CQ2 – 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.

Model choice: Contracting-in (so that a tenancy only has statutory security of tenure if the parties opt into a statutory scheme);

Reasons

TT Group (“TTG”) is one of the UK’s largest, privately owned property investment and development firms. Our portfolio comprises over 15,000 properties, spanning 85 million square feet. Our tenants range from government departments to blue-chip corporations, to national companies, to local traders.

We estimate that about 65% of our tenants benefit from security of tenure and we grant c.60 new tenancies each year and renew around c.30 tenancies.

Our view is that the contracting-in model is preferable as it would significantly speed new lettings of smaller/ cheaper accommodation to smaller tenants. Such tenants tend not to be professionally advised and equally tend not to be seeking long term accommodation. In our experience the tenants’ objective in such cases is to quickly secure short-term, flexible accommodation and security of tenure is not something they are seeking. The current contracting-out process inevitably causes delay in such lettings, and unnecessary/ unwelcome costs and hassle (for instance in having to visit an independent solicitor to swear a statutory declaration) when the tenant has chosen to be unrepresented and wants to minimise transaction costs.

Tenants for larger, higher quality accommodation tend to be companies or corporations, represented by solicitors and property agents. They also tend to have more significant up-front capital expenditure (for instance in fitting-out the property to reflect their specific use and/ or corporate image). Such organisations may well expect security of tenure in order to protect their long-term location and their capital investment but they are also better placed to deal with (and bear the costs of) the requirements of a contracting-in model.

CQ3 – 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 parties and their advisers

As outlined above, a change to the model that removes the need to contract-out tenancies would immediately simplify and speed transactions for that part of the market seeking short-term flexible space. It would enable those transactions to be undertaken faster, more simply and without unnecessary or wasted cost associated with the current process.

Also as outlined above, we do not envisage that the sector of the market involving bigger tenants and larger accommodation would be unduly prejudiced by a change to a contracting-in model. They are likely to already be professionally represented and well placed to absorb the additional process and costs of contracting-in.

(2) on the commercial leasehold market

For the reasons set out above, we do not believe that a change to a contracting-in model would impact the availability of, demand for, or value of accommodation. Transactions for the more "fluid" part of the market would be quicker and cheaper, whilst those involving the longer-term market are well placed to adapt quickly to the additional requirements of contracting-in.

CQ4A – 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.

In terms of the Use Excluded Tenancies, TTG is of the view that the current model covers all appropriate uses and cannot see that there are additional uses that should be excluded (or included) in the Act.

As regards the Duration Excluded Tenancies, TTG considers that if a contracting-in model were to be adopted then the matter is irrelevant – tenancies of all durations would be excluded, unless contracted-in. However, if the current contracting-out model was to be retained, then the Duration Excluded Tenancies could validly be extended to cover all tenancies of 3 – 5 years or less. In practice, tenancies of that length tend to be contracted-out and therefore could sensibly be excluded anyway.

We do not think that any other factors should determine the security of tenure position.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

No further comment, save that our suggestion of a longer Duration Excluded Tenancy is only relevant if the current model (contracting-out) is retained or mandatory security of tenure is adopted.

CQ5 – 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.

We would only add that introducing additional complexity or cost would be a significant disadvantage of any reformation of the Act.

CQ6 – 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

Please see the previous answer.

(2) on the commercial leasehold market

Please see the previous answer.

CQ7 – 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).

We do not believe so

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

N/A

Hammerson PLC

Role: a landlord (or predominantly a landlord)

If landlord or tenant:

Number of employees: 50-249

Regions: West Midlands, South West, South East, London

Sector(s): Arts, entertainment, leisure and recreation, Charity, Construction, Health and social care, Hospitality, Infrastructure and utilities (e.g. electricity, gas, water supply, sewerage.), Other service activities, Real estate, Retail and wholesale, Transport and storage, Offices

CQ1 – 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.

We have no comments to make in respect of this question.

CQ2 – 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.

Model choice: Contracting-in (so that a tenancy only has statutory security of tenure if the parties opt into a statutory scheme);

Reasons

We are an owner, operator and developer of sustainable prime urban real estate. We manage and invest in landmark city destinations integrating retail, leisure and community hubs to meet evolving customer and occupier needs. We have over 3,000 occupiers and in the UK our 5 destinations reach a third of the country's population.

We have thought very carefully about our response to the 1954 Act consultation given our leading position experience in the UK market. Critical to our thinking was our customers and occupiers, as well as the communities and cities we serve through our destinations.

PREFERRED MODEL – Contracting-in

Our view is that the 1954 Act should be reformed so that the contracting-in model is adopted.

Overall, 84% of our live leases are contracted out, but almost 100% of new leases (as opposed to renewal leases) granted in the past 4 years have been contracted out. This also means that of all the leases inside the 1954 Act granted in the past 4 years, almost 100% are renewal leases, which indicates that security of tenure is more of a legacy issue, rather than a key, commercial requirement for our occupiers.

As such, we are of the view that the contracting-in model reflects current market practice and our current portfolio and removes the additional time and expense of contracting the leases out of the 1954 Act.

COMMENTS ON OTHER MODELS

- ABOLITION OF SECURITY OF TENURE

Although we are submitting this response in support of the contracting-in model, we would not be averse to a change to the system resulting in the abolition of statutory security of tenure altogether.

Over the past decade, we have seen a market trend away from 1954 Act protected leases, particularly as lease lengths are increasingly shorter. Our data indicates that the number of protected leases in our portfolio are more due to legacy, rather than commercial drivers. The abolition of security of tenure would therefore also suit our portfolio and occupier base.

The 1954 Act currently causes numerous delays in the leasing process because the contracting out process involves a lot of unnecessary red tape. A disproportionate amount of time is spent by solicitors ensuring that the process has been followed correctly (e.g. verifying whether the person making a statutory declaration had authority to do so or whether the solicitor administering a statutory declaration had a practising certificate) as there may be significant repercussions where a technical error is identified, even if the parties clearly intended for the lease to be contracted out.

The current model also acts as a barrier against investment into our landmark city destinations. Key redevelopment projects, often where there is strong stakeholder and local authority buy-in, are often held up by minority occupiers whose rights under the 1954 Act cause problems with achieving vacant possession of development sites. Abolishing the 1954 Act would therefore significantly speed up our investment and mean we can get on with developments that add to the buzz of our cities and ensures our dynamic spaces continue to thrive for occupiers and consumers.

There is also a need for the UK to remain competitive in the international market. Other jurisdictions do not offer similar statutory protection and the very concept, as well as the additional administration and accompanying legal expense, can potentially be a barrier to the domestic market, particularly to new entrants. We also find that our international occupiers do not seem to see the need for security of tenure.

Our experience with 1954 Act lease renewals is that the 1954 Act is increasing the burden on the Courts system, which is struggling to handle the volume of cases. It can often take 2 to 3 years from the date a section 25 or 26 notice is served up until the date of a court hearing.

We also find that occupiers often need to issue proceedings in Court simply to protect their legal position, creating parallel negotiations. This is a very inefficient use of the Court’s time and is also costly to both landlords and occupiers.

- CONTRACTING-OUT (THE CURRENT MODEL)

For the reasons set out above, our view is that the current model is outdated and unsatisfactory and that reform is long-awaited. We therefore do not support the status quo.

- MANDATORY SECURITY OF TENURE

We do not support mandatory security of tenure. Mandatory security of tenure was in fact the position in the UK prior to 1970 and so it has already previously been tested out. The

previous outcome was that landlords became less willing to let out space on a short-term basis, leading to a reduction in supply of space to tenants and leading to a rise in commercial rents. This approach has no role in today's world of commerce.

CQ3 – 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 parties and their advisers

As 84% of our live leases are currently contracted out, a future switch to the contracting-in model would lead to greater speed and productivity for both landlords and occupiers in the vast majority of our lettings. This is because it would eliminate the red tape involved when leases are signed, whereby at present a disproportionate amount of time is spent by solicitors dealing with the contracting out process. It would also help reduce legal fees incurred by both landlords and occupiers. Time and energy by in-house teams can also be refocussed.

(2) on the commercial leasehold market

With deals being signed more quickly under the contracting-in model, this would mean that our dynamic cities will see the investment come through much more quickly. This also means fewer vacant units at our destinations.

The move to the contracting-in model would also speed up regeneration projects and sale of commercial property as it means that solicitors no longer have to devote as much time on verifying whether or not a tenant enjoys 1954 Act protection.

At present, Hammerson offers certain occupiers the opportunity to sign up to standard short-term licence agreements for periods up to 6 months using our bespoke "Hammerson Space" system. This is an online system which is dynamic and easy to use. Agreements are signed very quickly, and the system is very popular with our occupiers who often request the system be rolled out for use with longer term lettings. Due to the 1954 Act, it is currently not possible for us to roll out this system to lease agreements of more than 6 months because such agreements would have to be contracted out. A future switch to the contracting-in model would address this issue and would enable us to transact via this popular tool.

CQ4A – 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.

1. THE EXTENT OF THE USE EXCLUDED TENANCIES:

Our UK destinations are multi-use and integrate retail, leisure and community hubs to meet evolving customer and occupier needs.

We regularly review and change the uses of our spaces as part of our strategic repositioning of assets to ensure that they always remain dynamic spaces servicing the needs of the communities and cities that they serve. As such, there always needs to be flexibility for us to change the use of a particular space.

For these reasons, we oppose any changes to the 1954 Act which would distinguish between different uses as the existence of any distinctions could potentially create barriers to occupiers wishing to assign their lease to a business which intends to use the space for a different purpose. This would be detrimental to the communities and cities that we serve.

2. THE EXTENT OF THE DURATION EXCLUDED TENANCIES

Our view is that leases of 5 years or less should be excluded from the 1954 Act.

Our data shows that amongst all new (as opposed to renewal leases) leases of 5 years or less which we granted in 2024, 0% were inside the Act.

Out of all the leases granted in 2024 with a term of 5 years or less (including renewal leases), only 14% were protected leases, all of which were renewal leases. This again illustrates that the security of tenure regime is already of less relevance in the modern-day world, and particularly in relation to short term leases.

Also, by excluding leases of 5 years or less from the scope of the 1954 Act, this gives us the opportunity to greatly extend the signing of leases via the aforementioned Hammerson Space system, leading to much faster transactions.

3. OTHER TYPES OF BUSINESS TENANCIES WHICH SHOULD BE EXCLUDED FROM THE 1954 ACT

Other types of business tenancies which should be excluded from the 1954 Act

There are various types of leases which we frequently grant to occupiers in our destinations which we would never contemplate granting 1954 Act rights. Our view is that these types of leases should always be excluded from the 1954 Act.

These include leases of automated teller machines (ATMs) which are increasingly of less relevance in a modern world where customer payments are increasingly made electronically.

Also, leases of advertising screens and marketing space should be excluded.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

If security of tenure is abolished, there would be no need to exclude leases of a certain length or type of business tenancy.

If mandatory security of tenure is the underlying model, we would require significantly more carve outs (e.g. for all leases with a term of 20 years or less) to ensure that our dynamic spaces continue to thrive.

CQ5 – 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.

We welcome the opportunity to engage in any discussion which simplifies and speeds up leasing transactions and development and which benefits the real estate sector and wider community.

CQ6 – 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

By carving out leases with a term of 5 years or less from the scope of the 1954 Act, this would equate to cutting red tape so that deals can be done far quicker and more seamlessly. It would also reduce legal fees for both landlords and occupiers as solicitors often charge additional fees for dealing with contracting out.

61% of our leases which we granted in 2024 were for 5 years or less of which 86% were contracted out of the 1954 Act. Therefore, simply reducing the scope to carve out leases of 5 years or less would have a significant and positive impact on our portfolio.

(2) on the commercial leasehold market

By carving out leases of 5 years or less from the scope of the 1954 Act, this would mean that there is much less scope for errors to be me made in the contracting out process, meaning that there will be fewer instances of 1954 Act issues in short leases holding up redevelopment opportunities. This would greatly facilitate our goal of creating much needed dynamic spaces to enable the cities which we serve to thrive.

CQ7 – 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).

We sometimes find that certain individuals struggle to deal with the red tape imposed by the1954 Act because in practice it means that they need to attend a solicitors' office in person to make a statutory declaration. By removing this barrier, we believe it will ensure that occupiers with mobility or disabilities are able to sign leases more easily and this will help make the leasing process more inclusive.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

We have no further comments to make.

Network Rail Infrastructure Ltd

Role: a landlord (or predominantly a landlord)

If landlord or tenant:

Number of employees: 250 or more

Regions: North West, North East, Yorkshire and the Humber, Wales, West Midlands, East Midlands, East of England, South West, South East, London

Sector(s): Arts, entertainment, leisure and recreation, Hospitality, Infrastructure and utilities (e.g. electricity, gas, water supply, sewerage.), Retail and wholesale, Transport and storage

CQ1 – 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.

Not Applicable

CQ2 – 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.

Model choice: Contracting-in (so that a tenancy only has statutory security of tenure if the parties opt into a statutory scheme);

Reasons

Commercial / Retail view:

Network Rail by policy has not granted new tenancies with security of tenure in over a decade.

An Opt-In model would match the business landscape better than contracting out.

An opting in regime allows, when the circumstance is appropriate, for us to grant security of tenure, but it will not happen by default through lack of action.

Mandatory security of tenure would be problematic to to work with, hinder business development, reduce investment and provide less optimal travel environments across our estate.

Poor performing Tenants or those posing a risk to the railway are more difficult to remove at the end of their lease in a mandatory model, and the risk of gaining security of tenure is increased with a contracting out model.

An Opt in model Provides more open market letting flexibility and adapt our tenant mix to meet the needs of the travelling and none travelling customer. It will also create a more competitive market.

This matches the position recommended in the ORR's Market Study into Railway Catering 2024 - to reduce renewals to the same parties, be more open in how we conduct lettings and reduce the number of protected tenancies.

Development view:

Often the benefits of breaking a protected tenancy greatly outweigh the costs as this enables regeneration, investment and provision of new housing.

The ability to simply and quickly contract out of the 1954 Act enables landlords such as Network Rail to apply short-term or meanwhile uses for vacant land and buildings where development/ regeneration opportunities exist but may be some time off commencing. This has an extra facet in reducing the risks associated with unauthorised occupation, safety to the railway, allows the site to generate income and can provide a short-term benefit to local communities.

CQ3 – 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 parties and their advisers

Commercial / Retail view:

Opt in / no security reduces the risk of default security of tenure by lack of action. An Opt in could remove onerous Notice and Declaration procedures ahead of lease completion. There would be no need for S.25/26 Notices at lease end, simply negotiate between the parties. Less litigation and court costs.

An Opt in would still provide parties with the option to provide security of tenure if agreed, although a contractual option would have the same effect.

At the moment an ill-advised Tenant could inadvertently gain security of tenure when they may neither need nor want it. Also it exposes Landlords to high compensation figures if they wish to occupy or redevelop and additional time and legal fees at lease end.

An Opt in or no security model could save time and fees and lease inception and expiry.

Development view:

It could become more difficult and costly to obtain vacant possession of property subject to business tenancies. This has the potential to make marginal sites unviable and delay bringing forward development and regeneration opportunities (and the benefits such as housing provision that these schemes bring).

Landlords could be forced hold vacant land and buildings for longer which has the potential to blight local communities and introduces the risk of vacant property suffering from fly tipping, squatting and other problems.

An increase in tenant protection including greater compensation could add additional risks to development proposals. This could influence viability and reduce the number of development opportunities, unless compensated for via the town and country planning process (for example lower affordable housing provisions, lower CIL obligations and so forth).

A model that provides greater protection introduces additional risk for developers making it harder to plan schemes, access funding and make short-term decisions around the future of development.

It’s not often the principle of ’54 Act protection that is the blocker on development, but more the impact of compensation provisions in the case of redevelopment, which is a core part of the current model. Even a fairly modest change to this element (to give greater certainty around timescales and costs), whilst preserving other elements of security under the extant arrangements, could help better support development viability.

A change that brings in greater simplicity in contracting out of the 1954 Act and clearer definition of who can serve notice as competent landlord under S.30(f) would be beneficial – in instances where there is ambiguity into whether leases have been properly contracted out, uncertainty becomes a problem for development as failure to get vacant possession on time and uncertainty if S.25 notices are contested can significantly undermine development viability.

Any changes that bring greater clarity and certainty could be beneficial if applied retrospectively to existing tenancies although caution would be needed to avoid unduly disadvantaging development viability on this point.

(2) on the commercial leasehold market

Commercial / Retail view:

This will create a more competitive market. There will no longer be two tiers of comparable evidence and court decision over rents, the parties will simply need to agree or walk away. in an opt in or no security of tenure model.

It was highlighted in our response to the ORR's Study in Railway Catering 2024 that there were barriers to competition on our estate, for example between April and September 2024 we only tendered 20% of units at renewal. We have a clear direction in this control period to drive income and customer experience.

A further remedy identified in the Study was to "where possible, take advantage of any opportunities to terminate existing protected leases and replace them with contracted out leases." so Network Rail would support any recommendation from this consultation that would support remedying development areas identified in our business.

We do not believe in this market that statutory security of tenure is valued by tenants in the station commercial environment.

The renewal process needs to be streamlined and modernised, including appropriate open market rent arrangements and updating of lease clauses, rather than the previous lease being precedent at renewal.

It may not be looked on favourably by Tenants if the grounds of termination are widened and costs lowered, however at present if we do wish to terminate on legitimate redevelopment or railway grounds the legislation is a minefield and we can find ourselves tied up for months.

For example, a railway project to install gatelines at London Victoria. The preparation required to ensure our notices were served correctly, and the potential for litigation put a huge amount of risk on the project. We could not commit to demolition timelines before Tenants agreed we had served correctly and they did not wish to contest the notices, and

the costs to the government in statutory compensation were huge. We do not doubt that security of tenure played a part in increasing risk and cost to the project.

We want to reduce the administrative burden and costs imposed by the 1954 Act, as do Tenants, and simplify the termination process both for Tenant mix reasons and for redevelopment and operational railway project purposes.

In terms of Tenant mix, we are currently hindered from providing optimal mix and income due to the 1954 Act protected leases on our estate. We find they are least invested in by the Tenants as they know they have automatic right to renew regardless if the brand is suitable or generating adequate rent. We find that by tendering units the design, customer service and income from units is improved, and the passenger satisfaction follows. Where we have had a 'clean slate' to start tenant mix from scratch, we have proven that we can provide best in class commercial environments in a travel setting. For example Time Out magazine recently listed London Bridge 10th in the European Station Index, scoring the maximum points for restaurants and takeaways. This station was reopened in 2018 and has since gone from strength to strength, unhindered by protected leases. At expiry of each lease, the very best decision can be made for customer experience and income.

From a strategic point of view, we would support any recommendation that assisted us in competitive tendering as many units as possible, where appropriate to do so. Removing the security of tenure barrier would do this.

In summary, we do not grant new protected leases, so we do maintain a certain amount of flexibility, but where this change in legislation could really assist us, is with the legacy protected leases, and how we can more cheaply and easily terminate at lease expiry, if appropriate to do so.

Network Rail supports SMEs and understand that security of tenure is often sought by these types of Tenant to maintain goodwill from lease to lease, and help unlock investment. We seek to work with all occupiers to agree a suitable lease solution and hope we can provide the support required contractually rather than relying on legislation to do that. We believe we have proven through our COVID support that we are a Landlord who works in partnership with their Tenants, providing support to those who need it, whilst balancing our obligations under Managing Public Money.

CQ4A – 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.

We believe the current excluded tenancies are appropriate but there are certainly 'loopholes' which are widely used, licences by name only for example.

Overlapping legislation needs to be considered, e.g. Railways Act, Telecoms Code

We use a belt and braces approach and often double up to ensure protection cannot be gained, but this seems overly onerous.

A duration of 2 years could be considered for an excluded tenancy, assisting us with pop-up type uses. This would provide market agility.

Any change in the definition of excluded tenancies could complicate things further, and open up further loopholes.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

Yes. We would recommend an Opt in model, which would mean the above would be mostly irrelevant, it only matters in a mandatory or opt out model.

CQ5 – 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.

Aside from the points made in previous questions, and the assessment included in the consultation paper, we do not believe there is anything more to add.

CQ6 – 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

Assuming the model remains the same at present, any change in scope would need to be carefully considered. The legislation is already quite complicated and like with the current situation that Tenants can inadvertently gain protection, this risk will remain. There is a question of parity and equality in the way we treat Tenants, why should certain types of Tenants benefit while others do not?

Anything relating to the characteristics of a building or land could be manipulated to suit a party we believe.

(2) on the commercial leasehold market

If mandatory security or opt out security or tenure was applicable to our estate, this would make strategic decisions a lot more difficult.

Depending on the scope we might look to only build units that didn't apply, and we could maintain flexibility with, or if the scope only applied to certain occupiers we might look to avoid those, in order to retain the flexibility. This would further reduce our choices when it came on Tenant mix and income generation.

If the scope were to become more complex, project planning around operational requirements could become more difficult. We might need to include various time and cost risk profiles depends on which units were within scope.

The ORR's Market Study into Railway Catering recommended simplification and standardisation of contracts, We would support any outcomes that would assist us with this recommendation.

The exclusion period of 6 months really assists us with pop-ups and short term storage agreements. It keeps us agile, reduces our liabilities and improve the customer experience. Extending this to two years would only improve our agility.

CQ7 – 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).

No

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Should there be separate legislation for statutory undertakers? - for example that Tenants cannot benefit from security of tenure from a statutory undertaker? This would save those statutory undertakers on costs when they need to carrying out their duties.

Church Commissioners for England

Role: a landlord (or predominantly a landlord)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

CQ2 – 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.

Model choice: Contracting-in (so that a tenancy only has statutory security of tenure if the parties opt into a statutory scheme);

Reasons

Current Position:

The Church Commissioners ("CCE") grant commercial leases, i.e. leases granted under the auspices of the Landlord and Tenant Act 1954 ("the Act"), across their real assets portfolio.

As landlords of commercial property, the main problem encountered by the Commissioners is the inadvertent creation of a secure lease by:

- not, or incorrectly, opting out of ss. 24-28 of the Act.

- accepting rent after the end of a contracted-out lease as a result of allowing tenants to continue to occupy whilst a new lease is negotiated. Under present case law, this pragmatic and supportive approach risks creating a new periodic tenancy protected by the Act

As it currently stands, the position in commercial lease negotiation is that mutual agreement has to be reached to exclude the lease from the protections of the Act.

Current Commissioners' policy toward the Act can differ across elements of the commercial portfolio:

- Situation 1:

• New leases are granted with the default position that they are contracted out of the Act. This occurs when granting leases to small companies, generally start-ups with little equity, within listed buildings and is designed to allow flexibility for the Commissioners and the tenant, as well as reduce legal costs for both sides and to limit the liability for generally not well capitalised tenants in maintaining the fabric of a listed building.

• This provision appears in the Heads of Terms for all new lettings

• No new leases will be granted within the Act unless in exceptional circumstances, or if there is a renewal of a lease already protected by the Act.

- Situation 2:

• This scenario applies where there is a more traditional commercial portfolio comprising of nationwide assets in the major commercial property sectors – retail, office and industrial.

• Here, CCE adopts no official default position with regard to the Act when granting new leases.

• CCE recognises that within the sectors where we hold assets directly – primarily retail and industrial, the market norm is that leases are still granted within the Act and the type of tenants that we let to – national multiples – will expect to be granted leases inside the Act.

In some circumstances, largely as part of agricultural leases and rural properties (not traditional commercial assets) there may be some ambiguity in whether the Act applies. This risk is seen occasionally across CCE real assets. Such examples might include:

- Equestrian uses of land included within a Farm Business Tenancy – often a farm business can adapt over time and start to include horses on the land, and occasionally this provides difficulty with commercial lease terms where the Act may apply once a use has changed

- The ambiguity as to what is in scope of the Act also has in view the diversification of a farm business which started as purely agricultural in nature, with later requests for letting buildings for example in connection with the establishment of a farm shop or creation of a livery yard

- In such scenarios, the costs of preparing correct paperwork and ensuring correct notices are served can be disproportionate to income received on rural assets such as grazing licences

- Further ambiguity arises from some community uses e.g. cricket grounds, village halls, and playing fields which tenancies may fall within the Act, despite there not being intent to create a commercial lease and where the landlord receives a peppercorn rent

- Such scenarios also give around to complexities which arise from the application of associated compliance regimes. For example, some assets/holdings e.g. cricket pavilions, sport sheds will be caught by EPC legislation [Energy Performance of Buildings (England and Wales) Regulations 2012 (as amended)] when EPCs should not be relevant as currently they are let using commercial leases.

CCE notes that leases for mineral extraction are currently specifically exempt from the provision of the 1954 Act. This should be considered within the Consultation.

The Commissioners' preference is for the Act to be amended so that the default position is that commercial tenancies are contracted out of the Act. It follows that CCE considers that option 3 should be adopted so that a tenancy only has a statutory security of tenure if the parties opt into the statutory scheme. We believe that this will have benefits for both landlords and tenants, including:

- Diversification will be encouraged and, for landlords, the risks that tenants inadvertently create opted in tenancies would be removed; and

- CCE considers it likely that this option would lead to a reduction in legal and compliance costs for all parties, as we anticipate that a smaller number of tenancies would be opted in than are currently opted out by following the contracting out procedure under the Act.

CQ3 – 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 parties and their advisers

(2) on the commercial leasehold market

CQ4A – 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.

CCE believes that for certain types of tenancy, there should be no statutory security of tenure. For example, in the case of more unusual commercial properties such as playing fields, village and church halls etc, where tenants tend to be small unincorporated local bodies with limited expertise in property management, the burden of dealing with the statutory procedures under the Act adds increased costs and a disproportionate burden.

Furthermore, we are of the opinion that a minimum rent bracket should apply where the option for opting into the protections of the Act should not apply, of £5,000 per annum index linked so that the minimum figure increases over time. Where the rent is below that minimum figure, the tenancy should be excluded from the scope of the Act.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

CQ6 – 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

(2) on the commercial leasehold market

CQ7 – 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).

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Landsec

Role: a landlord (or predominantly a landlord)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

CQ2 – 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.

Model choice: Contracting-in (so that a tenancy only has statutory security of tenure if the parties opt into a statutory scheme);

Reasons

Business Tenancies: the right to renew

Landsec response to the Law Commission's consultation paper 1: models of security of tenure

This is a consultation response to the Law Commission's review of Part 2 of the Landlord & Tenant Act 1954 (hereafter the LTA or the Act). A review of the legislation is much needed, and we're grateful for the opportunity to share our views on a potential reform of the legislation.

Landsec is a major property investment and development company, with a portfolio that includes high quality central London offices, retail destinations and a residential development pipeline.

The success of our business is centred on partnership with brands, customers and local government. We exist to shape places which stand the test of time. To us, that means giving our customers the platform to grow over the long term. The right leasing strategy is therefore key to our customer's success.

In 2025, 78% of our customers choose to be contracted outside of the security of tenure provisions of the Act. A piece of legislation which is more often ignored than applied is dysfunctional and ripe for reform.

The LTA is outdated and doesn't reflect the modern, agile market we find ourselves in today. It's cumbersome and archaic in its application. Given most of our customers contract outside the Act, the simplest course of action would be to remove security of tenure. But we recognise that this might not provide sufficient protections for smaller businesses.

With that in mind, we support the British Property Federation's (BPF) submission in both a preference for the contracted-in and response to the technical questions.

Introduction

The Landlord and Tenant Act 1954 last year celebrated its 70th birthday. An impressively durable piece of legislation, the LTA has been around for almost as long as our business, which is currently marking its 80th anniversary.

The world of leasing has changed considerably since the LTA's introduction following the Second World War. It would've been hard for our founder, Lord Harold Samuel, to imagine that, from the rubble of the bomb sites he was regenerating, retail destinations, workplaces and neighbourhoods would emerge. All attracting global brands and businesses.

When the LTA was passed decades ago, the property market was a very different place, with the availability of commercial space in short supply. This picture has since changed dramatically, with far greater supply leading to shorter and more flexible leases, giving tenants greater optionality on where they choose to trade. Moreover, the effects of technological change and rapid globalisation mean that the marketplace has fundamentally changed.

In retail, for instance, a combination of technological shifts and customer preferences has altered the landscape significantly. While the best-in-class retail destinations continue to attract significant interest from brands, the bargaining position between landlord and tenant is far more equalised – particularly where the location is less desirable.

Moreover, international brands looking to expand their footprint in the UK overwhelmingly find the LTA process a hinderance to investment. Often, because their corporate approach to leasing space in other countries does not apply in the UK, the process of acquiring space can become incredibly complicated and expensive.

The uncertainty brought about by the current system also disincentivises our customers from investing in their buildings, which poses a particular challenge for decarbonisation. Equally, the inflexibility prevents business from investing in its buildings in the same way. This is a key issue on ageing buildings which may not achieve adequate EPC ratings without significant expenditure yet may be frustrated by an occupier claiming security.

The Act is not reflective of this changing landscape. Instead, it serves as a disincentive to flexibility, dynamism and economic growth. This is why it is increasingly common for parties to contract-out of the Act. In our own portfolio, over 75% of our leisure, 80% of retail and almost 60% of office leases are contracted-out, with BPF data suggesting that shorter leases (5 years of less) are even more likely to be contracted-out (between 70-90% depending on asset type).

A piece of legislation which is far more frequently circumvented than applied is no longer an effective piece of legislation. Not to mention its act as a brake on economic growth and progress on net zero targets.

The need for nuance

However, the principles established within the Act remain just as important – that owners and occupiers should work in partnership with one another, to ensure successful business and places. This is not, and must not become, a zero-sum game. We have considered the four models that might be relevant for the future and summarise our views below.

Maintaining the existing security of tenure system is not tenable. The perceived imbalance of power in the Act has shifted in the decades since, and with the growth of multinational businesses, has accelerated even further in recent years. Most businesses no longer need the protection of the Act and where security of tenure does apply it can cause delay and cost to owner and occupier and be a brake on investment, development, change, and growth.

Removing all forms of protection is likely to come with political challenges, even if from a commercial perspective, our lettings show security of tenure is relevant only in a minority of cases. However, we support the view that leases of less than 5 years should be excluded from the Act, since our leasing evidence shows only a small percentage of occupiers require the Act's protection. This would reduce the level of administrative burden involved in commercial leasing and remove uncertainty regarding when licences to occupy can become protected leases.

Tilting the balance towards default security for all leases does not recognise the needs of modern businesses, or the role of responsible landlords as custodians of the public realm. The reality facing businesses today is that most leases sit outside of the Act and in the sectors in which we operate between 70-80% of all leases granted don't benefit from security. Default security would also have a severe detrimental impact on economic growth and undermine any rational development considerations.

Contracting-in is generally viewed by the industry as a logical solution and based on our evidence in terms of volumes of contracted-out leases, we favour this model. In essence, it will provide the same protection as the contracting out model, but the process must be simplified to streamline the process and reduce cost and delay.

Towards a better reform

Reform of the LTA needs to be focused on fostering economic growth and the creation of better, greener places. This should include incentivising the decarbonisation of the built environment.

To achieve this, we'd urge the Commission to recognise security of tenure is only relevant in a minority of cases and to focus on simplifying the existing system, removing barriers to us working more collaboratively with our customers. Ultimately, it's only through close partnership that business can thrive. Any reform of the LTA should have this as a guiding principle.

Reform should also focus on providing flexibility. Where our customers wish to exit or renew a lease, we should be able to provide that service without the current situation of endless bureaucracy. In our retail, leisure and office destinations, where contracting out is nearly universal, sitting outside of the Act allows for a swift change of brands to suit our both our brand partners and customers.

Conclusion

This is a welcome first step towards a reformed arrangement between landlord and tenants, which should, at its heart, be about removing unnecessary layers of bureaucracy and cost that disincentivises investment.

In our view, the legislation should be amended to exclude any leases of less than 5 years in duration from security of tenure and adopt a contracting-in model for all leases in excess of 5 years which would represent the greatest reduction in administrative burden and free-up the greatest potential for closer collaboration between our business and brand partners, helping to create more sustainable places both in economic and carbon intensity terms.

We would strongly oppose a default tenure of security. And while abolition of the LTA altogether would benefit both our business and many of the brands we work with, we recognise that there may well be a need for legislative protections to ensure a level playing field across our sector. This could be provided via the opt in model.

We would suggest the following principles are considered ahead of the second phase of consultation:

• Move to a reformed model which allows closer working relationships between owners and occupiers, ending the excessive bureaucracy at present which disincentives investment, delays rather than enables growth, incurs considerable expenditure and time and does not help to drive economic growth or progress on net zero goals

• Exclude tenancies of less than five years, arguably longer based on our occupational profile, from security of tenure, above the current six months

• Ensure that any reform to the contracting out (or indeed a contracting-in) process are simple – it seems counter-intuitive that to contract out of a lease where professionally advised, an occupier must visit a separate adviser simply to witness them signing a declaration. This frequently delays occupiers taking access and hampers productivity adding cost and delay to the process

We look forward to the next stage of consultation and the detail to follow.

CQ3 – 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 parties and their advisers

(2) on the commercial leasehold market

CQ4A – 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.

Removing all forms of protection is likely to come with political challenges, even if from a commercial perspective, our lettings show security of tenure is relevant only in a minority of cases. However, we support the view that leases of less than 5 years should be excluded from the Act, since our leasing evidence shows only a small percentage of occupiers require the Act's protection. This would reduce the level of administrative burden involved in commercial leasing and remove uncertainty regarding when licences to occupy can become protected leases.

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• Move to a reformed model which allows closer working relationships between owners and occupiers, ending the excessive bureaucracy at present which disincentives investment, delays rather than enables growth, incurs considerable expenditure and time and does not help to drive economic growth or progress on net zero goals

• Exclude tenancies of less than five years, arguably longer based on our occupational profile, from security of tenure, above the current six months

• Ensure that any reform to the contracting out (or indeed a contracting-in) process are simple – it seems counter-intuitive that to contract out of a lease where professionally advised, an occupier must visit a separate adviser simply to witness them signing a declaration. This frequently delays occupiers taking access and hampers productivity adding cost and delay to the process

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

CQ6 – 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

(2) on the commercial leasehold market

CQ7 – 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).

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Tony, HSL, Personal capacity

Role: a landlord (or predominantly a landlord)

If landlord or tenant:

Number of employees: 1-9

Regions: South East, London

Sector(s): Retail and wholesale

CQ1 – 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.

CQ2 – 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.

Model choice: No statutory security of tenure (abolition);

Reasons

Because each party has agreed the terms of the 'contract' at the outset and should then re-negotiate at the end of the Term

CQ3 – 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 parties and their advisers

Less fees for advisors

Quicker tenancy renewal processes

Less costs to tenants and landlords

(2) on the commercial leasehold market

More choice

Proper market rents

less pressure on the court system

CQ4A – 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.

Not Answered

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

Not Answered

CQ5 – 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.

Not Answered

CQ6 – 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

Not Answered

(2) on the commercial leasehold market

Not Answered

CQ7 – 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).

Not Answered

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Not Answered

Griffon Group

Role: a landlord (or predominantly a landlord)

If landlord or tenant:

Number of employees: 1-9

Regions: London

Sector(s): Administrative and support services, Construction, Real estate

CQ1 – 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.

Not Answered

CQ2 – 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.

Model choice: No statutory security of tenure (abolition);

Reasons

Having to contract out is anachronistic and no longer required. Tenants can simply request longer leases with break clauses if required.

Having to contract out simply increases both parties legal fees which is of course great for lawyers but completely unnecessary.

There are inherent risks with the current system which is prone to simple drafting & dating mistakes - lawyers again.

CQ3 – 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 parties and their advisers

1. No material impacts other than speeding up the granting of leases and a consequent reduction in legal fees.

2. None.

(2) on the commercial leasehold market

None.

CQ4A – 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.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

CQ6 – 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

(2) on the commercial leasehold market

CQ7 – 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).

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

The Port of Dover

Role: a landlord (or predominantly a landlord)

If landlord or tenant:

Number of employees: 250 or more

Regions: South East

Sector(s): Administrative and support services, Arts, entertainment, leisure and recreation, Charity, Construction, Education, Financial, professional, scientific and technical services, Hospitality, Infrastructure and utilities (e.g. electricity, gas, water supply, sewerage.), Public administration and defence, Real estate, Retail and wholesale, Transport and storage

CQ1 – 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.

Not Answered

CQ2 – 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.

Model choice: No statutory security of tenure (abolition);

Reasons

As a Trust Port, our statutory duty is to administer, maintain and improve the Port. In order to productively pursue this duty, we need to ensure maximum flexibility within our estate so that we can focus on regeneration. The Port is also subject to evolving regulatory requirements like the EES scheme, which requires us as the landlord to be able to respond to these changes efficiently. It is important that we are not bound to (i) long-term tenant agreements and (ii) an obligation to renew unless we can rely on of the grounds not to renew, which is in itself can be a lengthy and time-consuming process.

In this context, the 'No Security of Tenure' model would be most advantageous for our business, as it eliminates the need for additional paperwork. This model would address the significant challenges associated with the current process, such as delays in obtaining tenant signatures and the additional costs. Overall, this would involve the least bureaucracy, while providing us with the maximum flexibility that we require to run our Port well.

CQ3 – 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 parties and their advisers

The 'No Security of Tenure' model would simplify the process for our tenants and their advisors as there would be no paperwork to be completed and no additional costs to incur to comply with a process. However, it will be important for tenants to be properly informed of their position so the impact of the arrangement (i.e. no right to remain once the term has expired) will need to be clearly communicated to the tenant at the outset.

(2) on the commercial leasehold market

If a ‘No Security of Tenure’ model is adopted, the dynamics of the general commercial leasehold market will likely shift as the balance of power between the landlord and the tenant is adjusted. However, within the Port, the impact will be minimal.

CQ4A – 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.

The Use Excluded Tenancies is not applicable to us due to the nature of our business.

In our review, the Duration Excluded Tenancies are not appropriate as they are too short. We feel that the exclusion should be extended to cover leases up to 5 years in duration (see answer to question 19).

We think a widening of section 43 (3) of the LTA 1954 to automatically exclude leases up to 5 years may address the issue we have regarding the contracting out process. We would not have to allocate additional time and resources to go through the contracting out process with our tenants. Leases offered by statutory harbour authorities on operational land/land within the harbour premises should also be excluded. This would allow maximum flexibility to manage the port estate as required to meet wider regulatory requirements.

CQ4B – We invite consultees’ views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

Mandatory security – No, in a mandatory security environment, we would still want leases of up to 5 years in duration to be excluded from the scope of protection.

No security – With a no security scheme, we do not need to exclude leases of up to 5 years.

Contracting out – Our answer would not differ as this would be beneficial to us under the Act’s current terms, saving us additional costs associated with negotiating contracts and obtaining signatures.

Contracting in – With a contracting in scheme, we would not need to exclude leases up to 5 years as anyone wishing to contract in will have to follow a process for contracting in.

CQ5 – 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.

Yes, your assessment is correct.

CQ6 – 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

Any change would involve short to medium term costs to both parties. Mandatory security of tenure would reduce ability of landlords to end leases upon their expiry, potentially reducing their willingness to let out certain properties.

(2) on the commercial leasehold market

The impact on the commercial leasehold market will depend on the nature of the change in scope. If more leases are routinely excluded (e.g. if all leases under 5 years in duration are carved out), then generally speaking, it is likely that tenants will be pushing for longer term leases to ensure protection, and this may impact on the rental value of shorter-term leases.

CQ7 – 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).

Tenants that lack legal acumen, or literacy skills may struggle to comprehend changes as swiftly as others.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

The landlord is a Trust Port, we cannot guarantee lease renewals due to the continually changing land requirements imposed by our statutory duties. The nature of the Port operations, particularly given our status as critical national infrastructure, requires us to be nimble in adapting to the changing regulatory landscape. Granting leases with security of tenure would significantly limit our ability to make required adjustments efficiently. It could create long-term constraints on land availability, delay necessary infrastructure projects, and reduce our capacity to respond to emerging regulatory or economic changes. The inability to terminate or restructure leases in a timely manner could hinder our plans to optimise port operations for the benefit of the wider economy. By contrast, the current contracting-out model ensures that we can continue adapting to evolving requirements while providing tenants with commercial certainty within the agreed lease terms.

Therefore, mandatory security of tenure is our least preferred option, as it would restrict the flexibility essential for efficiently running the Port of Dover which already struggles with land constraints due to being constrained by the surroundings cliffs.

Valor Real Estate Partners

Role: a landlord (or predominantly a landlord)

If landlord or tenant:

Number of employees: 10-49

Regions: London

Sector(s): Manufacturing, Retail and wholesale, Transport and storage

CQ1 – 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.

N/A

CQ2 – 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.

Model choice: No statutory security of tenure (abolition);

Reasons

Reducing Legal Costs and Bureaucracy to Improve Business Efficiency

- The lease renewal process under the 1954 Act is legalistic, costly, and time-consuming, draining resources from businesses and landlords alike.

o As an example, we have a tenant in London who served a s.26 Notice in Feb 2022, requesting a new lease commencing in Feb 2023.

o As terms could not be agreed before the notice expired, they then applied to court.

o It continued through the court process through 2023 and a trial was set for July 2024.

o Given the cost associated with court, it will now be decided by PACT in February 2025, some three years after notice was served.

- Eliminating these legal barriers would reduce operational costs for businesses, allowing them to reinvest savings into growth, innovation, and job creation.

- A streamlined property market would also make the UK a more attractive destination for international businesses, fostering economic competitiveness.

Aligning with Global Best Practices to Boost the UK's Competitiveness

- Many of the world's most dynamic economies—Singapore, Hong Kong, and the U.S.—do not provide statutory security of tenure for commercial tenants.

- These countries attract significant foreign investment due to their flexible property markets, which support rapid business expansion.

- By modernizing the UK's commercial lease framework, the country would become more competitive on the global stage, attracting multinational corporations, investors, and new industries.

Accelerating Urban Regeneration to Revitalize the UK's Cities

- The UK faces challenges with underutilized urban spaces in key cities where long-standing tenants hinder redevelopment.

- Abolishing security of tenure would accelerate regeneration projects, allowing cities to modernize faster with mixed-use developments, new commercial hubs, and vibrant business districts.

- This would create thousands of construction jobs, increase property values, and stimulate local businesses, contributing to economic growth in both urban centres and regional areas.

CQ3 – 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 parties and their advisers

Enhancing Market Efficiency to Drive Economic Productivity

- The 1954 Act traps commercial spaces in outdated, inefficient uses, limiting opportunities for high-growth businesses to access prime locations.

- Dynamic reallocation of property—allowing landlords to lease to the most productive tenants—would increase overall economic output.

- By ensuring that real estate aligns with the evolving demands of the modern economy, businesses can expand faster, boosting productivity and GDP growth

(2) on the commercial leasehold market

Stimulating Investment in Commercial Real Estate and Infrastructure

- Property owners are more likely to invest in redevelopment if they can regain possession of their properties without legal hurdles.

- The current system discourages long-term investments in refurbishments and modern facilities, especially in industrial and logistics sectors critical for economic growth.

- The commercial real estate sector is responsible for c.25% of all UK emissions. Abolishing the 1954 Act would allow landlord's to take control of assets earlier, which will facilitate quicker implementation of ESG initiatives, thereby helping to reduce carbon emissions.

- Removing security of tenure would unlock billions in private sector investment, as landlords would have greater confidence to fund large-scale development projects. This would create construction jobs, attract foreign direct investment (FDI), and revitalize local economies.

CQ4A – 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.

It is our view that the 1954 Act should be abolished.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

It is our view that the 1954 Act should be abolished.

CQ5 – 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.

CQ6 – 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

We advocate for the abolishment, not change, to the 1954 Act. Any change will only perpetuate in inherent inefficiencies and unnecessary excessive costs of the current system, as noted more fully below.

The Lease Renewal Process Under the 1954 Act Is Inherently Inefficient

- The current process requires a complex series of legal steps:

o Serving Section 25 or Section 26 notices,

o Negotiating renewal terms,

o Potentially initiating court proceedings if parties cannot agree.

- Even straightforward renewals can take 6–12 months to resolve, while contentious cases often drag on for years, clogging the already overburdened court system. Removing security of tenure would unblock the courts, enabling them to deal with other, more pressing matters.

- This legal bottleneck ties up valuable commercial spaces, preventing timely property transactions and business growth.

Legal Costs Are Excessive and Wasteful

- The renewal process under the 1954 Act often requires extensive legal representation, including solicitors, barristers, and expert valuers—regardless of whether disputes are minor.

- Businesses and landlords collectively spend millions of pounds annually on legal fees related to lease renewals.

- These resources could be better spent on business growth, property improvements, job creation, and innovation rather than on navigating outdated legal frameworks.

(2) on the commercial leasehold market

CQ7 – 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).

- The current system protects legacy businesses at the expense of emerging industries that could drive future growth.

- A more flexible leasing environment would allow startups and high-growth firms to access prime real estate, promoting entrepreneurship.

- Tech hubs, creative industries, and green energy companies would flourish in a property market where space isn't locked up by outdated tenancies, fostering an innovation-driven economy.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Shaftesbury Capital PLC

Role: a landlord (or predominantly a landlord)

If landlord or tenant:

Number of employees: 50-249

Regions: London

Sector(s): Agriculture, Arts, entertainment, leisure and recreation, Health and social care, Hospitality, Public administration and defence, Retail and wholesale,

CQ1 – 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.

Not applicable to Shaftesbury

CQ2 – 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.

Model choice: No statutory security of tenure (abolition);

Reasons

Shaftesbury is a FTSE 250 listed REIT owning c.635 number of buildings exclusively in London's West End with a value of circa £5bn. Our property portfolio makes up the most vibrant areas of Central London and has a diverse mix of restaurants, cafes, bars, shops, residential and offices. Our destinations include the high footfall, thriving neighbourhoods of Covent Garden, Carnaby Street, Soho and Chinatown.

We have curated these neighbourhoods over years of careful ownership. Across these destinations we have 1,066 number of commercial leases, of which 86% are contracted outside the Landlord and Tenant Act 1954. We do not grant new leases with security of tenure save where our tenants already have this protection and are entitled to a renewal lease on the same basis.

The ability to oppose renewal, for example on redevelopment grounds, is slow, cumbersome and uncertain for both landlords and tenants. We try to avoid demolishing and redeveloping buildings, because our goal is to become a Net Zero Carbon business by 2030 through an efficient "retrofit first" re-use and management of buildings. However, we still rely on the redevelopment grounds where we need to, without which reconfiguring and modernising our buildings to meet market needs would be extremely difficult.

Similarly, the process of renewing a lease with security of tenure can be slow and cumbersome, It can be particularly technical and onerous for tenants who need to take steps to ensure that their security of tenure is protected once notices have been served under the Act.

We would not have been able to make the same level of investment and strategic decisions necessary to create these world class destinations in circumstances where our occupiers had security of tenure. Security of tenure would have resulted in uninvested buildings and a

gradually diminishing retail and Food & Beverage area. If tenants had security of tenure, we are certain that these areas would not be as dynamic as they are today. Our ability to actively invest and manage tenancies has created thriving locations benefitting from high occupancy across the portfolio, better quality and safer buildings, safe-guarded the heritage of our properties and in many cases enabled investment into the public realm, benefitting the area as a whole. These elements bring a number of significant benefits to the area, including supporting its economic prosperity, increasing employment opportunities and reducing crime to name a few.

Leases of restaurants and retail premises in Central London often command a premium and occupiers will make decisions to sell their interests based on the highest consideration received rather than what is in the best long-term interests of the area. We have seen this play out with candy shop operators on Oxford Street, where landlords often have less control. One of the problems that arises when leases are traded for premiums, is that the transaction is largely unregulated and it's not unusual for gazumping to take place. Further, as discussions are primarily between the tenant and incoming party, it is not uncommon that the incoming tenant makes a decision on taking a unit without fully understanding the longer-term plans for both the building and the wider area. The outgoing tenant is often either not aware of all of the facts or due to their own circumstances is highly motivated to sell the unit. When taking a unit direct from the landlord, the information available will be better because the landlord is fully aware of the building details and is mindful of the longer term plans for the building and the area.

In contrast, we have relied on contracted-out leases to secure the best occupiers for each of our destinations to ensure their long-term attractiveness, not just to Londoners, but to everyone that visits our world class city. This flexibility has been essential in enabling us to curate the right mix of occupiers by responding to evolving trends and ensuring that underperforming or outdated occupiers, who are for example, not contributing to wider area, or who do not wish to maintain sufficient health and safety standards, are able to be replaced by occupiers who are better able to do so. This positively supports the evolution and economic vitality of our spaces, and in particular, our high streets. This has been an important factor in driving not only the economic value of the West End, but also the cultural and social value.

By providing security of tenure to incumbent occupiers, it is arguably harder for new entrants to gain a foothold, particularly in popular locations, even if those new entrants would perform better. Turnover of business is vital to ensure a dynamic market and economic growth.

In addition, the essence of high-quality curation balances lots of different types of occupiers, particularly in the retail and Food & Beverage sectors. We have always valued smaller and independent traders for what they bring to our destinations. Often, they may be on concessionary or shorter-term deals. We would not be able to do this in a mandatory security of tenure environment as these deals would be used as evidence in lease renewal negotiations.

For that reason, we believe that security of tenure should be abolished, or at the very least, simplified to be a contracting-in process. The current process of contracting-out, whilst now market standard, causes unnecessary delay to transactions and expense to our tenants. We would like to see our tenants take space as quickly possible to fit out and grow their

businesses. This benefits tenants and minimises the negative impact of empty spaces on the area.

The 1954 Act was passed in response to the chronic shortage of business premises seventy years ago. But for the past 15 years or more, approximately 14% of high street units have remained unlet. As the consultation observes, the market has changed out of all recognition. This comment by leading property barrister Guy Fetherstonhaugh KC in the Estates Gazette neatly summarises the position:

"The Landlord and Tenant Act 1954 was designed for the post-war era of scarce property and exploited tenants. Is security of tenure really paramount in days when so much of the high street is vacant that the government is bringing in compulsory vacant property rental auctions?"

CQ3 – 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 parties and their advisers

As above, we do not grant new leases with security of tenure save where our tenants already have this protection and are entitled to a renewal lease on the same basis. Abolition of security of tenure or adopting a model of contracting in would reduce costs for our tenants, as currently lawyers advise those tenants on the contracting out process resulting in time and cost inefficiencies.

We consider that flexibility is valued by both landlords and tenants, and it should be noted that the parties to a lease remain free to negotiate the length of the term.

We also believe that abolition of security of tenure would positively incentivise investment, repurposing, modernisation and better overall environmental standards, because it would reduce the barriers and risks associated with repurposing of our buildings and other asset management strategies.

There is always uncertainty around allowing tenants to remain in occupation for a short period following expiry of the term of their contracted-out lease. We would be more willing to allow our tenants to remain in occupation beyond the expiry of their contractual term without committing to a new lease if there is greater certainty that the tenant will not acquire security of tenure if we allow them to do so.

Moving to a mandatory security of tenure model would likely mean that lawyers would try to find ways for landlords currently relying on contracting out to continue with the same business model, for example by using licences rather than leases, or by making leases less flexible. Both of which would have a negative effect on tenants.

(2) on the commercial leasehold market

Abolition of security of tenure, or adopting a model of contracting in, would speed up leasing transactions (because the contracting out procedure is not required) allowing our occupiers to take space earlier to fit out and grow their business. While some tenants may favour mandatory security of tenure, under the current system, whether this is available depends on market conditions, and as already mentioned, we do not grant leases with security of tenure

unless we are obliged to. We have a very low vacancy rate which reflects that even with high levels of contracting-out, leases are generally renewed successfully and to the satisfaction of tenants. This should not be a surprise as we value reliable occupiers and wish to avoid empty properties.

Moving to a mandatory security of tenure model would undermine our investment model into our destinations. Please see our response to Consultation Question 2 above - contracting-out leases has been key to allowing us to make investments to ensure the vibrancy of our neighbourhoods. This in turns has helped drive growth in a significant sector of London's economy, including business rates for Westminster and Camden Councils.

Mandatory security of tenure would likely lead to land banking by tenants, with them treating our valuable locations as investments rather than a place to drive footfall and therefore business. We believe there would be a change away from our culture of introducing new concepts and brands to our portfolio, toward a culture and business model that where leases are sold to investors and sublet to lower quality occupiers.

Mandatory security would inflict real damage on the attractiveness of commercial property as an investment. It would reduce our control over our properties which may result in higher rents to reflect the increased risk of owning the assets. Redeveloping and refurbishing property would become more difficult and may make some schemes unviable. The trend for shorter and more flexible leases only works in a no security environment. Property owners would likely seek longer lease terms which would have a disproportionate impact on smaller and newer businesses.

Finally, we believe that the courts system would be unable to cope with the number of lease renewal proceedings that would arise under a mandatory security regime. These proceedings often take in excess of a year to resolve and at significant costs to both parties. A mandatory security of tenure model would increase the administrative burden and involvement in legal proceedings across the whole sector. For shorter leases, the cost imposed on parties at frequent renewals is not proportionate to any benefits likely to accrue.

CQ4A – 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.

As landlords, we take a longer-term view to maintain the attractiveness of our destinations. We choose unique and interesting occupiers that make the West End what it is today. In contrast, we see tenants with leases that have security of tenure, look to sell their interests to the highest bidder. For London's West End to remain a world destination, we must, as a major landlord in this area, ensure we can continue to curate these neighbourhoods for their long-term vitality and continue investing in urban regeneration to create balanced and relevant shopping and dining locations; alongside well-invested, safe and greener buildings. For that reason, we would argue that security of tenure is not appropriate for commercial leases in London's West End.

In addition, and more generally, we would argue that no lease for less than five years (including leases granted for consecutive five-year periods) should have security of tenure. It cannot be right that tenants not wanting to commit to a property for more than five years and having the flexibility of a short lease are then rewarded with security of tenure. This is particularly the case given that it is common market practice to grant short term retail leases of premises finished to a 'white box' standard. Tenant's who do not want to commit to lease of more than five years, nor invest in their initial fit-out, should not be granted security of tenure.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

A mandatory security of tenure regime would be most unwelcome and, if introduced, would completely change our investment model. For us to continue to maintain the desirability of London's West End we would require the lease length for which security of tenure is not available to be 15 years (whether or not granted consecutively). Alternatively, we would consider other models that allow us the same level of control that we currently have over who occupies our buildings, for example by preventing assignments.

CQ5 – 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.

We agree with the view of the BPF that the Law Commission's assessment underestimates the beneficial impact of reforming the scope of the 1954 Act to exclude short leases from security of tenure. According to MSCI, leases of five years or less accounted for 50% of leases granted in 2024, and the administrative saving for parties of not having to contract out or undertake protected lease renewals would be considerable.

Were short leases excluded, it is possible that property owners would seek to reduce lease lengths to below 5 years to ensure they are outside of the 1954 Act. However, owners would also need to balance restricting lease lengths with the impact on future income and also property valuations.

CQ6 – 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

A change that narrows the scope of leases to which the 1954 Act applies will assist us in making investment decisions in our destinations and to maintain the competitiveness of London's West End in a market of competing global cities. However, this will only be the case, if the system that is introduced was certain, simple to understand and within our control, so absent abolition, the following would be preferred:

1. as above, that leases of a particular duration be excluded from the 1954 Act; and/or

2. that leases within a particular zone of the Country, for example Central London, be excluded from the 1954 Act,

Parties would experience less cost and delay in contracting out. This would also remove significant burdens from the Courts. This would also support gaining vacant possession to

redevelop, repurpose and reconfigure our properties and to carry out sustainability improvements where needed. We would also be less concerned about occupiers obtaining security of tenure, allowing costs savings that would benefit both owners and occupiers.

However, amending the scope of the 1954 Act so that leases have security of tenure depending on for example rent, floorspace, or use would be overly complex and restrict our ability to properly manage our portfolio.

Any change that gives tenants greater security of tenure would need to rebalance the landlord and tenant bargain. As we have said above, the majority of our tenants have no security of tenure but do have a high degree of flexibility. Were they to have security of tenure, we would expect a lower level of flexibility for tenants. Currently any tenant who does have security of tenure can just leave at the expiry of their term without notice to the landlord or with 3 months' notice if they are holding over. This seems inequitable in a situation where they have all the benefits of security of tenure.

(2) on the commercial leasehold market

See our answers above, which apply to the wider market.

CQ7 – 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).

Not applicable

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Bolingbroke Limited

Role: a landlord (or predominantly a landlord)

If landlord or tenant:

Number of employees: 1-9

Regions: West Midlands, East of England, South West, South East

Sector(s): Administrative and support services, Charity, Real estate

CQ1 – 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.

Not Answered

CQ2 – 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.

Model choice: Not Answered

Reasons

Not Answered

CQ3 – 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 parties and their advisers

Not Answered

(2) on the commercial leasehold market

Not Answered

CQ4A – 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.

Not Answered

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

Not Answered

CQ5 – 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.

Not Answered

CQ6 – 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

Not Answered

(2) on the commercial leasehold market

Not Answered

CQ7 – 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).

Not Answered

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Not Answered

Trafalgar Gate Properties

Role: a landlord (or predominantly a landlord)

If landlord or tenant:

Number of employees: 1-9

Regions: South East

Sector(s): Retail and wholesale

CQ1 – 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.

Not Answered

CQ2 – 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.

Model choice: Not Answered

Reasons

Not Answered

CQ3 – 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 parties and their advisers

Not Answered

(2) on the commercial leasehold market

Not Answered

CQ4A – 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.

Not Answered

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

Not Answered

CQ5 – 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.

Not Answered

CQ6 – 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

Not Answered

(2) on the commercial leasehold market

Not Answered

CQ7 – 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).

Not Answered

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Not Answered

Basingstoke and Deane Borough Council

Role: a landlord (or predominantly a landlord)

If landlord or tenant:

Number of employees: 250 or more

Regions: South East

Sector(s): Public administration and defence, Real estate

CQ1 – 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.

As an organisation we do not operate in Wales, therefore we have no response to this question.

CQ2 – 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.

Model choice: Not Answered

Reasons

The contracting-out model is our preference. This model already works as it provides tenants the ability to negotiate security of tenure, while allowing landlords the flexibility to negotiate a contracted-out arrangement if needed for future plans. However, we believe that improvements could be made to the contracting out process as at present the current process places an administrative burden on both the landlord and tenant, with errors potentially resulting in tenants gaining statutory security of tenure. Simplifying the contracting-out process and reducing the possibility of errors would benefit all parties involved. Reducing the notice period for contracting-out would also help speed up the process. Currently, contracting out of the 1954 L&T ACT is a key component of guaranteeing vacant possession to take development and regeneration projects forward and can provide benefits of interim uses on schemes which often have a long lead in time of many years before they are implemented.

Our second preference is the Contracting-In model. The reason behind this choice is most of our leases are contracted out of Sections 24-28 of the Landlord and Tenant Act 1954, which often involves servicing notices that can be both expensive and time-consuming for both the landlord and tenant. Additionally, since leases are typically shorter and subject to more frequent renewals, this model would help streamline the process.

CQ3 – 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 parties and their advisers

Contracting-out model would not see a material change unless the process can be streamlined to the benefits of both parties.

In addition to our response detailed in question 2, we believe that the contracting-in model would help reduce the risk of statutory tenure being granted unintentionally which could be beneficial to the landlord. However, there is a risk that tenants may not be adequately advised on the process and may miss out on the opportunity which could adversely impact on their business.

The absence of statutory security of tenure It could lead to substantial changes in the market, and tenants reluctant to invest in their properties if they don't have security of tenure, potentially making it difficult for both parties to reach a mutually agreeable position.

(2) on the commercial leasehold market

The introduction of mandatory security of tenure could reduce interim uses whilst development plans are drawn up as landlord's less likely to take the risk and bear costs of tenant gaining secuirty. Currently, contracting out of the 1954 L&T ACT is a key component of guaranteeing vacant possession to take development and regeneration projects forward and can provide benefits of interim uses on schemes which often have a long lead in time of many years before they are implemented.

The absence of statutory security of tenure It could lead to substantial changes in the market, and tenants reluctant to invest in their properties if they don't have security of tenure, potentially making it difficult for both parties to reach a mutually agreeable position.

CQ4A – 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.

We consider that the extent of the Use Excluded Tenancies should remain as it is at present.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

Our view is that the time period should be extended to 5 years (in line with current market) and any prior periods of occupation should be ignored as very few leases of 5 years of less have statutory security of tenure. This would increase landlord control at the end of the tenancy reducing time and costs.

CQ5 – 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.

We generally agree with The Law Commissions analysis of the potential benefits and disadvantages.

CQ6 – 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

Please see our response to Question 4

(2) on the commercial leasehold market

CQ7 – 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).

We don't have any 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 mentioned in the Question.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

n/a

[Anonymous]

Role: a landlord (or predominantly a landlord)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

Most of our property portfolio sits outside of Wales so we are unable to comment on this, save that we would welcome similarities of approach for both England and Wales.

CQ2 – 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.

Model choice: Not Answered

Reasons

It is not possible for us to form a definitive view at this stage on which model should operate without consideration of the proposed operative provisions of each model and how they would work in practice. We have therefore provided comments relevant to each model below.

(1) Mandatory security of tenure: In our view, this model would give tenants an unfair advantage and would not provide for balanced negotiations between landlords and tenants, which is likely to have a negative impact on the commercial leasehold market.

(2) No statutory security of tenure (abolition): We would like to see a letting process that allows for more open and transparent negotiations between parties based on commercial objectives and market conditions. Our view is that security of tenure, to ensure returns on investment and certainty for tenants, can be achieved by agreeing longer lease terms and contractual rights to renew. Flexibility can be obtained through break clauses. If both landlords and tenants are negotiating based on their commercial objectives, with full disclosure between them and without the shadow of a statutory process, then we think this could result in more honest, quicker and cheaper negotiations and therefore better outcomes for both parties. [REDACTED]

(3) Contracting-in: If a form of statutory security of tenure is retained, our view is that the contracting-in model offers the simplification needed to reduce legal costs and litigation associated with the current model, whilst at the same time allowing parties flexibility and to negotiate openly to achieve tailored agreements. This model avoids tenants and subtenants inadvertently acquiring security of tenure when that was not the intention of the parties, therefore avoiding the legal intervention and costs required when that situation occurs.

(4) Contracting-out: The current model has become complex and can often result in protracted lease renewal negotiations and significant time and costs being spent by both parties. Tenants can use security of tenure to their advantage to get a better market deal at renewal rather than agreeing a fair market rent. For example, landlords may be inclined to agree lower than market rent to avoid disproportionate costs that can be incurred when agreeing a renewal lease. In our experience, we see a marginal increase in rental levels for leases with security of tenure, but it is usual for incentives to be given to tenants (such as additional rent free) rather than a lower rent agreed in return for a contracted-out lease. The current model can prevent landlords from dealing with their property as they see fit, for example, by being unable to react quickly to market changes or to modernise their buildings in line with the Government's sustainability goals. Automatic security of tenure can result in unintended adverse consequences for landlords if tenants gain security by default or if tenants attempt to take advantages of technical defects in the contracting out process, which has become unnecessarily cumbersome. If this model is retained, our view is that it requires an overhaul (we appreciate this will form part of Phase 2 of the Commission's consultation), including a simplified contracting-out procedure, more transparent lease negotiations and more ability on renewal to include green lease clauses.

CQ3 – 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 parties and their advisers

As indicated in 2 above, the current model has become complex leading to unintended consequences and increased costs for both parties. Therefore, a change to the model of security of tenure or an overhaul of the current model is likely to be beneficial for all parties and the commercial leasehold market. We anticipate that reform will (i) speed up the letting process; (ii) reduce leasing costs; (iii) increase flexibility and (iv) reduce the possibility of disputes.

Any change will take time to "bed in" but as with other changes to legislation, we anticipate that the market and work practices will adjust over time.

Key to any change is clear transitional arrangements.

(2) on the commercial leasehold market

As indicated in 2 above, the current model has become complex leading to unintended consequences and increased costs for both parties. Therefore, a change to the model of security of tenure or an overhaul of the current model is likely to be beneficial for all parties and the commercial leasehold market. We anticipate that reform will (i) speed up the letting process; (ii) reduce leasing costs; (iii) increase flexibility and (iv) reduce the possibility of disputes.

Any change will take time to "bed in" but as with other changes to legislation, we anticipate that the market and work practices will adjust over time.

Key to any change is clear transitional arrangements.

CQ4A – 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.

If the contracted-out model is to remain, we would welcome:

- an extension of the 6-month Duration of Excluded Tenancies; and

- removal of the rule under which an occupier automatically obtains security of tenure by remaining in occupation for a period exceeding 12 months.

Our view is that this would allow more flexibility between landlords and tenants, helping to support pop-up businesses and those businesses wanting to test the market.

If the contracted-in model comes into force, then this potentially removes the need to increase/decrease the scope of the Act as parties are free to negotiate whether a lease has security of tenure or not. Similarly to the above, we think this increases the ability for landlords and tenants to be more flexible and adaptable when agreeing leases.

In our experience the factors which influence whether a new lease is granted with or without security of tenure across all industries are (i) covenant strength; (ii) long term plans for the property; (iii) flexibility required by tenant; (iv) location (v) market forces; and (vi) voids (e.g. number of voids and length of void). The emphasis placed on each factor in negotiations across industries will differ.

We can see the benefit of excluding tenancies from the 1954 Act altogether that are subject to a competing statutory process.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

If the contracted-out model is to remain, we would welcome:

- an extension of the 6-month Duration of Excluded Tenancies; and

- removal of the rule under which an occupier automatically obtains security of tenure by remaining in occupation for a period exceeding 12 months.

Our view is that this would allow more flexibility between landlords and tenants, helping to support pop-up businesses and those businesses wanting to test the market.

If the contracted-in model comes into force, then this potentially removes the need to increase/decrease the scope of the Act as parties are free to negotiate whether a lease has security of tenure or not. Similarly to the above, we think this increases the ability for landlords and tenants to be more flexible and adaptable when agreeing leases.

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number of voids and length of void). The emphasis placed on each factor in negotiations across industries will differ.

We can see the benefit of excluding tenancies from the 1954 Act altogether that are subject to a competing statutory process.

CQ5 – 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.

Our view is that extending the scope of tenancies which are included/excluded from any of the security of tenure models using characteristics such as floor area and/or location, risks increasing the complexity of the Act, which could result in the need for increased legal intervention and costs.

We do see different approaches being adopted across different industries (e.g. an office lease is more likely to be contracted out). However, applying different models for different sectors could cause particular difficulties for mixed use developments.

There is the risk of increased litigation if there is a dispute over whether a building is in scope or not. We are also of the view that it could reduce the ability of the Act to evolve over time and to remain relevant as markets change.

CQ6 – 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

See sections 4 and 5 above.

(2) on the commercial leasehold market

See sections 4 and 5 above.

CQ7 – 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).

We are not currently aware of any adverse impact on individuals with protected characteristics.

[REDACTED]

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Paul Wigham, All Our Bars Limited, Personal capacity

Role: both a landlord and a tenant

If landlord or tenant:

Number of employees: 50-249

Regions: South East, London

Sector(s): Hospitality

CQ1 – 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.

Not Answered

CQ2 – 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.

Model choice: Mandatory security of tenure;

Reasons

It provides the best way of protecting the smaller businesses who have invested their heart and soul into the creation of value

It is not every case but primarily, the landlords of business tenancies tend to be scale property companies and the tenants tend to be more numerous smaller entities. Not all landlords are abusive in their power but many can be. The hopsitality sector has seen this and the Small Business, Enterprise and Employment (SBEE) Act of 2016 sought to protect the pub sector from this. Pubs and bars are not the only Business Tenancies and many others have suffered through the actions of landlords trying to make property or development profit at the expense of businesses creating employment and value.

CQ3 – 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 parties and their advisers

Landlords

Insisting on security of tenure would forse them to make longer term rental decisions on the buildings that they own. It would also reduce their value as their tenants need to be paying rents that are viable. That may cause banking covenant issues if the property companies are over-leveraged - though that leverage was their own choice

Tenants

The security of tenure would enable tenants to make longer term business decisions based on certainty and may allow more relaistic and sustainable rents such that business or retail

areas are not plagued with closed shops. It may also make it more diffiuclt for new entrants to get property as the landlords will be cautious about tenant covenants.

Advisors

Really not sure it makes much difference - it may even reduce cost

(2) on the commercial leasehold market

More realistic rents for tenants

Some landlords may find that reduced income could affect banking arrangements

LAndlords may be more selective about who they enter into agreemnts with

It would probably slightly reduce commercial property vlaues which have been over-inflated in recent years

CQ4A – 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.

I cannot comment on the Excluded Tenancies such as the farming tenancy model

Hospitality has its own characteristics and traditional pubs are worthy of protection and specific provisions. The market has been affected by the SBEE both positively and negatively, particularly where the pub owning companies have product ties. Whilst some mid-term tenants have had positive rental outcomes, many operators face losing their business at renewal when landlords take back properties for converison to "psuedo tenancies." In this situation, they deploy self employed managers who themselves employ staff in exchange for a sales based commission. At any other time, they would probably have been a tenant but that exposed the tied pub companies to the provisons of the SBEE Act. Therefore they take back contracted in property and effectively re-let in another form.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

Not really

CQ5 – 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.

It is correct in essence but it ignores the plethora of cases, practices, nuances and tweaks that landords have used to evade the true intent of the LTA54.

CQ6 – 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

Not sure I am qualified to answer such broad question

(2) on the commercial leasehold market

It depends what model was used. It could be positive or negative depending on which model. However, the address, re-evaluation and re-statement of the Act can only bring clarity and certainty in lawa nd in my mnd, the same process should encomplass the 1938 Landlord Repairs Act too. Landlords ignore this act and use repair and dilapidation issues, outside of the definitoins within that act, as a lever to evict tenants.

CQ7 – 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).

It can only help any prejudiced minority by re-stating the law

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

1. I referred above to the Landlord Repairs Act 1938. That needs re-inforcement and there is not reason not to include that in the Property Law review. In particualr, the assertion that a dilapidation is defined as anything affecting the residual freehold value of the property within 7 years needs to be re-affirmed

2. The market for property has significantly altered in the last 70 years with an ever more global and fast moving world. The notion that upward only rent clauses are apporiate in this world is farcical. Those clauses need to be removed or voided to permit a more sensible and sustainable market capable of surviving through economic peaks and troughs,

Steve Nicholson, Altermans Solicitors, Personal capacity

Role: both a landlord and a tenant

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

None

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

For economic reason tenants should have automatic security of tenure. I believe a contracting out ability assists landlords with the future development of their properties and changing marketing/social impacts. A process for contracting out is that important so that tenants, who do not always use solicitors, understand the rights they will be giving up.

CQ3 – 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 parties and their advisers

The erosion of rights will adversely impact both landlord and tenant potentially leading to higher rents or properties being left vacant pending development.

Advisors will adapt

(2) on the commercial leasehold market

As above

CQ4A – 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.

None

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

No

CQ5 – 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.

CQ6 – 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

(2) on the commercial leasehold market

CQ7 – 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).

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

James Gray, Halfords Group Plc, Personal capacity

Role: both a landlord and a tenant

If landlord or tenant:

Number of employees: 250 or more

Regions: North West, North East, Yorkshire and the Humber, Wales, West Midlands, East Midlands, East of England, South West, South East, London

Sector(s): Other service activities, Retail and wholesale, Vehicle service, repair and MOT

CQ1 – 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.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

An 'opt-out' arrangement (the current model) is best because it means that security of tenure is the default position. This is logical because security of tenure is very important for the majority of tenants.

Contracting out of the security of tenure provisions takes time and involves additional administration which will cause delays if the model changes to an 'opt-in' arrangement.

CQ3 – 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 parties and their advisers

Abolishing security of tenure would create a significant imbalance between the parties' negotiating positions in favour of the landlord. Retailers with large portfolios of leased properties (particularly those requiring significant capital expenditure to fit out) would be particularly disadvantaged. It is not hyperbole to say that abolishing security of tenure would be a disaster for business tenants in England and Wales.

An 'opt-in' model would disadvantage unrepresented small business tenants who may not obtain professional advice and understand the consequences of not having security of tenure. For corporate occupiers with large portfolios, an 'opt-in' model would add a layer of time and administration to the leasing process.

(2) on the commercial leasehold market

Too much bargaining power to landlords who would have the upper hand in rent review and lease renewal negotiations.

Multiple tenants may reduce new store openings.

Leases may get longer as multiple tenants would require a longer lease term to justify capital expenditure on fitting out properties. There are SDLT and accounting considerations here and this would negatively impact occupiers again possibly reducing new store openings and encouraging closures.

CQ4A – 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.

No comment.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

No comment.

CQ5 – 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.

No comment.

CQ6 – 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

No comment.

(2) on the commercial leasehold market

No comment.

CQ7 – 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).

No comment.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

The idea that the majority of business tenants 'contract-out' of the security of tenure provisions and therefore they have become unnecessary is misguided. Generally-speaking it tends to be short term leases of low value (secondary) commercial property that is contracted-out of Part II LTA 1954. The vast majority of multiple occupiers in prime locations absolutely want security of tenure. Speaking as someone who manages a large programme of lease events for a national retailer, I consider that the abolition of security of tenure would be a disaster for tenants. I am in favour of maintaining the current model which is well-understood.

In my opinion the problem is not security of tenure itself, but the court process (when matters become contentious) which is extremely slow. In my view, there needs to be a dedicated and efficient court process for contentious lease renewal proceedings under Part II LTA 1954.

NHS Wales Shared Services Partnership

Role: both a landlord and a tenant

If landlord or tenant:

Number of employees: 250 or more

Regions: Wales

Sector(s): Health and social care, Public administration and defence

CQ1 – 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.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

I am a Chartered General Practice Surveyor employed to represent NHS Wales in property matters.

The current model works quite well. Most leases should be contracted in to allow a lease renewal (other than where there are grounds for granting possession). This gives the tenant protection against being held to ransom over lease renewal terms (length of lease and rent) as they have the ability to refer matters to the Court if terms cannot be agreed between the parties.

There are times when it is reasonable for a landlord to insist on an excluded tenancy (such as when they know at the outset that they will definitely require possession for redevelopment). and NHS Wales must be able to contract out leases on large hospital sites as we need to be able to have control of reconfiguration and redevelopment and cannot have a tenant of a small area potentially holding the NHS to ransom and / or frustrating changes to the estate which are essential to service provision.

I would support a change to the method of contracting out to simplify it, so that there is no need to have the declaration witnessed by an independent solicitor as this seems unnecessary, is time consuming and delays completion.

CQ3 – 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 parties and their advisers

Mandatory contracting in would be problematic for landlord who need strategic control over their estate or those who only want a temporary letting (perhaps if they know they will redevelop or dispose of the property in a few years time).

Mandatory contracting out would offer tenants no certainty of occupation and could leave them open to unscrupulous landlords holding them to ransom on rent and / or lease length on lease renewal with no recourse to the Court.

(2) on the commercial leasehold market

Mandatory contracting in would result in landlords being reluctant to let property for fear of difficulty in obtaining vacant possession. This would lead to less availability and fewer market transactions.

Mandatory contracting out would result in tenants being vulnerable unscrupulous landlords holding them to ransom on rent and / or lease length on lease renewal with no recourse to the Court. Taking longer leases with break options isnt a palatable option for most tenants as they will pay much higher stamp duty land tax.

CQ4A – 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.

Not Answered

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

Not Answered

CQ5 – 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.

Not Answered

CQ6 – 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

Not Answered

(2) on the commercial leasehold market

Not Answered

CQ7 – 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).

Not Answered

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Not Answered

National Grid Electricity Transmission plc

Role: both a landlord and a tenant

If landlord or tenant:

Number of employees: 250 or more

Regions: North West, North East, Yorkshire and the Humber, Wales, West Midlands, East Midlands, East of England, South West, South East, London

Sector(s): Infrastructure and utilities (e.g. electricity, gas, water supply, sewerage.)

CQ1 – 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.

Not Answered

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

National Grid owns, maintains and develops the high voltage electricity transmission and distribution network in England and Wales. As part of our business we hold, as tenant, a large number of leases relating to our operational assets (such as substation leases). Our primary interest is therefore protecting our interests as tenant of these operational assets, which comprise critical national infrastructure. As such, we are keen to see any model having at its heart the protection of business tenant's interests, especially where the removal of our business assets could have serious consequences for critical national infrastructure.

Notwithstanding this, our business also involves us granting leases in connection with landholdings within our ownership not currently used for operational purposes, Given the nature of our business, having flexibility in our ability to grant such leases/occupational interests whilst ensuring that we can regain control and possession of our landholdings at the end of lease terms, is also of critical importance, as the electricity market continues to expand as we strive towards a clean, fair and affordable energy future for all We therefore recognise the competing interests and drivers of landlords and tenants in the commercial leasing market and the fundamental need for flexibility.

However, we are not in support of removing security of tenure entirely – this does not align with our interests as tenant of our operational assets, particularly given the nature of those assets. We are also alive to the potentially negative effects that the introduction of a mandatory security of tenure model could introduce, if it was applied to the commercial leasehold market in blanket terms. We therefore support a model that provides the market with some element of choice.

Given the extent of our operational landholdings across England and Wales, we hold a significant number of long leases which currently benefit from the protections of the 1954 Act. These leases were negotiated on the basis that we would have a right to renew them.

We therefore have concerns about how transitional arrangements for a "contracting in" model would protect our interests in those assets. Further, we have concerns about the possibility that a "contracting in" approach would effectively erode, over time, the use in many areas of the commercial leasehold market of a security of tenure model. We are concerned that such a change in market practice could prejudicially affect tenants such as National Grid, to whom security of tenure is still very important. We do not see a compelling rationale as to why a move to such a model would have any practical benefit.

Our overriding feeling is that the current "contracting out" approach to commercial leasing is an approach that works, albeit there are improvements in the current system that could undoubtedly be made. We touch on some of these below, and appreciate others will be the subject matter of the Commission's second consultation.

CQ3 – 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 parties and their advisers

We have set out in the section above some of our views on the likely impact of changing the security of tenure model on parties to leases and the market as a whole.

We consider that the total abolition of the security of tenure model would put too much power into the hands of landlords and this could have significant adverse consequences for tenants of certain asset classes, particularly assets relating to critical energy infrastructure.

However, a mandatory scheme is too restrictive for today's market (and was even found to be too restrictive in the troubled leasehold market immediately after the introduction of the 1954 Act, hence the introduction of the contracting-out regime in 1969). A return to this scheme is likely to have an adverse impact on the market and significantly increase the burden on an already stretched court system with the inevitable increase in renewal claims.

As stated above, a "contracting in" regime is likely to lead to an erosion overall of the security of tenure model and causes problems with transitional arrangements.

(2) on the commercial leasehold market

See above.

CQ4A – 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.

As landlord, we find the limitations placed on Duration Excluded Tenancies is too restrictive. The 6-month limitation on excluded tenancies is too short. Given the fact that large parts of the commercial leasing market has moved toward shorter, contracted-out tenancies and given the information available to parties when taking leases in the modern world, we believe

that Duration Excluded Tenancies should be extended to a minimum of 3 years (although there is an argument that 5 years would be equally justifiable), with an understanding that any successive lease would not qualify as a Duration Excluded Lease. A change of this nature would remove the requirement to look at the overall period of occupation under successive short-term tenancies and would help to reduce the unnecessary expense, time and management cost currently expended in ensuring that 'short term' access arrangements are not inadvertently caught by the 1954 Act.

While we do not consider that there are any other particular kinds of tenancy that should be excluded from the 1954 Act, we do consider that there is a compelling case for including (irrespective of the model adopted) a small category of tenancies to which either a mandatory model automatically applies (so that tenants of such lease have an automatic right to security of tenure) or, perhaps, a requirement on the landlord to grant a protected tenancy unless the tenant chooses at its discretion to "opt out". We consider that leases of land which comprises critical national infrastructure should be one of these limited classes of tenancy.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

See above.

CQ5 – 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.

We agree with the Commission's views that the current system in some instances affords too much unwanted or unnecessary protection on certain classes of tenants (such as tenants on short term tenancies longer than 6 months). In addition, and more generally, we would argue that leases for up to five years should not have security of tenure. Tenants who are committing to a property for less than five years and have the flexibility of or requirement for a short lease should not be rewarded with security of tenure.

We also consider that the 1954 Act in its current form, and any move to a model that dilutes security of tenure further, affords too little protection to tenants of critical national infrastructure.

As set out above, we believe that the current system works and is well understood in the market, albeit that amendments could be made to improve it. Obvious improvements include simplifying the contracting out procedure and providing more regulation in connection with common scenarios in which protected tenancies can be created inadvertently. We do not consider that the potential advantages of the other models included in your report outweigh the potential disadvantages.

CQ6 – 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

We believe that a move to increase the length of short term tenancies that can be excluded from the Act will be welcomed by the market generally. Tenants who require flexibility should have the quid pro quo of a reduction in security of tenure.

Conversely, tenants who need to commit a lot of time and expenditure at the outset of a lease, whose business is location-sensitive and confers an important public function, should be afforded greater protections, as set out above.

(2) on the commercial leasehold market

See above.

CQ7 – 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).

Not relevant to National Grid Electricity Transmission plc.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

N/A

Central England Co-operative

Role: both a landlord and a tenant We operate retail food stores and funeral homes approx half of which are leasehold. We also have non trade properties that we own as investments and we are the landlord

If landlord or tenant:

Number of employees: 250 or more

Regions: North West, Yorkshire and the Humber, West Midlands, East Midlands, East of England

Sector(s): Real estate, Retail and wholesale, Retail food stores, funeral homes and property investment

CQ1 – 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.

N-A

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

The current model works fairly well. Security of tenure is absolutely essential for our retail businesses we would not be able to invest significant sums of money in fit out and refits without being able to rely on security of tenure. In our other role as a property investor/landlord we are sympathetic to tenants need for security.

Protection must be statutory with the option to opt out.

CQ3 – 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 parties and their advisers

As already stated the current model works fairly well, and should be retained with some minor amendments.

Contracting in to security of tenure would be unusual to have to contact in to obtain statuary protection and would just add a tier of administrative paperwork.

Removing security of tenure would be disastrous from a tenants perspective especially in a retail market. Retailers must be able to depend on their location and their property. Location of retail stores is extremely sensitive, retailers invest in their location and in the property itself. The cost of fit out and refits generally has up to a 10 year payback (in our model). Doing away with tenant's security would make refitting a store during the last 10 years unviable.

Compulsory security of tenure gives little benefit to tenants and removes a lot of the landlord rights

(2) on the commercial leasehold market

I believe any change would create uncertainty in the leasehold market especially in the retail sector. This is neither wanted or required.

Removing security may drive demand for longer leases which may tie tenants unnecessarily. It will prevent investment if the future is uncertain. Tenants businesses and investment should be afforded protection automatically.

Mandatory security may make redevelopment more difficult and problematic to obtain vacant possession.

Opting in creates more paperwork and errors can penalise tenant disproportionately

CQ4A – 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.

1. Yes the use of excluded tenancies is appropriate, this could be extended.

2. Yes the extent of the Duration Excluded Tenancies is appropriate, this could be extended

3. Yes I believe there are other other types of tenancies where it would be appropriate to be excluded

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

Yes they would

CQ5 – 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.

CQ6 – 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

(2) on the commercial leasehold market

CQ7 – 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).

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

J Sainsbury Plc

Role: both a landlord and a tenant

If landlord or tenant:

Number of employees: 250 or more

Regions: North West, North East, Yorkshire and the Humber, Wales, West Midlands, East Midlands, East of England, South West, South East, London

Sector(s): Retail and wholesale

CQ1 – 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.

Sainsbury's lease properties in both England and Wales. Sainsbury's would be very concerned if a different approach emerged in Wales to the one which exists in England. It sees no reason for tenancy models to differ between the two. Consistency across England and Wales is important to avoid complexity and to ensure properties can be managed efficiently.

Sainsbury's also leases properties in Scotland (and Northern Ireland) and find that The Act and Security of Tenure are superior regimes offering certainty, stability and order to the letting market.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

The paramount objective must be to ensure that the current model of Security of Tenure is retained and not undermined by the review.

The current model plays a fundamental role in ensuring the continued viability of our retail investment and retail business model, it enables continued store investment (for the benefit of the customer) and greater colleague retention. Option (4) as set out above, provides the stability the market needs to enable business to invest and flourish, for the benefit of the wider economy.

The alternative options are not, in Sainsbury's view, viable or conducive to continued investment in properties nationwide. In summary, option (1) places burdens on those parties not wanting Security of Tenure. Options (2) and (3) effectively result in the same position and pose serious detrimental threats to the retail market, employment, investment and the general economy due to inflationary pressure that the lack of Security of Tenure would cause.

Sainsbury's Utilisation of Security of Tenure.

In England and Wales, approximately 94% of Sainsbury's leases have Security of Tenure.

Contracting out is by exception only and often only takes place due to the unique nature of a particular property, such as convenience stores within railway stations and airports.

Importance to Retail Investment

The investment model which underpins Sainsbury's portfolio is reliant on Security of Tenure and the certainty of occupation that it brings.

Without Security of Tenure, Sainsbury's ability to invest in sites during the term of a lease, would be only achieved where longer term leases were acquired. Such investment would also include green initiatives, which would be significantly impacted by the loss of Security of Tenure.

Longer leases, without Security of Tenure, would increase Sainsbury's and other retailers' costs through Stamp Duty Land Tax, balance sheets being detrimentally affected by longer liabilities and the inability to correct rents on renewal (longer leases commanding upward only rent reviews).

Impact of Ending a Contracting-Out Model

Moving to a Contracting-In/no Security of Tenure model would fundamentally undermine the stability which arises from the current approach, eroding the certainty which enables retailers to construct business cases to make necessary investments.

Sainsbury's believes that the overwhelmingly dominant negotiating position which landlords would occupy would result in tenants being forced to take inappropriate lease lengths, at inflated rents, without any ability to rebase those inflated rents.

Sainsbury's would disagree with the assumption, set out in the consultation document, that under a Contracting-Out model, the parties incur additional costs and delay in granting unprotected tenancies. Indeed, it is a Contracting-In procedure which would bring additional upfront costs for Sainsbury's and similar retailers.

CQ3 – 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 parties and their advisers

Any change to the model of security of tenure would have extremely serious, negative implications. As set out in the answer to Question 2, Sainsbury's utilises Security of Tenure across the vast majority of its estate. Security of Tenure is integral to the business case required to enable investment in a property, for the benefit of the customer.

Impact on parties to tenancies

Changing the existing approach to a Contracting-In/no Security of Tenure model would introduce a position where tenants are placed in much weaker positions in lease negotiations. This in turn, would undermine the certainty of taking on new retail space and harm the viability of existing property strategies.

Losing Security of Tenure would bring far more damage to tenants financially, having a direct personal effect on employees (as there would be more store closures at lease end) than any perceived damage to landlords for keeping the current regime.

Sainsbury's has experienced several instances where lack of Security of Tenure, even in a portfolio with relatively few leases without The Act's protection, has had a detrimental effect as it has given landlords increased bargaining power and forced Sainsbury's to pay an inflated rent to remain in the property after lease expiry. For example:

In a store in a central London shopping centre, without Security of Tenure, Sainsbury's was told that if it wished to stay after lease expiry, it would have to accept a rent close to the existing rent. This, was much higher than the open market value.

The Act would have not allowed this to happen as market rents are set. Furthermore, the landlord was not offering a term longer than five years. A relatively short lease would limit the investment Sainsbury's could make in that property.

In Scotland, where there is no Security of Tenure, Sainsbury's has a lease of a store with a rent well above market value. The landlord has allowed the lease to renew on a annual basis (tacit relocation) and there is no ability for Sainsbury's to reset the lease to a market rent. Whilst Sainsbury's could serve a notice to quit to force the landlord to negotiate, with that, it loses the right to remain in occupation, resulting in it putting colleagues on notice of redundancy (as it would have no guarantee of a renewal and would need to prepare to exit).

In railway station sites, where there is no Security of Tenure, Sainsbury's has been asked to tender against other bidders in the market to remain in occupation. If another bidder is unsuccessful, they walk away having started with nothing. This is not the case for Sainsbury's, as the sitting tenant who has to weigh up losing its store and therefore results in Sainsbury's offering rents above market to protect its goodwill and sunk costs in the property. Indeed, as part of the tender process Sainsbury's was also required to provide a total refit proposal, as if it were a new store against the open market bidders who would naturally fit out from fresh. Such actions are wholly unnecessary and could be prevented if the lease benefitted from Security of Tenure.

(2) on the commercial leasehold market

CQ4A – 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.

In terms of retail the scope, it is Sainsbury's position that The Act is appropriate including the scope of the use of Excluded Tenancies.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

With regard to the Law Commission review Sainsbury's position is:

o Security of Tenure is widely used, as is evident from the data provided in this response.

o Security of Tenure and The Act hasbeen shown to be fit for purpose in the market.

o By removing Security of Tenure, it would create negative relationship issues between landlords and tenants, an unfair bargaining power in favour of landlords and uncertainty and unviable business models for tenants.

In terms of other scope issues to split the market into sectors – it is Sainsbury's position as it has a wide portfolio over different sizes, locations and types, that retail should remain treated as one sector.

Sainsbury's has no view on the issue of competing regimes, referred to in the consultation document.

CQ6 – 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

Sainsbury's evidence and position has been set out above in earlier questions. In summary, The Act protects many elements of a tenant's occupation but fundamentally is a protective shield to there being a ransom made by landlords and to distort rents payable for properties.

(2) on the commercial leasehold market

CQ7 – 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).

Sainsbury's does not have specific comments on this question but fully supports an inclusive retailing market which supports and welcomes all groups or individuals within it. It is worth noting that any measure which undermines retailers' certainty in being able to invest in property, will have a knock-on effect on the business' workforce and may, as a result, have implications for workforce diversity.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Stonegate Group

Role: both a landlord and a tenant

If landlord or tenant:

Number of employees: 250 or more

Regions: North West, North East, Yorkshire and the Humber, Wales, West Midlands, East Midlands, East of England, South West, South East, London

Sector(s): Hospitality

CQ1 – 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.

We would advocate the same model as proposed in the rest of our submission

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

Stonegate Group is the largest pub company in the UK, with over 4,500 sites which range from Leased and Tenanted to Managed businesses. The entire estate is spread across various trading formats:

Our Managed estate, comprised of formats (including brands such as Slug & Lettuce, Popworld and Be At One) and containing community public houses, high street bars, late night venues and destination country inns.

Our Operator Led estate, where we work with and along self-employed operators to run and operate pubs across England and Wales.

Our Joint Venture business, where the operating model provides for a differentiated retail proposition, partnering with some of the best operators in the industry.

Our Leased & Tenanted estate, which is the largest part of the estate with in excess of 3000 pubs across the operating spectrum.

Whilst the majority of the estate are freehold, we do have a considerable number of properties where we hold a leasehold interest and therefore have a perspective of both Landlord & Tenant when managing our property portfolio.

The market of operating Hospitality businesses has changed significantly over the past 20 years. With agreements shifting towards shorter term and contracted out agreements. On reflection we feel that an improved version of the existing Contracting-Out model would work best as well as providing the least disruption to established ways of working and legislative interpretation/understanding. The benefits of retaining the existing model could be

significantly developed through the mechanics to be employed, with embracing digitalisation through permitting electronic documents and signatures to be utilised as well as consideration regarding exempt agreement types being a significant step forward compared to the current regime. Alternatively a model of Contracting-In could also prove to be marginally beneficial, albeit such benefits would wholly dependent on the mechanics to be employed under the adopted model as well as considerations in regard to any implementation as to minimise disruption or unintended consequences in amending the legislation and associated practices.

Within the summary the consideration was raised as to the impact of negotiating power based on the model to be adopted. However, in our experience, negotiating power concerning security of tenure is driven via market forces of supply and demand as well as covenant strength of contracting parties.

The key to success with whichever model is adopted, be it the existing model or an inverse contracting-in model, will be to ensure the embracing of modernised ways of working as well as promoting clarity for both landlords and tenants alike across both implementation of any changes as well as granting validly executed agreements in line with the legislation.

We do not feel, given the broad scope of the commercial property spectrum, that either the abolition or the mandatory model would be viable options. The Mandatory model is the same as Section 38 of the Landlord and Tenant Act 1954. Due to calls from the various organisations, with effect from 1 June 2004 S38(4) was repealed to exclude the need for Court approval to exclude an agreement from security of tenure. A new Section 38a was inserted in its place. It therefore is illogical to reverse a repeal a decision which was found to be ineffective. In addition, reversion to a mandatory model would also result in direct conflict and wider unintended consequences when considering associated legislation and Regulations such as the Pubs Code etc Regulations 2016.

CQ3 – 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 parties and their advisers

The Company operates as the UK's largest Leased and Tenanted Public House and Hospitality estate.

In the preceding 24 months up to September 24, the Company completed circa 4,000 agreement transactions.

The majority of the above transactions were for a term of no more than 5 years, with a further significant share being short term agreements with a term of less than 12 months in length.

In addition, the vast majority were contracted outside of the Landlord & Tenant Act. The impact of changing the model on both parties to the agreement are primarily focused on time and cost. There is not necessarily any sway towards one party of the other. For example, the average fee for the preparation of a statutory declaration for a Landlord is in the region of £300 plus VAT plus disbursements. The cost to a Tenant attending a Solicitors to swear the Statutory Declaration is anywhere between £5-£10.

As previously mentioned, Section 38 of the Landlord and Tenant Act 1954 as originally enacted prevented parties to business tenancies contracting out of statutory security of tenure. This was later amended by repealing S38(4) and the insertion of S38a. The process of excluding Landlord and Tenant Protection under Section 38a can be confusing to both Landlords and Tenants. In the first instance, it requires the serving of a "notice" in a prescribed form under the 2003 Regulations AND the tenant sign a statutory declaration or make a simple declaration. In most cases, Tenants are averse to increased costs of seeking relevant advice (despite being advised to the contrary). Simplifying the process of tenancies being contracted out, either through a simplified mechanic or via an automatically contracted out model, could have the potential to avoid confusion, complexity and time on both sides of the transaction.

(2) on the commercial leasehold market

The impact to the changing the model of security from the current position will impact on development and investment of property. If the model of Mandatory security of Tenure were adopted, this would give rise to an increase in the supply of empty property given the restrictions placed on Landlords to be able to develop/ refurbish/ upgrade their assets. Whilst S30 Grounds A-G would still exist, the imposition of being required to serve grounds to oppose renewal would place further financial burden on a landlord along with the potential for increased legal costs were the matter to be disputed.

Funding and financial complications will no doubt be an unintended consequence to changing the current arrangements. Where property is let to multiple occupiers (i.e. multi storey office or industrial estates) if the position was mandatory security of tenure, this could result in considerable financial negativity for Landlords, either seeking funding or refinancing, when securing vacant possession across the entire building.

In addition, the Mandatory model would also have significant unintended consequences with regard to associated legislation/Regulations such as the Pubs Code etc Regulations 2016 as mentioned above. These unintended consequences would likely result in a pub market moving away from the leasehold model and towards managed/hybrid/franchise style agreements over time to allow parties to freely negotiate and to make long term plans allowing for growth and security, unless pubs become an excluded class (as per the original form of the 1954 Act).

CQ4A – 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.

Use Excluded Tenancies - No comment

Duration Excluded Tenancies - Under the current model, we feel that the period of excluded duration tenancies should be longer, at least 12-months.

Other Possible Exclusions – As above, if a Mandatory Security model is adopted we feel that pubs would need to be specifically excluded. Mandatory security of tenure is unworkable within a sector already subject to the statutory Pubs Code etc Regulations 2016 which includes enhanced rights which apply to tenants with security of tenure.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

Use Excluded Tenancies - No comment

Duration Excluded Tenancies - Under the current model, we feel that the period of excluded duration tenancies should be longer, at least 12-months.

Other Possible Exclusions – As above, if a Mandatory Security model is adopted we feel that pubs would need to be specifically excluded. Mandatory security of tenure is unworkable within a sector already subject to the statutory Pubs Code etc Regulations 2016 which includes enhanced rights which apply to tenants with security of tenure.

CQ5 – 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.

Should the Contracting-In model be adopted we feel that the cost and administrative burden on parties, who currently employ considerable amounts of contracted out agreements, would be reduced. However, this would be dependent on the transitional arrangements and implementation.

Use Excluded Tenancies – no comment

Duration Excluded Tenancies - We would support an extension from six to at least 12 months to introduce greater flexibility in short-term tenancies. 12-month agreements are common in the sector and exclusion from the existing model would facilitate a speedier and more flexible process for landlords and tenants without any negative impact on either's rights.

Characteristic-based Excluded Tenancies - We feel that this would be overly complex and difficult. An entirely new regime and mechanism with experts and advisors would be required to manage this effectively. It would open up a potential for large-scale litigation where parties dispute measurements, situational assessment, and further room for rent review disputes.

CQ6 – 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

See response to question 3 above.

(2) on the commercial leasehold market

See response to question 3 above

CQ7 – 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).

Given the broad scope of the commercial property spectrum we are not aware of any impact (advantageous or disadvantageous) to any of the protected characteristics group.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

N/A

Greene King Ltd

Role: both a landlord and a tenant

If landlord or tenant:

Number of employees: 250 or more

Regions: North West, North East, Yorkshire and the Humber, Wales, West Midlands, East Midlands, East of England, South West, South East, London

Sector(s): Administrative and support services, Agriculture, Arts, entertainment, leisure and recreation, Charity, Education, Financial, professional, scientific and technical services, Hospitality, Information and communication, Infrastructure and utilities (e.g. electricity, gas, water supply, sewerage.), Other service activities, Retail and wholesale

CQ1 – 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.

Any review of the Act as it applies to Wales should be made in line with England, ensuring simplicity in property transactions and parity across the market.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

Model 4, the current model of opting out, should be retained. This model has been thoroughly tested and is proven resilient to challenge and changes in the market. This may not be the case for a new model.

Maintaining the current model fosters certainty, with less risk to the property market and wider economy.

A review of the mechanics of the Act is welcomed, particularly with regards to Landlord's grounds for opposition. Ground (f) requires review to support businesses and business investment by making Landlord opposition more clear; prohibiting the courts from granting development breaks where a landlord has not met the threshold to oppose at renewal, which currently creates uncertainty for business tenants.

CQ3 – 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 parties and their advisers

Any fundamental change to the existing model will create extreme uncertainty in the market and wider economy and would likely cause a crash in the commercial sector:

- The lack of certainty for businesses will extend beyond the property market to all businesses with commercial property assets.

- Uncertainty in the commercial property market will accelerate the move away from physical premises and therefore impact value

- Employment would be affected, as the knowledge and experience of legal and surveying specialists in the current model would be obsolete.

- The courts would be flooded by test cases, which will be costly for both landlords and tenants.

- The Pubs Code is drafted with reference to the current Act, any fundamental changes to this model will cause further difficulties in a sector already under pressure from other economic forces.

(2) on the commercial leasehold market

Any fundamental change to the existing model will create extreme uncertainty in the market and wider economy and would likely cause a crash in the commercial sector:

- The lack of certainty for businesses will extend beyond the property market to all businesses with commercial property assets.

- Uncertainty in the commercial property market will accelerate the move away from physical premises and therefore impact value

- Employment would be affected, as the knowledge and experience of legal and surveying specialists in the current model would be obsolete.

- The courts would be flooded by test cases, which will be costly for both landlords and tenants.

- The Pubs Code is drafted with reference to the current Act, any fundamental changes to this model will cause further difficulties in a sector already under pressure from other economic forces.

CQ4A – 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.

(1) The current extent of Use Excluded Tenancies is appropriate

(2) The extension of duration included tenancies from 6 months to 5 years would be supported, to allow expedited and simple transactions for short leases

(3) The current extent of Use Excluded Tenancies is appropriate

The above applies only to model 4.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

The above applies only to model 4.

If model 1 is adopted, mandatory security of tenure, then public houses covered by the Pubs Code are sufficiently protected and should be excluded.

If model 2 is adopted, abolition of security of tenure, public houses should retain their rights to security of tenure in order to protect these valuable community assets.

If model 3 is adopted, contracting in to security of tenure, then public houses should retain an automatic right.

CQ5 – 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.

Competing regimes

- Existing regimes are complimentary to current Act and often refer to the Act.

Unwanted or Unnecessary Protection

- This is captured in the current model by opting out.

Too much protection –

- The extension of duration excluded tenancies from 6 months to 5 years would be supported, to allow expedited and simple transactions for short leases

- The complexity of opting out is overstated and can be completed swifty at minimal cost

- Should the current method of opting out be found to be too complicated, the method itself should be amended (for example stated in a clause in the lease rather than a declaration), but not the principle of opting out

Too little protection

- Public Houses require protection in excess of that currently provided by the 1954 Act. As an asset to the community inherent with British culture, under threat from other forces in the economy and alternative use values, public houses should be afforded additional protection. The Government is committed to protecting and supporting high streets due to their important role in generating both local pride and economic activity. Pubs are central to this mission, driving footfall to high streets and community centres.

CQ6 – 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

See response to Question 3

(2) on the commercial leasehold market

See response to Question 3

CQ7 – 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).

Not as far as we are aware

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

The Co-operative Group

Role: both a landlord and a tenant

If landlord or tenant:

Number of employees: 250 or more

Regions: North West, North East, Yorkshire and the Humber, Wales, West Midlands, East Midlands, East of England, South West, South East, London

Sector(s): Education, Financial, professional, scientific and technical services, Other service activities, Retail and wholesale

CQ1 – 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.

Co-op supports the continuation of the existing "contracting-out" regime, as provided for by the 1954 Act.

Therefore, we would note our preference – to prevent divergence and therefore the complexity and associated cost of compliance with a separate regime – for ongoing alignment between England and Wales. As we will note in our response to Consultation Question 2, a more cautious approach to expansion in Scotland is necessitated by the absence of security of tenure. This would also be the case if this protection were to be removed, with the inevitable consequences for the Welsh economy and people of Wales.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

Co-op supports the continuation of the existing "contracting-out" regime, as provided for by the 1954 Act, with some reforms to the way the system operates.

The current system provides Co-op with the protection required to enable investment in leasehold premises for refits and expansion, and therefore to contribute to economic growth through the associated improved and new stores.

The vast majority (over 95%) of Co-op's England and Wales leasehold estate has security of tenure. Given the extensive fit out costs associated with investing in any store, it is a model which our business relies on heavily.

The conditions in which we would be willing to accept a contracted-out store would be very limited, for example a major transport hub where there is no possibility of security of tenure as this could prevent infrastructure improvements.

Co-op invests an average in excess of £1m in opening a new store and therefore conducts a robust assessment of the financial forecast to ensure every investment made will be worthwhile. The scale of investment is particularly marked in our Logistics estate where

investment in a new site can easily require in excess of £40m capital. The certainty provided by security of tenure is needed to enable ongoing investment in leasehold properties given the scale of the risk involved and typical payback duration.

CQ3 – 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 parties and their advisers

Mandatory Security of Tenure:

Co-op has a large estate that includes approximately 1,000 non-trading properties and is therefore also a landlord in the market.

Many of these properties are let on a shorter-term basis, the scale and character of which would be threatened by mandatory security of tenure.

The tenants of these lettings tend to be smaller, independent businesses (often in a start-up phase) or small charities who rely on this type of letting being available who would be significantly and adversely impacted by a mandatory security of tenure model.

There would also be an adverse impact for businesses like Co-op, unable to make full use of their portfolio, and the communities in which such properties would likely remain empty as opposed to being occupied.

Abolition of security of tenure:

Abolition of security of tenure would directly and negatively impact our ability to invest and maintain our store presence in communities across in England and Wales. Our direct experience in Scotland demonstrates how acute this would be.

Co-op has lost three stores in Scotland alone in the past 12 months. This has led to direct losses estimated in the region of £1.5m, as an explicit result of the absence of security of tenure. The impact, is of course broader than in those three communities specifically – to the detriment of our ability to serve the people of Scotland and contribute to the Scottish economy, our future investment appraisals for properties in Scotland have to take into account this risk.

Abolition of security of tenure would have a very significant and overwhelmingly negative impact on Co-op's plans for investment in its existing space and ambitious growth aspirations across England and Wales, with all the economic consequences that would follow.

New analysis of Co-op's community wellbeing data shows clearly that when high streets decline, community wellbeing declines too – and so the impact isn't just economic. It's social too, affecting everything from local employment to people's sense of belonging. Communities that lost a store in 2024 saw an average 1.37% drop in wellbeing, affecting around 900,000 people nationwide, whereas those that gained a store saw an equivalent 1.37% improvement. Furthermore, those communities that benefited from a reduced distance to a Co-op store experienced improved wellbeing by an average of 1.2%, benefiting millions across the UK.

Finally, landlords would have the ability hold tenants to ransom, leading to the risk of inflated rents above market rates where the tenant has a goodwill investment. Tenants would have to look further ahead from lease expiry. Again we have recent experience of this in Scotland – in one location we have had to pay in excess of 25% above market rent to stay in a site.

Opting into security of tenure:

From the tenant's perspective, an opt-in model would tip the balance of power further towards landlords. We believe this would produce similar consequences to abolishing security of tenure, and therefore the concerns articulated above would be consistent here.

(2) on the commercial leasehold market

Mandatory Security of Tenure:

This model would lead to an increased risk of overload on an already busy court system. It would restrict flexibility within the market, threatening economic growth. Finally, it would force terms on parties, including circumstances where it would be contrary to their interests to the extent, for example, where a landlord might refuse to renew a lease on the grounds it couldn't contract out.

Abolition of security of tenure:

Tenants will be less prepared to invest in their business premises if they do not know whether they'll be allowed to continue to stay in the premises (either at all or at an affordable rent).

To bring this to life, at Co-op we have approximately 80 refits planned for 2025 with an average cost of circa £950k per store. Without security of tenure many of these investments would not be authorised, as the risk would simply be too great.

It could potentially lead to an increase in empty properties where, rather than invest a poorer performing business, a tenant walks away due to the uncertainty of occupation. Lease lengths will get longer reducing flexibility for tenants and to the entire benefit of landlords. Furthermore, we would expect to see a reduction in the number of individuals who are prepared to take a risk on a new venture, given the premises could be lost at lease end.

In all these scenarios, job losses or missed opportunities for job creation (both in the stores themselves but also throughout the relevant supply chains) would be a natural consequence.

Unscrupulous landlords would exploit the abolition of security of tenure to extract as much rent as possible, benefiting unfairly from a tenant's good will. As Business Rates are linked to rents, increases would cause significant further costs to the leaseholder, most likely leading to increased consumer prices.

Opting into security of tenure:

The clear risk in an opt-in model would be in landlords pressuring tenants to accept absence of security of tenure for commercial advantage on renewal.

It would be likely that only the biggest, higher-covenant strength tenants could bargain for security, and therefore hinder the emergence and growth of new businesses. Furthermore,

smaller tenants may well be pushed out of the market, stymieing investment in shops by those who have been priced out of the market.

CQ4A – 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.

1. Yes, the use of Excluded Tenancies it is appropriate, provided they are kept to a minimum where very specific circumstances apply.

2. It is fairly unusual for shorter tenancies (below 5 years) to have security of tenure. Extending the period of length qualification to 3 years would largely reflect market norms and ease compliance requirements.

3. Our view is that the scheme should be as simple and uniform as far as possible. Exceptions should be minimal. A small store will still require significant investment and therefore need security of tenure to proceed to refit or acquisition.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

Whilst, as noted in our responses above, we would not support a move to adopt a mandatory security of tenure model, we would note that a longer qualification period (of five years) would be appropriate in this model.

CQ5 – 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.

As noted above, Co-op supports the continuation of the existing "contracting-out" regime, as provided for by the 1954 Act. The reforms to the operation of this model which we would be keen to see include:

- A more flexible approach that provides tenants with more time to agree terms.

- A less costly, more efficient scheme – perhaps akin to the current PACT system – as opposed to the current court-based system

- A reduction of the notice period 14 days to 7 days (at the most) in the contracting out process.

- Clarity around the existence of security of tenure arising by default, for example in the circumstance of a tenant in occupation originally by licence which on expiry gives rise to security of tenure protecting that tenant.

- Retention of security during the renewal process

- Less costly and simpler operation of the 1954 Act, including reviewing the resolution of renewal disputes, applications for extensions and the litigation process more generally

- Ensuring that levels of compensation reflect a tenant's good will sufficiently

CQ6 – 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

The impact on the parties to tenancies and their advisors would vary significantly depending on the alternative model adopted as a result of a change to the scope of the 1954 Act.

In the event of abolition of security of tenure, the worst possible model consulted upon in this paper, approx.10% of leasehold properties (around 195 stores) in Co-op's estate would expire annually on average. No investment would be possible in any of these stores in the years preceding their renewal due to the lack of certainty that the lack of security of tenure would create. It would also have second order consequences, for instance for the extent to which it would be viable to recruit new colleagues.

A mandatory scheme, with the correct qualification levels, would be the second choice for Co-op in the market, as it would pose the least threat to our business.

In an opt-in model, smaller businesses wouldn't see the benefit that an organisation of Co-op's scale would, however, and we believe that their needs should be considered. As a relatively higher covenant strength tenant, Co-op would be in a better position than some tenants, but would still end up at a significant disadvantage to many of our competitors. The costs – for all sizes of tenant – would be higher both to negotiate and mediate terms.

(2) on the commercial leasehold market

Similarly, the impact on the commercial leasehold market would depend on what the change of the scope of the 1954 Act entailed. We would envisage, however, that the abolition of security of tenure would lead to a more adversarial relationship between landlords, tenants and agents. An opt-in model would see security of tenure effectively removed from start-ups and independent businesses with limited negotiating power, only adding to the challenges this type of business face.

CQ7 – 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).

Whilst not an impact attributable directly to individuals or groups with protected characteristics, as a member-owned business Co-op is proud to operate a store estate which includes many stores serving disconnected communities where we are the only Food retailer providing access to food and other essential supplies (including in remote and rural locations, for instance the Isles of Scilly). We are acutely aware of the particular dependency that the communities we serve in such circumstances have on our ongoing investment in

such locations to ensure that our stores continue to meet the ever-evolving needs of our members and customers. By their very nature, such stores tend to operate with a significantly above-average cost to serve. A removal or weakening of security of tenure would have a particularly significant impact in these locations where there is the strongest social case, but where the business case requires significant scrutiny to ensure that any investment is made on a solid financial basis. Finally, small business and local charity occupiers who often occupy sites on a meanwhile basis could be adversely affected by changes the current system.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Co-op is a 180-year-old organisation, with over six million active member-owners and a presence in every postal area in the country. As the UK's leading convenience retailer, we operate over 2,300 food stores within our Food Retail business unit. Our Business-to-Business unit includes our Nisa business, serving more than 4,000 independent retail stores; our growing Franchise operation; and FRTS (Federal Retail Trading Services), which supplies products on a wholesale basis to 13 independent co-operative societies.

Our Life Services business unit includes Co-op Funeralcare – one of the UK's leading funeral businesses, with over 800 funeral homes across the UK, Co-op Legal Services – the largest regulated provider of wills in the UK, which also oversees the largest team of probate solicitors and specialists, and Co-op Insurance – with a range of products including home, car, travel, pet and life insurance. Also, the Co-op Academies Trust oversees 38 academies with 21,000 students. Our businesses are all UK-based, with our main support centre in Manchester, and we employ over 54,000 colleagues who are vital to our ongoing success across the country. In total, our significant estate consists of 3,230 trading and 1,000 non-trading properties in the UK.

A stronger Co-op means stronger communities; we're here to create value for our member-owners, and the communities in which we operate. Central to achieving this is running a successful and responsible business. We are therefore pleased to have this opportunity to respond to this Consultation Paper as we believe the security of tenure regime provides vital protection and certainty to retailers, including Co-op.

In responding to this Consultation Paper we would highlight Co-op's support for a "contracting-out" regime, where the default position is that tenants have statutory security of tenure, but the parties can "opt out", and therefore to see improvements proposed to the existing regime as opposed to any more fundamental reforms.

The Office Group

Role: both a landlord and a tenant

If landlord or tenant:

Number of employees: Not Answered

Regions: London

Sector(s): Administrative and support services, Charity, Financial, professional, scientific and technical services, Infrastructure and utilities (e.g. electricity, gas, water supply, sewerage.), Other service activities

CQ1 – 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.

No considerations especially for Wales. It is important that the regime is consistent across England and Wales. Further divergence of regimes across the UK nations will add confusion and cost to investment in and management of portfolios across jurisdictions.

CQ2 – 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.

Model choice: Contracting-in (so that a tenancy only has statutory security of tenure if the parties opt into a statutory scheme);

Reasons

The Office Group/Fora (TOG) is a leading flexible workspace developer and operator. We partner with some of the world's most progressive companies and building owners to create spaces that meet the demands of modern businesses and their employees. Our consumer-facing brand, Fora, offers workspaces across London, the UK (and Germany), providing flexible workspace solutions for companies of all sizes. TOG owns some buildings and occupies others as a tenant. In both cases, TOG provides serviced office space to occupiers either by granting leases or licences to occupy.

TOG opts for the contracting-in model for the purpose of this question but other reform (including reforms to scope) could resolve some of the issues we face with the current security of tenure regime.

TOG provides a variety of office spaces and services to occupiers depending on their need. The flexible office market is more about providing a service rather than the traditional view of granting a property interest. Sometimes occupiers require very flexible short term arrangements with changing needs for more or less space. We also provide more fixed premises for longer terms in a more traditional tenancy format. TOG's primary issue with the security of tenure regime is the risk that flexible arrangements agreed with an occupiers would be legally interpreted to be leases rather than licences, albeit the risk is minimal. Where it is obviously a licence, security of tenure does not apply. Where the arrangement meets the tests for a lease, we would always contract-out (under the current regime). The difficulty comes when it is not clear cut either way. For both TOG and the occupier, to deliver the flexible arrangements required, a full-blown lease and the formalities for accommodating

future changes are not helpful. For example, an occupier with a contracted-out lease needing to quickly relocate to another part of the building would need to surrender it and take another contracted-out lease. If the original arrangement could have been a licence without any risk of it being classed a tenancy with security of tenure, the whole arrangement and situation could be dealt with more efficiently for all parties.

Where TOG grants leases, they are (almost) always contracted-out. The current process is cumbersome. There does not seem to be the need for separate processes for where the occupier is or is not willing to visit an independent solicitor to swear a statutory declaration. A single process that can be carried out quickly and simply would be better.

TOG's choice of the contracting-in model reflects the fact that: (a) it would not matter if our licence agreements were interpreted to be leases – because if they were those tenancies would not have security of tenure and (b) where leases are granted, it would remove the need for the cumbersome contracting-out process.

CQ3 – 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 parties and their advisers

TOG's view is based on our involvement in the flexible office market which may present unique challenges not faced elsewhere in the market. However, we anticipate that landowners, occupiers and their advisors would welcome changes to the model that reduced the amount of contracting-out in the market and associated benefits of removing shorter term occupational arrangements from any risk of having security of tenure.

It would also mean there would be no disputes about validity of contracting-out or termination grounds associated with the lowest value, short term arrangements.

(2) on the commercial leasehold market

Mandatory security of tenure would be impossible for markets based on flexibility, such as the office market in which TOG operates. Security of tenure cuts across the entire business model and need to be able to easily change the location, size and nature of the premises.

The wider market would need to adjust to a different model, but we do not anticipate that there would be any impact on the availability of space.

CQ4A – 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.

In the flexible office market, we do not have any interaction with the current use excluded tenancies.

In the event that security of tenure is mandatory or the contracting-out regime is maintained, TOG would obviously welcome adding serviced office to the classes of use excluded tenancies. That would enable us and our customers to operate without the complexity of needing to avoid the security regime. We recognise that there are various models of serviced office (sometimes within the same building) and that defining serviced office space may be difficult. There is already a "primary purpose" test in the exclusion for telecoms leases but that could lead to more uncertainty or disputes if that was applied to "serviced offices" as there are different ideas about what services would meet the test.

However, it would be possible to capture most flexible space by reference to a combination of requirements – for example (a) predominantly office use, (b) short term (e.g. less than 2 years or no fixed term) and (c) the document creating the arrangement expressly refers to it being a serviced office arrangement.

It would be simpler to take these arrangements out of scope by changing the model to contracting-in or by extended the duration excluded tenancies to take out shorter term arrangements (we would suggest at least leases up to 3 years) or smaller premises (up to 2,000 sq. ft. in the context of our office spaces at least).

Other factors such as geographical location would add unnecessary complexity to the regime.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

As mentioned in the previous answer, the need to address scope depends on whether the relevant tenancies would have security by default under the chosen model.

CQ5 – 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 conclusions in the assessment are fair except that more recognition should be given to important markets (like the provision of flexible office space) that did not exist when the current law was developed. The needs of these markets must be addressed and so serious consideration should be given to a change to accommodate this whether through a use exclusion or other intervention to help improve the operation of the market.

CQ6 – 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

The primary effect is to make transactions clearer and more efficient.

(2) on the commercial leasehold market

CQ7 – 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).

We do not believe so.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

N/a.

British Independent Retailers Association (BIRA)

Role: a representative organisation

If landlord or tenant:

Number of employees: 10-49

Regions: West Midlands

Sector(s): Retail and wholesale

CQ1 – 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.

We do not know any reasons why commercial leases in Wales should be treated any differently from England. Consequently, any changes to the 1954 Act should be consistent across both countries. This would make it easier for all tenants and landlords to manage properties and leases should they have presence in both England and Wales

CQ2 – 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.

Model choice: Mandatory security of tenure;

Reasons

BIRA is an association for independent retailers with 4,500 members throughout the UK. We have a broad range of members from a small pet shop to an independent department store. There are approximately 400,000 independent retailers in the UK and whilst some of these businesses own their own premises, a high proportion will be commercial tenants.

Given the work we do and the members we represent, the most important aspect for commercial tenants is security of tenure. It is important for the following reasons:

1. Running a retail business is a long term commitment and security of tenure allows the business owner to focus on making their business a success. If the retailers are successful we believe that they should be rewarded with new lease

2. Lack of certainty on security of tenure diminishes investment in the business. Why would a business owner invest in the business without security as it would be harder to obtain a return on that investment

3. Whilst the current 1954 Act is intended to offer security of tenure, the option to contract out works in favour of the landlord. We believe that many commercial tenants are encouraged by landlords to opt out as part of the lease agreements, without realising the consequences

4. Commercial leases are complex documents and not always fully understood by a new or inexperienced tenant. Neither do the tenants seek legal advice, preferring instead to work with and trust the landlord who present the lease as a' take it or leave it' proposition

5. We believe that with mandatory renewals the landlord should still be able to terminate the lease using one of the reasons outlined in the current 1954 Act

CQ3 – 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 parties and their advisers

We have outlined in our response to question 2 why we feel that mandatory renewal would be a preferred option. The main reason is the stronger security of tenure it provides to the tenant.

It might also be argued that it would save money and time as there would be no need to take legal advice on the option to contract out

(2) on the commercial leasehold market

From a retail perspective the commercial property market has changed. Due to changes in consumer behaviour (on-line shopping and the growth of out of town retail parks) there is less demand for retail space on high streets in general. The current vacancy rate is in the UK is 14% and has remained at this level since Covid.

Other factors to consider are that the costs of running a physical store have significantly increased - cost of labour, cost of energy, business rates, etc.

We do not believe that mandatory renewals would result in less commercial property being made available in the current market due to low demand and we do not see this demand increasing in the future (from a retail perspective).

We have not been able to establish the extent of contracting out exists within the small independent sector. However we have seen figure from the British Retail Consortium that 90% of leases for the large retail chains have not opted out. This might be due to the negotiating power of a large chain and the business strength of the chain. This is clear evidence that a high percentage of landlords are happy to give security of tenure and this has not negatively influenced trends in the commercial property market. We believe that there is more contracting out with the smaller independent businesses which suggest that these tenants need to have the same protection as large businesses.

CQ4A – 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.

We believe that the current use of use and duration excluded tenancies is appropriate.

From a retail perspective we see great value in new entrants to the market testing their business model through a pop up shop which often results in a short term let (up to 6

months). We feel it is right for both the tenant and the landlord not to have the right to renew under these circumstances as we should be encouraging this type of initiative.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

No

CQ5 – 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.

We believe it is correct

CQ6 – 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

We have no views on this

(2) on the commercial leasehold market

None

CQ7 – 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).

We do not believe it would although mandatory renewal might remove any prejudices against people with protected characteristics

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Nothing to add

Guardians of the Arches

Role: a representative organisation

If landlord or tenant:

Number of employees: 1-9

Regions: North West, North East, Yorkshire and the Humber, Wales, West Midlands, East Midlands, East of England, South West, South East, London

Sector(s): Administrative and support services, Arts, entertainment, leisure and recreation, Charity, Construction, Education, Financial, professional, scientific and technical services, Health and social care, Hospitality, Information and communication, Infrastructure and utilities (e.g. electricity, gas, water supply, sewerage.), Manufacturing, Other service activities, Public administration and defence, Real estate, Retail and wholesale, Transport and storage

CQ1 – 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.

CQ2 – 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.

Model choice: Mandatory security of tenure;

Reasons

My answer is NONE of the above:

Note: There is an error in your interpretation of my meeting with you (Wed May 22, 2024 4pm) on this subject.

My answer is option 1 and 4.

I suggest there is an option 5.

Mandatory security of tenure "APART FROM IN EXCEPTIONAL CIRCUMSTANCES."

Why:

It is imperative that landlords can not simply contract out all leases, because they will.

One example is that although the process has been available for just 20 years, in that time TFL commercial property portfolio in London, with over 2000 properties, has 84% contracted out.
Evidence:(https://www.whatdotheyknow.com/request/of_commercial_leases_contracted#outgoing-1789153)

The high prevalence of contracting out is widespread with all our portfolio landlords: Blackstone (Arch Co) , TFL and Network Rail.

The incidence of contracting out new open market lettings by these landlords is 100%.

It is imperative that a method for contracting out exists, because it is needed by landlords for genuine reasons in exceptional circumstances.

If there is no means of contracting out it would be untenable and properties would be left empty.

Many cases of subletting require no security of tenure.

Many cases where a property may be required in the near future for the landlords to occupy or for redevelopment would be left empty.

"APART FROM IN EXCEPTIONAL CIRCUMSTANCES" explained:

I suggest contracting out is a straightforward and simple process for eligible leases such as those mentioned above.

Eligible properties should allow a straightforward process that requires no proof.

Control by means of monitoring via a new monitoring protocol would suffice.

There is insufficient data on this topic in general, this consultation process has highlighted this issue, and such a monitoring system would create such data as well as acting as a record to police the contracting out eligibility.

There are methods of policing this eligibility which would be easy by design for example, the contracting out in a portfolio can be restricted to a percentage, such as 20%. This would force landlords to choose locations more carefully. This self reporting system also reduces the workload on courts having to determine eligibility for contracting out.

This consultation process does not allow for my option 5 and I invite further discussion if possible.

My proposal would involve incorporating the wider framework of lease law into the solution, in particular, RICS non mandatory standards of good practice becoming mandatory via statutory legislation within the 54 Act and the introduction of a record of lease events.

CQ3 – 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 parties and their advisers

Businesses would get the opportunity to have security of tenure where previously they would not.

This would increase investment and growth measurable by an increase in GDP and a reduction in vacant properties.

The impact would be long term and create business confidence for both landlords, portfolio investors and tenants.

The reason for this increased confidence and investment is because the business would benefit from its goodwill and own improvements.

Family succession planning would have vastly improved success levels in instances where their businesses are committed to a specific commercial property.

For advisers there is no hope for contracted out tenants. Security of tenure means more can be done to defend unfair rent increases* and tenants rights.

* Contracted out tenants are less likely to contest rent increases that are above market rate due to no right to remain in the property long term, there is no lease to renew should they pay thousands on arbitration to determine the correct market rent because the landlord does not have to renew it.

(2) on the commercial leasehold market

Portfolio management will always operate within the rules permitted by the legal framework.

If something is legal, but not fair practice, the portfolio management decision will be to stay within the law and disregard fair practice.

This is because the industry is not necessarily in the business of leasing properties.

These landlords are in the business of increasing portfolio valuations.

The staff will not progress in their careers if they disregard this logic and attempt to apply fair practice in their part of the portfolio. If they did, they would not be competitive compared to their colleagues and competitors.

Portfolio investors looking at UK investments would be attracted by the more ethical nature this creates for the industry.

It is for the legal framework to set the rules so that these staff can operate using rules that allow them to compete on a level playing field.

The impact on this market will be that the staff will be happier in their work. A sense of satisfaction and fulfilment as a result of being able to behave more ethically. Because they actualy want this.

The long term benefits to the portfolios caused by increased investment and economic growth by the tenants would boost the value of the portfolios more than the current business model.

I need to clarify that of the 1 000 000 rented commercial premises more than half are operated by portfolio management as investment portfolios.

The 1954 Act, when written, did not cater for this as the modern private equity industry was not born until 1946 and alarmingly did not grow to the levels we see today since the start of this century. This growth coincided with the implementation of the current contracting out procedure which came into effect on June 1st, 2004 .

(https://en.wikipedia.org/wiki/History_of_private_equity_and_venture_capital)

CQ4A – 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.

No comment

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

Extend the term to two years rather than 6 months to be excluded from the scope.

In addition introduce a new rule called "The two year rule." (This does not exist and is a suggestion from me).

Any occupation longer than two years becomes eligible to request security of tenure should their landlord be unable to justify their contracting out within the rules relating to exceptional circumstances.

CQ5 – 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.

No comment

CQ6 – 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

No comment

(2) on the commercial leasehold market

No comment

CQ7 – 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).

The lower end of the scale in terms of rents and locations attracts the tenants with the least capital.

These tenants are the least likely to employ a professional to ensure their tenancy rights are understood or fair.

Ethnic minorities face the most difficult challenges in making a living on our shores, as a result ethnic minorities are a disproportionately higher percentage of our members than in the general population.

Ethnic minorities are the least likely to understand, or have access to those that understand, the complexities of commercial lease legislation and contracts.

At the other end of the scale, the landlords are growing larger. We have, for example, Blackstone ($1.108 trillion in assets under management) negotiating a lease with Muhammad Hamza (Net worth £1800) for a coffee shop near a train station in London.

Muhammad has an expectation that our rule makers have a framework of commercial tenancy rules that are just and equitable.

They are not.

It is up to you.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Vast efforts are invested by landlords and tenants in managing their tenancies and property portfolios.

Their is inefficiency and wasted time involved with lease events.

It would be prudent for the Law Commission to promote a solution that creates efficiency in the process and that promotes long term investment for the sake of wealth creation for these parties and the countries GDP.

Such efficiencies would free up resources from both parties to focus on the "green" issue. Energy efficiency, waste management etc.

Not just the actual building becoming more efficient, the activity of the businesses themselves use more energy than the buildings. (No definitive data is available however estimates are that the activity of the business in commercial premises consumes over 50%, on average, of the their total energy consumption.)

According to a study by the Energy Systems Catapult, small businesses account for 50% of commercial energy use in the UK. (https://es.catapult.org.uk/case-study/arbnco-boosting-access-for-smes-to-energy-efficiency/)

Commercial landlords and small business tenants in the UK are facing a climate crunch with looming changes to regulations meaning 85% of rental properties will need to improve energy efficiency by 2030 – or be banned from leasing out buildings. (https://es.catapult.org.uk/news/new-study-finds-85-of-commercial-rented-buildings-face-climate-crunch-due-to-sme-challenge/)

British Retail Consortium

Role: a representative organisation

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

Many retailers hold substantial property portfolios across both England and Wales. We would be very concerned if a different approach emerged in Wales to the one which exists in England. Any resulting complexity would undermine the ability of retailers to plan and manage their store portfolios. Consistency is important to avoid such complexity and to ensure properties can be managed efficiently.

One member drew attention to the example of Northern Ireland as a more simplified model with possible valuable benefits to be considered as all property is automatically inside the Act.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

The paramount objective must be to ensure that the existing model of security of tenure is retained and not undermined by the review. Retailers are united in their support for retaining the existing contracting-out model, which plays a fundamental role in ensuring the continued viability of modern retail investment. Security of tenure plays a crucial role in the retail business model, enabling store investment and colleague retention. With tenant fit out costs increasing, in part due to inflation and personnel related increases, the return on investment afforded by lease length and security of tenure is likely to become increasingly important in decision making.

Retail Utilisation of Security of Tenure: This is reinforced by the wide range of companies who indicated that only a very small proportion of properties in their portfolios are outside the Act. To understand this more closely, we undertook a survey of member companies to assess the importance which they attach to the contracting-out approach.

Companies with 14,075 properties, accounting for approaching a quarter of the retail industry by turnover, responded to our survey. The survey showed that:

- 89% of the properties held by these companies were currently inside the Act, with only 11% contracted out.

- There was clear feedback from those companies responding that the current approach to leasing provided them with the ability to ensure that security of tenure is a feature of their leases.

We also asked a number of individual retailers for additional information about the utilisation of security of tenure in their businesses:

- Company A, a large national food-to-go retailer, said that 91% of its stores are inside the Act.

- Company B, a national non-food retailer, reported that 95% of its stores are inside the Act.

- Company C, a national charity retailer, said that 98% of its stores are inside the Act.

- Company D, a national non-food retailer, said that all of its stores are inside the Act.

- Company E, a national non-food retailer reported that 85% of its stores are inside the Act; stores outside the Act are only permitted for good reason eg in locations that are uncertain (largely high street on flexible leases) or regional malls set up outside the Act.

- Company F, a national healthcare retailer, said that more than 90% of its leases were inside the Act.

Members generally said that contracting out often only takes place due to the unique nature of a particular property. Where a landlord says that a new lease would be outside the Act, this leads to extremely careful consideration from a retail tenant before proceeding. They were united in saying that any move to a contracting-in based approach would lead to fewer store openings and make investment in bricks and mortar retailing less attractive.

Importance to Retail Investment: The investment model which underpins the store portfolios of many retailers is only made possible as a result of this provision in law. Members emphasised that any removal of security of tenure would have far reaching consequences in this regard. Specifically, it would prevent them from investing in sites, with a direct impact on high streets and the wider economy. The assumption that many leases opt-out of the provision is strongly challenged – members consistently reported very high levels of utilisation, as shown above.

One retailer, with a £40m investment plan to refresh and refit its store portfolio, reported that it would not seek to make improvements for stores without security of tenure unless they had a minimum lease length of 5 years remaining. For stores with security of tenure, where a higher degree of certainty exists at lease expiry, investment in improvement is made even where the lease may have less than 2 years remaining. The certainty which arises from security of tenure enables investment to be amortised over a longer term on the assumption that any notice for new tenancy is unlikely to be the subject of objection.

Businesses with an overseas ownership structure noted that any change to security of tenure risked making investment in UK property less desirable than in other countries

covered by their groups. This would mean that companies choose to invest in countries with a more stable leasing regime.

The Legal Dimension: The current contracting-out model has been in place for more than 50 years. It is generally well understood, stable and effective. There is, however, considerable scope for the detail of the legislation to evolve to ensure that it is effective in delivering the needs of modern tenants and landlords.

In addition, member feedback indicates that, for sections of retailer tenants (particularly independent and smaller retailers), it is often the landlord that dictates whether or not security of tenure will be permitted in a lease. One specialist retail trade body told us that only 22.5% of the independent shops held by its members were able to confirm that they had tenancies inside the Act, although they noted that a further 60% were unable to say whether or not their lease was inside the Act. This is likely to be reflective of the lack of legal advice such tenants are able to access before signing their leases.

There is a strong view that a better landlord/tenant relationship can only be achieved with retention of security of tenure and enhanced protections should be put in place to ensure that that this is equally available to all tenants, irrespective of their market position. Retailers noted that smaller retail companies may not have the resource or capability to engage with professionals and understand the protections available to them.

The risk of a tenant losing any commercial protection is far greater with an opt-in model than an opt-out approach. This would potentially compel many companies to incur increased litigation costs or related expenditure at the time when they would have traditionally renewed.

Companies operating in regulated sectors where operating licences linked to the premises are required noted that a holistic view should be taken – it should not be taken as read that premises operating licences can easily be transferred to other premises. Security of tenure therefore ensures the continuity of services afforded by such license

Impact of Ending a Contracting-Out Model: Moving to a contacting-in model would fundamentally undermine the stability which arises from the current approach, eroding the certainty which enables retailers to construct the business case to make the necessary investment. The resulting reduction in protection would materially undermine a tenant's ability to ensure they obtained security of tenure as part of their lease negotiations. In addition, as observed in the consultation document, under a contracting-in model there is a clear risk that smaller businesses may be left unaware even of the existence of the potential for a protected tenancy. In such circumstances, the tenancy will, by default, be outside the statutory scheme and the landlord would not need to go through any meaningful process to contract out of security of tenure.

We believe that the overwhelmingly dominant position which landlords would then occupy would mean that, for many prospective tenants, there would be little possibility of securing a protected tenancy. Even were this possible, it is also apparent that it will be vastly more expensive and cumbersome under a contracting-in model to grant a protected tenancy than under the current approach.

Retailers' experience in Scotland, where security of tenure does not exist, is instructive, illustrating the practical difficulties which arise for tenants without adequate legislative protections. Members report the following issues as commonplace:

- The inability to rebase rent to reflect market rents and use any form of arbitration and expert determination as to value. Retailers highlighted the failure of many landlords in Scotland to engage in meaningful dialogue ahead of leases expiring, especially when rents have dropped in the market. Landlords in England and Wales have been responsive to the significant correction in values since Covid. This has not been the case in Scotland, where the only way to secure such a correction would often be to relocate at the end of a lease term.

- The inability to seek any form of interim rent, whilst negotiations are undertaken by the parties. This can mean a retailer can be overpaying for years into the future, when they have goodwill invested in a specific location, job creation/loyal employees.

- The departure from a tenant's preferred terms is more common in Scotland due to tenants' lack of ability to challenge through a judicial process. Retailers report that deals agreed between the parties, with landlords then reneging, mean that they either accept their demands to double the rent or must exit within 41 days. One member reported that this had occurred to their company on at least 4 occasions in the last 18 months.

- Being held to 'ransom' by a landlord, who owns multiple retail parks in the UK across Scotland and in England & Wales. The companies said they were told that if they did not agree to continue to pay the passing rents on properties in England and Wales then they would not be offered the chance to remain in stores on those parks in Scotland where no security of tenure exists.

- The cost of relocation is significantly more expensive and ties up capital.

- More confrontational negotiations are commonplace, with landlords threatening to close the store. Retailers reported having had instances where their businesses have had to tell staff the store is closing, and during the process of clearing out the store the landlord has changed their mind.

- Deterring decisions to invest, due to short lease period remaining.

Retailers also challenge the assumption, set out in the consultation document, that under a contracting-out model, the parties incur additional costs and delay in granting unprotected tenancies rather than protected tenancies because they go through a statutory contracting-out process. Retailers and their legal advisers state that this assumption is not borne out by the reality, which sees very little procedural complexity and/or cost. By contrast, a contracting-in procedure could be contentious from the start with additional upfront costs.

It is also very important to remember the impact on colleagues of the uncertainty which arises at the end of a lease. A store closure requires a minimum of six months to manage effectively. The experience of retailers operating in Scotland has shown that the adverse impact on the workforce can be considerable.

<u>CQ3 – We invite consultees' views, together with evidence wherever possible, as to what impact a change to the model of security of tenure will have:</u>

(1) on parties and their advisers

For the purpose of this question, we have primarily focused on the potential impact of moving away from a contracting-out model to a contracting-in model. This is in view of the fact that these seem to be the only models likely to receive serious consideration. Obviously were serious consideration being given to a move to abolish all security of tenure in law, the effects outlined below would be further magnified.

From the perspective of the retail industry, any change to the model of security of tenure would have extremely serious, negative implications. As set out in the answer to Question 2, the evidence clearly shows that retail industry utilisation of security of tenure is extremely high. Almost 90% of the shops held by companies responding to the survey are inside the Act. This reflects the fact that security of tenure is integral to the business case required by retailers before investment in a property is possible.

Impact on Parties to Tenancies: Changing the existing approach to a contracting-in model would represent an extremely significant reduction in the protections for tenancies compared to the existing approach. The reversal of the current position, to introduce a position where tenant do not have security of tenure unless they contract in to a statutory scheme, would inevitably leave tenants in a much weaker position in any contract negotiation. This would undermine the certainty of retailers looking to take on new retail space and harm the viability of existing property strategies.

It is also inevitable that it would be significantly more expensive and complicated to grant protected tenancies under a contracting-in model because parties would need to go through a statutory procedure to do so. This would entail delays to the speed at which a tenancy could be entered into and commence. The resulting impact would be extremely likely to mean that landlords would in practice be unwilling to offer protected tenancies. In practice that would mean that a move to a contracting-in model would materially undermine the use of security of tenure.

Retailers reported that their experience of operating in Scotland led them to believe that there would be significant and substantial harm to the commercial property market and the future viability of retail. It was noted that the ability to seek short term leases with security of tenure in England and Wales has provided the confidence which retailers need to invest in their properties.

(2) on the commercial leasehold market

Impact on the Commercial Leasehold Market: Any move to weaken the ability of retailers to obtain security of tenure would inevitably gravely undermine the viability of retailers' utilisation of physical retail space. We are keenly aware from other live policy discussions, for example in relation to changes to Business Rates, of the significance which changes to arrangements relevant to property costs can have for the viability and utilisation of properties. It is clear that even marginal changes can have significant repercussions for the viability of properties. Following the recent Budget, which saw significant additional employment and other costs impacting the industry, a number of retailers have publicly announced reductions in their planned store portfolios arising directly from that decision. Any change to the contracting-out model would be expected to precipitate much more serious impacts for the viability of retail property portfolios and the accompanying investment models which underpin them.

It was noted that recent changes in accounting rules require retail tenants to report their full lease length liability and rent commitments on their balance sheets. The removal of security of tenure would almost certainly mean that tenants would seek longer lease terms, resulting in greater balance sheet exposure and potentially less free cash to invest in store growth and job creation. Longer leases would also lead to increased Stamp Duty Land Tax charges being payable by tenants, which again would inform investment decisions and put yet another cost burden onto bricks and mortar retailers.

CQ4A – 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.

The BRC would strongly oppose any change to increase the scope of the Use Excluded Tenancies to include any properties utilised by retailers in their commercial activities.

We are unaware of any material concerns in relation to the current categories of properties defined as Use Excluded Tenancies. We note that the international examples cited in the section of the consultation paper indicate that protections in scope are widely defined as protecting shops, which shows the recognition of the value and importance of such measures across a range of different countries.

Retailers reported that they did not believe that changing the period of time required to qualify for a protected lease would avoid disputes or difficulties. It was felt that it would instead delay disputes or force them to take place in a different way.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

As noted above, we would strongly oppose any change to increase the scope of the Use Excluded Tenancies to include any properties utilised by retailers in their commercial activities.

We are deeply concerned that, in illustrating the potential disadvantages of reforming the scope of the Act, that the Law Commission has chosen a 'complex example' based around the exclusion of larger, town centre retailers from the scope of the Act. While we recognise that this has been included purely for the purposes of illustration, we would emphasise in the strongest terms that any approach which would seek to remove retail properties from the scope of the Act would be wholly opposed by the retail industry. The breadth of disadvantages identified in the document in relation to the 'complex example' are accurate and illustrate effectively the harm that would result.

We dispute the view, intimated in the document, that security of tenure gives tenants a stronger negotiating position than landlords at renewal. This is fundamentally incorrect – instead security of tenure acts to level the strength of the negotiating position, without which the tenant's position would be materially inferior to the landlord.

We do not believe that the current contracting-out approach can be viewed as 'going too far' in relation to the types of properties held by BRC members. We have heard no concerns from tenants seeking to set up 'pop-up shops' or similar in relation to the scope of the Act in this regard.

It is notable that the basis on which rents and lease lengths are agreed at renewal is not really discussed in the section looking at advantages and disadvantages. These are based on comparable market transactions, so outcomes should not be biased in the direction of either party. This is a fairer way to set the rent for a sitting tenant than not having protection and being in a very weak negotiating position. It is also noted that determining the rent via an arbitrator/expert has significant advantages as a speedier and less costly means of resolution than through the courts.

While this section broadly provides a reasonable summary of the advantages and disadvantages, the level of severity of the differing models is not adequately considered. Losing security of tenure would result in far more damage to tenants' interests than any perceived damage to landlords' interests from keeping security. The costs and delay of agreeing rents and contracting out are mentioned as a negative issue, however, these are far less significant than the potential impact of losing the right to security of tenure.

It also appears clear that the effect of having to agree lease extension options in the event of the loss of security of tenure needs to be considered in greater detail. The weak negotiating position of the tenant would mean that lease extension options could be agreed 10-15 years before they come into effect or are taken up. These lease lengths and other terms may not be appropriate in the future. There is also a risk that rent isn't agreed to reset to market value in the future – instead there may be an upward only rent review at that point. This means in turn that rents can't be corrected. This contrasts with a lease which has security of tenure, which permits rents to move up or down, correctly reflecting market value. The resulting lack of security of tenure would be inflationary,

<u>CQ6 – We invite consultees' views, together with evidence wherever possible, as to what impact a change to the scope of the 1954 Act would have:</u>

<u>(1) on the parties to tenancies and their advisors</u>

Our evidence has been set out above in earlier questions. However, it was noted that the 1954 protects many elements of a tenant's occupation but fundamentally is a barrier to there being a ransom on the rent payable. Were the model underpinning the Act to change, considerable expense would result from the use of advisors for curating, creating and running the disputes. Retail tenants would likely suffer as a result of the need to incur costs whilst any changes in law were worked through. This would put additional pressure on an already stretched industry.

<u>(2) on the commercial leasehold market</u>

Our evidence has been set out above in earlier questions. However, it was noted that the 1954 protects many elements of a tenant's occupation but fundamentally is a barrier to there being a ransom on the rent payable. Were the model underpinning the Act to change, considerable expense would result from the use of advisors for curating, creating and running the disputes. Retail tenants would likely suffer as a result of the need to incur costs whilst any changes in law were worked through. This would put additional pressure on an already stretched industry.

CQ7 – 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).

No specific issues have been identified in relation to the areas raised by this question. However, it is worth noting that any measure which undermines retailers' certainty in being able to invest in property, will have a knock-on effect on the workforce and may, as a result, have implications for workforce diversity, dependent on where such effects were concentrated.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

About the BRC

The BRC is the lead trade association for UK retail. Our purpose is to make a positive difference to the retail industry and the customers it serves, today and in the future.

Retail is the 'everywhere economy', a vital part of everyday life in the UK. The industry makes up 5% of UK GDP and is the largest private sector employer, providing 3 million direct jobs and 2.7 million more in the supply chain. Retail has a presence in every village, town and city across the country.

Over 200 major retailers are members of the BRC, with thousands of smaller, independents represented by BRC's trade association members. Together, these businesses operate across all retail channels and categories and deliver over £350 billion of retail sales per year.

We build the reputation of the retail industry, work with our members to drive change, develop exceptional retail leaders and use our expertise to influence government policy so retail businesses thrive and consumers benefit. Our work helps retailers trade legally, safely, ethically, profitably and sustainably.

The BRC's Property Community is made up of Property Directors, Heads of Estates and other property specialists from across the retail industry. Monthly meetings see engagement and participation from a wide range of retail companies, operating across the full breadth of retail models and locations. We are also joined by advisers to the retail industry, particularly legal experts. This enables us to offer a comprehensive and representative industry view.

Summary of Key Points Made

- The Landlord and Tenant Act 1954 is not fundamentally broken.

- The contracting-out model of security of tenure, with protected tenancies as the default, must be retained to ensure the viability and stability of the retail tenancy model.

- Looking beyond the issue of security of tenure, there are a range of areas of the legislation which would benefit from modernisation to ensure that they are fit for purpose. These should be the focus of the second consultation.

Overview

Overall, it is clear that the Landlord and Tenant Act 1954 is not fundamentally broken or in need of widespread reform. The current system provides a fair balance to both landlords and tenants, with landlords having the ability to act flexibly where they wish to. The longstanding availability of security of tenure as the default protection has helped to underpin the stability of the commercial property market. Any move away from the existing contracting-out approach would have very serious consequences for retail properties. It is inevitable that such a change would create very significant uncertainty and undermine tenants' willingness to invest in retail space.

However, there is scope for targeted improvements which will deliver material benefits for those seeking to invest in retail property, thereby supporting the wider objectives of the review. It is essential that all proposed amendments are fully considered as unintended consequences could be significant for the commercial property market. While we recognise that this will be the focus of the second consultation, we would at this stage highlight the following areas as being in particular need of consideration:

- Obtaining interim rents

- Efficiency of court processes

- Changes of landlord/tenant during lease terms and the pitfalls this can create in obtaining interim rents

- Section 28 provisions

- Landlord intention to redevelop

- Efficiency of lease renewals

- Improvement of contracting-out processes, including the simplification of the process where both parties are legally represented

- Facilitation of environmental objectives

It is also important to highlight the current economic backdrop. The recent Budget has significantly increased the tax burden on retailers – we calculate that the changes to Employers' National Insurance Contributions alone will cost an additional £2.3Bn from April. Taken together with the rise in the National Living Wage and other incoming regulations, including the introduction of new packaging levies, an estimated additional £7 billion new costs will crystallise for retailers in 2025. The sheer scale of new costs and the speed with which they will occur will create a cumulative burden that will make job losses inevitable, and higher prices a certainty. This backdrop amplifies the importance of ensuring stability of approach in the wider legal framework underpinning retail leases, thereby ensuring the industry's ongoing ability to invest in local communities.

NWSSP -SES

Role: a representative organisation

If landlord or tenant:

Number of employees: 250 or more

Regions: Wales

Sector(s): Administrative and support services, Health and social care

CQ1 – 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.

No special circumstances thought to be relevant as the existing legislation works uniformly between England and Wales. Welsh translation would be required however.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

The existing arrangements work well for us in health. We have both landlord and tenant functions . In the case of our owned estate we contract out with any of our tenants to preserve the strategic flexibility of the estate and its development.

We encourage our independent contractors with private sector landlords to secure tenancies that are protected. Core public services usually need long term security of occupation for effective delivery , it is not easy to plan and relocate some services in a short timeframe.

CQ3 – 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 parties and their advisers

Markets do not like change generally. If a system works then the question raised is why alter it ?

Moving to a mandated security of tenure could have an impact upon development and investment planning. Increase in the number of vacant premises / demolitions. Public estates could be significantly affected by this approach.

Moving to a mandated no security of tenure could similarly impact business expansion or improvement strategy , balancing investment risk against lease length . Might this encourage longer leases - possibly.

(2) on the commercial leasehold market

CQ4A – 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.

From a health perspective the scope of the act is appropriate and working.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

Yes , and as per previous comments the mandated options could have a significant impact upon public estate planning.

CQ5 – 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.

Broadly agree

CQ6 – 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

already covered

(2) on the commercial leasehold market

already covered

CQ7 – 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).

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

I would support minor changes to process , such as further simplification of the contracting out procedures and a move from statutory declarations to perhaps independently witnessed statements.

ACS (The Association of Convenience Stores)

Role: a representative organisation

If landlord or tenant:

Number of employees: None

Regions: North West, North East, Yorkshire and the Humber, Wales, West Midlands, East Midlands, East of England, South West, South East, London

Sector(s): Retail and wholesale

CQ1 – 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.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

ACS (the Association of Convenience Stores) represents over 50,000 local shops in the UK, from stand-alone family run independent stores to symbol groups to multiple convenience stores.

71% of convenience retailers are independent (either unaffiliated, symbol group retailers or franchises), while the remaining 29% are multiples and centrally owned. Of the multiples, 78% of them rent their premises, while independent retailers see a roughly 50:50 split between renting and owning.

ACS supports the continuation of the 'contracting-out' model, as it strikes a fair balance between landlord and tenant interests while ensuring that businesses can benefit from security of tenure by default. For retailers, particularly those who rent their premises, security of tenure provides the stability needed to plan for the long term, invest in their stores, and safeguard jobs. The ability to operate from a consistent location underpins retailers' relationships with their customers and communities, which is particularly vital.

While the current model requires landlords and tenants to follow a process to opt out, we believe this process is a necessary safeguard to protect tenants who might otherwise face uncertainty or vulnerability.

For small businesses, security of tenure is a particularly critical protection as it provides stability and ensures that can continue operating in their established locations without the risk of being displaced at the end of their lease. For these businesses, their location is integral to their success, with footfall, customer loyalty and community ties built over years of trading. Without security of tenure, these businesses face significant uncertainty as landlords may refuse to renew leases or impose steep rent increases without recourse. This uncertainty can devalue a business, making it harder to secure investment, plan for the future or sell the business.

Additionally, many smaller businesses may not fully understand their rights regarding security of tenure, particularly if they lack dedicated legal or property teams to review contracts. This leaves them vulnerable to landlords who may contract out security of tenure without clearly explaining the long-term implications. It is therefore important to raise awareness of security of tenure to prevent landlords from taking advantage of small businesses and ensure retailers make informed decisions about their leases.

CQ3 – 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 parties and their advisers

A change to the model, through the abolition of security of tenure or a move to a 'contracting in' model, could create uncertainty and increased complexity for tenants and impact their ability to plan long-term investments.

(2) on the commercial leasehold market

Altering the model could destabilise the commercial leasehold market, reducing tenant confidence and discouraging landlords from offering flexible terms

CQ4A – 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.

N/A

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

N/A

CQ5 – 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.

N/A

CQ6 – 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

N/A

(2) on the commercial leasehold market

N/A

CQ7 – 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).

N/A

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

N/A

Commercial Tenants Association

Role: a representative organisation

If landlord or tenant:

Number of employees: None

Regions: London

Sector(s): Arts, entertainment, leisure and recreation, Financial, professional, scientific and technical services, Health and social care, Hospitality, Manufacturing, Retail and wholesale

CQ1 – 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.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

This representation to the Law Commission is from the Commercial Tenants Association (CTA). The CTA was set up around 15 years ago and the CTA offer free advice to commercial tenants. For further information on the CTA please see https://thecta.co.uk

The CTA has around 5000 Members and all have free membership and access to free landlord and tenant advice. Many commercial tenants will come to the CTA for advice on the process of a commercial lease renewal.

In making our submission on the Landlord & Tenant Act 1954 we believe it is of paramount importance to go back to the time before the Act came into force and ask the question why was the need for the L&T 1954 Act?

The LT 1954 Act was introduced to protect businesses from being evicted by having their tenancy ended by the landlord. Businesses build up goodwill over a period of time and depending on the type of business, there might be significant costs in relocating the business. Prior to 1954, there were many instances of landlords hiking rents to substantially above open market rental value and taking advantage of the situation whereby tenants have no renewal rights. The CTA makes the point that this situation must not be allowed to occur by taking away tenants renewal rights.

The CTA believe that the L&T Act 1954 has been very successful in balancing landlords and tenants rights. It is equitable that a landlord can obtain possession if the tenant is in default of the terms of the lease or wishes to carry out a development of the property. It is also equitable that a landlord who wishes to use the property for his own purposes should have the right to obtain possession at the end of the lease (subject to the five-year rule).

The key point of this aspect of the consultation is to obtain views on the following aspects of renewal rights:-

a) No security of tenure (abolish the 1954 Act);

b) A “contracting-in” regime;

c) A “contracting-out scheme – The current position;

d) Mandatory security of tenure.

The CTA view is that a) above (no security of tenure) would be a disaster for commercial tenants. The sole reason for this change would be to benefit landlords to obtain higher than open market rents in a new lease. Landlords already have the right to obtain possession and the current legislation and this should not change. A tenant should pay a current open market rent in the new lease and not have to be forced to pay a high rent based on a take it or leave attitude of a landlord. The CTA object to this proposal.

The CTA do not believe that changing to b) above is appropriate. There are too many tenants who do not understand the legislation. The CTA believe that this would complex the situation at the end of a lease. The CTA object to this proposal.

The CTA believe that the current situation as c) above is the preferred option moving forward. Every lease should be within the 1954 Act unless the parties agree to a new lease which is contracted out. The current method is also the most transparent.

With regards to d) above the CTA has no objection if the 1954 Act is made mandatory. However, the CTA makes the point that lawyers would likely work away around this unless the legal drafting was very strong.

Please contact us if you require further information.

Howard Berlin MRICS IRRV(Hons) MCIOB

RICS Registered Valuer

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<u>CQ3 – We invite consultees’ views, together with evidence wherever possible, as to what impact a change to the model of security of tenure will have:</u>

<u>(1) on parties and their advisers</u>

Please see our response. Abolishment would be a disaster for commercial tenants

<u>(2) on the commercial leasehold market</u>

Abolishment would mean that rents would be much higher on a new lease and could create a hostile landlord and tenant situation.

CQ4A – 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.

There should be no change as all tenancies which are none residential should be covered

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

No difference.

CQ5 – 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.

There is no benefit for tenants in changing the current situation. The benefits of abolishing are solely with the landlord.

CQ6 – 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

Abolishing the 1954 provides no benefit to the tenant. The impact would be to increase rents in the new lease. A tenant would have to make a bid which included goodwill and fixtures and fittings.

(2) on the commercial leasehold market

As above.

CQ7 – 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).

We believe that there is no difference

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

The 1954 Act has passed the test of time and has created an equitable system where a tenant pays the market rent and the landlord has options to obtain possession. There is no need to change this aspect of 1954.

Moving forward there are some areas which can be changed to make the renewal process easier and cheaper for the parties.

Booksellers Association

Role: a representative organisation The Booksellers Association is a trade organisation representing over 95% of bookshops in the UK and Ireland. As of January 2025, it has 967 members with 3564 outlets, including 1029 independent bookshops. Booksellers Association members cover a range of bookselling businesses, including specialist chains such as Waterstones/Blackwell's; independent bookshops; community bookshops; Bookshop.org; large high street chains such as WH Smith, and supermarkets.

Although we represent all manners of bookshops our response to this consultation will mainly focus on independent bookshops. Over 80% of independent bookshops rent their store premises. In order for these businesses to succeed a good relationship with their landlords is vital.

The Booksellers Association is clear that the majority of landlords are good partners to work with. However, there are a significant minority of landlords who seek to take advantage of tenants who have far less knowledge or resources than they do. We are concerned that changes to the 1954 Act would make it far easier for such landlords to behave in a fashion that would be detrimental to their tenants.

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

Our larger chain members, as well as a couple of smaller independent booksellers operate in both England and Wales. We would like to see consistency maintained between the two nations to avoid unnecessary complexity. When surveying members on the Act there were no clear differences between those based in England and Wales.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

Whilst the contracting-out model is far from perfect (for reasons outlined below) we believe that, out of the options provided, the status quo is best maintained. Over recent years, the average fit-out and setting up costs of a new independent bookshop has risen substantially and is now sitting at around £70,000. In more expensive parts of the country that figure can easily exceed £100,000. That is a colossal sum of money for an individual taking the risk of starting their own small business, with the funds often coming out of personal savings or secured against their home. As that sum continues to rise it vitally important that security of

tenure is protected to enable booksellers to see a return on their initial outlay and allow their businesses the time they need to grow, otherwise we will find ourselves in a position where no one is willing to take the risk of starting a new retail business.

However, as things stand much more needs to be done to enhance the protections offered to tenants, particularly SMEs and microbusinesses. When asked whether their premises were inside the Act, 23% were able to confirm they were whilst 18% told us they have tenancies outside the Act. What is very concerning to the Booksellers Association is that 59% were unable to tell us whether their agreement was inside or outside of the Act. This clearly indicates the existence of huge barriers to small businesses accessing legal advice when signing tenancy agreements which could have significant implications for the future running of their bookshops.

Of those who are outside the Act, in 94% of cases this occurred at the landlord's request. During discussions with our members there has been no appetite from independent bookshop owners to lose their right to security of tenure. However in 70% of cases where the landlord requested it, the landlord would not allow the bookshop to sign a lease without opting-out of security of tenure leading the tenant to feel like they had no choice but to sign or else lose the property and have to start their search again, often in towns with limited suitable properties available.

Almost 60% of bookshops told us that when signing their shop's lease they did not fully understand the ramifications of opting out of security of tenure. Over 80% have told us they do not have the knowledge and/or financial resources to take legal action against their landlords to enforce their rights.

Whilst we acknowledge this consultation focuses purely on the four options outlined above, we would like to take this opportunity to request that the second consultation considers access to justice and legal representation for smaller businesses, specifically whether the introduction of an ombudsman scheme (or another alternative dispute resolution mechanism) would be viable to help level the playing field between tenants and landlords, as well as introducing clearer guidance accessible to smaller businesses navigating leases (and lease renewals) for the first time. The creation of an ombudsman scheme is something that would be supported by 98% of bookshops.

CQ3 – 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 parties and their advisers

(2) on the commercial leasehold market

CQ4A – 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.

We oppose any change that would increase the scope of excluded tenancies.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

In section 4.28 of the consultation the tenants of "pop-up shops" is cited as a group of tenants who may view the contracting out model as problematic. Over recent years there has been a growing number of bookshops that have started out as pop-ups before moving to a temporary site. As highlighted above, given the large set up costs, the pop-up model gives booksellers a chance to test their business model before committing to a permanent site. However not one bookseller who has started their business using that model has raised contracting out as being problematic or preventing them from operating on a short-term basis.

CQ6 – 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

(2) on the commercial leasehold market

CQ7 – 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).

We do not hold a great deal of data in this area however we do have anecdotal examples of bookshops that specialise in books relating to protected characteristics finding it more difficult to find premises than general bookshops (e.g. shops that specialise in books by black authors or LGBT+ bookshops).

One bookshop owner told us the following, "When searching for a commercial property we were asked multiple times to write a statement to Landlords declaring what our business was. Landlords that were interested in us changed their minds when they found out that we were a bookshop that specialised in black authors. The system does not support black and brown bookshop owners."

We are concerned that the loss of security of tenure would result in it being far easier for landlords to evict bookshops selling titles aimed at customers with protected characteristics.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Royal Institution of Chartered Surveyors (RICS)

Role: a representative organisation

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

RICS welcomes the opportunity to respond to this consultation as part of the Law Commission's review of Part 2 of the Landlord and Tenant Act 1954. We recommend that the existing contracting-out model of statutory security of tenure is retained but, importantly, on the basis that specific improvements are consulted on and approved during the second phase of the consultation.

One of the primary focus points of the Law Commission's review is to create a legal framework that is widely used rather than opted out of, making sure the legislation is clear, easy to use, and beneficial to landlords and tenants. There is a correlation between the way that the 1954 Act works in practice and the number of parties agreeing to exclude it. While there are no inherent issues with the existing contracting-out model of security of tenure, to ensure that the Act is fit for purpose for the future, concerns over the substantial uncertainty, delays and costs that currently result from it, must be addressed.

For example, improvements to the 1954 Act should focus on the resolution of disputes. It is critical that conflicts between landlords and tenants are avoided as far as possible but in circumstances where disputes arise, it should be possible to resolve these quickly and cost effectively. While the contracting-out model of security of tenure itself is suitable, the way in which the renewal process works in practice, including the cost of it and length of time that the process takes, increases the number of excluded tenancies.

Court processes are very costly and inordinately slow. In some cases, the process can take many years. Cases are often unique and complex, with lots of variables. The courts are therefore repeatedly unable to achieve economy of scale. Mediation and arbitration are viable alternatives to litigation, which are well established in the property sector.

If parties can easily access these routes, it will help to relieve the pressure on the courts. With only a tiny majority of cases proceeding to hearings in court, usually linked to the

prohibitive time and costs of taking litigation forward, many cases currently result in wasted resources.

By streamlining the system at the operational end, more leases could benefit from the provisions of the 1954 Act but within the existing contracting-out security of tenure model.

CQ3 – 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 parties and their advisers

As highlighted in the consultation paper, the current process can be fraught with cost, bureaucracy and delay. Reform of the 1954 Act should seek to reduce this. It is recommended that the existing model is reformed to mitigate these issues. Professional standards must be upheld. The Code for leasing business premises was reissued in September 2023 as a professional standard to improve the quality and fairness of negotiations on lease terms. It is intended to promote the issue of comprehensive heads of terms that should make the legal drafting process more efficient.

RICS has an international presence in alternative dispute resolution (ADR) across several markets. Over the last five decades, RICS has appointed dispute resolvers in nearly a quarter of a million cases internationally. The RICS Dispute Resolution Service serves the public interest, as required by its Royal Charter, by resolving over £1.5 billion worth of disputes every year, keeping cases out of the courts and providing the parties with cheaper and more efficient access to justice. Greater understanding and adoption of ADR and conflict avoidance measures, by both private and public sector organisations, could significantly reduce the occurrence and impact of contractual disputes, saving valuable time and resources.

The current cost of contracting out and conducting a temporary lease or licence can be excessive in terms of cost. RICS stakeholders are of the view that ADR and simplification would help to reduce the scope of this. This should be addressed in detail in the second phase of the consultation process.

(2) on the commercial leasehold market

CQ4A – 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.

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

Yes.

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

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RICS stakeholders support the extension of the Duration Excluded Tenancies from six months or less to up to two years. Other stakeholders have advised that up to three years could be appropriate for some sectors, such as the office market. In the existing market, there are few occupiers that would expect to benefit from security of tenure when entering into a short flexible lease. Ensuring that occupiers can access leases for business premises in a flexible way is necessary in the current market.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

If the 1954 Act were to shift to an opt-in model of security of tenure, RICS stakeholders have suggested that in that situation there should be a point at which longer leases become protected. For example, if a lease exceeded 10 years in a certain sector such as retail and hospitality, then security of tenure should automatically apply. This is to account for the considerable goodwill that will have been built up and the material investment made in the fit out of the premises. If a decision is taken to switch to a contacting-in model, smaller occupiers need to fully understand the risk that could be associated with this.

The largest number of excluded leases are in central London estates where the large, international retailers are based. Although these retailers are likely to navigate the current system, other smaller retailers, across the country, are in weaker positions, and can benefit from the protections that the existing model of security of tenure affords via the model of contracting out. This is providing that improvements are made to the workings of the 1954 Act to reduce cost and improve speed.

CQ5 – 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 revision of the 1954 Act creates an opportunity to explore how the use of leases at renewal can benefit both tenants and landlords. It is evident that there are improvements that can be made to the 1954 Act with a need for revision, refreshment and modernisation.

In considering the assessment of the potential benefits and disadvantages of each security of tenure model, it is challenging to separate the benefits and disadvantages of each model of security of tenure from the detail of how the model should work.

Although the detail of the preferred model is intended to be explored in the second consultation phase, it is vital to note that the potential benefits of a particular model – for example, retaining the existing model – hinge on improvements to how that model works in practice.

A contracting-out model

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We recommend the retention of the existing contracting-out model on the basis that certain substantial changes are made to the operation of the model of security of tenure. We agree

that the benefits of the existing contracting-out model are that it is a known quantity, albeit with a need for revision, refreshment and modernisation to ensure it is fit for purpose.

The contracting-out model is the best way to ensure balance between tenants and landlords. However, improvements must be made. We acknowledge that the Law Commission intends to address any changes to the detail of what the model of security of tenure should look during the second consultation. RICS stakeholders are supportive of the continuation of the contracting-out model on the basis that improvements are made, such as improving the process for the resolution of disputes.

A key cornerstone that must be explored and resolved is the inefficacies around data sharing between the relevant parties. Consistency must also be created around the interpretation of financial incentives set out upon a new lease. The complexities and time-consuming aspect of renewals should also be minimised as much as possible.

A contracting-in model

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The proposed benefits and disadvantages of the contracting-in model seem appropriate. This model is similar to the existing contracting-out model. However, as stated, this model would offer less protection to tenants as the default position would be that tenants have no security of tenure.

Many smaller businesses are not professionally represented in lease negotiations and could be disadvantaged if the default model were to switch to a contracting-in model of security of tenure.

It is unlikely that the change required to implement a contracting-in model would deliver benefits or the balance between tenants and landlords that would justify moving to this type of security of tenure model.

No security (abolition)

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The assessment that this model would offer the least protection to tenants is valid. A core tenet of the Landlord and Tenant Act 1954 is that it ensures that commercial real estate is used fairly, effectively and efficiently. The loss of a standardised system of security of tenure would create an uneven playing field for tenants. We would not present the abolition of security of tenure creating certainty and maximum freedom for landlords at lease expiry as a "pro", as it removes the balance between tenants and landlords.

Mandatory security of tenure

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Security of tenure would be made compulsory in this instance where a mandatory security of tenure model was introduced. There is a risk, as stated in the disadvantages in the consultation paper, that landlords might look for mechanisms to avoid security of tenure altogether as a result. There will also be some tenants that would want more flexibility than this model would in theory offer.

A disadvantage of this model, which is not stated, is that landlords may find it more challenging to take back premises to undertake refurbishment works or development in relation to ESG or EPCs. This is at a time when there is likely to be a growing expectation or requirement to deliver considerably improvements and enhancements to meet energy standards, sustainability requirements and net zero targets.

RICS stakeholders recommend that the existing model, which facilitates contracting out of the Act as the default. This is with the caveat that the second phase of the consultation process considers the question of lease modernisation and changing circumstances. It is important that the model of security of tenure balances interests and is fit for purpose for a changing world.

CQ6 – 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

The adoption of a contracting-in model could pose risks for smaller occupiers. This Is particularly the case for those occupiers that need to make considerable investments to business premises. A switch to a default contracting-in model could jeopardise their ability to agree a lease with the 1954 Act.

The contracting-in model is unlikely to improve the existing position materially and wouldn't justify what would be a significant change to the 1954 Act and its operation.

RICS stakeholders suggest the current model works in theory and would work well if improvements were made. This should be addressed in the second phase of the consultation covering most notably the use of ADR, as well as contracting out procedures and other areas to reduce cost, improve the speed of its operation and cut bureaucracy.

(2) on the commercial leasehold market

The commercial property market is driven by market forces, and it must remain free to operate in this way. Parties should be free to agree whether the 1954 Act applies. However, this should be with the full knowledge of the implication of its application. If either the abolition or mandatory model or security of tenure model was adopted, this could have an impact upon investment into the UK commercial property market.

Mandatory security of tenure could restrict further investment in commercial property across the UK by hampering development. This would be counterintuitive, and particularly at a time when the UK is looking to boost growth and attract inward investment via the Government's industrial strategy and infrastructure plans. Plans for new towns and regenerating high street also relies on a thriving commercial property sector. It is important that the 1954 Act functions well and operates in a way that benefits all parties. Parties would likely be less likely to opt out of the Act if its operation was streamlined and less costly.

On the other hand, abolition of security of tenure and the current protections of the 1954 Act gives occupiers uncertainty and may in turn affect their willingness to invest in business premises.

Subject to improvements to the operation of the 1954 Act during the second phase of the Business Tenancies project, the focus should be on retaining the status quo in terms of model of security of tenure.

There could be a reversal, in which the parties to all future leases are required to opt in. However, given the use of the Act is driven by market forces, and a reversal of the application of the Act would not change this, RICS stakeholders do not believe that such a change would improve the position of the parties.

CQ7 – 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).

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

British Beer & Pub Association

Role: a representative organisation

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

The BBPA membership includes pub companies that operate pubs in both England and Wales. We are not aware of any specific issues that would indicate that a different approach is needed for Wales compared to England. It is preferable to have a unified approach across both regions to avoid unnecessary complexity and ensure consistency in legal frameworks.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

On balance we feel that the current model (contracting-out) works best, but with some refinements to streamline the process. This could include broadening the scope of duration-excluded tenancies to reduce administrative burdens and provide clearer guidelines for both landlords and tenants. In addition we would suggest that it permits lease documents to be validly executed electronically without need for a wet-ink statutory declaration style process which currently prevents full electronic execution in some circumstances.

As a second-place alternative, a contracting-in model could also work but consideration would need to be given to the extent of the work required to redraft the legislation only to ultimately arrive at a model that is largely where we are now. We have no strong objection to this option in principle provided the opting in process is efficient and clear. As noted above for the contracting-out model, it would also be helpful if this is implemented in a way that lease documents can be validly executed electronically without need for a wet ink statutory declaration style process which currently prevents full electronic execution in some circumstances.

In addition, if changing the current Act, consideration would need to be given to the interactions with the statutory Pubs Code [The Pubs Code etc Regulations 2016 https://www.legislation.gov.uk/uksi/2016/790/contents] which contains extensive references to the current Act.

The view of our members is that neither mandatory security nor abolition would work. In the case of mandatory security, this would directly conflict with the existing terms of the Pubs Code and create an unintended right for all tied pub tenants to trigger a Market Rent Only lease request. Abolition has potential to create confusion and an unnecessary administrative burden to both landlords and tenants.

CQ3 – 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 parties and their advisers

There are no foreseen impacts if we retain the current model. We feel that security of tenure creates a stable environment for tenants, allowing them to invest in their premises with confidence. The ability to opt-out supports landlord investment and provides flexibility for proactive asset management, benefiting both tenants and other stakeholders. Whichever future framework is used it should continue to uphold these principles while removing unnecessary administrative and cost burdens.

(2) on the commercial leasehold market

Abolition or Mandatory Security could see impact on investment, increased Court proceedings and S25/26 disputes, costs etc. With regards to Mandatory Security this would have a significant impact on the landlords of regulated tied pubs due to the effect of the Pubs Code (noted earlier). The pub market would have to move away from the leasehold model and towards managed/hybrid/franchise style agreements over time to allow parties to freely negotiate and to make long term plans allowing for growth and security, unless pubs become an excluded class (as per the original form of the 1954 Act).

CQ4A – 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.

- Use Excluded Tenancies - We do not have a specific view on Use Excluded Tenancies but understand that they apply to specialised markets. Therefore our view would be the extent is appropriate.

Duration Excluded Tenancies - The current scope of Duration Excluded Tenancies is appropriate but too narrow. The framework needs to support both tenant and landlord investment, which often correlates with the length of the tenancy. Tenants who invest in their premises need certainty of tenure to recover their investments, which longer leases and renewal rights provide. Conversely, shorter agreements often see landlords investing and actively managing the assets, with tenants having fewer obligations like repairs or benefiting from break clauses. In general we feel the period of excluded duration tenancies should be longer, at least 12-months.

Other Possible Exclusions – Only if a Mandatory Security model is adopted, in which case we feel that pubs would need to be specifically excluded. Mandatory security of tenure is unworkable within a sector already subject to the statutory Pubs Code (Pubs Code etc Regulations 2016) which includes enhanced rights which apply to tenants with security of tenure.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

- Aside from the points noted in our previous answers, we feel that the assessments provided are broadly correct. Many of our members operate in a market where shorter agreements are often opted out of the Act. Automatically opting out would significantly reduce costs and administrative burdens, making the process more efficient for all parties involved.

Use Excluded Tenancies – we would need to further consider this would have if pubs were to be excluded under the existing contracting-out model. In principle we would have no objection on the basis commercial terms are freely negotiable but we need to consider the impact/interaction with the Pubs Code.

Duration Excluded Tenancies - We would support an extension from six to at least 12 months to introduce greater flexibility in short-term tenancies. 12-month agreements are common in the sector and exclusion from the existing model would facilitate a speedier and more flexible process for landlords and tenants without any negative impact on either's rights.

Characteristic-based Excluded Tenancies - We feel that this would be overly complex and difficult. An entirely new regime and mechanism with experts and advisors would be required to manage this effectively. It would open up a potential for large-scale litigation where parties dispute measurements, situational assessment, and further room for rent review disputes.

CQ6 – 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

– We have nothing to add under this question other than what we have already outlined for Question 4. Certainly, changes to length the period for Duration Excluded Tenancieswould have a beneficial impact for both tenants and landlords in terms to the costs and time needed for granting and renewing such agreements.

(2) on the commercial leasehold market

CQ7 – 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).

– We believe that there is no evidence to suggest any advantage or disadvantage to groups with certain characteristics under the current system.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

The British Beer & Pub Association

The British Beer & Pub Association is the leading trade body representing companies across the UK, which between them own around 20,000 pubs and brew over 90 percent of beer sold in the UK.

Our members include international companies, national and local brewers and pub businesses operating managed and tenanted pubs in cities, towns and villages across the country.

These businesses are at the heart of communities and local economies and include family businesses who have been brewing beer and running pubs for hundreds of years alongside emerging brewers and pub operators.

An up-to-date summary of our membership can be found on our website.

The Pub & Brewing Sector

The brewing and pub industry in the UK makes a major contribution to the local and national economy. The sector generates over £36 billion of economic value, supports over 1 million jobs and generates £18 billion per year in tax revenues.

78% of pubs in the UK's 45,300 pubs are run as SMEs.

As at the end of 2023, the make up of the UK's pub sector by operating model was as follows:

Managed	10,150
Leased & Tenanted	12,550
Independent	22,650
Total	**45,350**

As shown, at least 28% of the UK's pubs are clearly operating under some sort of lease of tenancy (i.e. the L&T pubs in the table above). However, within number of Managed pubs and Independent pubs, there will also be many that are occupied as tenancies.

CAMRA

Role: a representative organisation

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s): Hospitality

CQ1 – 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.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

I would like to highlight the way in which the Act interacts with the Pubs Code, and the rights of tied pub tenants who have security of tenure, giving them a legal right to renewal under the Act. This interaction is especially relevant to timetables for renewal or agreement of lease terms between a tied tenant and pub owning business, and mitigation of the effect of hostile notices.

CAMRA supports the continuation of the current 'contracting out' model, but I would like to provide the context behind our stance as I hope it will inform any further technical consultations that the Law Commission hold on the Act.

While the 'mandatory security' model would provide greater protection to tied pub tenants, we are seeing pub owning businesses increasingly move from tied pub tenancies, within the scope of the Pubs Code, into arrangements slightly outside of the Code that do not offer the same statutory rights and protections.

Pub owning businesses can oppose the renewal of a tenancy or terminate a continuation tenancy on the grounds that they intend to occupy the premises by converting the business to a managed or franchised operation. Although the tied tenant can contest the validity of this, and some compensation must be paid, this does not constitute a trigger event under the Code that would allow tenants to request to go free of tie. As a result, where tied tenants are seeking a Market Rent Only (MRO) tenancy free of the tie, they may face a hostile notice without recourse.

We have significant concerns that the additional responsibilities that mandatory security would create for pub owning businesses would simply see them seek to move a greater number of their tied pubs to other business models in order to minimise their obligations.

For this reason, we believe the pub trade is best served overall by the continuation of 'contracting out'.

CQ3 – 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 parties and their advisers

(2) on the commercial leasehold market

CQ4A – 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.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

CQ6 – 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

(2) on the commercial leasehold market

CQ7 – 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).

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Thank you for the opportunity to provide comments as part of your review of the Landlord and Tenant Act (1954).

I am writing in my capacity as Pub and Club Campaigns Director for CAMRA – a consumer rights organisation that represents around 147,000 beer drinkers and pub-goers across the UK.

Institute for Revenues, Rating and Valuation

Role: a representative organisation

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

Maintain the Status Quo

3. The Institute is of the opinion that the current 'contracting out' model found in Part 2 of the Landlord and Tenant Act 1954 should not be removed or replaced. The principle of security of tenure is strong and important for the stability of the market. It allows tenants to make investment decisions and plan for the future, and gives protection to tenants' interests to have a statutory right of renewal. We are greatly concerned that the changes proposed in this consultation could lead to landlords demanding greater than true market rents from tenants or replacing tenants without listening to their proposals. In theory, market forces offer some protection to tenants as Landlords should not be able to demand more than the market provided; however, they can as the tenant has no protection. This is due to both landlords and tenants knowing that moving a business from one property to another is a significant cost and upheaval and, with leisure and retail in particular, can cause the loss of goodwill from customers. Without protection, the tenant can be forced to give some of these costs saved from not moving to the landlord through rent. There is no need for this level of competitiveness in landlord and tenant transactions, which could result in many tenants being forced out of their communities and/or rental values in the location being driven up artificially.

4. Owners, and therefore landlords, have the power to take back their own property if they desire through the qualifying conditions of S30 of the Landlord and Tenant Act 1954. Markets must find approximate equilibrium; it is our opinion that the current Landlord and Tenant Act 1954 provides as close to this equilibrium as feasibly possible. Anything that damages this could result in significant uncertainty and turmoil for one party or the other; for example, if security of tenure is removed, tenants may demand longer leases with tenant-only breaks. This would result in higher rents in prime locations, which would be detrimental to the High Street, and particularly for start-up businesses.

5. Whilst we strongly argue to maintain the ‘status quo’ of the current process, we acknowledge that the current contracting out model is burdensome and should be made simpler. For example, declarations could be made through an online portal or a member of a professional body such as the RICS or the IRRV, both of which being obliged to highlight the advantages and disadvantages of contracting out.

Improvements to the Court Process

6. We take issue with the process concerning the procedure where a negotiated settlement to a dispute at a lease renewal cannot be reached. The current solution of having terms determined by the court does not work for either the landlord or the tenant, particularly as it is time-consuming, costly, uncertain and adds significant delay to the process of settling the dispute. This means that many (especially those concerning small amounts) will not be taken to court and result in one party or the other (usually the tenant) being subject to an unsatisfactory outcome and potentially having to move. Alternatively, the Landlord can be subject to uncertainty as the tenant can opt to reject the Court decision and vacate. Instead, these disputes should be dealt with through an independent third-party expert in a similar manner to the PACT (Professional Arbitration on Court Terms) process, although this new process should not require consent from both parties (as is the case with PACT) as a tenant should not be forced to pay a rent beyond their means. There should be time limits to ensure the renewal process is not unduly drawn out, particularly where a tenant may have an undeclared intention to vacate irrespective of the outcome.

Other Changes

7. The definition of ‘rent’ should be updated in line with modern practice. Currently, there is a common issue of differing definitions, the devaluation of improvements, and whether a net effective rent or a net ‘net’ rent is being examined.

CQ3 – 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 parties and their advisers

(2) on the commercial leasehold market

CQ4A – 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.

CQ4B – We invite consultees’ views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

CQ6 – 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

(2) on the commercial leasehold market

CQ7 – 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).

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

About the Institute

1. The IRRV is the professional body concerned with all aspects of local taxation and local benefits administration across the United Kingdom. Institute members, in both the public and private sectors, are engaged in local authority benefits administration, local tax administration, valuation of property for taxation and other purposes, the appeals processes and financial management in local government.

2. The Institute is the only professional body in the United Kingdom that specialises in the law and practice of local authority revenues and local taxation collection together with the income-related benefits that support these processes.

Association of Real Estate Funds (AREF)

Role: a representative organisation

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

No comment

CQ2 – 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.

Model choice: Contracting-in (so that a tenancy only has statutory security of tenure if the parties opt into a statutory scheme);

Reasons

(1) mandatory security of tenure;

We do not agree with mandatory security of tenure; the feedback from our members suggests that a system of mandated security is

(i) out of line with existing market practice and

(ii) would affect investment into commercial real estate, which cannot be the intended consequence of this review.

It is important there is the option for leases with bespoke terms to be agreed reflective of different market practice for different asset classes.

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

The feedback from our member group suggests that the investment market into real estate has a strong preference for excluded leases, and that market practice demonstrates an increase in contracting-out over time.

Having no security of tenure provides freedom to negotiate contractual clauses appropriate for both parties without the need to have to pay the costs of opting out of a statutory scheme. In some cases, members have expressed an increase in the use of other contractual mechanisms to provide tenants with certainty of duration of tenure, such as contractual options to renew, which they note are easy to standardise, are almost always at the tenant's election and are a much more straightforward process. There could be templates of contracts available that could be used as a starting point for negotiations similar to the Model Commercial Lease (MCL). Contractual options to renew still protect tenants with pre-agreed

contractual terms (which often will be the same terms as the existing lease but with a day 1 rent review on the start of the new term) and dispute resolution provisions The granting of contractual options to renew cuts down on paperwork and having to go through a court process and has the advantage that terms not under the Act can be included, such as updates to reflect then current environmental practice.

Our member base has highlighted a number of key concerns with the provision of security of tenure by default:

• There can be difficulty in removing a tenant with a lease that has the benefit of security of tenure which affects landlords' ability to respond quickly to asset management needs and can affect all other tenants of the development.

• The tenants who currently benefit from security of tenure tend to be the larger corporates who can afford legal advice. Some tenants do not fully understand the concept of security of tenure, particularly if they have experience of other jurisdictions where security of tenure is not available. They can waste time worrying about an event 5 or 10 years away when they do not fully know if they would want an additional future lease or not.

• Currently, it can be difficult for landlords to redevelop or refurbish a commercial property, or change to green leases, where some or all the tenants have security of tenure. It was noted by one of our members that when looking at office refurbishments or repositioning opportunities these regularly fell down through one tenant having security of tenure, even if it was a small tenant, for example, a ground floor retail in an office building. The burden of proof for a landlord to obtain vacant possession of a building is overly burdensome and expensive.

• Security of tenure can attract business tenancies of just 6 months or more, and security of tenure can be inadvertently obtained through a small mistake in the process of serving notices to contract out.

That said, we are not in favour of an absolute abolition. There are some tenants where security of tenure is appropriate and our members' experience is that market practice has evolved to reflect this where appropriate.

There are varying views from our members on whether security of tenure attracts or disincentivises capital investment into commercial property in England and Wales. We note however that other jurisdictions, such as Scotland do not have security of tenure and landlords are able to let their buildings without too much trouble. Also, there are many examples of retail parks and shopping centres in England and Wales where no leases have security of tenure, or most do not, and this has not affected the ability to let all their units.

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

We acknowledge that certain tenants require protected leases, for example in the healthcare sector leases tend to be within the Act. Certain strategically important properties such as military, police, fire, hospitals, liquefied natural gas terminals and other essential infrastructure require security of tenure. [Although, should the requirements of these niche sectors dictate the law for the wider English commercial real estate market?]. Another

example we were given was where there are relatively high (tenant) entry cost due to specialist fit out e.g. various leisure uses such as restaurants and golf courses.

Following consultation with members, we believe a contracting-in model would enable these types of tenants to obtain the security of tenancy they require. This would address much of the administrative burden we have identified below with the current contracting-out model. Tenants who do not require security of tenure would not have it unintentionally imposed upon them and those that do require it can agree this with their property owners.

If the model was changed to contracting-in this should:

• only be available for leases longer than 5 years; and

• be a simplified procedure, perhaps just an endorsement on the front of the lease, to save parties time and cost.

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

The UK Government has set out five missions to rebuild Britain ((i) Kickstart economic growth, (ii) Make Britain a clean energy superpower, (iii) Take back our streets, (iv) Break down barriers to opportunity (v) Build an NHS fit for the future). Also, there are eight growth-driving sectors proposed in their Industrial Strategy. Most of the Government's missions and the growth-driving sectors will require a dynamic and well-functioning commercial real estate sector. In addition to the issues we have mentioned above in relation to providing security of tenure by default, our member base has highlighted a number of key concerns with the existing contracting-out procedure, many of which are constraining the real estate sector in assisting the Government to achieve its aims:

• When contracted out leases are renewed, terms typically get agreed prior to the lease end and new leases are signed usually before the expiration date or within a few months. Because of the court process, leases with security of tenure under the Act often do not get to terms agreed stage within 6 months to a year after expiry and then leases can take up to 2 years to complete – with significant risk to the landlord of losing the tenant.

• Our members find that 1954 Act leases are time consuming, costly and cumbersome both on renewal and particularly when a landlord wants to terminate them under one of the grounds allowed. The procedure for agreeing interim rents is a significant issue for landlords pending the grant of a renewal lease with time and cost of professional advice required.

• The risk of security of tenure arising also puts parties off granting short term licences etc even where both parties may want that arrangement.

• The existing system is open to "strategising" with well advised tenants often using the statutory renewal process to their advantage. The original intention of the 1954 Act was to give certainty to tenants making capital investments in fit outs etc. However, as a result of case law, the Act is commonly used as a tool by tenants to secure flexibility at renewal such as break options and a shorter term than their previous lease which was not the original intended outcome of the Act.

As commercial leases get ever shorter the argument from tenants that they need security is weaker as to obtain security they should simply take a longer term. We believe that security of tenure should only be an option for leases longer than 5 years.

Where there are circumstances in which security of tenure facilitates investment from the tenant the parties should be free to negotiate this on a case-by-case basis and through market led practice. A default security of tenure position with rights to contract out doesn't help this because parties will always negotiate what they need for a deal to proceed. In reality, it hinders negotiations because it adds time and cost to the transaction where leases are excluded.

The process for contracting-out can be both time consuming and costly, which simply adds friction to entering into leases in England and Wales which is frustrating for property investors. The process needs to be streamlined; it could simply be a clause in a lease, clearly referenced and defined that can be executed virtually (i.e. via DocuSign) rather than a full blown legal process.

CQ3 – 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 parties and their advisers

We believe that as long as tenants that have legitimate reasons for security of tenure can still obtain this by a contracting-in model there shouldn't be an impact on a change of model for these types of tenants. Other tenants who currently have security of tenure under the Act, in some cases with relatively short leases, they could use contractual options to renew. These would more likely provide security that better meets the occupier's needs and be less costly and time consuming than currently renewing under the Act. There would be a reduction in the cost of appointing advisors in the negotiation process as this would most likely be less protracted.

(2) on the commercial leasehold market

A move to a contracting-in model with a minimum requirement of at least 5 years for a lease to receive security of tenure we believe may lead to longer lease lengths.

CQ4A – 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.

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

We agree that there are certain types of tenancies that should be prevented from benefiting from the protection currently afforded by the Act. We do not believe the current arrangements need changing.

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

Our members believe that that the minimum length of a lease for it to be automatically excluded from the Act should be much longer than six months. In the main, our members believe that tenancies of 5 years or less should be excluded from the Act. Our reasons for this are explained in our response to Q2.

(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.

We agree that the greater the number of exclusions from the protection of the Act, the greater the risk of unintended consequences.

Also, we agree that it is difficult to allow in the Act for leases for particular properties to be excluded. Every property and its lease is different.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

We believe that it is best to keep the requirements under the Act simple whichever model there is. If it is decided to keep the current contracting-out model or go to a contracting-in model, there should be a limited number of excluded tenancies and a longer minimum length of lease of 5 years before security of tenure would be permitted

CQ5 – 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.

We agree where there are competing regimes, tenancies should be excluded from the Act.

As we have explained in our responses to Q2 and Q3, tenancies less than 5 years should be excluded from security of tenure under the Act.

We agree that key infrastructure should receive some form of security of tenure. These are normally long leases so should be longer than 5 years. Although as stated in the consultation, such leases may benefit from bespoke clauses and not necessarily require security of tenure under the Act.

CQ6 – 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

The current contracting-out model with tenants on fairly short leases obtaining security of tenure is administratively burdensome and costing. Moving to a contracting-in model with leases of at least 5 years only being able to obtain security of tenure, will lead to a reduction in administrative costs and court time.

(2) on the commercial leasehold market

The use of security of tenure varies by sector and by locality so the impact of any changes on the leasehold market will vary considerably.

We asked our members, fund managers, and some property managers the proportion of their leases that were currently inside the Act. The fund managers' responses varied from 50% to 100% of their leases benefitted from security of tenure. About 60% of a sample of nearly 40,000 leases overseen by the property managers, were inside the Act. However, as we mentioned in response to Q2 the feedback from our member group suggests that the investment market into real estate has been moving more towards excluded leases, and therefore we expect the proportion of leases inside the Act, as it currently stands, to reduce over time.

CQ7 – 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).

No comment

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

British Property Federation (BPF)

Role: a representative organisation

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

CQ2 – 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.

Model choice: Contracting-in (so that a tenancy only has statutory security of tenure if the parties opt into a statutory scheme);

Reasons

DETAILED RESPONSE TO CONSULTATION QUESTIONS [1 We have not provided comments on question 1 related to Wales or question 7].

12. Reform of the 1954 Landlord &Tenant Act (the Act) has been a longstanding call from the BPF. It creates day-to-day administrative burdens for both property owners and occupiers, makes it harder to improve the energy efficiency of buildings, and puts barriers in the way of property owners managing, refurbishing and redeveloping their buildings.

13. Today's commercial property market and wider economy is very different to when the Act was introduced more than 70 years ago and even from the Law Commission's last review in 1992. Given changes to the market, new and emerging challenges and experience in wider countries where security of tenure is not the norm, we strongly feel that security of tenure should not be the default position underpinning nearly all commercial leases.

14. It is clear to us that the day-to-day burdens associated with the Act impact on wider economic and social policy objectives, particularly the ability to drive investment, grow the economy and decarbonise it. Reform therefore offers an opportunity to make sure that legislation supports key priorities:

• Supporting economic growth and productivity through increased development and refurbishment;

• Removing red tape and unnecessary regulation;

• Decarbonising our buildings;

• Supporting town centre regeneration and repurposing of space; and

• Removing burdens from the court system.

15. We are keen to ensure that such opportunities are not lost within a narrow debate about the right to security of tenure.

Limitations and challenges of the current Act:

16. Before considering any changes to the current system of security of tenure, it is important to understand the many difficulties that the Act raises in practice and specific challenges it creates for property owners. These fall into four broad categories:

• Complicating redevelopment and refurbishment

• Sustainability considerations

• Administrative burdens

• Estate and place management

Complicating redevelopment and refurbishment

17. Although the current Act recognises at section 30(1)(f) that owners should be able to gain possession in order to redevelop their properties, the process for doing so presents significant barriers to investment.

18. Notably, it can involve a frequently protracted and expensive court process that provides opportunistic occupiers with opportunities to delay redevelopment even where it is clear that proposed work will meet the requirements for possession under the Act. A small number of occupiers objecting to plans on a major site are sufficient to delay development for protracted periods of time.

Case study 1 – Delays, costs and uncertainty associated with redevelopment

19. As noted above, developers routinely experience long delays to redevelopment where court processes are needed. For instance, a member reported that for a development they are advising on, the property owner was seeking to improve a retail park, having already secured planning permission for the redevelopment work. An occupier however was requiring grounds to be proved in court. The relevant court is currently taking 20 weeks to issue termination proceedings. The next stage would be to go through the directions the courts set and following this, it will then take a minimum of another 18 weeks to fix a trial date.

20. Such delays are incurred even where it is clear (and likely understood by the occupier) that given the nature of the redevelopment work and steps already taken by the owner, that grounds would be successful.

21. In another case, a property owner seeking to redevelop a multi-tenant office block, had secured vacant possession of the office space, but a small retailer on the ground floor had sought to object to the plans, which subsequently led to an 18- month delay to development. During this time, the property owner was not able to undertake works and productive space was not able to be brought into the market.

22. In addition to the time delays associated with redevelopment, the cost of such cases can run to many hundreds of thousands of pounds, (in part due to the need to provide expert evidence and requirement to spend significant time in court).

23. In such cases, property owners must balance whether they choose to proceed with the statutory process, or seek an agreement of surrender. The payments under such agreements will often exceed the compensation required within the statutory process, and even though they provide what amounts to an uncovenanted financial benefit to occupiers, can be less costly than going through the statutory process. Importantly, such agreements provide certainty of both costs and timeframes for when development can commence.

24. When property owners do not have this certainty, as is the case where they do not know how long court processes will last, it creates significant risk about the future viability of works. In planning a development, various assumptions around costs will be made which will be valid at the time, but could subsequently change and mean that the redevelopment is no longer viable – such as the cost of materials or contractors.

25. The overall impact of the process is to make redevelopment work more costly, risky and time consuming, restricting the ability of property owners to invest, improve commercial property, and ultimately support economic growth.

26. It is also extremely difficult under the Act to undertake less visible redevelopment or reconstruction work for instance of only part of premises, because of the need to evidence that the work is sufficiently substantial. This makes it more difficult to undertake sustainable retrofit, which is increasingly demanded through the planning process and energy efficiency regulations – and which may be less externally visible. This all adds to the uncertainty of the current process for both owners and occupiers.

27. To mitigate these difficulties, where there is an intention to redevelop properties, owners will normally seek to agree leases outside the Act with potential occupiers. This enables space to be occupied while owners finalise plans, secure vacant possession on the wider site and seek planning permission.

28. Such arrangements provide clear benefits for both owners and occupiers, supporting investment and efficient uses of space. They ensure that supply of property is available to occupiers, often on discounted terms, that otherwise might be withdrawn from the market to protect development opportunities. They also provide income to owners of premises, offsetting or mitigating costs associated with redevelopment.

<u>Sustainability</u>

29. We have previously submitted a paper to you examining areas where the Act and the ability to make sustainability improvements to buildings come into conflict.

30. There are two reasons why sustainability is such an important issue for commercial property leasing. Firstly, there is a necessity, underpinned by legislation, to reduce greenhouse gases. Buildings account for around 25% of UK carbon emissions and considerable investment is needed to ensure these are brought down. Secondly, there is an increasing risk that large numbers of commercial properties could end up as ‘stranded assets’; effectively unlettable for either legislative or commercial reasons.

31. The current Act is a barrier to action on this issue due to:

• Difficulty incorporating sustainability / Green Lease clauses into protected leases as a result of the principle laid down in O'May that a renewal lease should be the same as the old lease.

• The difficulty for owners to gain possession of properties at lease end where there is an intention to retrofit properties to bring them up to ESG standards.

• The constraints in undertaking improvement work where tenants are still in place where these exceed the current 6-week period established under case law.

Administrative Burdens of the Act:

32. In our view, the Act in its current guise and method of operation imposes unnecessary administrative burdens, including around:

33. Contracting-out: Processes such as the tenant declaration procedure are cumbersome, bureaucratic and add unnecessary delay to the contracting-out process. Notably, there are also technical defects in the legislation that mean parties can invalidate the contracting-out process despite the clear intention of both parties to do so.

34. Serving notice and term declarations: Because the Act enables uncertainty around the valuation and start dates for new leases, it means that one party can benefit over the other. This can see parties taking complex tactical decisions and incurring the costs of advice which would be unnecessary were the valuation and commencement date of renewal leases to be fixed.

35. Unnecessary burdens on an already backlogged court service: County Court judges are rarely experts in landlord and tenant law or experts in valuation and are being asked to decide on matters that would be better resolved by specialist tribunals, arbitration such as PACT, or specialist judges. As well as the delays this causes for parties to tenancies, it involves the courts taking on largely administrative functions, rather than their more central role in upholding justice.

36. Lease Renewals: Compared with leases outside the Act, lease renewals within the Act can place considerable burdens on owners and occupiers in terms of cost and time. Delays associated with the courts significantly protract the process. Members report that it can take more than three months just to schedule a hearing and then a further 6-12 months till the hearing itself. Even then, hearings and Case Management Conferences are frequently stayed. In relation to the time and cost for both parties it is hard to see how this is proportionate for leases that themselves might only be for 3 years.

37. By way of illustration of some of the above, we set out two case studies representing the experiences of members:

Case study 2 – Friction of contracting-out for flexible spaces and shorter leases

38. The unnecessary friction involved in contracting-out is something that is consistently raised by members – both property owners and their advisors. The cumbersome nature of the process is particularly noticeable and impactful where members provide flexible space,

or where shorter lease terms are being sought. In such situations, the vast majority of leases are contracted-out and most occupiers, particularly in flexible spaces are not seeking a lease that has security of tenure.

39. Occupiers seeking to move in quickly must sign a statutory declaration in order to avoid waiting 14 days for a simple declaration to enter the premises. This requires locating a willing and available lawyer at short notice and physically bringing the declaration to them to sign it. Although this might only incur minimal cost e.g. a few hundred pounds, the time taken to do this could have been better spent on normal business affairs. Even where occupiers are able to expedite the process as quickly as possible, it introduces an unnecessary delay to occupation, prevents occupiers moving in as quickly as they would like and commencing business activity.

40. For example, a lease with rent of £100,000 per year, each day of delay would amount to almost £275 of lost income for a property owner. Where occupiers do not sign the statutory declaration, this loss of income over the 2-week period increases to almost £4,000. During that time, the property remains vacant and unproductive, and the occupier loses the opportunity to occupy the premises and to utilize it productively.

41. Members report that errors, delays and difficulty with the process are most common for unrepresented occupiers and small businesses unfamiliar with the process. One member found that 10% of contracting-out paperwork relating to their portfolio contained errors the first time it was completed and therefore needed to be re-done, sometimes multiple times in the case of less experienced occupiers.

Case study 3 – Shopping centre – high cost of protected lease renewals and tactical behaviour

42. In the context of a lease renewal for a unit of around 8,500 sq ft at a large shopping centre a tenant sought disclosure of every document pertaining to every letting in the previous year – including any Covid-related concessionary agreements – regardless of the nature of the premises in terms of size and location thus even including kiosks. The cost to the property owner of collecting this information was in the region of £20,000-£30,000 and ultimately not recovered.

43. Had matters not been agreed out of court the legal costs for a full hearing would likely have exceeded £100,000, in addition to the cost of expert time and the internal resource needed to support the process. All of this expense in connection with a proposed £10,000 increase in the annual rent and a reduction in term from ten to five years.

44. The protections offered by security of tenure, allied to “bear traps” in the process build in opportunities for tactical behaviour and one member noted that they see occupiers using the use the threat of court as a means to negotiate more competitive terms – including where such terms are below market valuations.

45. Inevitably, this creates an adversarial approach to negotiations. For instance, for the lease renewal noted above involving the disclosure exercise, the tenant’s opening offer was £1,000 per year despite the settled passing rent of £250,000. It is hard to see this as anything other than vexatious.

46. Often the current Act enables opportunistic behaviour between parties. While this is an understandable course of action for individual companies, it has a much wider impact on business certainty and investment. A relatively common occurrence is that because the Act provides security of tenure, this enables occupiers to refuse to engage during the lease renewal process.

Case study 4 – Opportunistic behaviour enabled by the Act

47. In one case an occupier in a multi-let building served notice to renew, but subsequently refused to engage in renewal negotiations, stating that they were considering their options. The original lease then expired and the lack of engagement continued. While the owner was within their rights to take matters to court this inevitably would involve time and money.

48. Such lack of engagement wouldn't be possible for leases outside the Act, as parties would be compelled to engage and either agree terms or provide clear details of intentions. The wider impact however is the significant uncertainty it creates. During the period of uncertainty, owners are not able to plan or allocate resources properly, cannot invest in the premises, make improvements (including, potentially across the wider building), and also cannot relet the property. A further consequence is the impact on property valuations which can come from the lease holding over.

Estate and place management

49. To a greater extent than in other sectors, the success of individual retail, leisure and hospitality businesses will heavily depend on the success of the wider location, and how much footfall the shopping centre or destination attracts.

50. To make destinations attractive, owners must curate the right 'mix' of occupiers by responding to evolving consumer tastes and ensuring that underperforming occupiers, who are not contributing to the wider destination are able to be replaced by occupiers who are better able to do so.

51. There are countless examples of locations that have not evolved the tenant mix and contain retailers that are less relevant to consumers. These locations contain high levels of vacancies, with knock-on effects on local economies and communities. Having a large proportion of leases outside the Act is central to the ability of owners to adapt their occupier mix. These destinations, many of the most successful ones, in turn drive economic growth, create jobs and serve as important locations for families and communities to spend leisure time.

Case study 5 – Bluewater: a destination largely outside the Act

52. Bluewater has been one of the largest and most successful shopping centres in the UK since it opened over 25 years ago. It has around 300 leases in place, of which around 280 are contracted-out.

53. Of the original occupiers list only a few remain – e.g. John Lewis and M&S as anchors, plus Boots, WH Smith and Next – while brands such as Apple who were less prominent in the past have entered. The other original occupiers have either left or fallen victim to the pressures of the retail industry over the years.

54. Many occupiers regularly relocate within the centre as their requirements change. This allows them to right-size – whether taking more space or downsizing to maintain a presence on more affordable terms. Occupiers also regularly “renew” or “regear” leases often as part of their refresh and investment decisions. This would be far more complicated to achieve were their leases to be covered by the Act and governed by its cumbersome renewal provisions. As long as their businesses remain relevant and successful, not having security of tenure does not raise problems, and rather than lack of security being the issue, where it does not trade well it may not be able to afford the rent.

55. While the concern is that not having security of tenure impacts small retailers, smaller traders are owned by individuals with personal stakes and personal exposure to business failure. They depend on locations being vibrant and attracting footfall which well managed locations are able to offer them.

56. It is also notable that owners of locations value smaller and independent traders for what they bring to destinations and will often seek to support or take a chance on such traders. Many of the most successful retail destinations are heavily curated spaces that use their mix of smaller and independent retailers as a draw to the destination. The burdens of the Act, including the possibility that agreements could be used as evidence in lease negotiations with other occupiers restricts this ability.

Is security of tenure “anti-competitive”?

57. One related concern with security of tenure is that by providing automatic renewal rights to incumbent occupiers, it makes it harder for new entrants to gain a foothold, particularly in popular locations, even if those new entrants would perform better than existing ones.

58. This is of particular relevance in a retail and mixed-use context where new entrants might provide new products and services desired by visitors and help make the location more attractive than incumbents do. Turnover of business should be seen as a vital part of a healthy, dynamic, competitive economy that facilitates innovation.

Enabling new entrants enables more productive use of space, which in turn supports economic growth.

Assessing options for change

59. Security of tenure was first introduced as a right for occupiers of commercial property through the 1954 Act. The circumstances in 1950s Britain were very different to today. As a result of extensive damage after the Second World War, high quality space was at a premium and the concern was that occupiers who would often invest considerable sums bringing properties into a state of repair should have protection on this investment.

60. Today’s commercial landscape is markedly different. Commercial property underpins almost all economic activity and the availability of high quality space in the right place is essential to the overall productivity of the economy. Lease lengths have reduced markedly since the Law Commission’s last review of the Act and increasing numbers of businesses invest either minimal amounts into their premises or move into fully fitted locations.

61. Notably, since 2002, MSCI statistics suggest a marked drop in leases of 15 years or longer, falling from 25.6% of new leases in 2002 to only 12.3% in 2024 (retail, 13.1%;

offices, 10.7%; industrial, 13.5%) [2 MSCI Lease Events Review 2024].Meanwhile, 49.6% of leases are for five years or less. The same data also indicates that 26.1% of leases granted in 2024 included a break clause, as opposed to 16.4% in 2002.

62. Shorter leases combined with more break rights provide a level of flexibility for occupiers that did not exist 20 years ago and suggests that flexibility is increasingly valuable. Members report that major occupiers, particularly in retail, who traditionally would only sign protected leases are increasingly willing to agree leases outside the Act where this allows better lease terms such as additional breaks. The strong growth in demand for flexible/fully managed office space over the past five years supports this view; at least for many office-based businesses.

63. In addition to changes in the leasing market, there are also significant challenges facing the sector and wider economy – the need to invest significantly to decarbonise buildings and the need to repurpose space in town centres where there is an oversupply of retail property.

BPF recommendation – move from “contracting-out” to “contracting-in”

64. In responding to this consultation we have engaged extensively with our members and have gathered from them evidence on the extent to which leases in their portfolios are contracted-out of the Act.

65. Based on this engagement, consideration of the arguments and evidence, we recommend a switch from the current contracting-out approach to contracting-in. We also note that there are persuasive arguments for ending security of tenure in its entirety, but we have stopped short of recommending this on the basis that there are particular circumstances where it is seen as valuable by both occupiers and property owners. This will be typically where larger occupiers take a long lease and invest substantially in premises (e.g. healthcare, large-scale leisure, large office lettings).

66. In coming to this position, our starting point has been the considerable costs and friction the Act creates for both parties and burdens imposed on the courts.

67. Significantly, the Act creates barriers and risk for property investment. This has a knock-on impact on economic growth, the productivity of commercial property, decarbonisation of buildings and repurposing of space in town centres. The Act also makes it more difficult to curate successful mixed-use locations, which play a vital role in local economies and town centres.

68. The evidence we have collected comes from BPF members managing a total of c. £90bn of commercial property, which represents just under a fifth of the total value of invested (i.e. rented out) commercial property in 2022 [3 PIA Property Data Report – available at pia-2023-final-150124.pdfpia-2023-final-150124.pdf].

69. This data suggests that just over half of all leases are contracted-out of the Act, the proportion of which increases to around 65% for new leases agreed since 2020. For this majority of lease counterparties, switching to a contracting-in approach would therefore lead to a more streamlined leasing process.

70. While changing security of tenure from the default statutory option raises concerns that occupiers will lose the protections that it affords, there are good reasons to believe that even

without security of tenure, the commercial property market will function well for occupiers, while they will also benefit from broader reform (see our comments in response to question 3 below).

71. It is estimated that around 70% of the total return from commercial property investment in the UK derives from rental income (as opposed to capital value growth). Owners are therefore keen to maintain stable income streams, and ensure their properties are continually occupied.

Comments on consultation models

1. Mandatory Security of Tenure

72. Mandatory security of tenure would be a considerable mis-step in our view; damaging to economic growth, and the ability to invest in a modern commercial property sector. There were good reasons for introducing contracting-out following the Law Commission's 1969 report on the Act and we do not think there is any sound rationale for going back on this.

73. Doing so would exacerbate the limitations associated with the current Act and would also eliminate the flexibility that the current contracting-out approach provides and which our evidence suggests that an increasing majority of owners and occupiers agree upon. We discuss the potential impact in more detail in our response to question 3 below.

2. No Mandatory Security of Tenure (Abolition)

74. As noted above, although we support moving to a contracting-in approach, we think there are persuasive arguments for ending security of tenure in its entirety.

Remove burdens associated with the Act

75. The immediate impact of abolition of security of tenure would be to do away with the challenges set out under "limitations and challenges with the current Act" above, saving time and cost, removing burdens from the courts and facilitating effective property management and redevelopment.

76. As well as direct, quantifiable costs associated with the current Act, the current approach causes more significant intangible costs related to uncertainty, delay and risks associated with investment. These reduce the ability of property owners to invest because resources are diverted to (in our view) unnecessary administrative processes.

77. Abolishing security of tenure would remove these challenges, which we believe would in turn have a positive effect on economic growth, jobs, the modernisation of property to enable it to support a dynamic productive economy, decarbonisation of buildings and the repurposing of space in town centres.

3. Contracting-in

78. Contracting-in is our favoured approach. Notwithstanding the arguments set out above in favour of full abolition, an important proportion of our membership continues to see a role for security of tenure in some form. Its existence is particularly important in circumstances where high fit-out and investment costs are incurred by occupiers and the importance those occupiers place on protecting that investment. This reflects the fact that owners value

occupiers that invest in premises, the wider benefits that investment might bring to a location and the certainty of occupation that it provides.

79. As noted above, the evidence we have collected suggests that just over half of all leases are contracted-out of the Act, the proportion of which increases to around 65% for new leases agreed since 2020. Contracting-in would therefore reduce the administrative burdens for most leases.

80. Contracting-in would strike a balance that means participants who do not require security of tenure do not have it unintentionally imposed upon them and those that do require it can agree this with their property owners.

4. Contracting-Out

81. We have noted the limitations of the current approach above and the benefits that would accrue from removing security of tenure as the default option.

82. If this is ultimately the Law Commission's preferred option, it is crucial that improvements are made to mitigate the issues set out in "limitations and challenges with the current Act" above.

CQ3 – 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 parties and their advisers

Impact of switching to a contracting-in model

Simpler new tenancy process for more leases

83. The most notable impact of a change to contracting-in – at least as far as our evidence suggests – would be a more straightforward process for agreeing new tenancies for the majority of leases.

84. Our data indicates that we are currently imposing the costs and difficulty of varying the statutory default on the majority of leases. A default position of leases not benefitting from security of tenure should therefore reduce the costs, time and difficulty involved with agreeing those leases. This should allow businesses to access property more quickly.

85. There is a particular rationale for this as it supports those smaller and newer companies currently signing contracted-out leases, who have an interest in their lease commencing quicker and being able to trade sooner without any procedural delays. It also means that a greater proportion of the cost and complexity will be borne by larger organisations, better able to meet costs and complexity of negotiations.

Where are protected tenancies more common?

86. The evidence we have collected suggests that protected tenancies are more common for longer leases and larger floorspaces in industrial, retail and office sectors as well as sectors such as healthcare, infrastructure and large-scale leisure such as cinemas or bowling alleys. The converse is also true – there are high levels of contracted-out leases across industrial, office and retail, for shorter leases and for smaller floorspace.

Contracted out leases by lease length:

Leases up to 5 years (inclusive)	**All Leases**		**New leases since 1st Jan 2020**	
	No. leases	**% Contracted out**	**No. of leases**	**% Contracted out**
Leisure	115	87.0	128	89.1
Retail	1,084	77.6	1,733	77.5
Offices	601	90.8	705	89.2
Industrial & Logistics	439	79.5	567	76.0
Other	77	80.5	85	81.2
All	**2,316**	**82.0**	**3,218**	**80.4**

Above 5 years - 10 years (inc)	**All Leases**		**New leases since 1st Jan 2020**	
	No. leases	**% Contracted out**	**No. of leases**	**% Contracted out**
Leisure	195	70.3	114	64.9
Retail	1,013	66.0	756	63.5
Offices	547	69.3	357	68.1
Industrial & Logistics	744	56.5	526	48.7
Other	78	79.5	50	76.0
All	**2,577**	**64.7**	**1,803**	**60.5**

Above 10 years	**All Leases**		**New leases since 1st Jan 2020**	
	No. leases	**% Contracted out**	**No. of leases**	**% Contracted out**
Leisure	678	44.7	141	55.3
Retail	897	45.9	363	46.6
Offices	616	52.9	239	67.4
Industrial & Logistics	1,001	33.2	298	37.2
Other	1,403	24.9	320	18.4
All	**4,595**	**37.5**	**1,361**	**42.5**

Contracted out leases by size of property:

	All Leases		Leases since Jan 2020	
	No. of leases	**% Contracted out**	**No. of leases**	**% Contracted out**
Leisure				
Below 2,500 sq ft	315	58.4	148	73.6
>2,500 sq ft	504	40.7	165	55.2
All leases	819	47.5	313	63.9
Retail				
Below 2,500 sq ft	1,653	75.0	1804	75.1
>2,500 sq ft	1,194	46.6	975	59.1
All leases	2,847	63.1	2,779	69.5
Office sector				
Below 10,000 sq ft	1,127	79.6	923	82.3
>10,000 sq ft	579	54.1	340	70.9
All leases	1,706	70.9	1,263	79.3
Industrial & Logistics				
Below 20,000 sq ft	1,516	59.6	1,058	62.9
>20,000 sq ft	641	28.7	327	39.1
All leases	2157	50.4	1,385	57.3
Other				
Below 20,000 sq ft	652	43.1	235	55.3
>20,000 sq ft	885	19.5	212	13.2
All leases	1537	29.5	447	35.3

87. This picture reflects, to a large extent, the market determining where security of tenure is agreed upon. We don't anticipate that moving to a contracting-in approach will change the basic negotiating dynamic in such situations. To the extent that some occupiers want security as part of new lease negotiations, but are unable to obtain it under the contracting-in model, that will continue under a contracting-out model.

88. We do not dismiss concerns that a shift in approach could see participants without market power losing a right that they want. Rather, we would question how widely this would occur in practice and how large a segment of the market this potentially applies to given our evidence of the extent to which shorter leases and those for smaller floorspaces are currently contracted-out. As noted in our response to question 2, property owners want reliable, stable occupiers in place to ensure income and rent collection and incur costs and risks when they give notice.

89. The alternative concern is that under the current approach, occupiers who do not have a specific need for security, obtain it because it is the default statutory approach and it is unnecessarily difficult and complex to opt-out. Such occupiers may be paying to obtain a benefit that they do not want or need, at the expense of other factors that will have more value to them such as lower rent, different lease lengths, or other factors. Enabling the market to operate more efficiently, so that only those occupiers who genuinely want security of tenure pay the market price for it, would enable other occupiers to agree more optimal arrangements on other lease terms.

Impact on lease renewals

90. We don't know of any reliable way to predict how many leases would remain inside the Act under a change to a contracting-in model. Were it to lead over time to fewer leases inside the Act, this could considerably reduce the burdens of lease renewals. As highlighted by case study 3 above, lease renewals are generally less adversarial, cheaper and faster outside the Act.

91. Over time, a shift to contracting-in would also significantly reduce the difficulty of gaining vacant possession where the intention is to redevelop properties.

Use of contractual options

92. There are considerable benefits when using contractual options in leases over and above statutory processes as they: • Provide more comprehensive security for occupiers that will better meet their needs, ensuring proper trading continuity for occupiers;

• Are clearer and simpler documents than the Act;

• Embed valuation approaches for lease renewal within contracts, (a key point of contention for leases renewals inside the Act) and thereby they lead to an easier renewal process.

93. Notably, there has been a rise in standardisation within leases through the wide adoption and influence of the Model Commercial Lease (MCL) which already includes "off the shelf" drafting to enable the use of contractual options.

94. If a switch to contracting-in led to a greater use of contractual options this could be a generally beneficial development.

Impact on occupiers

95. While a change to a contracting-in model might raise concerns around occupiers losing certain protections, we think that there are good reasons to suggest that even without security of tenure (let alone the contracting-in model we recommend), the commercial property market would function well for occupiers.

96. Few other jurisdictions have a security of tenure as comprehensive as England & Wales (including most notably Scotland). This does not prevent those jurisdictions from having well-functioning commercial property markets and successful economies that foster smaller and independent businesses.

97. While occupiers may in theory favour a statutory right to security of tenure, whether that right is available in practice even under the current approach is mostly determined (for new leases) by market forces. As our evidence shows, contracting-out appears to be the norm in many circumstances, particularly for leases of 5 years and under. According to MSCI data, such leases account for half of all leases signed and our own figures suggest the vast majority – 80% - of such leases are contracted-out. There are also high levels of contracting-out for smaller floorspaces. Changing to a contracting-in model would have no impact in these circumstances.

98. Although we have not been able to gather data on how lease renewals vary between inside the Act leases and those outside the Act, members have noted that in many locations

with high levels of contracting-out, such leases are generally renewed successfully and to the satisfaction of occupiers. Were obtaining renewals for leases without security of tenure a significant problem, we would expect more widespread evidence for this.

99. Smooth and satisfactory renewals of outside the Act leases should not be surprising. It reflects the fact that owners value reliable, stable occupiers, wish to avoid empty properties and incur significant costs and risks in giving notice. Indeed, the business model of many property owners is based on stable income streams, which relies on ensuring high levels of continuing occupation.

100. To the extent that occupiers find it hard to renew a lease, this more often than not reflects changes to market rents or other factors such as business rates or the economy. These apply equally to leases inside or outside the Act.

Impact on advisors

101. To the extent that changing to a contracting-in approach would reduce the complexity of new leases and lease renewals it would reduce the costs associated with advisors needed to navigate those processes. As noted previously, some of the implications of security of tenure under the Act can create an adversarial approach to negotiations, which can in turn give rise to disproportionate costs being spent on advisors that could be more productively deployed elsewhere.

(2) on the commercial leasehold market

Impact of switching to contracting-in

Reduced barriers to investment into commercial property

102. We believe that moving to a contracting-in model would increase investment into the sector because it would reduce the barriers and risks associated with redevelopment and asset/place management. It would also reduce other costs such as around lease renewals for leases currently inside the Act, at least some of which would be allocated to investment into the sector.

Attractiveness of commercial property for investment

103. Our members report that property investors consider whether assets have security before acquiring them. Where there is security, this is seen as a risk and gets “priced in” to the amount that investors are willing to pay for assets and which sub-sectors they invest into. For overseas investors and lenders used to other jurisdictions, the level of security of tenure in England & Wales often comes as a surprise.

More responsive rents

104. It is worth noting that under the Act, because renewals are based on comparable transactions, which are backward-looking, based on deals already made. This slows down market movements so that prices set at renewals do not reflect true levels as they would be agreed on the open market.

105. This impacts how responsive lease agreements are to changes to market prices – whether they are upwards or downwards – with important effects on the efficiency of the

pricing mechanism. When prices are falling, occupiers may not get the full benefit of price adjustments and rents are ‘locked in’ at a higher price than they arguably should be. It means that the costs that occupiers incur do not reflect the (lower) returns that they might expect given current market conditions. Similarly, when prices are rising, owners are not able to agree prices that accurately reflect the proper valuations of properties – in effect locking in lower property valuations in the medium and long term.

Case study 6: Lack of open market transactions and impact on investment

106. Where there are infrequent open-market transactions, this can make it very difficult for the market to ‘discover’ prices, making it difficult for valuations to find their ‘true’ level. One such recent example of this was within retail warehousing in England and Wales where until recently there had been few open-market transactions. The insolvency of Carpetright then led to owners with vacant possession of buildings, new lettings and arms-length transactions, which enabled owners to demonstrate true market prices were different to what they had been able to prove through the lease renewal process.

107. This perceived lack of transparency can deter investment because it raises the risk that valuations and prices received will not reflect the capital invested. In the retail warehouse market, members noted that there had been strong investment demand for such properties in Scotland, where prices were determined by open-market transactions and therefore property valuations were perceived to be more accurate. Weak investor demand in England was due to the lack of such transactions.

Case study 7: Scotland

108. Many of our members own substantial portfolios in Scotland and England and Wales. It is worth noting that their experience is that the system works well and that there is a healthy investment and occupier market in Scotland. The notion of a ‘wild west’ for commercial leasing is certainly not one that they recognise.

109. Indeed, there are some areas in which our members would say that the commercial property market operates more effectively in Scotland than in England and Wales. Specifically: • The existence of a definitive timetable for serving notices and gaining vacant possession prevents occupiers avoiding engagement with owners and holding over indefinitely as highlighted in a case study above. In other words, there is less ability to “game” the process for advantage, which is prevalent in England and Wales.

• Due to the less adversarial approach and because of the lower ability and incentive to litigate matters, leasing and legal costs can be commensurately lower.

• It is easier for property owners to gain possession of property for redevelopment purposes, reducing the risk and cost of this economically beneficial activity.

• As noted, because in some circumstances there will be more open market transactions, market prices will be more transparent. Members have related that in turn, this can give investors more confidence to invest in Scotland as they can be more certain that the amount they are paying or investing reflects true market levels.

Impact of switching to a mandatory security model

Damage to investor sentiment and property investment viability

110. Any shift to mandatory security would run counter to recent developments in commercial leasing. It would damage economic growth and inflict real damage on the attractiveness of commercial property as an investment.

111. It would reduce property owners' effective control over their own assets and therefore increase the risk of owning them. The knock-on impact would either be an increase in rents (to compensate for the higher risk) where market forces permit or – where they don't – a reduction in property values to reflect the lower price a buyer would be prepared to pay for a now riskier asset. Reductions in value could pose particular risks for property owners where properties have debt finance secured against them.

112. More generally, redeveloping and refurbishing property would become more difficult and uncertain, with buildings that would have been suitable for redevelopment no longer being viable. It would also deter investment among global investors who might be unfamiliar with or unwilling to invest in properties with such a strong level of security of tenure.

113. On a practical level, if the Act were mandatory, the number of renewals requiring the courts would increase dramatically given the high numbers of leases currently contracted-out. Unless an alternative process were put in place, or there is sufficient investment to deal with the influx of renewals, an already overburdened system would be in danger of collapse.

A return to longer lease lengths and less flexibility

114. As outlined above, a notable development within the property sector over the past 20 years has been a trend towards shorter, more flexible leases, especially within the retail, office and industrial sectors. This caters for those businesses that might not feel the need for longer term certainty, do not wish to spend considerable amounts on fit out costs, and might be seeking the fastest commencement of trading possible. They might also value the flexibility of being able to move at relatively short notice to smaller or larger spaces as their circumstances change.

115. While short, flexible leases can be made to work with security of tenure, were it to be made mandatory then the challenges outlined above regarding protected lease renewals and their impact on the court system would become even more pronounced.

116. In addition, property owners might begin to seek longer lease terms from occupiers to maximise the certainty of their income. This would disadvantage those occupiers who currently value shorter leases and most likely have a disproportionate impact on smaller and newer businesses.

CQ4A – 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.

1. The extent of the Use Excluded Tenancies is appropriate;

117. Overall, we feel that basing exclusions on particular classes or uses of premises would be exceedingly difficult to achieve without creating arbitrary cliff edges that would inevitably give rise to litigation.

118. In addition, enhanced flexibility has recently been introduced into the planning system aimed at providing for easier change of use, which would cause issues where a property's security of tenure depended on use.

119. We are not aware of competing regimes that might warrant exclusion from the Act. The consultation paper refers to the Electronics Communication Code (ECC), which our members have a number of significant concerns with (though these fall outside the scope of this review). However, differences in how the ECC and the Act operate do create additional complexity. This stems from the need for property owners to monitor two separate administrative regimes, each with their own timelines, sometimes in relation to the same property. We would therefore caution strongly against creating more "parallel regimes" than those set out in the Act.

2. The extent of the Duration Excluded Tenancies is appropriate;

120. We believe that tenancies of five years and less (hereafter "short leases") should be excluded from the Act. There are both principled and practical reasons for this:

Balance of interest principle

121. A "productive and beneficial commercial leasing relationship" (as the consultation's terms of reference put it) between property owners and their occupiers depends on there being a sense that rights and obligations are fairly shared.

122. There is an implicit understanding that flexibility for the occupier (e.g. in the form of a shorter lease or availability of break options) should be reflected either in a higher rent or flexibility for the owner at the end of a lease to compensate the uncertainty this causes for them. The converse naturally applies – where an occupier can commit for the longer term, then a lower rent is more likely and owners are more likely to agree that an occupier can remain in place at the lease end.

123. Our members generally perceive that an automatic right to renew a short lease unduly tips the balance too far in favour of occupiers. Occupiers benefit from the flexibility of a short lease and the flexibility to remain in occupation at the end of the lease term. The property owner on the other hand does not have the flexibility to take back the property at the end of the lease term. Excluding short leases from security of tenure would better balance owner and occupier benefits.

Practical benefits

124. Given the high proportion of short leases that are already contracted-out (80% overall, but between 75%-90% depending on asset type), excluding leases of five or less years from security of tenure would significantly benefit the majority of parties to such leases, who currently have to go through the process of contracting-out.

125. It would also reduce the occurrence of unintentional errors in the contracting-out process that can give rise to legal challenges. In addition, excluding shorter leases would eliminate the uncertainty and risk that currently exists around when a licence may unintentionally become a (protected) lease. The precautions currently taken to ensure this doesn't happen would become unnecessary were short leases excluded.

126. As we noted previously, renewing a protected lease can take between one and three years. For shorter leases, the cost imposed on parties at frequent lease renewals is not proportionate to any benefits accrued.

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.

127. Where parties explicitly agree contractual break rights in leases, they should be able to be exercised. That isn't the case currently for protected leases as security of tenure still applies even where there is such a break clause. This creates additional complexity as parties willing to agree such break clauses then need to contract-out of the Act.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

128. Were security of tenure to be abolished, there would be no need to exclude leases by duration from the Act.

129. Under contracting-in, there would be reasons both for and against excluding tenancies under 5 years from the Act, however as noted above we would favour their exclusion.

• Allowing contracting-in for such tenancies would provide flexibility where both parties want this.

• There would already be some benefits from reducing friction through switching to a contracting-in approach. However, the full benefits of simplifying the approach for such leases would not be realised. There would be delays and costs where negotiations take place or parties seek to consider their options.

CQ5 – 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.

130. In our view, the Law Commission's assessment underestimates the beneficial impact of reforming the scope of the Act to exclude short leases from security of tenure. According to MSCI, leases five years or less accounted for 50% of leases granted in 2024, while our own data suggests that around 80% of these are contracted-out. The administrative saving for parties to these leases of not having to contract-out or undertake protected lease renewals would be considerable.

131. Were short leases excluded, it is possible that property owners would seek to reduce lease lengths to below 5 years to ensure they are outside of the Act. However, owners would also need to balance restricting lease lengths with the impact on future income and also on property valuations, which are based on the value of future income streams.

CQ6 – 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

132. Excluding leases of five years or less from the act would mean parties would experience fewer costs and delays as a result of contracting-out – our evidence suggests the overwhelming majority (between 75%-90% depending on asset type) of tenancies for shorter duration are contracted-out.

133. Shorter leases would no longer be within the Act for lease renewals. This would significantly reduce the cost and difficulty of lease renewals. It could also remove significant burdens from the Courts. There would also be less potential for advisors to make mistakes and potential resulting damage (including litigation)

(2) on the commercial leasehold market

134. Any reduction of leases within the Act would make it easier to gain vacant possession for redevelopment purposes. This in turn would support redevelopment of properties.

135. Such a reduction in leases outside the Act would also make it easier to incorporate "green clauses" into leases and owners to gain possession where sustainability improvements to properties are needed but do not meet the current threshold for gaining possession under the Act.

136. Excluding short leases from security of tenure would eliminate the need to take action to make sure licences to occupy do not unintentionally become protected leases. The resulting time and cost savings would benefit both owners and occupiers. This would have particular benefits for the provision of flexible space and shorter leases for both owners and occupiers.

CQ7 – 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).

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

INTRODUCTION

1. The British Property Federation (BPF) is the voice of the UK property sector. Our industry helps power the economy, adding 7% of Gross Value Added (GVA) annually, equivalent to more than £137.5 bn. We support one out of 12 jobs across the country and pay more than £7bn in direct taxes each year, contributing another £7bn indirectly to local communities through the planning system.

2. We welcome the Law Commission's review of Part 2 of the Landlord & Tenant Act 1954 (the Act) and the opportunity to feed into it. As we set out in more detail below, a thorough

review of the Act in light of evolving commercial leasing practice and broader socio-economic shifts is long overdue.

KEY POINTS

Challenges and opportunities

3. The way the Act currently operates imposes costs, burdens and barriers which in turn:

• Makes it harder to redevelop buildings;

• Makes it harder to “green” buildings;

• Involves considerable administrative complexity and sets up bear traps for the unwary; and

• Makes effective place management more difficult.

4. Reforming the Act offers an opportunity to make sure that commercial leasing legislation better supports key government priorities such as economic growth and productivity, decarbonisation and the repurposing of vacant commercial space.

Proposed new model and scope

5. Evidence provided by our members suggests that just over 50% of commercial leases are contracted-out of the Act with variation between types of asset. This proportion rises to 65% for new leases agreed since January 2020.

6. Shorter leases (those of 5 years or less), which MSCI data suggests account for 50% of all leases, are even more likely to be contracted-out. Our evidence suggests 82% of shorter leases are contracted-out, with high levels across all asset classes (78%, retail; 80%, industrial and logistics; 81%, other; 87%, leisure; and 91%, offices)

7. Based on these findings we recommend switching from a contracting-out model 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.

8. We would strongly oppose mandatory security of tenure for all leases as this could result in extensive property market disruption, including potentially higher rents, lower property values and less flexibility for occupiers.

9. We also recommend excluding tenancies of five years or less from security of tenure (an increase from the current six-month exclusion). Our data suggests a particularly high proportion of such leases contract-out of the Act. There is therefore a strong rationale for such leases should be outside the Act to remove the administrative burdens on such leases and the uncertainty regarding when licences to occupy can become protected leases.

10. We set out detailed responses to consultation questions below.

11. Appendix 1 summarises data received from BPF members regarding the extent to which leases in their portfolios are contracted-out of the Act.

APPENDIX 1 – PREVALENCE OF CONTRACTING-OUT AMONG BPF MEMBER PORTFOLIOS

Overview:

Commercial property leases contracted out				
	All leases		New leases since 1st Jan 2020	
	No. of leases	% Contracted out	No. of leases	% Contracted out
All Leases* [*All leases shows findings from all leases collated. Some members only provided overall lease data for their portfolios and not more granular data by sector, lease length and property size. "All leases" covers these organisations. "Leases by sector" only includes organisations providing granular data.]	22,965	51.7	6,808	65.2
Leases by sector* [*All leases shows findings from all leases collated. Some members only provided overall lease data for their portfolios and not more granular data by sector, lease length and property size. "All leases" covers these organisations. "Leases by sector" only includes organisations providing granular data.]	14,216	64.0	6,783	66.1
Leisure	977	54.7	375	68.8
Retail	6,563	61.4	2,934	70.2
Offices	2,098	69.8	1,466	70.6
Industrial/logistics	3,000	50.5	1,391	57.4
Others	1,578	26.1	617	53.6

Commercial property leases contracted out (matched sample)** [**The matched sample shows the findings for organisations providing data for both all leases and new leases since 1st January 2020.]				
	All leases		New leases since 1st Jan 2020	
	No. of leases	% Contracted out	No. of leases	% Contracted out
All Leases	8,372	55.1	6,421	66.9
Leisure	956	54.5	375	68.8
Retail	2,888	64.9	2,849	69.8
Offices	1,594	69.6	1,302	79.5
Industrial/logistics	1,365	47.1	1,391	57.4
Others	1,572	30.7	479	39.7

Value of respondents' assets under management	
	Total (£)
All Responses	88.9bn
Leases by sector	73.7bn
Matched sample	56.6bn

Leases 5 years and under

Leases up to 5 years (inclusive)	**All Leases**		**New leases since 1st Jan 2020**	
	No. leases	**% Contracted out**	**No. of leases**	**% Contracted out**
Leisure	115	87.0	128	89.1
Retail	1,084	77.6	1,733	77.5
Offices	601	90.8	705	89.2
Industrial and Logistics	439	79.5	567	76.0
Other	77	80.5	85	81.2
All	**2,316**	**82.0**	**3,218**	**80.4**

Retail				
	All Leases		**New leases since 1st Jan 2020**	
	No. leases	**% Contracted out**	**No. leases**	**% Contracted out**
Up to 5 years (inclusive)	1,084	77.6	1,733	77.5
Above 5 years - 10 years (inc)	1,013	66.0	756	63.5
Above 10 years	897	45.9	363	46.6
Total	2,994	64.2	2,852	69.8

Offices				
	All Leases		**New leases since 1st Jan 2020**	
	No. leases	**% Contracted out**	**No. leases**	**% Contracted out**
Up to 5 years (inclusive)	601	90.8	705	89.2
Above 5 years - 10 years (inc)	547	69.3	357	68.1
Above 10 years	616	52.9	239	67.4
Total	1,764	70.9	1,301	79.4

Industrial and Logistics				
	All Leases		New leases since 1st Jan 2020	
	No. leases	% Contracted out	No. leases	% Contracted out
Up to 5 years (inclusive)	439	79.5	567	76.0
Above 5 years - 10 years (inc)	744	56.5	526	48.7
Above 10 years	1,001	33.2	298	37.2
Total	2,184	50.4	1,391	57.4

Other				
	All Leases		New leases since 1st Jan 2020	
	No. leases	% Contracted out	No. leases	% Contracted out
Up to 5 years (inclusive)	77	80.5	85	81.2
Above 5 years - 10 years (inc)	78	79.5	50	76.0
Above 10 years	1,403	24.9	320	18.4
Total	1,558	30.4	455	36.5

Contracting out by size of property

Leisure	All Leases		New leases since 1st Jan 2020	
	No. leases	% Contracted out	No. leases	% Contracted out
<500 sq ft	60	56.7	43	62.8
500-2,500 sq ft	255	58.8	105	78.1
2,500-10,000 sq ft	361	44.6	123	60.2
10,000-20,000 sq ft	61	41.0	19	47.4
>20,000 sq ft	82	23.2	23	34.8
Total	819	47.5	313	63.9

Retail	All Leases		New leases since 1st Jan 2020	
	No. of leases	% Contracted out	No. of leases	% Contracted out
<500 sq ft	532	78.0	784	74.4
500-2,500 sq ft	1,121	73.6	1020	75.7
2,500-10,000 sq ft	724	58.1	672	65.2
10,000-20,000 sq ft	224	30.4	184	48.9
>20,000 sq ft	246	27.2	119	40.3
Total	2,847	63.1	2779	69.5

Offices	All Leases		New leases since 1st Jan 2020	
	No. of leases	% Contracted out	No. of leases	% Contracted out
<2,000 sq ft	512	85.4	484	85.5
2,000-10,000 sq ft	615	74.8	439	78.8
10,000-25,000 sq ft	417	59.0	247	71.7
25,000-50,000 sq ft	106	48.1	72	73.6
>50,000 sq ft	56	28.6	21	52.4
Total	1,706	70.9	1263	79.3

Industrial and Logistics	All Leases		New leases since 1st Jan 2020	
	No. of leases	% Contracted out	No. of leases	% Contracted out
<20,000 sq ft	1,516	59.6	1058	62.9
20,000-100,000 sq ft	427	33.3	208	48.6
100,000-500,000 sq ft	157	19.7	90	23.3
500,000-1m sq ft	32	25.0	16	25.0
> 1m sq ft	25	12.0	13	15.4
Total	2,157	50.4	1385	57.3

Other	All Leases		New leases since 1st Jan 2020	
	No. of leases	% Contracted out	No. of leases	% Contracted out
<500 sq ft	261	54.0	168	66.1
500-2,500 sq ft	391	35.8	67	28.4
2,500-10,000 sq ft	566	21.4	125	15.2
10,000-20,000 sq ft	163	19.6	36	8.3
>20,000 sq ft	156	12.8	51	11.8
Total	1,537	29.5	447	35.3

City of London Law Society's Land Law Committee

Role: a representative organisation

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

We have no response to this question.

CQ2 – 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.

Model choice: Contracting-in (so that a tenancy only has statutory security of tenure if the parties opt into a statutory scheme);

Reasons

Our comments on the respective models are included below and some of our comments are separated under particular headings. We have a few further general observations.

As an important point, whichever model is adopted, the changes should only apply prospectively and any transitional arrangements should be carefully considered.

Whichever model is determined by the Law Commission, the legislation should also allow the landlord and the tenant to move from a lease benefitting from security of tenure to a lease without security of tenure, or vice versa without requiring any surrender and/or re-grant arrangement.

Also the current requirement in section 38A(1) of the Landlord and Tenant Act 1954 that the contracting out agreement can only apply to a tenancy to be granted for a term of years certain, should be removed. The decision in "Van Staden" London Borough of Newham v Thomas-Van Staden [2008] EWCA Civ 1414 (29 July 2008) [https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWCA/Civ/2008/1414.html] highlights the problems caused by the requirement for a term of years certain. We recommend that this issue is addressed regardless of which model is chosen.

Contracting-in is the preferred model

We consider that the contracting-in model of statutory security of tenure should operate.

Business efficacy and problems with the current contracting-out process

The primary reason for this is business efficacy.

The majority of leases that we encounter are contracted out of sections 24-28 of the Landlord and Tenant Act 1954.

The current process for contracting out involving the service of a warning notice and the making of a simple declaration/swearing of a statutory declaration is unnecessarily administrative and problematic.

If there are any defects in the carrying out of the process, the tenant may benefit from statutory security of tenure, even though the landlord and the tenant agreed in the heads of terms (or equivalent) that the tenant would not have statutory security of tenure. There is even a statement in the lease by which the landlord and the tenant agree that sections 24-28 do not apply.

A large amount of time is expended on the contracting out process by prospective landlords and tenants and their respective legal advisors. If a statutory declaration is used, tenants will need to attend an independent commissioner of oaths/solicitor, which takes time and ultimately costs money.

Uncertainties about whether to re-do the contracting-out process

There are uncertainties about whether, and the circumstances in which, the current contracting-out process needs to be re-done if the form of lease changes after the process is carried out, or if there is an exchanged agreement for lease and a change is required post-exchange to the agreement or the form of lease to be granted, such change occurring before lease completion.

There are also similar issues with contracting-out in an option to renew situation.

In those situations, the landlord's legal advisor will usually consider whether the process should be re-done. Due to the serious consequences for the landlord if the process is carried out incorrectly, a cautious approach may be taken and the contracting out process is re-done, which again takes time, costs money and potentially delays the transaction.

There are uncertainties with the current contracting-out model where the landlord or the tenant changes after the warning notice is served and/or the simple/statutory declaration made, but before the lease is completed.

There are also uncertainties about whether a warning notice needs to be served on, and a simple/statutory declaration needs to be made by, a guarantor (which includes a current guarantor or a guarantor under an authorised guarantee agreement (AGA) or a guarantor of an AGA). The current law is unclear on this point.

Since most leases, from our experience, are contracted out, to adopt the contracting-in model would mean that the contracting-out process, with all its issues, is avoided. It also prevents a tenant unwittingly benefiting from statutory security of tenure, in a situation where that was not the intention of the landlord and the tenant. Also adopting the contracting-in model so that the default position is that there is no statutory security of tenure, overcomes difficulties associated with contractual break rights in the light of the Landlord and Tenant Act 1954. The Act can end up frustrating the parties' intentions that the landlord is contractually entitled to break the lease, by affording the tenant statutory security of tenure,

notwithstanding what the lease states on the face of it regarding the landlord's right to terminate.

The situations mentioned above are all examples of why there should not be a prior process (potentially involving a third party) to establish a position on statutory security of tenure. Whichever model is chosen by the Law Commission, there should not be a need for a prior process. We mention below a suggested alternative approach of simply dealing with this in the lease itself.

Why is there a warning notice for contracting out, but not for other lease provisions?

It is also illogical why there is a specific process for advising the tenant on the rights that it is losing by contracting out the lease, but there are no warning notices for other aspects of the lease that may have a more immediate impact such as alienation, repair or rent review – the current process seems to attach undue importance to one particular aspect of the lease.

Considerations where there is an unrepresented party

In a situation where both the landlord and the tenant are legally represented, their respective advisors will advise on whether statutory security of tenure will apply and the implications of this. For an unrepresented landlord or tenant, we consider that the terms of the lease bargain will be better understood with the contracting-in model. The unrepresented party will have a more complete picture, because the lease terms (plus any supplemental documents) will encapsulate the whole deal between the landlord and the tenant and there will be no misunderstanding as to any statutory rights, because none will apply.

By contrast, if the contracting-out model is used, the unrepresented landlord or tenant may not appreciate that the terms of the lease are not the full picture and that statutory security of tenure may apply, either because any required contracting-out process was not carried out or was carried out incorrectly. An unrepresented tenant may not appreciate that staying in the premises a day beyond the end of the contractual term brings section 27 into operation and the tenant is bound for at least another three months.

An alternative to the contracting-out process – a confirmation/health warning on the face of the lease

It is important to learn the lessons of the problems with the current contracting-out model in relation to the proposals for contracting-in. We do not believe that there should be a process (potentially involving a third party such as a commissioner of oaths for a statutory declaration) and, instead, there should be a new contracting-in provision on the face of the lease (whether as an endorsement on the front of the lease, or in its prescribed clauses (where the lease has prescribed clauses) or elsewhere in the lease).

The provision would confirm that the tenant has statutory security of tenure and include a health warning summarising which statutory rights the tenant has, as a result of benefiting from statutory security of tenure. It would be helpful for specific wording for the provision including the health warning to be prescribed in legislation, which can be included in the lease. The legislation should allow for reasonable departures from the wording, such as "or substantially in the form".

We need to ensure that the contracting-in model is not overly prescriptive or administrative and avoids tenants unwittingly not obtaining statutory security of tenure when it was the parties' intention that the lease is protected. If a prior process is avoided and there is a contracting-in provision on the face of the lease, this should address the Law Commission's concerns about disincentivising landlords from offering protected tenancies under a contracting-in model.

Comments on the other models

Contracting-out model

Our next preferred model is the contracting-out model but with significant change.

We understand that this model more clearly highlights to the tenant the statutory rights that it is not receiving. However, as mentioned above, for the model to be retained, it needs significant change.

The current contracting-out process is too administrative and susceptible to error, which can lead to the tenant unwittingly benefiting from statutory security of tenure, and consequential disputes drive potential litigation and additional costs and aggravation.

We, therefore, consider that the warning notice and simple/statutory declaration should be scrapped and replaced by a new contracting-out provision on the face of the lease (whether as an endorsement on the front of the lease, or in its prescribed clauses (where the lease has prescribed clauses) or elsewhere in the lease). The provision would confirm that the tenant does not have statutory security of tenure and include a health warning summarising which statutory rights the tenant does not have. It would be helpful for specific wording for the provision including the health warning to be prescribed in legislation, which can be included in the lease. The legislation should allow for reasonable departures from the wording, such as "or substantially in the form".

We need to ensure that the revised contracted-out model is not overly prescriptive or administrative and avoids tenants unwittingly obtaining statutory of tenure when it was the parties' intention that the lease is not protected.

We should add that while contracting-in is our preferred model, we would have no objection in principle to the contracting-out model, provided that there is no prior process and the contracting-out provision including any health warning are included in the lease.

Mandatory security of tenure

We reject this model. It would be unacceptable to the majority of landlords since it would cause the landlords to lose control of their let premises. Landlords would be unable to ensure that their tenants leave at the end of the contractual term and would have to go through a statutory process to end the tenant's occupation, which may fail or lead to the payment of compensation. This uncertainty as to recovery of the let premises at the end of the contractual term is problematic for where the property is required for re-development, but also for any other purpose that the landlord may have for its property. While we are not valuers, we believe that the impact of this uncertainty would have a significant valuation impact. A landlord may choose to grant its tenants statutory security of tenure, but that should be the landlord's choice for the appropriate transaction.

No statutory security of tenure

We reject this model. We see a place for tenants to have statutory security of tenure for the appropriate transaction, but this should be agreed by the landlord and the tenant.

An argument in favour of this model might be that the parties can agree a contractual lease renewal right which might be more flexible than the statutory model. However, this will mean reinventing the wheel for each transaction with an increased chance of inconsistency and error. While acknowledging that the statutory process can be improved, it does provide greater certainty and predictability, including suitable protections for the landlord and the tenant.

There will be transactions where the investment of the tenant in the let premises justifies more secure occupation rights, or where the state of the letting market gives tenants the negotiating leverage to insist on statutory security of tenure and the legislation should allow for this to be agreed between the parties.

CQ3 – 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 parties and their advisers

We cover this in our response to Question 2.

In summary, using the contracting-in model ensures that there is less risk of statutory security of tenure being unwittingly granted. This will help to ensure that there is less litigation on esoteric points of the type encountered with the current contracting-out process.

The courts are under huge resourcing pressure and we should strive for a model that reduces the chances of litigation.

The current contracting-out process is a source of professional negligence claims against the legal profession and any model that reduces the number of claims is to be welcomed.

(2) on the commercial leasehold market

We consider that moving from a contracting-out to a contracting-in model will not have a significant impact on the commercial leasehold market. When heads of terms are agreed by agents for the parties, they are deciding, as a commercial matter, whether or not the tenant is to benefit from statutory security of tenure, not the specifics of the process. That is why we reject the models for Mandatory security of tenure and No statutory security of tenure, because we consider that such models may have a material impact on the market including valuation implications and would take away the parties' rights to agree the position.

In terms of effect on the high street, because the contracting-in model reduces the chances of statutory security of tenure being unwittingly granted, this gives greater assurance to landlords that at the end of the contractual term (or earlier, as permitted by the lease) they have the flexibility to move tenants around, and develop and otherwise use their properties as they wish.

CQ4A – 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.

Using the numbering above:

(1) We consider that the extent of the Use Excluded Tenancies is appropriate. We do not consider that this should be extended to cover infrastructure leases such as for windfarms (mentioned in the Consultation paper). It will be difficult to define with precision (probably because the arrangements are too technical), which infrastructure should be excluded. In any event, for projects of this magnitude the landlord and tenant will usually have specific negotiations over contractual protections. Our experience is that statutory security of tenure is not a significant commercial point for such transactions.

(2) We can see the benefit of widening the extent of the Duration Excluded Tenancies. We consider that a lease for a term of up to 5 years should be excluded from statutory security of tenure. Prior periods of occupation should be ignored, to simplify the position (currently, prior periods of occupation encourage landlords to contract out very short term tenancies where there is any doubt as to whether statutory security of tenure applies). The term of leases in the commercial market has over the years become shorter and many leases are for 5 years or less. We consider that by excluding leases for 5 years or less, this will increase certainty as to the landlord's control of its premises at the end of the contractual term and support the overall objective of reducing administration, cost and delay. This exclusion is less significant if the contracting-in model is adopted (since the default position is that the lease is contracted out). It would, however, mean that for leases of 5 years or less, tenants would be unable to contract into statutory security of tenure. In practice, however, our experience is that very few leases of 5 years or less have statutory security of tenure.

(3) We consider that periodic tenancies should be excluded. Such tenancies may slip under the radar on due diligence for the purchase of a property. The fact that they may attract statutory security of tenure is very problematic and they should not be allowed to interfere with the landlord's redevelopment or other plans for its property. When a crucial economic driver is the promotion of growth, landlords should not be constrained in redeveloping properties by statutory rights pursuant to a tenancy that they may know nothing about.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

Subject to the points made in our responses to the Consultation Questions, we generally agree with your analysis and congratulate the Law Commission on an excellent consultation document.

CQ6 – 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

Please see our response to Question 4.

(2) on the commercial leasehold market

Please see our response to Question 4.

CQ7 – 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).

We do not believe, nor do we have any 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 mentioned in the Question.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

About the City of London Law Society

The City of London Law Society represents approximately 21,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi-jurisdictional legal issues.

The City of London Law Society responds to a variety of consultations on issues of importance to its members through its 22 specialist committees, one of whom is the Land Law Committee.

Response

The City of London Law Society's Land Law Committee is pleased to respond to this important Law Commission consultation on models of security of tenure. The use of "we" in the response to the Consultation Questions refers to the City of London Law Society's Land Law Committee.

Central Association of Agricultural Valuers

Role: a representative organisation

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

Working across the UK, we do not see any practical difference between Wales and England for the operation of the 1954 Act or the impact it has on the leasehold market in either country. We have outlined elsewhere in our response to this consultation some of difficulties with the current 1954 Act regime, with a variety of awareness, understanding and knowledge of landlords and tenants. These broad concepts are applicable to both Wales and England.

Our only comment would be that, should any reform be proposed and subsequently implemented, it will be important to see accessible and easy to read guidance to support “lay people” (whether these be landlords or tenants), with such guidance also available in Welsh.

CQ2 – 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.

Model choice: Contracting-in (so that a tenancy only has statutory security of tenure if the parties opt into a statutory scheme);

Reasons

We consider option 3, the contracting-in model to be the most suitable for the approach to security of tenure above that given by the lease.

This option reflects modern commercial lease practices, while preserving existing protected tenancies and allowing landlords and tenants to enter into new protected tenancies should they wish.

From our professional experience, this would be the practical approach to the very large number of small commercial lettings for which the present procedure is an additional effort and procedurally confusing, presenting a further cost on relatively small propositions. Where contracting-in is required for a larger or more substantial letting, the transaction is more likely to regard the processes as proportionate.

As the consultation paper highlights, there is difficulty with the current model of security of tenure (contracting-out) as it relies on both the landlord and tenant being fully cognisant of the 1954 Act and its application to a wide range of uses. We commonly see “accidental” protected tenancies created where:

• the “use” of the premises or the type of tenant is not thought of as “business” (for example, where the tenant is a charity or other non-commercial entity, as illustrated in *Addiscombe Garden Estates Ltd v Crabbe* [1958] 1 QB 513);

• the original term is for 6 months but occupation continues beyond this, creating a periodic tenancy

• the original tenancy is governed by common law or another statute but the use evolves over time to fall within 1954 Act jurisdiction.

Similarly, existing tenants may be unaware that they have statutory protection, as the agreement is “silent”. The position relies on a tenant being aware in the first place or having taken professional advice.

Many landlords prefer premises to be let for long durations, provided that the tenant is observing the lease terms, as this provides a secure income as a return on investment. Therefore, security of tenure is not something that many landlords object to where there is confidence in the tenant and their ability to pay rent. However, many tenants can be wary of being committed to a longer term. A contracting-in model will allow flexibility for the parties to consider all circumstances.

For example, a “new” tenant might see the landlord agree to an unprotected tenancy for an initial term. Once the landlord has gained knowledge of the tenant and wishes them to remain in the premises, the landlord may then be willing to grant a protected tenancy, which could be negotiated and implemented for a subsequent lease renewal. Conversely, a contracting-in model may see an increase in the granting of protected tenancies, particularly where it is considered to be a “tenant’s market”.

Additionally, a contracting-in model would provide those tenants and landlords who frequently enter such protected agreements the option to continue to do so. These might be more frequently seen where the tenant is an infrastructure owner or the landlord has a preference to grant protected tenancies (for example, a landlord who is a charitable trust).

The conscious and positive act of the landlord and tenant electing to contract-in ensures fairness to both parties.

We see the main advantages of this option are that:

• it is more suitable for the majority of “new” commercial leases granted, which are typically contracted-out and so would avoid the additional cost and delay of this process

• it avoids protected tenancies being created inadvertently

• it retains flexibility for parties to agree to a well-known and understood statutory security of tenure.

Although it would necessarily form the subject of a second consultation, we see that it would be possible to draft legislation such that the contracting-in model would not alter the status of protected tenancies that exist prior to the implementation of the change. We do not want existing arrangements to be retrospectively altered with the uncertainty that would bring to affected individual and property transactions more widely.

Additionally, a second consultation could address ways in which a prospective tenant could be alerted to options available to them in respect of security of tenure. This might, for example, see improved guidance, perhaps with it being mandatory for landlords to send prospective tenants such published guidance. This position is seen elsewhere, for example, with residential landlords in England being required to provide tenants with the How to Rent [https://www.gov.uk/government/publications/how-to-rent/how-to-rent-the-checklist-for-renting-in-england] guide.

Comments on Option 1 – Mandatory Extended Security of Tenure

We agree with many of the observations made in the consultation about the potential impact of mandatory security of tenure on the market. Such a model could lead to restricting the availability of commercial leasehold property as landlords would be disincentivised to let. This might disproportionately affect small to medium sized business tenants, who might not be considered to be a secure long-term covenant for those landlords seeking such lease terms. As the consultation paper sets out, the original model of the 1954 Act having mandatory security of tenure caused such issues and we do not feel the fundamental motivations of landlords are much different in today's market.

It does seem pertinent to note that the commercial lettings market in Scotland is understood to operate very satisfactorily with no such provision, never having had one. The Scottish experience in very similar markets and circumstances gives a good comparator for the discussion in this consultation.

While the consultation paper points to the perceived weakness of the negotiation position of a tenant seeking a renewal of a tenancy where no security of tenure exists, this overlooks the frequently incurred motivations and fears of landlords.

Landlords, in most circumstances, will want to achieve a return on their investment. If the existing tenant has been reliable in paying rent and observing other lease terms, landlords are typically keen to retain such a tenant. The risk to the landlord in seeking terms which are above market norms is that they could lose the tenant, who may have choice of other premises; this is particularly true for retail units (especially for high street shops), as well as secondary and tertiary office space. The risk of the landlord seeing the premises empty, and so no longer receiving a rental income but needing to meet additional costs, such as business rates, as well as possible additional investment to attract a new tenant, will frequently bring balance to negotiations.

As the consultation has considered, introducing mandatory security of tenure would also need careful consideration on whether it would apply to leases already in existence at point of implementation. We agree with the concerns raised in the consultation paper regarding a potential breach of Human Rights and, more fundamentally, how this interferes with the freedom for parties to contract as they see fit.

Comments on Option 2 – No Extended Security of Tenure (Abolition)

We agree with the consultation paper that contractual options to achieve a form of extended security of tenure are likely to be more complex, requiring careful drafting and with a greater potential for disputes and litigation to arise at a later date (most likely at the point of lease renewal).

As the consultation paper correctly indicates, the impact of abolition on leases already in existence on implementation of such a model would be disruptive.

Although the consultation paper necessarily needs to focus on “business” tenants, protected tenancies are also granted to other types of tenants, including charities and infrastructure providers (e.g. railway assets, electricity substations etc). We agree that the majority of commercial leases tend to contract-out by default, however, protected tenancies are still relevant and actively selected for a number of reasons.

Comments on Option 4 – Contracting-Out Model

For the reasons outlined in the consultation paper, we agree that the current contracting-out model causes unnecessary administrative burden for the modern commercial property sector, as well as a risk of protected tenancies being created or entered into inadvertently.

In practice, the current prescribed notices can prove very confusing for lay parties, complicating the process and undermining assurance despite their objective.

CQ3 – 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 parties and their advisers

As a professional association, our role is to brief and advise our members on changes in legislation, both before the implementation so to alert members in advance of any changes and then on enactment and afterwards.

Any change will take parties and their professional advisers time to adapt. The more radical the change, the greater the impact is likely to be, with a variability or likelihood of unintended consequences. Therefore, should either Option 1 (mandatory security of tenure) or Option 2 (no statutory security of tenure) ultimately be implemented, it is likely that these would see the most dramatic changes to parties’ behaviour and the advice given.

Options 3 (a contracting-in model) and Option 4 (a contracting-out model, with some modifications) are unlikely to cause significant disruption to the commercial leasehold market itself. Landlords would continue to offer premises to let as they do now and tenants would pursue premises and seek to negotiate terms that they feel are appropriate or desirable.

With any legislative reform, the more successful implementation is seen where there is a delay between enactment and implementation of the provisions. This allows time for the parties and their professional advisers to become familiar with new legislation wording, including the detail of any transitional provisions, prior to the changes taking effect.

In any event, we urge that any changed position apply only to agreements made after the implementation date and do not disturb the rights, obligations and expectations under existing agreements.

Although the consultation paper comments that a reform of the 1954 Act could create a complex legal framework, with some tenancies governed by a new model and some governed by the existing 1954 Act model, we do not see this as a significant issue. Such multiple regimes govern other aspects of landlord and tenant law (for example, tenancies

governed by the Agricultural Holdings Act 1986 offering security of tenure to qualifying successors versus that of the farm business tenancies governed by the Agricultural Tenancies Act 1995). We therefore do not see such legal complexity as a significant obstacle or a constraint that should, in of itself, restrict prospective reform for the future.

(2) on the commercial leasehold market

See above.

CQ4A – 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.

We do not feel there is sufficient justification or evidence to warrant changing the scope of the 1954 Act, either in terms of:

• The list of Excluded Tenancies, or

• The Duration Excluded Tenancies.

As the consultation paper correctly indicates, any such change would risk introducing complexity into what is generally a well-known and understood regime.

The consultation paper cites the example of infrastructure assets, such as energy generation tenants (e.g. wind farms). It is important to note that many (but not all) infrastructure providers have access to statutory powers to acquire rights over land if agreement cannot be reached. Indeed, in England, the Government is to recognise onshore wind and solar with a generating capacity of 100MW or more as being in scope of the Planning Act 2008 and, so, with potential access to compulsory purchase powers. Therefore, where qualifying projects or a statutory authority has access to such statutory powers, this can assist in the negotiation and frequently results in such schemes being able to negotiate terms that provide the required level of security of tenure.

Amending the Duration could modify behaviour in the market, seeing terms offered to avoid security of tenure. For example, if the scope of the 1954 Act was amended such that a term of 2 years or less would not be within scope, there would be an increase in landlords offering leases for a term of 2 years. This behaviour has been seen elsewhere, for example, historically with the Agricultural Holdings Act 1986, where landlords granted tenancies of more than one year but less than 2 years to avoid being in scope of the security of tenure provisions that applied (so-called 'Gladstone-Bower' agreements following the Court of Appeal decision of Gladstone v Bower [1960]). Although the agricultural market is complex and different to that of the commercial leasehold market (with annual crop cycles and other factors), we broadly see the potential for some landlords to alter their behaviour to coincide with a change to the Duration.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

Our answer would differ depending upon the model of security of tenure recommended.

Our answers for Option 3 (contracting-in model) and Option 4 (contracting-out model) would be as above.

Option 1 (mandatory security of tenure) would require careful consideration. Our might well change to reflect the potential impact of such a regime.

Option 2 (abolition of security of tenure) would largely be irrelevant, except for existing tenancies, for which we would consider some continuation of the 1954 Act regime would be necessary, even if this were to be time limited.

CQ5 – 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.

We agree that the consultation paper summarises the potential impact of a change of scope well, except for the unintended consequences of changing the Duration from 6 months. As outlined in our response to Question 4 above, that could change the behaviour of landlords and see a two-tier market develop.

CQ6 – 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

In short, we believe the consultation paper largely summarises the potential impact of reform, noting our comments in Question 4 above regarding a change to the Duration.

(2) on the commercial leasehold market

See above.

CQ7 – 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).

We have not identified any specific equality impacts.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

The Central Association of Agricultural Valuers

The Central Association of Agricultural Valuers (CAAV) represents, briefs and qualifies some 3,000 professionals who advise and act on the very varied matters affecting rural and agricultural businesses and property throughout the United Kingdom. Members are

instructed by a wide range of clients, including farmers, owners, lenders, public authorities, conservation bodies, utility providers, government agencies and others; their work requires an understanding of practical issues.

The CAAV does not exist to lobby on behalf of any particular interest. Its members are called on to act or advise both Government and private interests. It therefore aims to ensure that policies are developed and designed in as practical a way as possible, taking account of circumstances.

The progressive diversification of the rural economy means that we see ever more work with business tenancies governed by the 1954 Act and other legislation, many being important for small businesses for which the present contracting out procedure is, unfortunately, an opaque minefield while the outcome is important to their landlords. That market is now joined by longer and more substantial leases as for renewable electricity generation facilities, such as solar farms and wind turbines.

NFU

Role: a representative organisation

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

N/A

CQ2 – 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.

Model choice: No statutory security of tenure (abolition);

Reasons

The NFU prefers option (2) – no statutory security of tenure (abolition). Contracting out is used widely across the commercial leasehold market and by our NFU members. It is a complex procedure, especially for smaller landlords and tenants. It can be costly to both parties since it can attract the need for professional engagement and has the scope to inadvertently create unintended protections if administered incorrectly.

Broadly speaking, in today's market, protected leases usually only arise where a landlord is happy for renewal and so contracting out is consciously not undertaken or where, due to ignorance or an error in the contracting out process, or an originally unprotected lease becomes unintentionally protected.

Removal of the need to contract out will allow parties complete freedom of contract in this respect and an option to renew a tenancy on agreed terms can be included into the lease agreement itself should the parties wish.

Where a landlord is happy for the protection to exist, a renewal clause can be inserted into the agreement as stated above. Where protection is not intended, there will be none created due to mistakes, etc, so neither party is worse off using this option.

In addition, business tenancies are wide and varied, ranging from extremely small, inexpensive properties to those of a much larger extent as well as with a multitude of uses. Different tenants, businesses and landlords have different requirements and the current one size fits all approach is unsuitable for such diversity. Abolition of a statutory security of tenure would allow parties to make their own choices suitable to their individual circumstances.

The NFU's next preferred option is (3) – contracting in. Similarly to option (2), this option is aimed at affording protection where parties wish for this to occur and removes any

unintentional default position which is restrictive and binding. Should a mistake be made in the contracting in process then this could be rectified on discovery since it was the common intention of the parties.

Should this option (3) be taken forward, however, the process for contracting in should be made as simple and comprehensive as possible unlike the current contracting out process. For example, there should be no requirement for notices to be served in advance of the start of the lease and the notice could be in the form of a statement contained at the beginning of the lease itself.

Our third preferred option is (4) – contracting in. If,this were to be retained, it would need to be done so on a much more simplified basis in order to keep prohibitive professional costs down and avoid the typical errors which currently occur which cause the contracting out to fail.

There are costs involved for both parties in contracting out and for smaller landlords and tenants they can simply be unaffordable which can lead to self-representation and error. The mindset of people has changed from when contracting out was first introduced in 1970 and people now undertake simple legal tasks such as will writing or drawing up Assured Shorthold Tenancy agreements themselves. A simplified version of contracting out could be used where the notice is more of a statement contained within the tenancy agreement and becomes binding at the time the tenancy is entered into. There should not be a required notice period as the fact the tenancy will not be protected should have been conveyed during negotiations.

The NFU does not consider option (1) – mandatory security of tenure - to be an option at all and would strongly oppose this due to its severely restrictive nature and the impact it could have by constricting the market.

CQ3 – 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 parties and their advisers

Any change to the model of security is likely to have both positive and negative impacts on parties and the commercial leasehold market, especially in any bedding in period whilst the market adjusts to a new regime.

NFU members are usually small-scale landlords who have diversified and repurposed redundant agricultural land and buildings which they let to small individual business tenants.

As in other areas of the market for smaller businesses (and sometimes larger businesses), leases tend to be much shorter than in 1970. Planning regulation is also now much more flexible in terms of use classes and so landlords are generally averse to regimes which remove flexibility from them. Therefore, any changes which either increase costs for parties or restrict future use are likely to cause a landlord to either withdraw from the market and use the property in a different way. There is also the possibility that tenancies might be granted for a succession of even shorter periods to ensure exclusion from any statutory protection.

(2) on the commercial leasehold market

See above.

CQ4A – 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.

The scope of the 1954 Act will partly be dependant on which model of protection is adopted.

Generally speaking, the current Use Excluded Tenancies as defined within this consultation are subject to other legislation which in many cases grants separate protections for security of tenure, and there are reasons for this bespoke approach due to their specific use and previous history. It would not be correct to afford dual protections for these tenancies or in some cases enhance them. If Use Excluded Tenancies were to be brought within the scope of the LTA 1954 Act, then amendments to the legislation under which they specifically operate would need to be made.

The NFU recognises that it could be beneficial for certain tenancies to fall outside the scope of the 1954 Act which currently do not. However, the more exclusions there are, the more complex the legislation would become and the NFU is very much in favour of a more simplified approach overall.

Should this consultation conclude that some form of protection be retained then the scope for Duration Excluded Tenancies should be enhanced e.g. the period under which no protection is given is increased. The NFU suggests that this increase be up to 7 years at which point the lease would be registerable. It is likely that leases which are agreed in excess of 7 years would be those that would incur significant investment and fit out costs and so protection would be desirable to encourage them in taking on the lease. Leases of less than 7 years could still negotiate a renewal process.

An extended duration would give less scope for protection to be granted unintentionally.

An extended duration exclusion would be very necessary in the event that mandatory protection were to be granted to all business tenancies.

Please also refer to comments made in response to question 6 below.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

See above.

CQ5 – 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 NFU agrees that the Law Commission assessment of the potential benefits and disadvantages of reform is correct.

CQ6 – 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

The impact a change to the scope will depend on what that change is and which tenancies are brought in or out of the 1954 Act, and whether the protection under the Act is also changed.

The NFU is unable to comment on some types of Use Excluded Tenancies but would highlight how the market has reacted to changes to security of tenure, and how it has affected parties in the past for agricultural tenancies and electronic communications leases.

Farm Business Tenancies were introduced with little statutory security of tenure but with new freedom of contract for parties as a response to the dwindling amount of agricultural land landlords were prepared to let, due to the high level of protection enjoyed by their predecessor Agricultural Holdings Act tenancies. As a result, the amount of land coming to the market increased significantly as landlords embraced the new flexibility. Should agricultural tenancies suddenly revert to being given certain levels of protection then it is likely to reverse the amount of available land.

Use Excluded Tenancies include those under the Electronic Communications Code. Since this industry departed from the LTA 1954 and was granted enhanced security of tenure, fewer agreements (particularly for mobile mast sites) have been entered into and are frequently resisted by landlords which has had the knock-on effect of a significant increase in litigation.

With Duration Excluded Tenancies, should the duration of use be extended significantly then there is every possibility that tenancies may become longer as landlords will feel more secure that the tenant will not attain security of tenure by default where the expiry of a tenancy is not acted on.

Since the majority of our members are only landlords to smaller tenants in terms of area of the unit and rent levels, it is not within our area of expertise to comment of how the market or landlord might react to excluding tenancies under certain rent or area threshold.

(2) on the commercial leasehold market

See above.

CQ7 – 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).

N/A

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

The NFU represents 44,000 Farmer and Grower businesses across England and Wales.

Whilst the NFU is more concerned with agricultural tenancies, a number of our members have diversified into non-agricultural operations on their farms. These diversifications include conversion of redundant buildings into small units which are then let to tenants from which they run their own individual businesses. Typical uses of such units include for equestrian purposes, workshops and small offices. This means that our farming members are landlords to business tenants.

Country Land and Business Association

Role: a representative organisation The CLA is the membership organisation for owners and managers of land, property and businesses in rural England and Wales. With 26,000 members, the CLA is the go-to organisation for owners and managers of land, property and businesses in England and Wales. Our members own or manage around half of its land, operating more than 250 types of business. We help safeguard the interests of owners of land, and all those with an economic, social, and environmental interest in rural land.

CLA members have a diversity of commercial lettings on their estates and farms. This is increasingly the case as they seek to diversify in order to provide an additional income stream to their fluctuating and eroded agricultural income. In many cases this will involve a re-inventing of existing farm buildings around their farms for a variety of different uses, such as small office units, food related processing, mechanics' workshops, the storage of vehicles and sometimes a farm shop or a café. Storage is also very popular, both domestic and commercial, either in existing buildings or more recently in shipping containers. Some estates and larger farms have created mini trading estates on a bigger complex and may have up to 20 or 30 letting units. In addition, some of our members are tenants of business premises, where they run rural enterprises in the countryside.

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

We are not aware of any specific circumstances in Wales which would justify a different approach being taken there compared to England. To some extent the answer to this will be dependent on the general availability of shops and offices and other commercial premises in Wales. Should there be a greater scarcity of such premises in Wales than England, then there would be greater justification for retaining security of tenure arrangements in their current form.

CQ2 – 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.

Model choice: Not Answered

Reasons

We can see no justification for model 1 which we feel would be seriously detrimental to the commercial property market.

An argument could be made for model 2. The commercial property market is in an entirely different position to how it was in 1954, shortly after WW2 and when there was a serious shortage of all kinds of commercial property and the loss of a tenant's premises might easily

jeopardize their business altogether. Now there is an almost a universal glut of office and shop premises and it is arguably a tenant's market. Were a tenant to lose his or her office premises today, it is feasible (with the likes of office providers such as Regus, etc.) to pick up a new office immediately. Model 2 would also be consistent with calls for greater de-regulation. A comparison can be made here with agricultural tenancies which until 1995 had stringent security of tenure protection for tenants. This was abolished by the Agricultural Tenancies Act 1995 which resulted in a liberalising of agricultural tenancies without significantly adverse effects for tenants. Following this Consultation, if the Law Commission decided that abolition of statutory security of tenure was the appropriate way forward, the CLA wouldn't have undue concerns.

The major benefit of model 3 would be that most inexperienced landlords, mainly those who wish to personally manage their commercial premises, would avoid unwittingly creating protected tenancies which is a problem that the writer sees on a weekly basis. Whilst generally a farmer who needs his building back for the purposes of his own business is usually able to invoke Ground G in order to deny a tenant a new tenancy, there can be significant costs and delays in following the statutory procedure to achieve this. Almost invariably they require the services of a professional to undertake this.

Model 4: If the current system of security is to be preserved, then we would suggest on balance that model 4 is the most sensible way forward. It is universally familiar to professional practitioners and doesn't involve re-inventing the wheel. It would also avoid the risk of unintended consequences. However, the system should be tweaked to try to eliminate certain undesirable characteristics of the existing system.

CQ3 – 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 parties and their advisers

Our members are invariably letting premises in rural areas. Often these are small units. Some will be surplus agricultural buildings which are only suitable for storage. For instance, a farmer may let out a grain store at a time of the year when he doesn't need to use it for grain. Sometimes prospective tenants want to store classic or other cars in a disused barn. Builders may wish to store building materials. The rents are frequently low, but any additional income is attractive to farmers making only a modest income out of agriculture. The system needs to enable such lettings to take place with the minimum of administrative cost to the landlord. It simply doesn't make economic sense to instruct a solicitor to prepare a lease at a cost of perhaps £2,000 when the rental income is only £200 per month. If the landlord is unfamiliar with there being any security of tenure and lets the tenant into possession without an agreement, he or she can then be faced with long delays and considerable expense in recovering the premises at a later date if the tenant is unwilling to vacate. We believe that a case can be made for leases which only involve the storage of goods could be excluded from security of tenure. Additionally, there could be merit in the proposal to exclude leases at a rent below a specified threshold from enjoying security as the costs of instructing a solicitor in order to enter into a contracted-out tenancy or having to go through the s.25 procedure to bring the letting to an end are more keenly felt when the rent is only modest.

(2) on the commercial leasehold market

CQ4A – 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.

1 We cannot think of any persuasive reason for the scope of excluded tenancies to be narrowed.

2 We can see merit in extending this from 6 months to three years. This would enable land agents and chartered surveyors to prepare more business leases without the need to instruct solicitors in such cases. We regularly hear from members who say that if they instruct a solicitor to prepare the lease the whole of the first year's rent will be consumed in legal fees and therefore it isn't economically viable to enter into the letting, even where they wish to help out a prospective tenant. In such low-rent scenarios the letting frequently doesn't proceed or the landlord will require the tenant to pay his costs. (The general experience is that the tenant doesn't instruct a solicitor and so all the costs are placed on the landlord.)

3 We believe a case could be made for lettings of storage only where the tenant isn't physically going to be present on the premises to be excluded. Agreements of this nature are often informally entered into without the landlord (and for that matter the tenant) being aware of the concept of security of tenure. The complications, expense and delay in regaining possession if the tenant refuses to leave when the landlord needs the premises back can be considerable. Invariably professional advice is required to go through the s.25 procedure, and this isn't commensurate with the kind of letting involved. This doesn't seem to be proportional when the premises let may only be the size of a shipping container or domestic garage.

We also believe there is merit in amending the system so that once a lease has been entered into on a contracted-out basis that lease should remain contracted-out, however long the tenant remains in possession. If both the landlord and the tenant are content with the letting arrangements, where is the merit in requiring the landlord to have to renew the lease simply because the lease has expired, and a new fixed-term tenancy is required in order to preserve the lease being contracted-out? It should be possible for the original lease to continue on as a periodic tenancy but still on a contracted-out basis. A significant financial saving could be made here to the benefit of both landlords and tenants. We also find that many landlords are not even aware of the requirement to renew a contracted-out lease once it has expired in order to preserve its contracted-out status. Occasionally this can have serious ramifications if they wish to sell their farm (or the let property) and discover they are unable to give the purchaser vacant possession.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

We feel the discussion comprehensively covers the multi-faceted nature of the subject. We appreciate the difficulties in trying to assess what the consequences of any changes to the current system might be when the scope of business leases is so varied. This would tend to favour tweaks to the current system rather than comprehensive overhaul.

CQ6 – 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

This is more a question for practitioners in the field to attempt to answer.

(2) on the commercial leasehold market

CQ7 – 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).

We cannot think of any.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Property Managers Association

Role: a representative organisation

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s): Arts, entertainment, leisure and recreation, Charity, Financial, professional, scientific and technical services, Hospitality, Manufacturing, Real estate, Retail and wholesale, Transport and storage

CQ1 – 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.

We do not think that there is any need for anything different for Wales, and the experiences do not differ from those in England.

CQ2 – 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.

Model choice: Not Answered

Reasons

We (the committee), and our members, strongly support the retention of the existing contracting-out model. This model is functional, practical, and well understood. It provides necessary flexibility while maintaining a fair balance between landlords and tenants. Any shift to a mandatory security of tenure, contracting-in model, or the removal of statutory security of tenure altogether would have significant economic, environmental, and operational consequences.

Economic Impact

Retail is the UK's largest private sector employer, contributing over £100bn annually to GDP and employing three million people. Retail businesses already pay 55% of their profits in business taxes and operate on tight margins of 3% to 5%, leaving little room to absorb additional costs.

Any fundamental change to the 1954 Act—whether moving to a contracting-in model, altering its purpose, or abolishing it would introduce uncertainty and long-term cost burdens. This would inevitably reduce investment and recruitment within the sector, ultimately impacting employment, business growth, and tax contributions that support local communities.

Retailers are already under immense financial pressure from rising energy costs, uncertain business rates reform, increased national insurance contributions, wage increases, and construction cost surges. While headline sales values may appear to be rising, sales volumes are declining. Adding unnecessary legislative changes to this list would likely place further strain on an already overburdened industry, threatening the viability of many businesses.

Environmental Considerations

The retail sector has also been significantly impacted by increasing capital expenditure costs, making relocating unviable for many businesses if they are forced to close. Any change to the contracting-out system, whether moving to a contracting-in model or abolishing it would exacerbate this issue and create unintended environmental consequences.

Frequent business relocations due to loss of tenure would result in increased demolition, fit-outs, and refurbishments, leading to higher carbon emissions. The UK Green Building Council has highlighted that construction, demolition, and excavation account for 60% of material use and waste generation. With the built environment contributing around 40% of annual CO2 emissions, the environmental impact of altering the 1954 Act must not be overlooked.

Additionally, a lack of security in tenure would discourage tenants from undertaking environmental improvements, as they would be less likely to see a return on their investment if their occupancy was uncertain. This could hinder the achievement of net-zero targets within the retail sector.

Retail Investment

Retail investment is intrinsically linked to security of tenure as retailers make substantial long-term financial commitments to their physical stores, including shopfitting, branding, and technology which require stability to justify expenditure. Any move away from the current contracting-out model would create uncertainty, making it significantly harder for retailers to plan and invest confidently in their premises both on a new letting and during the term of the lease. The abolition of statutory security of tenure or a contracting-in model would shift the balance in favour of landlords, limiting retailers' ability to negotiate fair terms and discourage capital investment by retailers. Conversely, a mandatory security model could reduce landlords' willingness to lease to retailers and drive up rents, restricting access to prime retail locations. The existing contracting-out framework provides a necessary balance, ensuring retailers have a default level of protection while retaining flexibility for both parties. Any change to this model risks undermining retail investment, creating instability and negatively impacting the broader retail sector.

Lessons from Other Jurisdictions

While some landlords have suggested adopting the Scottish system, we caution against this approach. In practice, the Scottish system has led to landlord monopolies and exploitative practices, which would be detrimental to retailers. Instead, we advocate for consideration of elements from the Irish system, which provides lease protections and mandates that rent reviews be both upwards and downwards, ensuring a fairer outcome for all parties.

Conclusion

The 1954 Act has been in place for decades because it works. It has evolved to meet changing business needs, providing stability for tenants while ensuring flexibility in the commercial property market. We appreciate the effort of the consultation teams in reviewing its effectiveness and trust that the outcome will focus on procedural improvements rather than unnecessary structural changes.

Reforming the 1954 Act risks discouraging investment in UK high streets which are our communities' economic and social backbone—and undermines net-zero commitments. The existing contracting-out model remains the best approach to ensure stability, investment, and sustainability in the retail sector. We look forward to further consultation discussions that address procedural efficiencies in the event of disputes.

CQ3 – 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 parties and their advisers

As set out in question 2, the retail sector is already under huge financial burden for variety of costs increases. Changing the current model of security of tenure would create a large amount of uncertainty and add further unneeded strain to the sector.

We do not believe there is likely any consideration for a mandatory model and therefore have focused the below on contracting in and abolishment as we are aware there are some Landlords who want to move to a model similar in Scotland.

A move away from the current model to abolition or contracting in would greatly weaken the position of tenants. This would inevitably result in less tenants looking to take retail space and harm existing portfolio strategies.

Although the costs of running the act can be expensive, these are minimal when compared to the loss of business from losing stores due to weakened negotiating positions. We believe the current model should therefore remain, but certain parts of it adapted and updated to tackle certain issues with appropriateness of the current renewal process and associated costs.

The current position allows an even negotiation position. Any change to this would likely result in the position of the other party being unfairly strengthened. The current model allows for a more level playing field, it would be unjust to change this. For example, if security of tenure was abolished and a model adopted similar to Scotland's, in prime shopping locations the negotiation position of landlords would improve greatly as retailers would have to pay and agree terms the landlord may demand or face having to leave no matter what.

(2) on the commercial leasehold market

We believe the number of vacancies in high streets would certainly increase. This is because as mentioned above if the position of tenants would be weakened from a contracting in model or abolishment, then less retailers would be looking to take and possibly remain in certain stores. We have already seen how changes such as those in the recent Budget have has a negative impact on retailers, with a number openly admitting due to increase in NI that some stores will no longer be viable. A number of retailers have also stated that the possible changes in Business Rates will have a similar impact and have requested that the Government to review these increases, otherwise there will be an increase store closures and therefore unemployment will also rise.

If retailers were unable to gain security of tenure, this may result in more retailers buying freeholds. If this occurs, it will adversely impact the commercial leasehold market and stagnate retail.

CQ4A – 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.

It is critical for the retail sector that there are no changes to the definition of Use Excluded Tenancies which could result in any properties occupied or used by retailers falling outside the scope of the 1954 Act. If this was the case the effect would be the same as the impact of removing statutory security with the consequences outlined previously.

There are no reasons to change the current criteria. Any extension in the length of leases covered by this provision would have the effect of removing statutory security with the consequences outlined previously.

There are no other types of business tenancy that should be excluded from the 1954 Act as far as we are concerned. The critical point for the retail sector and the broader economy, is that the properties occupied and used by retailers, regardless of the size and nature of the property, fall within the 1954 Act and have statutory protection.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

Our answer would not differ.

CQ5 – 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 reforming the scope of the 1954 Act has been dealt with in the previous questions and I would refer you to those answers. Although some of the consequences of reforming the scope of the Act are foreseeable there will inevitably be unintended consequences. There is a considerable concern that the choice of example to illustrate the potential disadvantages of reform relates to excluding larger, town centre premises which would have a significant detrimental impact on retailers. The use of arbitrary criteria to determine what is excluded creates considerable scope for argument, and there are a range of disadvantages, all of which are outlined in the consultation paper and given an indication of the harms that would result.

CQ6 – 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

We believe that any narrowing of the 1954 Act's scope risks undermining the balance that currently supports both tenant security and market stability.

Reducing the Act's scope could inadvertently exclude a significant number of retail tenancies, thereby weakening tenants' negotiating position and exposing them to abrupt lease terminations.

A change to the current scope would likely result in increased complexity and costs. A more fragmented statutory framework would force parties to rely on bespoke contractual negotiations, raising legal and advisory costs at a time when the retail sector is already under financial pressure.

(2) on the commercial leasehold market

Narrowing the scope risks creating a two-tier market where some properties lose statutory protection, leading to increased uncertainty and potential vacancies on high streets.

The uncertainty could discourage long-term investment by retailers, possibly prompting a shift towards freehold acquisitions, which would further disrupt the leasehold market dynamics.

In conclusion, maintaining the current scope of the 1954 Act is essential to preserve the stability and balance necessary for both tenants and the wider commercial leasehold market. Any changes risk unintended economic and operational consequences that could further destabilise an already challenged retail sector.

CQ7 – 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).

The PMA is a diverse organisation, that embraces all characteristics. We believe that the presence of the Act enforces fairness and minimises the potential for, and harm from, discrimination. Whether biases are intended or not, they still exist within society and by association within the property industry. Without the protections of the 1954 Act, the application of those biases (conscious and unconscious) towards individuals within the context of negotiations would be far more prevalent.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

The PMA is an industry body representing the interests of over 300 retail, hospitality and leisure property occupiers with thousands of leases across the country. We have been approached by members who have informed us that, due to the uncertainty around anonymity and confidentiality of comments made as part of this consultation, they as both individuals and as businesses are uncomfortable to provide a response despite having strong views on the matter. We hope to have represented them within our consultation response and that additional weight will be applied on this basis. Do not assume that a lack of response from individual tenants is due to a lack of interest or investment in the matter, but due to a structural issue in the set up of this consultation. We hope that further consideration will be given to how responses are gathered in the next stage.

Property Litigation Association

Role: a representative organisation

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

The majority of our members who responded to our internal survey did not have any particular experience in Wales. Of the 3 who did respond on this question all stated that they did not consider that there were any particular considerations or differences because a property was located in Wales.

CQ2 – 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.

Model choice: Not Answered

Reasons

Of the members who responded to this question: 60% favoured the current contracting out model; 32% favoured a contracting in model, with 2 respondents preferring an abolition of security of tenure and 1 respondent favouring mandatory security of tenure.

Of those favouring a new "contracting in" process, the main reason, put forward by half of the respondents who favoured this approach, was to avoid unexpected security of tenure arising following the expiration of expired tenancies. The other reasons given were:

1 One respondent thought that "contracting in" would achieve clarity at the outset.

2 One respondent thought that "contracting in" would avoid the potential for unexpected security of tenure to arise because of a mistake in the contracting out process.

3 One respondent thought that a "contracting" in process could be simpler than the current contracting out process.

4 One respondent thought that the justification for security of tenure no longer exists, particularly given the preference for short term tenancies, but that outright abolition would extend too far.

5 Three respondents thought that a "contracting in" process would give landlords a greater bargaining position in negotiations or makes it a more balanced negotiation, as, increasingly, tenants had the stronger bargaining position in lease negotiations.

Of those who favoured a contracting out process, the general consensus, put forward in one form or another by the majority of respondents is that the current model is broadly fit for purpose and the best solution, albeit some changes would improve the process. Most respondents favouring the current "contracting out" process did so despite recognising that a large number of leases are now contracted out. In broad terms, they considered that the current approach offers stability and security, flexibility to opt out and an established legal framework and precedent. They thought that the issues with the process could be addressed in minor amendments rather than wholesale change. The majority noted that the contracting out model is generally the fairest – balancing the bargaining positions of landlord and tenants, whilst protecting unsophisticated tenants.

In addition, the following points were made:

6 Two respondents thought that the certainty and familiarity of the current model was preferable to the uncertainty that a change in the model would bring. There was a concern that a new model would be disruptive and likely to cause a shift in the balance between landlords and tenants.

7 One respondent thought that the current approach was preferable but only if the length of duration for excluded tenancies was increased from 6 months to 3 years. This respondent thought that tenancies of under 3 years should have an option to contract in to security of tenure.

8 One respondent noted that the inability to contract out of the Electronic Communications Code has resulted in a large drop in consensual agreements and a very polarised industry. They noted that parallels could be drawn to the 1954 Act.

9 One respondent pointed to the fact a change would mean that there would be two systems in place which would take time to phase out. It could also lead to potential issues with how leases entered into under the old system would be dealt with.

10 Several respondents pointed out that mandatory or abolition of security of tenure would be extreme.

11 Several respondents pointed out that the "contracting out" system protects unsophisticated tenants who may be unable to afford legal representation whilst allowing more sophisticated tenants to contract out.

12 Several respondents noted that they did not think that reform of the 1954 Act was a pressing concern.

The member who proposed mandatory security of tenure noted that contracting out undermines the whole purpose of the 1954 Act, which they noted was to protect small businesses. They noted that landlords have greater market power and that the general direction of travel in residential tenancies is for greater tenant protection. They criticised a general lack of regulation in England and Wales.

The only respondent who provided an explanation in support of abolishing security of tenure did so on the basis that the majority of commercial leases are now contracted out of the 1954 Act and that in the majority of cases new terms can be agreed for a new lease on expiry.

CQ3 – 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 parties and their advisers

Our members' views on this point was, unsurprisingly, divided depending on their responses to Question 2.

Of those who favoured remaining with the current "contracting out" process, nearly all noted that a new procedure would result in increased costs and uncertainty. In particular:

1. One respondent noted that increasing the duration threshold to 3 years would speed up the process for short term leases and benefit landlords. They also thought that it may result in an increase in the length of lease terms as tenants would like longer leases to get security of tenure. They noted that shorter leases outside the Act may result in more periodic tenancies arising after expiry but thought that the Act could be amended to apply only to written tenancies.

2. One noted that the possibility of having two systems in place would create a two-tier property market.

The respondent in favour of mandatory security of tenure thought that abolition would result in increased costs for tenants and their advisors.

The respondent in favour of abolition thought that this would simplify matters considerably, resulting in lower costs.

Of those who favoured a switch to a "contracting in" approach, the majority noted the potential for there to be an increase in the costs and potential for disputes in the early stages. However, a number commented that they felt that in the long run a contracting in approach would result in a simpler and cheaper process than the current contracting out process.

(2) on the commercial leasehold market

Overall, the majority of our respondents thought that there would be increased uncertainty caused by any change in the security of tenure model. However, there was not any real consensus on what that effect would be.

The following points were made:

• If the 1954 Act was abolished and no security of tenure was offered, tenants would be less likely to invest in leasehold properties due to concerns about their tenancies not being extended.

• If protection offered under the 1954 Act was increased and security of tenure was made compulsory, this may drive landlords to leave the commercial property market due to concerns that they would not be able to reclaim possession of their properties. This would lead to fewer properties being available on the rental market and the increased competition for properties would result in tenants have less negotiating power and increased rents due to lower supply and higher demand.

• Increasing the threshold for excluded tenancies would likely speed up deals for shorter term leases falling outside the Act, and would benefit landlords, who will no longer have to deal repeatedly with renewals during the term of a shorter-term lease. Raising the threshold for excluded tenancies may result in increased lease lengths. However, if the market adapts in this way, this will reflect the reality of market demand. A shift to longer lease terms could open the door to upwards/downwards rent reviews, which undermines the benefit to landlords from longer lease terms. There is also an ongoing tension between the 1954 Act and turnover rents, and rent-free periods which will need to be addressed where longer term leases are the norm

• Landlords, tenants, and investors may need time to understand the new rules, potentially leading to hesitation in making leasing decisions.

• Long-term real estate and business planning strategies could be affected as parties reassess their positions under the new rules, impacting investment decisions and potentially altering the dynamics of the commercial property landscape.

• There would be an adjustment period as both parties and their advisors adapt to the new system, potentially slowing down market activities and decision-making.

• Mandatory security of tenure would be very negative for the "investor-friendliness" of the commercial RE market and could drive landlords out of the rental market.

• One thought that abolition would create more flexibility in the market and reduce the cost of taking leases, which should help to increase reactiveness in the market.

• One respondent commented that abolition of statutory protection will increase rents.

A small minority thought that it would not have a significant impact.

CQ4A – 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.

(1) Yes (the extent of use excluded tenancies is appropriate) - 72%

No – 16%

Unanswered – 12%

The majority agreed the existing extent is appropriate, although a common theme in those responses was the request for more clarity around competing regimes, such as telecoms and farm business tenancies.

Those who consider that the extent is not appropriate question the purpose of providing security of tenure in the first place. If it is to protect goodwill, they suggest there would be merit to distinguish between client-facing businesses (including retail, hospitality and professional services) and others. A counter-argument is that businesses who do not typically rely on goodwill connected to a location, such as logistics and offices, still suffer loss and disruption if they have to move on lease expiry. It is generally agreed that over-categorisations of use is likely to be problematic and lead to unintended consequences/satellite litigation, particularly where there are multiple uses or the use changes during the term of the lease. Specific uses which were suggested for exclusion were wind turbines, serviced offices, and utilities, including substations.

(2)Yes (the extent of duration excluded tenancies is appropriate) – 33%

No – 59%

Unanswered – 8%

The majority disagreed that the existing exclusions are appropriate. Whilst many of those did in fact agree that an exclusion based on duration was appropriate, they think the current length of 6 months is too short. The consensus is that tenancies between 2-3 years should be excluded, with some suggesting an opt-in regime for these shorter tenancies.

(3)Yes (There are other types of tenancies that should be excluded) – 64%

No – 24%

Unanswered – 12%

The majority agreed that other types of tenancies should be excluded, namely those where security has been obtained inadvertently. These situations include periodic tenancies where the tenant stays in occupation after the expiry of a fixed term which has been contracted out of the Act, inadvertent surrenders and regrants and tenancies not originally granted for the purpose of a business tenancy.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

Yes (their answers to question 4 would differ depending on which model is recommended) – 48%

No – 39%

Unanswered – 13%

Many respondents used this question to reiterate their preferred model. Whilst it is recognised that each model has different considerations, there is a shared view that the model for mandatory security of tenure would need more uses/duration exclusions than an opt-in/out model.

CQ5 – 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.

• Not all of our members surveyed had read the assessment of the potential benefits and disadvantages, or perhaps had not known where to look for it.

• Almost all of our members surveyed who had read the assessment, simply agreed that it was correct or broadly correct (and we note that the assessment does seek to set out a balanced position on behalf of stakeholders).

CQ6 – 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

• A number of our members raised concerns about any change in scope giving rise to uncertainty, which in turn could lead to litigation, and increased costs to tenants. Equally, some suggested that once understood by advisors any changes (particularly simple ones) would be beneficial and lead to decreased costs. Accordingly, the view on whether changing the scope of the Act will impact on the costs incurred by those interacting with it, depends on which changes are implemented and whether they are straightforward.

• Some of our members suggested that the best and simplest way to change the scope of the Act would be to raise the duration threshold (e.g. up to three or even twelve years) potentially next to an opt in option, as this would encourage the use of empty spaces and avoid parties having to interact with the Act multiple times in relation to short leases.

• Members considered that other ways of changing the scope of the 54 Act, such as formulating a test to exclude business tenancies with certain characteristics, is likely to be difficult and likely to lead to disputes which would undermine the benefit of excluding those tenancies from the Act.

(2) on the commercial leasehold market

(2) On the commercial leasehold market

• The responses were mixed, but this was clearly because the answer to this question depends on which model is adopted.

• The one very clear theme was that uncertainty is unwelcome in the market; whichever model is adopted needs to be simple to understand and aimed at increasing certainty.

CQ7 – 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).

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Does the absence of security of tenure disadvantage tenants (To be answered by those with experience where there is no security of tenure)

Yes - 38%, No - 10%, N/A 51% - presumably because no experience of other jurisdictions

Those who agreed noted that no security tended to result in:

• shorter tenancies with the risk of greater business disruption. Hong Kong provided an example,

• reluctance to invest with risk of loss of investment & goodwill,

• landlords taking advantage of their stronger bargaining position in terms of higher rents and more onerous other terms,

• tenants being unprepared for the end of the tenancy

These who disagreed noted:

• tenant choice e.g. short-term or transitional arrangement provided the tenant is aware at the start of the tenancy

• process was more streamlined and simpler

Law Society of England and Wales

Role: a representative organisation

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

4. We have no Wales-specific concerns or considerations to highlight.

CQ2 – 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.

Model choice: Not Answered

Reasons

5. It is the Law Society's position that before a preferred model is finally determined, the Law Commission ought to carry out robust research into each model, including impact assessment, to effectively estimate the impact on the parties to tenancies and their advisors, on the commercial leasehold market, as well as on High Street businesses and local economies.

6. While it may be that the larger firms of solicitors mainly handle leases that are contracted-out from security of tenure, that is not the invariable position. We believe that there are still many cases, especially those handled by small or medium sized firms, where leases are granted with security of tenure under the 1954 Act.

7. We offer our views on each of the models proposed below.

8. As a general point, we also believe that any reforms should take effect prospectively, with well-considered transitional measures to ensure a smooth implementation.

9. Furthermore, there are certain difficulties with the current legislation that should be rectified whichever model is adopted. There are three issues we would like to highlight.

10. First, there should be a mechanism enabling landlords and tenants to switch the status of leases, after they have been granted, between carrying and not carrying security of tenure, without the need for a surrender or re-grant of the lease.

11. Secondly, contracting out should be possible for periodic tenancies. Limiting it to leases for a fixed term seems an unnecessary restriction on the parties, and has led to some unfortunate court cases, such as London Borough of Newham v Thomas-Van Staden [2008] EWCA Civ 1414 (29 July 2008). We appreciate that amending the Act might require some

consequential amendments, such as to the provisions governing the terms of the new tenancy.

12. Thirdly, while the majority of solicitors' firms who have passed their views to the Society prefer retaining the contracting-out model, as we mention below, there is support for refining certain procedural elements to improve its efficiency. For example, many solicitors believe that the statutory declaration process is unnecessarily burdensome and could be streamlined to reduce administrative complexity without compromising tenant awareness or protection.

(1) Mandatory security of tenure

We do not support this model as it would be unacceptable to most landlords due to the loss of control over their leased properties. Landlords would no longer have the assurance that tenants would vacate at the end of the contractual term, instead having to navigate a statutory process to regain possession— one that could be unsuccessful or require compensation payments. This lack of certainty is particularly concerning when the property is needed for redevelopment or any other intended use by the landlord. Landlords should have the ability to grant statutory security of tenure where appropriate, rather than having it imposed upon them.

From the tenant’s perspective, mandatory security of tenure may not always be beneficial. While security of tenure aims to protect tenants, a rigid statutory framework could reduce flexibility and choice. Landlords, wary of difficulties in regaining possession, may be less willing to offer leases, particularly on shorter or more flexible terms, potentially limiting available commercial space or driving up rents. Additionally, tenants who need the freedom to relocate or restructure may find a mandatory framework restrictive.

There is also concern that landlords could use automatic security of tenure as leverage to impose higher initial and renewal rents, which could ultimately disadvantage tenants rather than protect them.

Maintaining the existing opt-out mechanism ensures that security of tenure is available when needed but does not impose it indiscriminately.

(2) No statutory security of tenure (abolition)

We do not support this model. Security of tenure may be appropriate in certain transactions, and it should be available to the parties through statute.

There are situations where a tenant’s investment in the premises justifies stronger occupation rights or where market conditions give tenants the bargaining power to secure statutory protection. Although in such cases the parties could negotiate contractual renewal rights, potentially offering greater flexibility than the statutory framework, it would require a bespoke approach for each lease, increasing the legal and other professional costs for both parties and carrying a greater risk of inconsistency and errors than incorporating the established statutory regime. While there is room for improving the statutory process, it has the benefit of having been considered by the courts in a vast number of reported cases and provides a fair level of certainty and predictability, offering important protections for both landlords and tenants.

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

The Law Society attended a joint discussion with the City of London Law Society on the proposed reform of the 1954 Act and is aware of its views. We concur with its points around business efficacy and agree that any reform should streamline processes, eliminate uncertainties and reduce administrative burdens.

However, while the City of London Law Society's response draws mainly on views from large City firms, we have received feedback from some small and medium sized firms. The majority, though not all, of small or medium sized firms who gave us feedback prefer contracting-out, for the reasons given below.

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

There is strong support for retaining the current contracting-out model, particularly among our small and medium sized members who operate in the commercial property space. Their feedback indicates that the contracting out model is widely regarded as an effective balance between flexibility and protection for both landlords and tenants.

The existing system allows parties to negotiate terms that suit their specific needs while ensuring that tenants, especially those new to leasing, are made aware of the rights they are waiving. The process ensures informed decision-making without imposing unnecessary rigidity on the commercial leasing market. Many practitioners see no compelling reason to alter this approach, viewing it as an efficient and practical system that allows businesses to operate with certainty while preserving landlord's rights to take back their premises on lease expiry in suitable circumstances.

From the point of view of consumer protection, the Society considers that it is important to ensure that prospective tenants, particularly in the SME category, seek advice from their professional advisers regarding the risks to their businesses of not acquiring security of tenure. Contracting-out seems to be an effective means of ensuring that tenants are, at the very least, made aware of this issue.

Another key concern among members is that removing or altering the current model could have unintended economic consequences. Security of tenure plays an important role in fostering business confidence, encouraging tenants to invest in their premises and contribute to local and national economies. If businesses are discouraged from making long-term investments due to uncertainty over lease renewals, the broader economic impact could be significant. That is why we recommend detailed research and impact assessment.

<u>CQ3 – We invite consultees' views, together with evidence wherever possible, as to what impact a change to the model of security of tenure will have:</u>

<u>(1) on parties and their advisers</u>

13. The potential commercial and economic implications of a change in the model of security of tenure are mainly matters for the parties and their funders, surveyors, valuers, managing agents and other property professionals. We imagine that bodies representing occupiers and investors will be able to provide informed views on these matters.

14. The Society believes that the legal profession as advisers to landlords and tenants will be able to adapt to any of the proposed changes with little difficulty and cost unless the current statutory regime is replaced by a different complex regime requiring significant time and expenditure on learning new rules and preparing new documents.

(2) on the commercial leasehold market

CQ4A – 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.

(1) We believe the current scope of Use Excluded Tenancies is appropriate and should not be expanded to include infrastructure leases, such as those for wind farms, as suggested in the Consultation Paper. Defining which infrastructure should be excluded would be challenging, likely due to the technical complexity of such arrangements. In practice, for projects of this scale, landlords and tenants typically negotiate bespoke contractual protections and, in those cases, they can contract out if appropriate. From our experience, statutory security of tenure is not a key commercial consideration in these types of transactions.

(2) We urge caution about widening the scope of the Duration Excluded Tenancies to reach three or five years. The existing exclusion of extremely short lettings can be justified on the basis that such tenants would probably not be expecting any rights of extension or renewal in those situations and their automatic exclusion avoids having to go through the contracting-out procedure. Those justifications would probably apply to any fixed term letting of up to a year. However, applying that to, and taking away the choice currently given to parties entering into, leases for any longer term seems an unnecessary reduction in parties' freedom of choice.

(3) Apart from the modest change we mention in (2) we are not in favour of denying security of tenure to categories of business tenancies that currently can enjoy protection.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

15. We largely agree with the Law Commission's analysis.

CQ6 – 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

16. Our views on this accord with those expressed in response to Questions 3 and 4.

(2) on the commercial leasehold market

16. Our views on this accord with those expressed in response to Questions 3 and 4.

CQ7 – 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).

17. We do not believe, nor do we have any evidence or data to indicate, that altering the security of tenure model or the scope of the 1954 Act would create any advantages or disadvantages for specific groups or individuals based on the characteristics referenced in the Question.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

1.The Law Society is the independent professional body for solicitors in England and Wales. We are run by our members, and our role is to be the voice of solicitors, to drive excellence in the profession and to safeguard the rule of law.

2.As the body representing solicitors and with a statutory public interest role, part of the Law Society's overarching purpose is to safeguard the rule of law in the best interests of the public and the client. We are driven by our core objectives to promote access to justice, safeguard the rule of law, promote diversity and inclusion, the international practice of law and to support our members' businesses.

3.We welcome the opportunity to respond to the Law Commission's consultation on models of security of tenure. Our submission underscores the importance of a balanced approach that considers the suitability of a model to support both the solicitors' practice business, as well as protecting both landlords and tenants.

Propertymark

Role: a representative organisation

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

4. Propertymark has consulted with several commercial property agents who operate within Wales, and no considerations or experiences relating to Wales were highlighted in relation to reform of the 1954 Act. However, Propertymark recognises that the position towards the 1954 Act and the devolution settlement to Wales is complex. Property law is not a reserved matter under the Government of Wales Act 2006 [https://www.legislation.gov.uk/ukpga/2006/32/contents]. However, the Welsh Government can only modify any aspects of property law that relate to a reserved matter. There are many aspects interlinked to the 1954 Act that are devolved to Wales including regeneration and planning. Accordingly, although we have not identified any specific issues relating to Welsh devolution, we would recommend that the Law Commission should consult with the Welsh Government and Welsh local authorities on their proposals.

CQ2 – 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.

Model choice: Not Answered

Reasons

2. The Law Commission are conducting a wide-ranging review which will consider in detail how the right to renew business tenancies, set out in Part 2 of the Landlord and Tenant Act 1954 (The 1954 Act), is working and will consider options for reform. The Law Commission are essentially seeking views on whether the law needs to change. They present four different ways in which security of tenure could operate (which we refer to as "models") and ask consultees which model they prefer. The four models include:

• No security of tenure (Abolish the 1954 Act.)

• A 'contracting in' regime.

• A 'contracting out' regime.

• Mandatory security of tenure

Propertymark response -summary

3. The 1954 Act is an important piece of legislation that supports property law. The 1954 Act is integral in providing security of tenure for tenants while balancing the right of landlords to deal with their property. Propertymark is supportive of maintaining security of tenure for tenants while maintaining a level of fairness to property owners. However, this process of 'contracting' requires reform to make the process simpler and in line with modern business practices. Accordingly, Propertymark is supportive of maintaining the 1954 Act with reform to provisions included. While there has not been any reform of the 1954 Act for twenty years, we believe that radical changes are not required and that the 1954 Act only requires minor modifications.

[...]

5. Propertymark's favoured model of security of tenure would be option 3, contracting in to enable a tenancy to only have statutory security of tenure if the parties opt into a statutory scheme and that this would be most appropriate for certain lease periods of seven years or more. We think this for three reasons:

• Firstly, any lease period of seven years or more would be automatically contracted in to the 1954 Act. Tenants who have a lease of seven years or less, should be able to contract in to 1954 Act, should they wish greater security of tenure which we believe would be supportive of smaller businesses and less of a deterrent to small business start-ups.

• Secondly, we believe this option strikes the right balance between supporting small businesses, businesses on a long lease and the needs of landlords.

• Thirdly, this approach allows flexibility towards the diverse needs of businesses as we recognise that this flexible model could be advantageous in removing costs and time to contract out, but simultaneously provides a degree of security of tenure for those that require it. Reserving the contracting out method for longer leases, provides security of tenure for some tenants. However, to fundamentally ensure that this option is viable, significant awareness raising of tenants' rights to contract in would be required.

CQ3 – 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 parties and their advisers

6. We have outlined he potential to 'opt into the Act' rather than 'contracting out' for some lease periods. We think that the current model of contracting out is not fit for purpose for both landlords and tenants. The process of lease renewal can take several months and in some cases years, which is providing a lack of certainty for both parties and significant costs. The current system is severely impacting the performance of the court system, which is already determining complex commercial cases in relation to a diverse range of legal disputes including the ownership, management and use of commercial property. A significant proportion of disputes are unnecessarily centred on security of tenure. Accordingly, reform of the 1954 Act may reduce court disputes and allow the courts to focus on more contentious disputes around property use and management, which are likely to increase with energy efficiency and Minimum Energy Efficiency Requirements (MEES [https://www.gov.uk/guidance/non-domestic-private-rented-property-minimum-energy-efficiency-standard-landlord-guidance].)

7. We have already highlighted that any reform of the 1954 Act would have to be highlighted to all parties in terms of changes to their rights. We recommend this should pave the way for improved legal support between both landlords and tenants to reduce the time in reaching agreements. This could be in the form of improved access to Alternative Dispute Resolution services, which are currently underutilised.

(2) on the commercial leasehold market

CQ4A – 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.

8. Propertymark thinks the extent of the Use Excluded Tenancies is appropriate, workable and subject to negotiation between landlords and tenants. Propertymark has already highlighted a preference for Duration Excluded Tenancies and feel that this would be appropriate and workable for leases of a duration of seven years or more to be given protection from the 1954 Act, subject to negotiation for other leases should the tenant require protection within the act. Propertymark agrees that there should be certain business types that should remain excluded from the scope of the 1954 Act. This should include tenancies at will whereby a lease can be ended at immediate notice by both parties. We recognise that this could be useful where the tenant requires occupation quickly and may not have the time to negotiate terms, due diligence and the terms of a lease. We also believe that businesses on license should be outside the scoup of the 1954 Act. This has the advantage of granting a tenant with a license permission to use the property but negates further rights within the 1954 Act such as right to remain. However, it also gives the landlord the advantage of discontinuing the tenancy when it is not work out practically. This can be advantageous in situations where the tenant is sharing a tenancy with different tenants, or the landlord and their business use is detrimental towards others.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

9. Propertymark thinks that there are problems in commercial property law that are not defined well enough but don't fall with the 1954 Act. The Law Commission should establish whether reform of the 1954 Act could provide clearer legislation in this regard.

10. One area of reform should be on conditions of the property and striking the right balance on management and upkeep of the property through the duration of the lease. Accordingly, there should be greater provisions within the Act for landlords to provide an inventory for tenants to protect them from any unfair disputes on conditions. This would also provide further safeguards and fairness for the tenant as a schedule of conditions only limits the conditions of the property at the end of the lease.

11. Provisions within the 1954 Act should also be modernised to reflect requirements for energy efficiency and decarbonisation through non-domestic MEES. These requirements currently state that non-domestic property must be EPC B by 2030, subject to seven exemptions. However, there is legal ambiguity on who is responsible to meet this standard and whether it is fair on the tenant to meet these standards. The scoup of the 1954 Act should also focus on potential changes to building and fire safety with regards to an assessment on fairness and responsibilities to adhere to new provisions.

CQ6 – 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

12. Propertymark strongly recommends that any reforms to the 1954 Act considers the needs of business lenders. If there are any adverse provisions in the reform of the 1954 Act towards lenders, then there could be consequences towards lending to business and subsequently business startups. Furthermore, any reform of the 1954 Act should also consider the UK Government's planning reforms, which are aimed at encouraging investment in high streets and reducing unnecessary hurdles in planning consent. In particular, local authority intervention in High Street Rental Auctions should be considered within the provisions of reform of the Act.

(2) on the commercial leasehold market

See above.

CQ7 – 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).

13. Propertymark does not foresee any adverse disadvantages to any persons or groups who have protected characteristics in relation to the scope of reform of the 1954 Act.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Propertymark is the UK's leading professional body of property agents, with over 18,000 members representing over 12,800 branches. We are member-led with a Board which is made up of practicing agents and we work closely with our members to set professional standards through regulation, accredited and recognised qualifications, an industry-leading training programme and mandatory Continuing Professional Development [https://www.propertymark.co.uk/].

UKHospitality

Role: a representative organisation

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

CQ2 – 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.

Model choice: Not Answered

Reasons

Executive summary

• UKHospitality supports a continuation of the contracting out model, or a return to mandatory security of tenure.

• If the contracting out model is to continue, the Law Commission should consider how to recalibrate the balance of power, with increased tenant protection.

• UKHospitality does not support increasing the scope of excluded tenancies from the 1954 Act.

• Should the Law Commission recommend a return to mandatory security of tenure, they should consider a mechanism to prevent landlords from bypassing the Act via offering short-term tenancies.

UKHospitality would support the continuation of the current contracting out model, or a return to a model of mandatory security of tenure.

As noted in the consultation document, the Landlord and Tenant Act has provided the basis for a contracting out model since 1969 and has granted commercial tenants with important protections around seeking a lease renewal. For many hospitality businesses, this has, and continues to be, a significant mechanism in allowing them to plan ahead by making longer-term commercial decisions with the certainty that they will be permitted to extend their lease.

However, despite the legal default position being one of security of tenure, there has been an increasing shift in landlords only seeking to negotiate with businesses on the basis that security of tenure will be contracted out. In practice, this means that many hospitality businesses (particularly SMEs with less resource and therefore in aweaker negotiating

position) seeking to obtain security of tenure are prevented from doing so, despite it being the default position.

With this in mind, and whilst we do support a continuation of the contracting out model, we would call on the Law Commission to consider strengthening the default position being one of security of tenure, to help rebalance the negotiating power across the commercial leasehold market.

In addition, we would support a return to a position of mandatory security of tenure, as a means of creating maximum protection for tenants. As noted above, whilst the contracting out model is of benefit to some, there are many businesses seeking to obtain security of tenure who are prevented from doing so. Adopting mandatory security of tenure would alleviate many of these businesses' concerns, allowing them to take longer-term investment decisions, whilst providing financial stability for landlords with greater certainty that the property will be leased out, beyond the current terms of the contract.

Given the ongoing need for reinvestment in high streets and local areas, for environmental and societal reasons, the introduction of mandatory security of tenure would provide significant community benefits, reducing the number of vacant premises and increasing local job opportunities. However, should the Law Commission decide to recommend a return to mandatory security of tenure, it is important that they consider a mechanism to prevent landlords from offering increased short-term contracts (under six months), as a means of bypassing the Landlord and Tenant Act.

CQ3 – 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 parties and their advisers

(2) on the commercial leasehold market

CQ4A – 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.

UKHospitality supports the existing scope of the 1954 Act. We would strongly oppose any attempt to limit the scope of the Act, including exclusions. It is right that the scope remains as broad as possible, to ensure maximum protection for commercial tenants.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

CQ6 – 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

(2) on the commercial leasehold market

CQ7 – 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).

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

About UKHospitality

• UKHospitality is the leading trade body for hospitality, representing more than 740 members and 130,000 venues across the UK. As a sector, hospitality contributes £93 billion to the economy, employs 3.5 million people and generates £54 billion in tax for the Treasury.

• The body speaks on behalf of a wide range of leisure and 'out-of-home' businesses, from FTSE 100 enterprises to medium-size groups and independent single-site operators, as well as 6,000 affiliated operators.

• Engaging with Government, the media and the public, UKHospitality works to develop a robust case on how to unlock the industry's full potential as the biggest engine for growth in the economy and ensure that the industry's needs are effectively represented.

• Hospitality represented 10% of UK employment, 6% of businesses and 5% of GDP in 2019.

Kim Lewison, Lord Justice of Appeal HM Courts and Tribunals Service, Personal capacity

Role: Not Answered Lord Justice of Appeal; editor of Woodfall on Landlord and Tenant; previously a barrister specialising in real property; small landlord (in a personal capacity)

If landlord or tenant:

Number of employees: Not Answered

Regions: South East, London

Sector(s): Hospitality, Retail and wholesale

CQ1 – 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.

Not Answered

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

The contracting out model has worked fairly well for 50 years and is well-embedded in market practice. Any change is likely to have unintended consquences. I qualify that by saying that changes need to be made to

1. the process for contracting out (which is over-cumbersome);

2. to the scope of contracting out (e.g. permitting periodic tenancies to be contracted out so as to cater for "pop up" shops as referred to in the Consultation Paper and

3. to the process for the renewal of protected tenancies and the forum for dispute resolution.

CQ3 – 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 parties and their advisers

(2) on the commercial leasehold market

CQ4A – 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.

In addition to the exclusions mentioned in the Consultation Paper there is a rag-bag of further use exclusions which might require examination (e.g. home business tenancies; leases to defence procurement contractors; leases granted following local authority auctions under Part 10 of the Levelling Up and Regeneration Act. A list of exclusions is found in Woodfall paras 22.030 to 22.037.5.

Six months is too short a duration, especally where it ceases to apply once the tenant has been in occupation for 12 months or more. This can, of course be mitigated by contracting out (e.g. where a landlord's redevelopment plans are evolving). If the qualifications to the exclusion were removed, there would be greater certainty.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

My views would only change if the Commission recommended either mandatory security of tenure (in which case the exxclusions shuld be widened) or a contracting-in model or complete abolition (in which case they would probably be unnecessary)

CQ5 – 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.

Yes.

CQ6 – 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

(2) on the commercial leasehold market

CQ7 – 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).

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

I am not entirely convinced that the high level questions posed in the Consultation Paper can be definitively answered without some appreciation of wht changes (if any) the Commission might propose to the detailed working of security of tenure.

Railway Delivery Group Ltd

Role: The Rail Delivery Group (RDG) was established in May 2011. It brings together Network Rail and passenger and freight train operating companies to lead and enable improvements in the railway. The purpose of the RDG is to enable Network Rail and passenger and freight train operating companies to succeed by delivering better services for their customers. Ultimately this benefits taxpayers and the economy. The RDG aims to meet the needs of:

• Its members, by enabling them to deliver better outcomes for customers and the country;

• Government and regulators, by developing strategy, informing policy and confronting difficult decisions on choices; and

• Rail and non-rail users, by improving customer experience and building public trust.

Station Strategy Group is the industry forum for stations on the GB network. It has senior representation from Passenger Owning Groups, Network Rail, GBRTT, Department for Transport, Community Rail Network, RSSB and HS2.

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

Subject: RDG letter to Law Commission Consultation on the Landlord and Tenant Act 1954 – Part II

Rail Delivery Group (RDG) notes the Law Commission's consultation on Part II of the Landlord and Tenant Act 1954, specifically regarding how the right to renew business tenancies is working.

Recognising the importance of this consultation, RDG has worked with station operators and RDG's Station Strategy Group (SSG) to raise awareness of the consultation. Stations play a vital role in the rail industry and can drive positive customer experience, economic growth and regeneration. SSG enables Network Rail and operators to collaborate together in improving outcomes for passengers, taxpayers and communities.

Following the Office of Rail and Road (ORR) Catering Market Study (2024), RDG has been encouraging members to provide responses to this consultation. ORR's final report in June 2024 outlined a package of remedies to address issues identified within the railway station catering market. One of the key areas highlighted was the application of the Landlord and Tenant Act 1954, particularly its impact on station operations and railway catering providers in relation to lease renewals. Following engagement with train operators, SSG considers that a continuation of a "contracting-out" regime or even moving to a "contracting-in" regime would be in the interests of operators and would allow greater flexibility on lettings.

We recognise this important review and remain committed to supporting discussions on the legal framework governing business tenancies in railway stations. Should you require any further information, please do not hesitate to contact us.

Note: Rail Delivery Group

The Rail Delivery Group (RDG) was established in May 2011. It brings together Network Rail and passenger and freight train operating companies to lead and enable improvements in the railway. The purpose of the RDG is to enable Network Rail and passenger and freight train operating companies to succeed by delivering better services for their customers. Ultimately this benefits taxpayers and the economy. The RDG aims to meet the needs of:

• Its members, by enabling them to deliver better outcomes for customers and the country;

• Government and regulators, by developing strategy, informing policy and confronting difficult decisions on choices; and

• Rail and non-rail users, by improving customer experience and building public trust.

Station Strategy Group is the industry forum for stations on the GB network. It has senior representation from Passenger Owning Groups, Network Rail, GBRTT, Department for Transport, Community Rail Network, RSSB and HS2.

CQ3 – 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 parties and their advisers

(2) on the commercial leasehold market

CQ4A – 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.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

CQ6 – 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

(2) on the commercial leasehold market

CQ7 – 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).

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

HDG Limited

Role: Not Answered

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

CQ2 – 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.

Model choice: No statutory security of tenure (abolition);

Reasons

This response addresses the Law Commission's consultation on business tenancies and the models of security of tenure under the Landlord and Tenant Act 1954 (the 1954 Act). It advocates for the abolition of statutory security of tenure (the "No Security" model) as the most appropriate approach for a modern commercial leasehold market, with a contracting-in option as a secondary alternative.

The current framework is outdated, burdensome, and increasingly irrelevant in the context of contemporary business practices. Reform is urgently needed to remove unnecessary obstacles to economic growth and foster a flexible, efficient, and business-friendly property market.

Primary Recommendation: Adoption of the 'No Security' Model

The outright abolition of statutory security of tenure is the most effective way to modernize the commercial leasehold framework. This recommendation is based on the following points:

1. Administrative Inefficiency of Contracting-Out

The current system, where security of tenure is the default and contracting out requires a procedural opt-out, is both time-consuming and administratively burdensome. The contracting-out process involves multiple steps, including serving statutory warnings and obtaining declarations from tenants. These steps introduce unnecessary complexity and increase the potential for errors. Any misstep in this process can lead to disastrous consequences, including tenants acquiring unintended statutory protection and exposing landlords to costly legal disputes.

2. Declining Relevance of Security of Tenure

The landscape of commercial leases has shifted significantly since the introduction of the 1954 Act. Lease terms are increasingly short, reflecting the need for flexibility in a rapidly evolving economy. Most tenants now prefer adaptability to statutory protections that tie them to a particular premises. Furthermore, fewer tenants are investing in their fitouts, with landlords furnishing the premises themselves so there is less necessity for longer leases to amortise costs. In this context, the protection offered by the current law is largely unnecessary and redundant.

3. Anti-Growth Effects on Development

Statutory protection for tenants presents a significant obstacle to redevelopment and regeneration projects. Developers face heightened risks and delays due to the complexities of terminating protected tenancies. The requirement to navigate the court system to secure possession of premises is slow, expensive, and fraught with uncertainty. This not only deters investment but also undermines the broader goal of stimulating economic growth and revitalising urban spaces.

4. Economic Inefficiencies of the Court System

The reliance on the court system to resolve disputes under the 1954 Act further compounds its inefficiency. The courts are already overburdened, leading to significant delays in resolving cases. For landlords and developers, this creates an untenable situation where the costs and time associated with navigating the judicial process far outweigh the benefits of engaging with the current security of tenure framework.

5. Anti-Growth Nature of the Current Law

The protection afforded by the 1954 Act inadvertently stifles growth. By making it more difficult for landlords and developers to regain possession of properties, the law discourages investment in redevelopment and regeneration. This is particularly problematic in high-growth areas where redevelopment is essential for economic progress. Abolishing security of tenure would create a more dynamic and adaptable commercial leasehold market, fostering investment and growth.

<u>Secondary Recommendation: Contracting-In as a Fallback</u>

Should the Law Commission determine that a complete abolition of security of tenure is not feasible, a contracting-in model should be adopted as a compromise. Under this approach, security of tenure would not be the default but could be explicitly agreed upon by the parties. This model has several advantages:

1. Simplifies the Default Framework:

- By removing statutory protections as the default, the contracting-in model eliminates the procedural hurdles associated with contracting out. Landlords and tenants would only negotiate security of tenure where both parties see clear value in it.

2. Preserves Flexibility:

- The contracting-in model respects the freedom of parties to negotiate their own terms. It would allow tenants who value security of tenure to negotiate for it, without imposing it on all leases indiscriminately.

3. Supports Economic Growth:

- A contracting-in framework reduces risks and barriers to redevelopment, while still enabling tenants to secure long-term occupancy where necessary. This strikes a fair balance between landlord and tenant interests without undermining development opportunities.

Conclusion

The current security of tenure framework under the 1954 Act is no longer fit for purpose. Its administrative inefficiencies, declining relevance, and negative impact on economic growth underscore the need for reform. Adopting the “No Security” model would streamline the commercial leasehold market, foster investment, and align the legal framework with contemporary business needs. As an alternative, a contracting-in model would serve as a pragmatic fallback, preserving flexibility and reducing unnecessary burdens on landlords and tenants alike.

The Law Commission’s work on this issue is vital, and we urge it to recommend bold reforms that reflect the realities of today’s commercial leasehold market.

CQ3 – 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 parties and their advisers

(2) on the commercial leasehold market

CQ4A – 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.

CQ4B – We invite consultees’ views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

CQ6 – 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

(2) on the commercial leasehold market

CQ7 – 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).

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

HDG Ltd is a privately owned real estate investment and develop business. We manage a large portfolio of commercial properties (offices, industrial and retail) which are occupied by a range of businesses, from start-ups through to large corporate occupiers. HDG has over 60 years' experience with UK real estate.

[Not Answered]

Role: Not Answered

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

Not Answered

CQ2 – 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.

Model choice: Not Answered

Reasons

Not Answered

CQ3 – 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 parties and their advisers

Not Answered

(2) on the commercial leasehold market

Not Answered

CQ4A – 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.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

CQ6 – 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

(2) on the commercial leasehold market

CQ7 – 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).

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

There should be laws covering Surrendering Deed of business property without prejudice by business tenants. Commercial Landlords must NOT have the rights to REFUSE Surrendering deed of Property.

2) Flexibility of termination of lease/reducing length of break clauses/lease just like the New Renters Law coming into place must be enacted to protect business tenants struggling financially. To ease financial burden on business tenants.

Office of the Pubs Code Adjudicator (PCA)

Role: Not Answered Independent regulator responsible for enforcing the statutory Pubs Code (The Pubs Code etc. Regulations 2016)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

19. The Pubs Code regulates the relationships between large pub owning businesses and their tied tenants in England and Wales. As such, our responses below relating to the interplay of the 1954 Act and the Pubs Code apply equally to Wales as to England.

CQ2 – 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.

Model choice: Not Answered

Reasons

20. The aim of the PCA's consultation response is to inform the Law Commission of the purpose and operation of the Code and the potential impact of the proposed changes, rather than to advocate for a particular legislative approach.

CQ3 – 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 parties and their advisers

Option 1 - Mandatory Security of Tenure

21. Mandatory security of tenure would (but for growth in the use of alternative forms of agreement) increase the number of protected tenancies in the regulated tied pub market, which is in decline. It would therefore be likely to give more tied tenants the right to request the MRO option and, if they wish, choose to trade free of tie. Any such increase would also be likely to provide such tenants with greater negotiating strength in relation to the tied terms and rent at renewal. That the tied tenant at renewal has the right to choose to go free of tie provides an incentive for the POB to deliver on Parliament's intention that they should be treated fairly and lawfully by their POB in their tied tenancy and be no worse off than if they were free of tie.

22. Mandatory security of tenure may therefore support the delivery of Parliament's intention in effecting the Code by increasing incentives on the POB and strengthening the commercial hand of the tenant. It could also provide greater protection from a refusal by the landlord to

renew where the tenant has exercised the right to go MRO or otherwise sought to assert their Pubs Code rights during the tied tenancy.

Option 2 - Abolition of Security of Tenure

23. The impact of removing security of tenure may affect the balance of power in pub tenancy negotiations on new tenancies and at the end of the term, in which the tied trading terms and rent are also at play.

24. Owing to the interaction between statutory renewal rights and certain Pubs Code rights, the abolition of security of tenure would render some parts of the Code redundant and may necessitate a variation to the procedures within the Pubs Code legislation, including in relation to the MRO procedure. The removal or reduction of 1954 Act protected tenancies would be associated with a reduction in tied tenants' access to the MRO option. This may be both because there would be fewer gateways at which the right to MRO would arise, and because tenants may be less likely to exercise their MRO right at mid-term rent review for fear that they would have no protection against a POB's decision not to renew an MRO tenancy at its end.

25. The tenant would be less likely to be able to make the commercial decision to exercise their MRO right to have greater control over and invest in their property. This could be seen as impacting on the delivery of the 'no worse off' principle, and the converse of points outlined in respect of Option 1 could apply. Protection against detriment for exercise of MRO rights (which is prohibited under the Code) could be harder to monitor should security of tenure be abolished.

Options 3 and 4 - Contracting in/Contracting out of the 1954 Act

26. The 'Contracting-in Model' is not too dissimilar to the present 'Contracting-out Model' - both require commercial agreement between landlord and tenant prior to the tenancy being entered and the tenant cannot compel the landlord either way. While removing default security of tenure by introducing a 'Contracting-in' model might create a more simplified system, in the context of the regulated tied pub trade it would not necessarily result in greater fairness in the tied relationship.

27. Those majority of POBs which currently typically contract out of the 1954 Act may be considered unlikely to agree to contract into statutory protection. Many prospective tied tenants of the POBs in the market do not appear to have sufficient negotiating strength to obtain statutory or contractual renewal rights. Some multiple operators may have more ability to influence the outcome of negotiations over tenancy terms. Such operators may seek security of tenure to support their investment strategies.

(2) on the commercial leasehold market

Option 1 - Mandatory Security of Tenure

28. The changes in agreement types used by the regulated pub companies since the introduction of the Pubs Code may evidence a willingness to innovate in the market where legislative change operates to restrict the pub company's freedom to choose how to use its commercial property. It may be conceivable that mandatory protection could result in changes by POBs to their agreements, where they may wish to retain flexibility to manage

their tenanted properties, with altered business models or a move towards alternative agreement types which offer lower security to a pub operator compared to a tenancy. However, it is very difficult to accurately predict likely behaviours of the pub companies in response to such a change.

Option 2 - Abolition of Security of Tenure

29. Whilst the abolition of security of tenure would not prevent the parties from agreeing a contractual right to renew, an understanding of the regulated tied pub trade and the range of agreements within it may help to assess the likelihood that the POBs would do so in significant numbers. The tied pub trade is a sector in which the imbalance of power between the largest pub-owning businesses and their tied tenant was such that Parliament considered it required regulation to protect those tenants from unfair treatment. The PCA is therefore mindful that reductions in the protections available to tied pub

tenants pursuant to the 1954 Act may serve to impact the balance of power that Parliament has sought to effect by providing rights and protections under the Pubs Code.

Options 3 and 4 - Contracting in/Contracting out of the 1954 Act

30. There has already been an identified reduction in statutory renewal rights in the regulated tied pub trade, which commentators may consider reflect POBs' power in the negotiation of a new business relationship. The reduction in protected long leases may already be impacting on the number of tied tenants who have the right to request an MRO option. Parliament provided this right so that there would be greater balance in the tied pub business relationship and to further its intention that tied tenants should be no worse off than if they were free of tie. It is unclear that this market trend would be different under a contracting in regime.

CQ4A – 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.

31. The Pubs Code and the 1954 Act are not competing regimes. The PCA works to promote and enforce the Pubs Code legislation as currently drafted, including in its interplay with 1954 Act rights. The forthcoming statutory review of the Pubs Code, for the 3-year period ending 31 March 2025, provides an opportunity for stakeholders to provide evidence as to the effectiveness of the Code, including in that interplay, which may be relevant to the Law Commission's work. The PCA has provided information about the possible impact of proposals on the regulated tied pub trade, which we consider merits particular consideration.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

32. The PCA has no comment as to the correctness of the potential benefits and disadvantages of reforming the scope of the 1954 Act. However, we have set out some of the possible impacts in relation to the interplay with the Pubs Code.

CQ6 – 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

33. The duration of a compliant MRO proposal must be at least as long as the remaining term of the existing tied tenancy. It must offer statutory protection where the current tied tenancy is protected. Were there to be a change to exempt tenancies of longer duration (say, under 5 years) from statutory protection, it is possible that there could be friction with the MRO option (where, for example, a lessee requests the MRO option at a point at which there is less than 5 years remaining on the term of the protected tied agreement). Were the bar changed, and tenancies of a different duration or type included within the ambit of the 1954 Act, some inconsistency with the Code may result which could give rise to the need to consider its amendment.

34. That tied pub tenancies often provide both a business opportunity and a home may be a matter for consideration in assessing the impact of including more tenancies in excluded categories. Detailed consideration of the tied pub trade may be warranted in developing proposals.

(2) on the commercial leasehold market

35. The PCA has referred, above, to the data collected in the annual POB compliance reports which may assist in understanding their estates. Most POBs offering tied tenancies already favour shorter opted-out agreements. This is a complex and innovative market, with changing business models and emerging agreement types. The PCA recommends further detailed consideration of the impact of a change in scope of the legislation on the tied pub market once specific proposals are identified.

CQ7 – 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).

36. The PCA has no comment to make regarding changes to the model of security of tenure or scope of the Act in relation to groups or individuals with protected characteristics. However, in its annual tied tenant survey it does collect limited demographic data of a sample of 1,200 tied pub tenants (15% of the regulated industry). The 2024 survey results can be viewed here.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

1. The Pubs Code Adjudicator (PCA) is the independent regulator responsible for enforcing the statutory Pubs Code (The Pubs Code etc. Regulations 2016 [https://www.legislation.gov.uk/uksi/2016/790/contents]). Parliament introduced the Pubs Code to address the imbalance of power in the business relationship between the largest tied pub-owning businesses (POBs) and their tied tenants. A tied tenant is one who is contractually obliged to purchase some or all of their alcohol from their landlord. The tied pub model operates by the tied tenant paying above market prices for their alcohol (the wet rent) in exchange for a below market rent (the dry rent). They may also receive special commercial and financial advantages from their pub company. Unusually for a commercial tenancy, in many cases a pub tenancy also provides the tenant and their family with a home at the pub. This is worthy of note when considering legislative amendments.

2. For many years serious concerns had been raised to Parliamentary Select Committees about the relationship between large pub companies and their tenants. The Final Impact Assessment noted repeated reports of delay in opening rent review negotiations, lack of transparency in such negotiations, failure to carry out repairs agreed when a tenancy began, verbal agreements being ignored, and of harassment of tenants when they were vulnerable through bereavement. Such problems were considered to occur due to inequalities of bargaining power in these business contracts. The Pubs Code is based on two core statutory principles that (a) there should be fair and lawful dealing by POBs in relation to their tied pub tenants, and (b) those tenants should be no worse off than if they were free of tie.

3. The Pubs Code provides tied pub tenants of those pub companies with more than 500 tied pubs in England and Wales with various rights and protections. These include the right to receive information from their POB at key junctures, such as before taking on or renewing a tenancy and when negotiating the rent. Other rights include the option for the tenant to price match the premises insurance and to have written notes of business discussions with their POB. The Pubs Code legislation also introduced a new statutory right for tied pub tenants, where certain circumstances arise, to break the tie with their landlord by taking the Market Rent Only (MRO) option.

4. As the independent regulator, the PCA seeks to support this consultation by (i) providing outline information on how Pubs Code processes interact with the 1954 Act; (ii) signposting to evidence which may help assess potential impacts of contemplated amendments, including as they might interact with the Pubs Code; and (iii) illustrations of the use of 1954 Act protection within the regulated tied pub trade.

5. The Pubs Code does not regulate against the 1954 Act. It includes references to the 1954 Act to ensure that procedures under the Pubs Code work alongside the statutory rights given to protected tenants. The Pubs Code also provides rights at contractual renewal, but these are not identical in all respects to those at statutory review, and the number of agreements with contractual renewal rights is very low. Significant amendments to the 1954 Act may create a need for amendments to the Pubs Code to be considered.

6. The PCA regulates by enforcing compliance with the existing legislation. It seeks to ensure that the Pubs Code affords effective protections to tied tenants, including in its interplay between the 1954 Act, and that there is balance in the tied business relationship. Given the potential impact on the tied pub market of changes to the 1954 Act, the PCA would recommend that, as proposals are considered and developed, further consideration be given to assessing the impact of any proposed changes on the tied pub industry and the Pubs Code. The PCA would be pleased to provide further and more detailed information to

the Law Commission if required and would be happy to meet with the Law Commission to discuss the complex interactions between the Pubs Code and the 1954 Act.

7. The PCA does not seek to advocate for a particular legislative approach. For this reason, and because the PCA does not fit any of the permitted categories of respondent to the survey, it has opted to submit its consultation response, including some of the available data, by email rather than using the online form.

The Market Rent Only Option

8. Under the Pubs Code a tied tenant has the right at certain gateways (including at statutory or contractual renewal) to request an offer of a free of tie tenancy which is MRO-compliant (the "Market Rent Only" or MRO option) and to then choose whether to accept that option to trade free of tie. The MRO right represents a significant intervention in the market, in that it empowers the tied tenant at specified points in the tenancy to change the fundamental nature of the contract with their landlord. The ability of the tied tenant by these means to

(i) compare the tied and free of tie options, (ii) negotiate on the tied and/or free of tie terms, and (iii) choose the option that is best for their business, is important to the delivery of Parliament's "no worse off" principle.

9. Under an MRO-compliant tenancy, a tenant is free to buy alcohol and other products and services on the open market and will pay an agreed rent for the premises (or, failing such agreement, a market rent). The terms of the MRO-compliant tenancy must be reasonable. Except where the gateway to MRO is renewal, the MRO-compliant tenancy must be for a period that is at least as long as the remaining term of the existing tied tenancy. Where the existing tenancy is 1954 Act protected, the proposed MRO tenancy must, in all cases, also be protected under the 1954 Act. The Pubs Code specifically provides different timetables within the MRO process to allow for the service of a s.25 or s.26 notice under the 1954 Act and an application to court to determine the terms of a new tenancy.

Pubs Code interactions with Statutory Renewal Rights

10. The Pubs Code does not operate to improve on the statutory renewal rights protected tenants may enjoy. In addition to the MRO rights specifically operating at statutory (as well as contractual) renewal, in providing rights for tied pub tenants, the Pubs Code reflects the protections they may have under the 1954 Act in a number of ways. For example, the Pubs Code provides rights to protected tenants at statutory renewal, including the right to request a rent proposal from their POB. This is an analysed and evidenced rent offer which must be based on reasonable trading assumptions. This information can support the tenant in rent negotiations and business planning.

11. The Pubs Code also places obligations on the POB to provide information consistent with any renewal right. This includes the duty, where the tenancy offered is a protected 1954 Act tenancy, to provide pre-tenancy information to the negotiating tenant on the process for renewal.

Protected tenancies in the tied pub trade

12. The pub trade is a unique sector. A small number of pub companies control a large number of tied pubs. There are currently around 8,000 tied pubs owned by six pub companies which are regulated under the Pubs Code. The PCA collects data is available as to the number of the tied agreements regulated by the Code which are protected business tenancies pursuant to the 1954 Act.

13. Regulated POBs have a statutory obligation to provide an annual compliance report to the PCA. These reports are published online on their individual company websites. Compliance report data shows that across the regulated industry, the proportion of agreements with 1954 Act protection has declined. For example, on 31 March 2020 38% of regulated agreements were protected, compared with 31% on 31 March 2024. Similarly, the proportion of new tied tenancies that have 1954 Act protection has decreased, from 13% in the year April 2020 to March 2021 to 2.1% for the year April 2023 to March 2024. New tied tenancies include new short agreements.

14. These trends may at least in part be a response to the introduction of the Code and the MRO right. It should be understood that underlying this data there are significant individual variations between the POBs, which have different appetites towards the grant of long leases with statutory protection (usually with full repairing and insuring liability on the tenant and a right to assign). These longer leases are more likely to attract tenant investment in the pub. Most regulated pub companies have moved to favour shorter agreements (with tenancies of 3-5 years in duration with shared repairing liabilities which are opted-out of statutory protection), as well as other types of pub operating agreements (such as franchises and management models). The reduction in the number of protected tenancies of regulated tied pubs may be an indication of a lack of commercial negotiating strength on the part of prospective tied pub tenant, though it may also reflect some tenant preference for shorter agreements.

15. The 8th annual Pub Governing Body report audited pub company signatories to a voluntary code (who operate up to 500 tied pubs and are therefore not covered by the Pubs Code) for the period August 2023 to July 2024. Of 2,194 substantive tied agreements, 78% were 1954 Act protected. The remaining 22% were unprotected agreements. This suggests a much higher rate of 1954 Act protection of tied pubs outside the regulated industry.

16. There is very limited use in the regulated tied pub trade of tenancies whose terms provide a contractual right to renew. This fact, together with the market position of the regulated pub companies, and data on the number of protected tenancies, may suggest that the prospective tied pub tenant has limited commercial negotiating strength in this market to secure either contractual or statutory renewal rights.

17. The PCA would also reference the Secretary of State's reports on the two statutory reviews of the operation of the Pubs Code (for the periods ending 31 March 2019 [https://assets.publishing.service.gov.uk/media/5fa151d58fa8f57f37c12088/Report_on_the_statutory_review_of_the_Pubs_Code_and_PCA_2016_to_2019.pdf] and 31 March 2022 [https://assets.publishing.service.gov.uk/media/653b8d6ce6c9680014aa9c26/report-on-the-second-statutory-review-of-the-pubs-code-and-pca-october-2023.pdf]). The latter includes data on pub ownership tenure models. These reports contain comment from witnesses, and findings from the Secretary of State, about the impact the Pubs Code has had on the market, and the changes seen in agreement types and opt-outs from 1954 Act protection within the regulated tied pub market. Whilst it is difficult to predict, it could be expected that there would be tied pub market changes in response to any amendment to or abolition of the 1954 Act, driven by the commercial interests of POBs, including in their use of various other agreement types.

Office of Rail and Road

Role: Not Answered We are the independent economic and safety regulator for Britain's railways and we regulate performance and efficiency on England's strategic road network. We are also a designated national competition authority, with powers held concurrently with the Competition and Markets Authority (CMA), to apply competition law in markets relating to the supply of services relating to railways.

We have a statutory duty to promote competition for the benefit of users of the railway, ensure that markets function effectively, and protect the public interest in the sectors we oversee.

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

CQ2 – 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.

Model choice: Not Answered

Reasons

5.1 The consultation asks which model of security of tenure should operate.

5.2 As explained in the previous section of this submission, the balance of the evidence that was made available to us during our market study suggested that the impact on retail in railway stations of arrangements around security of tenure in the 1954 Act appears likely to be negative. This leads us to propose that if tenancies of premises within railway stations and other markets with similar characteristics were to stay within the scope of the 1954 Act, that a reduced level of lease protection should apply by moving away from a default right to renew position and by lessening the burden of statutory processes for opposing renewal and contracting out.

5.3 Our market study gathered a modest amount of feedback from stakeholders on aspects that would improve the functioning of the 1954 Act, such as simplification of statutory processes and we would be glad to share this detail with the Law Commission in the next phase of its review should it be required.

5.4 The stakeholder engagement which formed a key part of our market study provided us with some limited insights with the issues identified by the Law Commission with respect to the potential distortion of terms that were negotiated on the basis of the current 1954 Act. We would be happy to discuss these insights with the Law Commission as helpful. Topics for discussion might include phased changes over periods of around 5-10 years.

CQ3 – 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 parties and their advisers

(2) on the commercial leasehold market

CQ4A – 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.

4.1 The consultation asks whether the scope of the 1954 Act should be changed.

4.2 The balance of the evidence that was made available to us during our market study suggested that the impact on retail in railway stations of arrangements around security of tenure in the 1954 Act appears likely to be negative, for the reasons summarised in the previous chapter of this submission.

4.3 We consider that it would be proportionate and beneficial to expressly exclude tenancies of premises within railway stations from Part II of the 1954 Act as one of the named exceptions under section 43. Such a step would in our view be beneficial given that lease protection under the 1954 Act currently acts as the largest single entry barrier in the market for station catering.

4.4 This change would in our view be proportionate given the relatively clear demarcation between railway and non-railway properties, and the relatively large size of this market, which per chapter 2 of our market study report, looks set to move towards £1bn pf passenger spend per year by the end of the current five-year rail control period (CP7, which runs to 2029).

4.5 The Law Commission may wish to consider whether there are any other markets which share the characteristics of station catering which give rise to significant entry barriers due to lease protection. An example of a key factor that the Law Commission could take into account would be tenant size. The largest tenants often benefit from nationally or globally known brands to an extent that was less common at the time the 1954 Act came into effect, making them less likely to be reliant on a continued presence in a particular location. This makes them relatively less likely to be 'captive' to a specific retail location. Such tenants will also typically benefit from the legal and management resource that may be needed to enter lease negotiations from a position of strength.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

CQ6 – 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

(2) on the commercial leasehold market

CQ7 – 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).

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Executive Summary

Introduction

We, the Office of Rail and Road (ORR), make this submission in the light of the findings of our market study into the provision of railway station catering services – for which our final report [https://www.orr.gov.uk/railway-station-catering-market-study] was published in June 2024. Lease protection under the Landlord and Tenants Act 1954 ('the 1954 Act') played an important role in our findings.

Our submission

Our market study assessed the state of competition in station catering, and the extent to which passengers and taxpayers are getting value for money from this market. The evidence that we gathered from our review suggests the impact of the provisions of the 1954 Act appear likely to be negative from a passenger and taxpayer perspective.

Our study recommended that landlords of railway stations should contract out of lease protection for all future leases and that landlords should take every opportunity to move away from existing protected tenancies. Our study also identified the opportunity for reform posed by the then-forthcoming Law Commission review of the 1954 Act.

In this submission we argue that it would be proportionate and beneficial to expressly exclude tenancies of premises within railway stations from Part II of the 1954 Act as one of the named exceptions under section 43. The Law Commission might consider the case for further proportionate exemptions in other circumstances where similar market characteristics to station catering exist.

If tenancies of premises within railway stations stay within the scope of the 1954 Act, our view is that a reduced level of lease protection should apply either by moving away from a default right to renew position or by lessening the burden of statutory processes for opposing renewal and contracting out.

1. Introduction and purpose of this submission

Introduction

1.1 We are the independent economic and safety regulator for Britain’s railways and we regulate performance and efficiency on England's strategic road network. We are also a designated national competition authority, with powers held concurrently with the Competition and Markets Authority (CMA), to apply competition law in markets relating to the supply of services relating to railways.

1.2 We have a statutory duty to promote competition for the benefit of users of the railway, ensure that markets function effectively, and protect the public interest in the sectors we oversee.

1.3 We are grateful for the opportunity to respond to the Law Commission’s consultation on the right to renew business tenancies. Our response draws on recent insights from our work, specifically our 2024 market study (‘our market study’) into retail businesses who sold ready-to-eat food and drink from railway stations (‘station catering’).

1.4 Our submission focuses on the implications of the 1954 Act for our own sector. While we of course recognise the broader scope of the Law Commission’s consultation, we have limited our response to those issues on which the findings of our market study enable us to comment. Where possible and relevant, our submission briefly considers the wider applicability of our study’s findings.

Our market study

1.5 Our market study concluded in June 2024 with the publication of our final report [https://www.orr.gov.uk/sites/default/files/2024-06/railway-station-catering-market-study-final-report-june-2024_0.pdf].

1.6 Over the course of our market study, we requested corporate and financial data from businesses who specialise in station catering and from landlords who run railway stations. We talked to station managers and retailers about their first-hand experience.

1.7 The evidence collected over the course of our market study gave us a comprehensive picture of how businesses operate in railway stations, and the key issues that they face including those caused by the application of the 1954 Act.

Our review, in line with our jurisdiction, covered stations in Great Britain (GB), thereby encompassing stations in Scotland where the 1954 Act does not apply. This breadth enabled us to carry out a limited comparison between otherwise similar markets where the 1954 Act did and did not apply.

1.8 Our market study report signalled our intention to engage with the Law Commission’s review as follows:

“We will... make our own submission to the Law Commission's consultation. We will aim to focus on, but not be limited to, the following areas of the 1954 Act that we believe merit modernisation and need to be amended so as to better fit to the current commercial needs within railway stations:

(i) Grounds of termination: we will submit that there is a need to ensure more flexibility and bring the grounds closer to the needs of the modern real estate/environmental needs;

(ii) Cost of termination (including statutory compensation): we will submit that the cost of legal proceedings to terminate protected leases, together with statutory compensation where applicable, can be a significant barrier to the redevelopment and/or repurposing of station units. We will submit evidence on the issues caused by the need to factor statutory compensation into any redevelopment proposals;

(iii) Terms of lease upon renewal: we will submit that legislation should allow more flexibility to update lease terms on renewal, as and when appropriate, so as to fit the market's current requirements and ensure that protected leases are kept in step with market standards."

1.9 We summarise key aspects of our findings, particularly where they relate to protected leases, in Chapter 3 of this submission.

2. The structure of the GB rail industry

2.1 The GB mainline railway infrastructure, including track, stations, bridges, and signals, is owned by Network Rail Limited. Network Rail is an executivenon-departmental public body, sponsored by the Department for Transport.

2.2 Although Network Rail is the owner of all stations, it only operates 20 of the very largest stations [https://www.networkrail.co.uk/communities/passengers/our-stations/].The remaining c 2500 stations are operated by Train Operating Companies (TOCs), whose primary function is the operation of passenger trains.

2.3 Since privatisation in 1997, the majority of TOCs have been privately owned enterprises that were either awarded the right to operate a franchise or licenced to operate an independent service under their own brand. Additionally, at the time of writing DfT Operator Limited [https://www.gov.uk/government/organisations/dft-operator-limited/about], a public corporation of the Department for Transport, operates a number of rail services that were previously operated by private sector companies but have not been re-awarded to the private sector.

2.4 Both TOCs and Network Rail are partly funded by the taxpayer. The overall level of subsidy to the railway significantly increased during and after the Coronavirus pandemic to cover the shortfall caused by the reduction in passenger numbers.

2.5 The Government has announced [https://www.gov.uk/government/speeches/our-progress-in-overhauling-the-railways] that it is committed to a programme of rail reform. The Passenger Railway Services (Public Ownership) Act 2024 [https://bills.parliament.uk/bills/3732] makes provision for almost all passenger railway services to be provided by public sector companies instead of by means of franchise agreements. Whilst there remains a degree of uncertainty around some of the details of the future industry structure, the future seems set to involve, firstly, a move towards greater public ownership of passenger train services, and, secondly, a greater degree of integration between infrastructure management and the operation of passenger services.

3. Business tenancies in railway stations

Introduction

3.1 Our reasons for launching our market study are summarised in our published statement of scope [https://www.orr.gov.uk/sites/default/files/2023-06/railway-station-catering-market-study-statement-of-scope-june-2023.pdf].

Station catering plays an important role in serving the needs of millions of rail passengers and commuters across the country and is an activity that accounts for the large majority of the commercial property income that is earned at stations.

3.2 Of the stations that fell within the scope of our market study, only around 20% have one or more catering outlet and almost half of these stations have only one outlet. Station operators tend to prioritise their primary function, which is to operate passenger trains, over retail, often meaning that where space is at a premium, retail outlets are limited.

3.3 Retail premises in stations are, with few exceptions, commercially let by the station operator. At TOC-managed stations the TOC, as the station operator, is the landlord and Network Rail, as the owner, is the superior landlord. Leases for premises in TOC-managed stations are tri-partite in nature.

The role of competition

3.4 As in all markets, competition between station catering suppliers can be an important market force driving value for money in terms of the price and quality of goods and services.

3.5 As described in Chapter 3 of our market study report, a common feature of many station catering outlets is that, offering what is often a convenience proposition and being located within the enclosed boundaries of a train station, they face relatively little head-to-head competition 'in the market' from other suppliers of similar goods.

The best value for money for customers may be reduced. This increases the risk that offerings which are sub-optimal in terms of price and or/quality may be able to survive within stations, insulated from normal market competitive pressures. Because of this, our market study featured a particular focus on the strength of competition 'for the market', whereby suppliers compete to win the right to operate station outlets. Such competition can deliver clear benefits to both passengers and landlords (and hence taxpayers) by incentivising tenants to present the strongest offer to passengers and/or landlords, thereby increasing the chance that they will win or retain outlet occupancy.

Our market study's findings

Overview

3.6 Our market study suggested a lack of effective competition among prospective tenants to occupy existing station outlets. We found that landlords competitively tender premises less than 5% of the time.

3.7 Our market study found a number of reasons for this apparent lack of competition. Some of these factors appeared to be transient in nature, including the aftermath of the Coronavirus pandemic. Other factors appeared to be permanent and possibly intractable, such as the limited space available within stations and the specialist knowledge required to compete in an operating environment that is unusual in terms of the very 'peaky' profile of demand at railway stations and the commonly limited access to kitchen and storage space that is typically available to otherwise comparable high street outlets.

3.8 But we found that lease protection constituted the single most important barrier to competition to occupy tenancies. We found that 24% of station outlets, accounting for 27% of total rental revenue, are currently covered by protected leases. Our review also found that the lease protection may extend beyond these outlets, since holding a protected lease may confer the lessee with strong advantages, often associated with facilities such as storage space etc, when competing to occupy adjacent outlets.

3.9 Most protected leases are held by the largest and longest established players in the market. The largest single holder of protected leases is SSP Ltd, a FTSE250 business with a global turnover of c. £3.4bn offering well known nationwide own brands such as Upper Crust and franchised brands such as Burger King. Our review found that SSP controls 20% to 30% of outlets in stations and accounts for 40% to 50% of passenger expenditure. SSP's share of all outlets is larger than that of the next six largest players combined. Costa Coffee and WH Smith are the next largest players in the station catering market.

3.10 Our market study found some, albeit not conclusive, evidence to suggest that lease protection tends to put downwards pressure on rents and hence upward pressure on product/ticket prices and/or taxpayer subsidy. Hard evidence in this area was difficult for us to obtain. Our market study found, firstly, that traditional metrics by which retail asset owners value shopping centres etc, such as rent per square metre may be distorted by the prevalence of kiosk units. Rail stations and units within them also vary significantly in terms of their footfall and hence revenue earning potential, as shown in published ORR station usage data [https://dataportal.orr.gov.uk/statistics/usage/estimates-of-station-usage]. However, data that we presented in our market study averaged over a small number of case studies (see Chapter 3 of our market study report) suggested that lease protection places downward pressure on rentals amounting to around 10% of the starting minimum guaranteed rent.

Why our market study found that lease protection is an issue

3.11 In the paragraphs below we explain our market study's key findings regarding the impact of the 1954 Act. In doing so we provide further detail than provided in our published report – which we attempted to keep relatively short and whose focus encompassed a wide range of issues beyond those associated with the 1954 Act.

3.12 The stakeholders who engaged with our review presented us with arguments and evidence which aligned with their commercial interests, for example:

• The landlords we spoke to consistently argued against lease protection. They told us that lease protection entails a loss of control of their premises and of the ability to take decisions on tenant mix. Landlords also argued that lease protection hands excessive negotiating power to tenants many of whom are very large international businesses, as summarised above.

• Most of the tenants and prospective tenants who engaged with our review argued that lease protection is harmful on the grounds that it denies them the opportunity to occupy units located in railway stations. Opportunities to bid on the open market come up only very rarely because sitting tenants always exercise the right to renew; railway stations are seen as potentially lucrative and reliable trading locations.

• Some landlords, and in particular those tenants who are currently net beneficiaries of lease protection, stressed that the protection offered under the 1954 Act can be important to provide small businesses in particular with security of tenure in order to mitigate the lack of certainty and secure a return on investment in fit out costs.

• We were not, however, provided with a large volume of evidence that made a compelling link between protection under the 1954 Act and levels of investment. Particularly at larger stations, investment in station catering continues to take place in new outlets without the benefit of protection under the Act.

3.13 Both landlords and tenants told us that the cost of opposing renewal or renegotiating the terms of a protected lease can, particularly from the perspective of small businesses, be disproportionately high and can consume a significant amount of time. Landlords told us this was a material factor influencing their decision to rarely oppose the renewal of protected leases. This often results in the sitting tenant benefiting from favourable terms.

3.14 During our market study we met with, and received written submissions from, several landlords and tenants who are currently and/or prospectively active in our sector. Of the seven possible grounds of opposition to lease renewal that the 1954 Act provides, our

review only found evidence of the use of ground (f), whereby repossession is necessary for a landlord to carry out a necessary demolition or work of construction [As the Law Commission will be aware, the full list of grounds is: (a) Repair Obligations; (b) Persistent Rent Delay; (c) Other Breaches; (d) Suitable Alternative Accommodation; (e) Property Reletting; (f) Demolition or Reconstruction; and (g) Owner occupation]

Our interpretation of the evidence made available to us was that, in all but very unusual/exceptional circumstances, in our sector ground (f) provides the only realistic means of opposition.

3.15 We did not discuss the other grounds in detail with stakeholders but found evidence of:

● a common perception of a 'prevailing wind' acting against landlords in the courts in the case of grounds (a) to (c);

● limited relevance of ground (d) due to the limited space available within rail stations;

● infrequent applicability of ground (e) owing to prohibitions on sub-letting; and

● station operators typically not being in the market to occupy their own retail outlets.

3.16 During our market study we were told that demolition or reconstruction is costly from the perspective of rail operators, firstly given the often high costs of construction work in a rail environment (reasons for this can include factors such as listed station buildings) and secondly given the disruption to a normal retail offering that such works will often cause, particularly in environments that are only served by a small number of outlets.

3.17 Our market study found that, when redeveloping a retail unit, a landlord such as Network Rail will calculate an Internal Rate of Return (IRR), to be compared with pre-agreed hurdle rates. Whilst the direct costs of redevelopment will typically dominate such a calculation, we were told that the costs of statutory compensation can have a material impact on economic viability.

3.18 A response to our market study prepared by an agent which acts on behalf of several station operators included an indicative worked example based on its experience in the sector, showing that a combination of statutory compensation and the direct costs of development could amount to a high multiple of the rateable value of a station property.

3.19 The evidence provided to us during our market study showed that a redevelopment undertaken purely to enable a landlord to bring in new tenants will rarely, if ever, make economic sense. Stakeholders described to us situations where landlords held long-running but ultimately unrealisable ambitions to remove tenants that they considered were offering poor value.

3.20 We were told that lease protection gives sitting tenants a strong advantage in negotiations with landlords. The value of protection to tenants who hold protected leases was shown by our analysis of contemporaneous internal documents provided to us by landlords. We found that tenants whose request for a renewed tenancy has been opposed by a landlord under ground (f) will carefully consider whether they would have any chance of successfully challenging the landlord's claim.

3.21 The impact of the strength of negotiation power afforded to tenants by the 1954 Act is particularly acutely felt in a market that is to a degree dominated by the presence of large well-resourced and long-established businesses that already benefit from a strong negotiating position (and who are well resourced to negotiate leases outside the 1954 Act).

We understand that it is not the intention of the 1954 Act to further strengthen the negotiating position of strong businesses in this way.

The applicability of our market study's findings to our submission to the Law Commission.

3.22 The balance of the evidence made available to us during our market study suggested that the impact of the 1954 Act on rail sector retailing is negative. Competition between tenants is a potentially important means by which value for money could be driven in this sector, but lease protection under the 1954 Act is the single most important factor restricting such competition. Our market study found little evidence of countervailing benefits of lease protection, other than perhaps in the case of the smallest tenants – but in the rail catering sector, the primary beneficiaries of protection under the 1954 Act are companies of a size who are our view not the intended beneficiaries of its protections.

3.23 Our review, covered stations in Great Britain (GB), thereby encompassing stations Scotland, albeit that the 1954 Act does not apply there. This breadth enabled us to carry out a limited comparison between otherwise similar markets where the 1954 Act did and did not apply. Whilst we were not able to carry out any formal analysis, some of our evidence did suggest that ScotRail (a Scottish train operating company, publicly owned by Scottish Rail Holdings on behalf of the Scottish Government) adopts a relatively proactive approach to its station catering offering.

Our review did not find any evidence that the Scottish market has suffered through not falling under the 1954 Act.

<u>Market study recommendations with regard to lease protection</u>

3.24 Our market study recommended that landlords should contract out of lease protection for all future leases.

3.25 We also recommended that landlords should take every opportunity to move away from existing protected tenancies (by way of agreed surrenders, renegotiation, or by opposing renewal as permitted by the 1954 Act where appropriate) to minimise protected tenancies and open up leasing within stations to be more flexible and competitive. Landlords agreed with us and have committed to reducing the number of protected leases where feasible. Our proposals have also had the support of the DfT.

3.26 Our recommendations received general support from businesses except those understandably who already hold protected leases.

Epwin Group PLC

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: 250 or more

Regions: North West, North East, Yorkshire and the Humber, Wales, West Midlands, East Midlands, East of England, South West, South East, London

Sector(s): Administrative and support services, Construction, Manufacturing, Retail and wholesale

CQ1 – 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.

It can prove to be highly problematic for multi-site occupiers across different jurisdictions where the security provisions are markedly different (e.g. Scotland). From a strategic point of view, choosing where to invest in property as a leaseholder does in-part rely on the extent to which security of tenure applies. Practically too, it can be challenging to find appropriately capable and experienced legal and professional advisors with the property sphere and a separate set of legislation in Wales is therefore likely to isolate Welsh advisors from work within England and vice versa, making it far more difficult to occupiers to obtain "joined-up" high-quality consultancy across their business. I am therefore of the strong opinion that any changes to the 1954 Act ought to apply to both territories equally.

CQ2 – 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.

Model choice: Mandatory security of tenure;

Reasons

There is no doubt that security of tenure is a highly important piece of legislation as it provides both certainty of occupancy for leaseholders and prevents Landlords from imposing rents that are unaffordable to Tenants by benchmarking them against the market.

I consider that the proposed "contracting in" would prove to be highly ineffective. By creating a system in which security of tenure is not the norm, you are likely to find that the "contracting-in" legislation is hardly ever used, and will only be insisted upon by occupiers which have both the covenant strength and professional knowledge to do so. SME's are less likely to be fully aware of security of tenure legislation and therefore may not realise that contracting-in is even an option. In that context, even where smaller tenants are aware, they will need to be sufficiently attractive a tenant for a Landlord to consider allowing contracting-in.

Contracting-out does go some way to alleviating the above issue but does not eradicate it as it is after all just the other side of the same coin.

Only by making the rules the same for everyone, can you create a level playing field that enables all occupiers to thrive. It is occupiers, after all, that make up the main component of economic growth and stability, and any eradication or erudition of security of tenure is likely

to keep more wealth in the hands of already wealthy landlords rather than for the common good and to encourage economic growth.

CQ3 – 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 parties and their advisers

I can't foresee any change to the legislation having a material impact on institutional investors and their decisions whether to develop a site except that in areas where there is an over-supply of property (e.g. retail) it is likely that more concrete security of tenure may lead Landlords to re-purpose property for residential use where possible as the level of market regulation is less in that sector.

For tenants, a change to the model to "contract-in" or abolish security of tenure altogether is likely to result in an immediate pause of investment in their property portfolio as the change would create significant insecurity in the short term. I cannot foresee any negative tenant implications if security of tenure was to become mandatory.

(2) on the commercial leasehold market

Any apparent weaking of security of tenure is likely to result in occupiers seeking longer leases with more break options to mitigate the risk of being forced to vacate at lease end.

However, security of tenure works as an effective tool for tenants to keep rents at a market-level and where security does not apply, the Landlord will naturally use the unwillingness of the tenant to bear the cost of moving as leverage to encourage a higher rent in many cases above true market levels (e.g. a tenant is likely to accept an additional £25kp.a. in rent to avoid having to move and pay £50k to fit-out a new unit that is let at a reasonable rent). This risks artificially inflating the market, and making businesses less profitable, especially when they have been established for some time.

CQ4A – 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.

1. The only use-excluded tenancy that I am familiar with is for those tenancies that are otherwise covered by the Electronic Communications Code. I do consider the Code to be more "tenant-friendly" than the 1954 Act, and so it's right that the tenant doesn't enjoy "double-protection" from the 1954 Act. I would suggest some revision of the ECC is necessary but I accept that this doesn't form part of the scope of this consultation.

2. Duration Excluded Tenancies are in theory a good thing as when a tenant enters into a very short term lease, they shouldn't be expecting to invest significantly in a fit-out and Landlords should have the right to recover possession if the tenant is unwilling to agree to a longer term and there are other tenants willing and able to take occupation for longer.

However, the legal complexities around whether a tenancy has been established and has security of tenure rights is both overly complex and an unnecessary burden of Court time. I'd therefore suggest that these tenancies are not excluded from the 1954 Act but suggest an additional ground upon which a Landlord could refuse a renewal under Section 25 on the basis that the lease term is less than 12 months and the existing tenant is unwilling to renew for a period of more than 12 months.

3. I would suggest that any lease with rents linked to turnover should be excluded from the 1954 Act as the rental basis of these leases are not "market-linked".

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

No differing answer.

CQ5 – 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.

I am fundamentally of the view that the 1954 Act intervention does not unfairly distort the market but that if the market was allowed to run free, Landlords would be the beneficiary to the detriment of tenants and the wider economy. Its removal would also exacerbate the differences in costs between online and physical retailers.

In the industrial sector, demand greatly outweighs supply and we have seen market rents respond accordingly with double digit year on year rental growth in 2021 and 2022. The subsequent inflation spike and its economic consequences have reduced this in more recent times, but the fact remains that without market intervention rents for industrial space would be much higher, putting many more businesses at risk of closure and less competitive markets for those industries that tend to gravitate towards industrial property use. I therefore think the assumption that the 1954 Act can distort the market negatively to be incorrect.

I also consider the point that the 1954 Act is not needed where parties agree more particular security arrangements as incorrect. The 1954 Act should act as a base level of protection for all tenants which can then be enhanced by negotiation.

CQ6 – 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

This question has already been asked and answered. See answer to Question 3.

(2) on the commercial leasehold market

As above.

CQ7 – 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).

If security of tenure afforded under 1954 Act was to be abolished or moved to a "contracting-in" position, we would be likely to see less security for tenants and as such less investment in fit-outs. This would result in it being less likely that tenants would make appropriate modifications to their properties to be fair to individuals (whether they be staff members or customers). Some examples may include modifying property to be step-free or lowering light switches to be wheelchair-friendly, or indeed creating toilet facilities that are safe spaces for specific genders or those who have undergone gender reassignment.

I cannot see how the introduction of mandatory Security of Tenure would be detrimental to any group protected under the Equality Act.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

I think the main purpose for modifying the Security of Tenure provisions ought to be to enable parties to better avoid disputes that end up in Court. The 1954 Act is ineffective protection for smaller tenants and ineffective at enabling smaller Landlords to recover protection as the cost and time of resolving the matter in Court is prohibitive.

I am of the view that more work should be done to enable transparency of rental information so that both parties' can agree rent based on the whole evidence within the market. It may also be beneficial to enforce Dispute Resolution Service upon parties that cannot agree on renewal terms.

Tim Rowcliffe-Smith FIRRV, Personal capacity

Role: a professional (legal, property or other professional)

I answer as an indpenended valuation surveyor and associate university lecturer.

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

CQ2 – 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.

Model choice: Mandatory security of tenure;

Reasons

If operated property, and small modifications made, there is not negative effect of mandatory security of tenure as it currently operates. Only tenants who have fulfilled their obligations to the landlord as a tenant and who will to continue training and paying a market rent are protected. Where is the problem with that? Landlord who wish to redevelop and quit, so are not encumbered. All of the reasons proposed for changing fall when confronted with the above fundamentals.

Yes landlords with empty properties are suffering. However reducing the security of tenure of occupiers makes not difference to that suffering: it merely enables landlords to have an inappropriate unbalance of power at the negotiation table at lease renewal. It creates a situation where the tenant must pay whatever rent the landlord demands at renewal or vacate. Rents agreed will therefor be punitive, above market rent, and actually be market making rents, when cited as comparable by landlords in rent reviews on comparable properties.

It is not appropriate to redress the difficulties landlords are having that arise from challenging economic circumstances, by giving them an almost exploitative power over their tenants at lease renewal.

CQ3 – 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 parties and their advisers

Reducing the security of tenure of commercial tenants merely enables landlords to have an inappropriate unbalance of power at the negotiation table at lease renewal. It creates a situation where the tenant must pay whatever rent the landlord demands at renewal or vacate. Rents agreed will therefor be punitive, above market rent, and actually be market

making rents, when cited as comparable by landlords in rent reviews on comparable properties.

(2) on the commercial leasehold market

Rents agreed on lease renewal, and with reduced security of tenure will be punitive, above market rent, and actually be market making rents, when cited as comparable by landlords in rent reviews on comparable properties. Not good!

CQ4A – 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.

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CQ5 – 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.

CQ6 – 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

(2) on the commercial leasehold market

CQ7 – 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).

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Jonathan Hewitt, Personal capacity

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

CQ2 – 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.

Model choice: Mandatory security of tenure;

Reasons

It is so easy to contact out and is imposed on the majority of tenants by landlords that it really means very little these days. The only people generally able to insist on protected leases are large anchor tenants who have sufficient bargaining power to be able to do so. However, they are the tenants with sufficient bargaining power in relation to rents and other lease terms (e.g. restricting competitors in nearby units etc) anyway. The result is that something introduced to protect tenants and equalise (to an extent) the bargaining power of landlords and tenants now only benefits large tenants who never needed protecting in the first place and who could have negotiated options to renew without the assistance of the Act, whereas smaller tenants (who really ought to be those towards whom the Act's provisions should be geared) don't get the benefit and so never really had the chance of the two options. Outside of large tenants with a lot of bargaining power, it is essentially as if the Act does not exist.

It was recognised in the 1960s that landlords may be unwilling to let on short term lets if they could not easily get their space back. However, contracting out was a sledgehammer to crack a nut and effectively makes the 1954 Act a useless piece of legislation for the most part. Extending the short term exemption was the correct approach and should have been adopted alone but with a longer period.

Landlords, of course, will argue against anything that threatens their huge bargaining power and absolute domination in this regard. However, that is the point of this act, the empower tenants and put them in a fairer position. As long as there are sufficient and fair grounds for opposition, landlords have nothing to fear.

The position ought to be similar to that in Northern Ireland: mandatory security of tenure but with a longer minimum period of say 18 months, so as not to discourage very short-term letting.

I would be in favour of keeping all business leases protected as office tenants and others still need protection and can face huge costs of relocation and dilapidations.

CQ3 – 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 parties and their advisers

It would provide a framework for all renewals but ultimately, if the parties agree that their should be a renewal, the process would be no different to now.

Where it would make a difference would be that landlords could not simply "get their own way" and say that if the tenant doesn't agree to their new terms they have to leave. It would go some way to equalising the bargaining positions of the parties. This would actually in many cases lead to a quicker resolution because if both parties know the landlord has to grant a new lease and the only question is the terms (almost inevitably rent and term) and the Court/Tribunal will impose terms that are reasonable, neither party will want to spend money arguing that and so in 99% of cases they will simply agree what is reasonable.

Therefore, in the end, putting a structure around the process and an arbiter into the process leads to more agreement, not more dispute.

In terms of legal advisors, it will make little difference as they will paper the agreements either way. What it may do is reduce the need to involve agents to negotiate as the parties will know they have to be reasonable and so seek to resolve matters quickly between themselves so as to avoid the costs of the Court/Tribunal process which would sit behind the whole process and act as an incentive to resolve matters between the parties.

(2) on the commercial leasehold market

Ultimately, if we returned to mandatory security of tenure across the board, it would simply be a fait accompli. Landlords want to earn money from their investments and so would continue to let. The key is to ensure the grounds for opposition are sufficient and that there is a simple process to follow where there is a dispute over them. For example, a simple application to the First Tier Tribunal for a finding of fact that, for example, the landlord has sufficient intention to redevelop etc. Similarly, there should be an easy Tribunal determination process for say rent and term - these are market matters which can easily be decided by a Tribunal process led by a surveyor, and for the most part could be dealt with on paper and minimal cost.

Where there may be a negative effect is in short term lettings. However, I think that this can be easily addressed by extending the minimum time which a lease can exist "unprotected" to say 18 months and expressly excluding nil rent tenancies so that "meanwhile space" given to charities is not impacted (in practice this is often achieved via a tenancy at will but it would help to specifically exclude nil rent tenancies from the Act).

CQ4A – 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.

Not Answered

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

Not Answered

CQ5 – 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.

Not Answered

CQ6 – 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

Not Answered

(2) on the commercial leasehold market

Not Answered

CQ7 – 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).

Not Answered

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Not Answered

Rachel Watkin (District Judge), Ministry of Justice, Personal capacity

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: None

Regions:

Sector(s):

CQ1 – 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.

I am based in Wales and have some familiarity with the property market across wales. All of my comments reflect my understanding of the effect of the current 1954 across both England and Wales.

I have worked as a property lawyer (solicitor then barrister) working across England and wales for over 25 years. I am currently a District Judge sitting in the Civil jurisdiction, including the Business and Property Courts, I also support beneficiaries through a charity know as Refugee Kindness - North Wales. Many of our beneficiaries look to set up local businesses once they have had their legal status and right to work confirmed and we may support them with this, albeit we do not offer them legal advice.

CQ2 – 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.

Model choice: Mandatory security of tenure;

Reasons

The present situation is akin to there being no security of tenure - save that the parties to any lease are each having to incur legal fees up front for the preparation of declarations. Therefore, the current form of contracting out makes the provisions for security of tenure set out in the 1954 Act not only pointless but onerous and costly.

Many landlords take the standard approach of demanding that tenants contract out. As tenants often do not fully understand the position and consider that the landlord has a stronger negotiating position, they consider that they do not have any alternative.

It is very difficult to explain the concept of security of tenure to a potential tenant, particularly one who does not speak English as a first language. Even those who do understand, often do not wish to enter into further negotiations either after a difficult rent negotiation period, or at all. The concept that security of tenure might exist at all is not readily understood by many tenants who are new to the market.

However, in order to enable tenants to continue to trade profitably and, thereby, make our retail communities work, there needs to be security of tenure. As it stands, it appears that

there is no security of tenure for the majority of tenants. the only way of resolving this is for security of tenure to be mandatory.

CQ3 – 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 parties and their advisers

If there was mandatory security of tenure it will improve the position of all of the above.

Security of tenure is likely to encourage more tenants to enter and stay in a commercial lease. This is to the advantage of the landlord, tenant and the market as a whole. Even tenants who have accepted that they have no security of tenure live in fear of what will happen at the end of the tenancy as they have no confidence in having a saleable asset at the end. So they are likely to cease to invest in the property and their continued occupation of it towards the end of the term.

At present many solicitors and commercial agents work on the basis that increased flexibility is to their landlord clients advantage and are, therefore, demanding contracting out. Often even holding out and leaving premises vacant if they cannot find tenants who will contract out. The lack of certainty then prevents many tenants from entering the market at all, particularly those who are aware of their rights, and also results in many closing their businesses at the end of a term as they become scared to over invest in premises that they may only be able to rent for a limited period. Additionally, the lack of security of tenure gives the landlord the power to make unrealistic rent demands at the end of term with the result that tenants cannot continue in their businesses.

(2) on the commercial leasehold market

At present, there is, effectively, no security of tenure as parties can very easily (save for additional fees to their lawyers) contract out. And it appears that they are doing so, save for in the rare occasion where the tenant has a strong negotiating position.

In North Wales, there are many vacant rental units and many town centres and, potentially, industrial/business parks are struggling. Anything to encourage tenants to lease properties must be of benefit to the commercial leasehold market as a whole.

Landlords appear to be accepting that more flexibility for them, through no security of tenure, is a good thing, without appreciating the effect of this on tenants who may not come forward to rent premises and, those who do, may not feel secure or able to invest in their businesses - resulting in the business failing to thrive. Tenants may also leave rather than enter into (or during) difficulty negotiations at the end of a term. The security of tenure is limited anyway by s.30 of the 1954 Act which, in most cases, should be sufficient. Landlords are able to increase rent even where there is 1954 Act protection and properties are often worth more with a reliable tenant rather than vacant. Therefore, there is often no real reason for them to demand contracting out.

Tenants should be encouraged to enter the market and stay in the market. At the moment, many are put off by the lack of certainty due to no security of tenure. This, coupled with the effect of repairing clauses at the end of a tenancy can be very concerning for those who are fully advised.

CQ4A – 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.

Consideration needs to be given to whether there is any scenario in which security of tenure would not be suitable. Given the exclusions within s.30, it is difficult to envisage any such scenario. Tenants of all units need security of tenure and it benefits a landlord for the tenant to stay as long as possible (save for in circumstances covered by s.30).

All tenants need to know that their lease can continue indefinitely if they need it to. In order to give them the freedom to invest in their business. Even tenants who occupy for 6 months or less may need to invest in the property and, therefore, it is sensible for them to have security of tenure. The only possibility might be where a landlord has a future use for the premises and wishes to rent it out in the interim. For example, if they believe that a larger retail who is a better proposition as a tenant may want to take the premises in, say, 6 months. This could be added as a further exclusion to s.30 - where a specific use is set out in advance. For example, where a change of use application has already been made and/or where the tenant is notified in advance.

Furthermore, it is confusing if tenancies governed by other legislation but which still are still business tenancies are not covered by the Act. It would be appropriate for all such situations to be covered or specifically referred to within the Act.

Tenants with greater negotiating power such as the large national companies may be less affected by the legislation as they may have the negotiating power to demand appropriate options to renew at the commencement of the lease, irrespective of legislation. Albeit, where landlords are encouraged to pursue difficult negotiations, the national companies are often willing to simply go elsewhere. Therefore, encouraging landlords to believe that contracting out is viable may be not of assistance to them.

As s.30 is there to protect landlords who may need possession of a premises at the end of term, I cannot see that there is any benefit to either party in security of tenure not being mandatory. Where there are reasons that might be applicable, these should be added to section 30.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

The various models that are suggested are of no consequence to my responses. A contracting in or contracting out model are no different to where security of tenure is removed entirely - as the outcome in each situation will turn on the negotiating power of the parties. From the market at present, it seems that the result of this will be that all parties will contract out - to the detriment of both.

Therefore, save for an adjustment in the amount of legal fees paid by a party, the position will remain ase it is today, with potential tenants being in fear of taking on leases as they have no security and those who do so, being reluctant to invest in their businesses due to the uncertainty. Unless the tenants have particularly strong negotiating power.

It seems, therefore, that the only model which may resolve the current problems and give tenants the peace of mind that they need to start a business is by providing them with mandatory security of tenure. This does not prevent landlords relying on s.30 LTA 1954 - which could be extended.

CQ5 – 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.

From the situation as I see it on the ground in Wrexham (aside from my work as a judge and a lawyer), the 1954 Act is in desperate need of reform. The current security of tenure provisions are beyond pointless as as landlords seem to all adopt the policy of demanding that tenants contract out and the tenants (particularly those who don't speak English as a first language) don't feel able to negotiate. Therefore, there is no security of tenure for them. I say that the provisions are beyond pointless as not only do the tenants have to contract out but they have to pay additional fees to their lawyers to prepare the documentation to do so.

I cannot see any disadvantage to moving to a position where security of tenure is mandatory - particularly as s.30 can be extended if landlord believe that they need extra protection.

CQ6 – 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

A change to bring in mandatory security of tenure would prevent landlords taking the blanket approach of insisting on contracting out. This would mean that tenants have some certainty (even if not absolute - due to s.30) that they will be able to develop businesses that will support them and their families for a long time to come and will eventually be a saleable asset. Whereas, at present, they can have no faith in recovering anything more than day to day profits, any goodwill that they had to the business at the premises will be taken by the landlord at the end of the lease term.

It is hoped that the change would result in more tenants taking on leases, them having increased motivation and ambition to run and expand their businesses, knowing that they are not only creating an immediate income but are leaving a legacy to their families/successors. Businesses would then be more likely to thrive.

Additionally, when tenants decide to leave their businesses, they are saleable not just to enable the tenants to benefit from an increased value but to enable future tenants to continue the business and the town centres and retail parks then have on going goodwill for the market as whole not just for individual transient businesses.

(2) on the commercial leasehold market

With security of tenure, businesses could be set up with a view to them becoming saleable assets, enabling the particular business to continued on a longer term basis - beyond the period of the lease or even the working lifetime of any tenant.

At present, with no security of tenure, tenants work towards creating a business that will last no longer than the term of the lease. At the end of the term, they have no certainty and have been encouraged to focus on an end date. Therefore, at the end of the term, they may remove their business and, therefore, remove any goodwill with the result that the unit becomes less desirable. The result is a constant turn over of temporary businesses in town centres and retail parks that are struggling.

If tenant's are encouraged to develop sustainable and saleable businesses, by being informed that they have security of tenure, they are more likely to do so which will assist in the re-generation of town and city centres, and help sustain the commercial leasehold market. At the moment, the only way of a business person knowing that they have any form of security of tenure is by purchasing the freehold or long lease. Many cannot do so, due to financial constraints. As a result, many avoid renting from private landlords and cannot pass on their businesses - either to family successors or through a sale. Businesses therefore flounder at the end of a lease term and result in empty units and failing town centres/business parks.

CQ7 – 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).

Through my involvement with Refugee Kindness - North Wales (charity) - signposting and supporting some of the beneficiaries in securing tenancies, I am able to say that security of tenure under the current regime is not available to them. I have been informed by local letting agents and solicitors that it is standard practice in Wrexham for Landlords to insist on the parties contracting out of security of tenure. Even explaining this to potential tenants who do not speak English as a first language is very difficult. This is particularly the case as there is so many other matters to be considered - such as the impact of repairing covenants, rent reviews, covenants etc. Further difficulties arise from the nature of many of the families. They already often feel that they are not welcome in the UK and, therefore, often do not wish to enter into difficult negotiations.

May of the beneficiaries have no assets in the UK and are starting the business in the hope of creating something that they can pass on to their children in time. If they have no certainty of this being a possibility due to the length of the lease, the business becomes less desirable to them - particularly the more senior potential tenants. If need be, I believe that I could obtain statements of truth from Syrians and Afghans who would be able to confirm the above.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Some general thoughts:

1. If it is thought that mandatory security of tenure is not appropriate, it could revert to a requirement to obtain the approval of the court to any contracting out. Whilst this would be similar to the position prior to 2005, it should not be a simple rubbering stamping exercise but should be a proper approach whereby a landlord would need to show a real need for the property to be returned at the end of the term. However, it is difficult to envisage what type of reason that might be given the exemptions that are already available to a landlord within s.30.

2. If it is considered that there are good reasons as to why security of tenure should not be offered at the outset, consideration could be given to extending s.30. For example, where a landlord informs the incoming tenant at the outset that they are applying for change of use and that possession may be required from a certain date. However, this would need to have certainty.

3. Consideration should also be given to considering whether s.30(f) and (g) are appropriate. Whilst the intention for a landlord to occupy themselves or to redevelop must be real, it is not appropriate that they should simply be able to show that they have an intention do so before ousting a tenant and ruin a tenants business. Surely, there should also be a consideration of the impact of this on both the parties and a balancing exercise be carried out - in addition to the landlord showing that he has a real intention. This may avoid a purchase by a new landlord who is content to wait 5 years but whose aim is to oust the current tenant. This may be for consideration at the next stage of the consultation process.

Guy Pewter, G+S, Personal capacity

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

Not Answered

CQ2 – 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.

Model choice: Mandatory security of tenure;

Reasons

Protects tenants so not ransomed at end of lease.

CQ3 – 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 parties and their advisers

If all tenancies inside Act a level playing field so fair to both tenants and landlords

(2) on the commercial leasehold market

CQ4A – 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.

All tenancies should be inside Act but we need Act re worded so it allows landlords to take back premises more easily at lease end with good reason. eg, own use, refurbishment to improve property (important where property EPC rated C - G), tenant not good at maintaining property as lease / poor payer.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

If lease inside Act we need a better procedure to impose terms if tenant wants to renew but landlord and tenant can not agree. we also need it easier for landlord to evict tenants at lease end with good reason.

CQ5 – 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.

Yes Act needs modernisation so easier to get tenants out in protected leases at lease end and a procedure quicker and more cost effective than Courts to determine disputes.

CQ6 – 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

If all leases inside Act it creates a level playing field and protects both tenant and landlord, but importantly gives tenants reassurance to invest in their premises in knowledge at lease end they can only be evicted with good reason and not ransomed to pay an unrealistic and higher than market rent to stay trading from premises.

(2) on the commercial leasehold market

Both landlords and tenants need certainty and Act only really needs modernising because of differences when drafted 70 years ago. EG advance of internet, mobiles and transport.

CQ7 – 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).

If all leases inside Act with a quicker and cheaper mechanism to resolve disputes it would be more fair for all parties. The Court process to resolve disputes is too slow and expensive.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Tim Garratt, Blackstar Advisory, Personal capacity

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

Not Answered

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

I am concerned that we are making changes for changes sake. The present system works perfectly well. If it about tenants not realising what they have signed then that is an education issue and does not need the legislation to change.

CQ3 – 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 parties and their advisers

I think a change over complicates matters. I consider that the present situation is widely understood and the security of tenure issue is fairly low down the list of issues. As an example a tenant recently showed me his lease (which was contracted out - albeit not correctly) but he had signed an annual rent review calculated by reference to RPI (which has nothing to do with property). He is tied in for 10 years! His lack of security of tenure is the least of his worries, his rental escalator will be penal if we have a year like 2022. We are looking at the wrong thing here.

(2) on the commercial leasehold market

It won't make any difference at all.

CQ4A – 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.

I am of the view that the present situation works and so would not advocate any change. What should change is guidance for tenants - in the form of better understanding. But that does not need primary legislation!

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

No

CQ5 – 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.

I see more disadvantages than advantages. Changes for changes sake mean confusion in the market. We have legislation that has worked with minor tweaks for 70 years.

CQ6 – 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

I don't see many meaningful impact. Tenants will continue to be unrepresented as now; some landlords will ignore any legislation. Education is key.

(2) on the commercial leasehold market

See above

CQ7 – 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).

I have seen zero evidence of any of this in 43 years of professional practice.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Robert N Smith, Levy Real Estate, Personal capacity

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

The current model of security of tenure isnt the issue. I represent both landlords and tenants in disputes under the act across office and industrial properties. In most instances I find that the parties have knowingly entered the lease with security of tenure and are happy to do so. However, they are not aware of the potential for the delays and costs that are now common place when there is a dispute. The courts do not seem to have the capacity to deal with the disputes and where they do, the process can be hijacked by either party leading to significant costs, delays and uncertainty.

We already have the PACT scheme and my view is that in the case of a dispute this should be mandatory with reference to either an arbitrator or an independent expert.

This is common practice in rent review disputes and they are usually resolved quickly and economically.

CQ3 – 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 parties and their advisers

I dont think the model should change.

As I say, the issue is the cost, delays and and cumbersome nature of the current dispute resolution process through the courts.

The impact of a compulsory use of PACT would be cheaper and quicker resolution of disputes. This means that both sides would be more willing to sign up to leases inside the act and business would have more opportunity to have greater security.

(2) on the commercial leasehold market

By changing the dispute resolving method, the commercial leasehold market would be more flexible and the costs of investing in a property as either an investor or occupier would be lower. This would make the commercial leasehold market more liquid.

CQ4A – 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.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

CQ6 – 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

(2) on the commercial leasehold market

CQ7 – 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).

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

[Not answered], Personal capacity

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

CQ3 – 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 parties and their advisers

(2) on the commercial leasehold market

CQ4A – 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.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

CQ6 – 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

(2) on the commercial leasehold market

CQ7 – 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).

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Everett Tomlin Lloyd & Pratt

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

None

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

Mandatory security of tenure may well deter property owners from letting, particularly owners of larger buildings who may have sound reasons for wishing to preserve flexibility.

No statutory security of tenure will mean business owners will not have the certainty required to invest and plan for the future. It would run contrary to the rationale which led to the introduction of Part II of the 1954 Act in the first place.

Having to contract-in may well put tenants at a disadvantage in trying to persuade a landlord to contract-in. In addition, some landlord's may be deterred from contracting in if it means additional legal work when granting a lease, especially as that additional work would effectively be for the benefit of the tenant.

The current system of contracting-out works, so why mess with it? Although the original procedure which required an application to the court in order to contract-out was cumbersome and could lead to delay in granting a lease or entering into an agreement for lease, the new procedure introduced some twenty years ago by the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 removed that problem.

CQ3 – 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 parties and their advisers

In the short term change would lead to uncertainty among the parties to tenancies and their advisers whilst everyone gets to grips with the new regime.

Compulsory contracting-in could well lead to landlord's withdrawing from the market and may converting their properties to residential.

(2) on the commercial leasehold market

Abolishing security of tenure could well deter people from setting up a new business or from expanding a new one, which in turn would have an adverse effect on demand in the commercial leasehold market.

Compulsory contracting-in could lead to higher rents.

CQ4A – 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.

Different considerations apply to agricultural holdings, farms, mines and minerals and telecommunications installations which justify them being excluded from the scope of the 1954 Act and that exclusion should continue.

Duration Excluded Tenancies should also continue to be excluded, otherwise short term arrangements could end up having security of tenure when that is not what the parties intended.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

No.

CQ5 – 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.

Yes.

CQ6 – 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

If the Use Excluded Tenancies were brought within the scope of the 1954 Act it would cause uncertainty for farmers, mining concerns, telecommunications businesses and their advisers. Professionals who have spent years building up expertise in a particular type of tenancy could see the need for that expertise dispensed with.

(2) on the commercial leasehold market

Not sure.

CQ7 – 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).

I do not think so.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Nothing.

Gethin Parry, Pearce & Co (Chertsey) Ltd, Personal capacity

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

The current regime is well known but the process of contracting out could be streamlined to avoid delays, additional costs etc

CQ3 – 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 parties and their advisers

I propose no change

(2) on the commercial leasehold market

CQ4A – 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.

1. I believe so, yes.

2. Consider extending this.

3. Not that springs to mind.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

Possibly.

CQ5 – 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.

I think the impact could be dramatic. My experience is that the vast majoirty of lease are inside the Act and that contracting out makes the process longer and more expensive. For exmple, a landlord client died recently after a tenant had contracted out but before the lease completed. New lease documents had to be circulated and the process meant that tenant had to pay twice to have their stat dec sworn.

CQ6 – 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

(2) on the commercial leasehold market

CQ7 – 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).

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Michael Anthony Harvey, Nantes Solicitors Limited, Personal capacity

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

none

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

The protection the 54 Act gives to tenants means that tenants as a group can avoid the usually enormous expense of having to move from one premises to another when it does not fit into their business plan. That will keep business costs down in general, costs to consumers down in general, and help commerce in general be more efficient.

The right to a new lease gives tenants the negotiating position they need to keep their rent in line with the market rent when a lease comes to an end.

If a tenant has no security of tenure it will end up being blackmailed into paying a rent that is higher than the market rent to avoid having to pay much higher relocation costs.

Many tenants do not take legal advice when they take a lease, and the only time they would be made aware of the 54 Act is when an exclusion notice is served on them. Automatic removal of security will mean many more tenants will find themselves in a weak position when their lease comes to an end, and usually drive up their costs of operation.

No security at all will often mean many tenants will wish to enter into complex contractual renewal agreements, involving significant delays in getting leases signed, and increases in legal fees.

CQ3 – 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 parties and their advisers

The reduction in negotiating strength for tenants will increase the costs of doing commerce generally.

Their advisors will need to be equipped to provide and negotiate complex contractual renewal provisions to replace the Act

(2) on the commercial leasehold market

Fewer tenants will wish to enter the market as they may have fewer rights to renew

Tenants will find it more difficult to keep control over the premises that are the most efficient for it to operate from.

CQ4A – 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.

I do not see the need for any changes

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

No change

CQ5 – 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.

Please see above for my views

CQ6 – 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

Please see above for my views

(2) on the commercial leasehold market

please see above for my views

CQ7 – 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).

I do not have any such evidence.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Nothing else. I think the current rules work well. Any significant changes will put tenants at a significant disadvantage, thereby increasing their own costs which will be passed on to consumers.

Elizabeth Rhodes, Historic England, Personal capacity

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: 250 or more

Regions: West Midlands, South West

Sector(s): Financial, professional, scientific and technical services

CQ1 – 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.

Cannot comment

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

The reason for the choice is that Landowners and those renting need a balanced approach between Landlord and Tenant with no one holding the balance of power. The 1954 Act was bought in because of unscrupulous actions by Landlords following WW2, and then because of the uncertainty of Landlord's getting their premises back, amended in 1969. That amendment to it and the changes that were bought in, in 2003 by and large works: however there is a tendency to default to the statutory declaration method for any contracting out, rather than using the simple declaration method, which could just be a matter of education.

CQ3 – 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 parties and their advisers

Having a party hold all the cards makes for a very sided negotiation. Any outcome to a property transaction should be win-win for all parties. It should not feel that one party has bested the other, because that in turn leads to a lack of trust between the parties which is not quickly forgotten.

(2) on the commercial leasehold market

Should that lack of trust occur then the commercial leasehold market will probably encounter further decline.

Small businesses taking tenancies should be better informed as to the rights they are giving up on contracting out which despite all the warning notices, it is our perception that these are rarely read.

Beyond the scope of this consultation but food for the revitalisation of the high street, maybe the commercial property market would benefit from the rating multiplier being reset.

CQ4A – 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.

All business tenancies should be covered by security of tenure, excluding agricultural where a different regime exists.

Extent of duration excluded tenancies is currently correct.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

My answer would not change

CQ5 – 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.

Not convinced it is the 1954 Act causing the issue. As mentioned previously the multiplier for Rates is very high at present, and with the change in shopping habits to more intranet businesses, these should be bought into scope.

CQ6 – 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

The market always finds a way to try and circumvent any changes, if the balance of power changes too far so that it becomes out of balance then there are always those operating in the market who will try to take advantage.

The purpose of the consultation is to revitalise the high street, perhaps small business owners need to be come better informed of their rights.

(2) on the commercial leasehold market

As above.

CQ7 – 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).

Changes to the scope of the act have to be promulgated to the small business so that larger landowners do not take advantage of unfamiliarity.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Rupert Barnes, Personal capacity

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

There is no distinction between Wales and the rest of England and Wales in any matter relevant to the consultation. Indeed, it is of advantage to business and professionals to have identical rules understood across the jurisdiction.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

One point missed from an otherwise excellent paper is relevant to this question. This is that a landlord may often prefer to grant a Protected Lease. Firstly, a Protected Lease may command a better rent, both as an initial rent and on review. Secondly, a tenant without protection will be planning his possible departure in advance of expiry, leaving the landlord in an uncertain position; while the tenant with protection can be usually be relied upon to renew, with no break in the rental income. Thirdly, a tenant with security is more likely to maintain and improve the property: one in precarious position has no incentive to do so and so will do the minimum, hiding cracks behind cupboards, and being ready to leave a tottering shop behind him. My responses should be read in that context.

(1) Mandatory security must be ruled out at once. It would collapse the commercial market, and lead to widespread vacancies, emptying town centres and industrial estates alike. This is well analysed in the Paper. Further, rents would increase substantially to compensate for the lost income.

(2) No statutory security is a subtle question. If no security is available at all, that is disadvantageous both to landlords and tenants.

However, the abolition of the statutory scheme would be greeted by the creation of an industry-standard private version. This is the "standard-form contractual option" referred to in paragraph 3.94 of the Paper. I discuss this in more depth in my response to Question 6. I have also at the end of the Consultation made observation on the rule against perpetually renewal leases in this case.

(3) & (4) Choosing between an opt-in and opt-out version is a fine balance. If the opt-out or opt-in procedure is simple and certain, it should not make too much of a difference. That said, if an opt-in scheme were adopted, it should be introduced on 1 January in the year, so that one could tell from a glance at the date at the head of the lease to know which regime applies.

Whichever version is chosen, consideration will need to be given, in the context of the scheme, to the position where a tenant is holding over after expiry, and whether this provides statutory protection: this would be a matter for the Part 2 Paper.

Other considerations:

Partial opt-outs or agreed additional grounds should also be considered a possibility. This might be a matter for the Part 2 Paper. The concept is specifically relevant where the lease has a landlord break option, or where a lease is granted with a particular future development or reorganisation in mind, when the strict terms of the Act are a hindrance.

The Act applies at the exercise of a landlord's break option, as analysed at 1.21 of the Paper. A landlord with a future development or sale in mind, contingent on events, is therefore only able to grant an Unprotected Lease, which is disadvantageous to both sides. The landlord would be encouraged to grant a Protected Lease if the lease could say "If X happens then the Act does not apply" (with or without the statutory compensation for disturbance).

An alternative would be to allow the parties to add a further, contractual ground for opposition to the grant of a new lease.

The Act also applies to agreements to surrender. I have no additional comments on this, but feel it should be noted while considering the implications of an opt-out or opt-in system.

CQ3 – 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 parties and their advisers

This is discussed in my responses on Question 2.

(2) on the commercial leasehold market

This is discussed in my responses on Question 2.

CQ4A – 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.

Exclusions should be minimal, because certainty is vital. It must be clear from the face of the lease, without the need for research or measurement, whether a lease is protected or unprotected. As the examples in the Paper show, criteria such as location, area and rent lead to uncertainty and litigation. Without certainty, the landlord is not able to plan, nor know the value of their interest, and the tenant does not know if they can safely invest in their own business.

In practice today, leases which are clearly excluded, such as a six-month lease, often go through the opt-out procedure just in case. Even licences to occupy sometimes have a 1954 Act opt-out added, in case the licence is ruled to be a lease. If more exemptions were introduced, we would still use the opt-out in each case.

Even the limited exemptions in Section 43 of the current Act can be problematic. The licensed premises exemption in s 43(1)(d), for example, is little known and too indefinable to be any use: the distinction between a pub and a restaurant is philosophical, not real.

In short, if it were decided that for policy reasons a certain sort of lease ought not to be a Protected Lease, the landlord and the tenant can sort that out themselves (provided that an opt-out is available), so there is no advantage in setting out an exemption and no loss in failing to do so. The existence of the exemption could cause damaging uncertainty.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

The answer would be the same: whether a statutory protection applies to a lease must be certain, not dependent on detailed or shifting factors. This is relevant whether there is an opt-out or opt-in. If there were no statutory protection, the question becomes irrelevant. If it were proposed that there be no protect except in certain limited defined circumstances, this throws the whole thing into uncertainty again.

CQ5 – 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.

It is a well written Paper in this respect. The market follows the current commercial needs. Practice is shaped by the needs of the market, but in the context of the statutory scheme: if Part II of the 1954 Act were not there, then practice, and the market, would be very different.

I would note that the Landlord and Tenant Act 1954 has proven remarkably enduring, after its two main reforms. It has several practical faults (which are a subject for the Part 2 Paper), but the overall structure is well understood and coherent – rare for an ambitious statute.

CQ6 – 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

If the statutory scheme were abolished, one would expect to see the creation of an industry-standard private version. One can foresee the inclusion in each lease an option to renew by reference to an accepted industry-standard scheme. This is the "standard-form contractual option" referred to in paragraph 3.94 of the Paper.

The RICS or the Law Society could provide a standardised contractual renewal option, whereby parties might agree that the lease includes “1954 Conditions”. This would have more flexibility that a fixed, statutory scheme, with the flexibility to amend or disapply “1954 Conditions” as the parties choose. If done well, then I would anticipate widespread take-up.

That said, many of the most entrepreneurial tenants are inexperienced and may prefer a scheme set out in law.

I would add that an industry scheme is possible even if a statutory scheme continues: one could opt out and choose the scheme instead. However, this has not happened in today's legal regime and so is unlikely under a reformed scheme, unless there is substantial market pressure for other options.

Under Question 2 I suggested consideration of partial opt-outs or agreed additional grounds, as specifically relevant where the lease has a landlord break option.

(2) on the commercial leasehold market

See above.

CQ7 – 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).

There is no relevance nor effect.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Consideration may be given to the way the rule against perpetually renewal leases would impact on any contractual protection. This is a statutory rule which transforms any perpetually renewable lease into a 2,000-year term. Replacement of the statutory protection by a contractual scheme has been discussed: this might happen on the abolition of statutory security or if the market demands more flexibility than the statutory scheme can provide. If a contractual scheme is to be made available, the rule against perpetually renewal leases would need to be repealed.

I also noted above, in response to Question 2, the possibility of allowing a partial or conditional opt-out.

Consideration should be given to allowing the parties to agree grounds for opposition in addition to those in Section 30.

Navneet Jhawar, BPP University, Personal capacity

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

Mandatory security of tenure would be too restrictive and it would be possible for inadvertent security in scenarios where neither landlord or tenant would benefit eg occupation of a room within serviced offices but the occupier is the only one with access to the room.

No security of tenure would disincentivise businesses from investing in a local area in knowledge that they may be moved on. It also wouldn't allow them to build up goodwill.

Contracting in is likely to disproportionately affect small businesses with lesser bargaining power and perhaps lack of knowledge about their legal position

Contracting out, whilst can be cumbersome, balances the interests of both parties involved.

CQ3 – 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 parties and their advisers

(2) on the commercial leasehold market

CQ4A – 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.

In terms of duration, the current restriction on 6 months is sufficient to address pop up shops and temporary businesses

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

CQ6 – 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

(2) on the commercial leasehold market

CQ7 – 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).

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Avison Young

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

Not Answered

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

This system protects tenants but also allows flexibility.

CQ3 – 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 parties and their advisers

A change to outdside the Act for all tenancies will cause some tenants to be exploited at lease end.

In an unprotected tenancy rents at lease end tend to be higher as the tenant is in a weak negoiating position.

(2) on the commercial leasehold market

As above.

CQ4A – 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.

We believe the current scope is appropriate in terms of extent and type of tenancies.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

yes we believe so.

CQ6 – 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

The current system is appropriate as it allows the option depending on the property type and market.

(2) on the commercial leasehold market

Making inside the Act mandatory would be onerous for landlords in certain cases. To remove security of tenure would place tenants in a weak position. The Act currently allows for both and is appropriate.

CQ7 – 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).

not other than the comments above.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Mr A S Hyman

Role: a professional (legal, property or other professional)

Self Employed, as a practioner and property investor

If landlord or tenant:

Number of employees: None

Regions: North West

Sector(s): various - it depends on our tenants!

CQ1 – 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.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

The system in place works well for both landlords and tenants. It is important that there is flexibility to allow the parties to negotiate what is suitable. Either party has the choice to walk away. There is no need to legislate further on this. In doing so this will create confusion and result in mistakes as parties need to learn and become familar with new procedures. Mistakes are expensive.

Changes will result in a 2 tier system across portfolios as there will be the existing situation and a new system. This inconsistency will cause significant management issues and result in additional resources and confusion.

CQ3 – 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 parties and their advisers

This will result in confusion

(2) on the commercial leasehold market

Some tenants require Security of Tenure, by removing this it could result in significant issues for tenants who wish to make a long term commitment to the space that they lease from a landlord.

I disagree with the following:

- 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

There is no indication that a change to the L&T Act would improve the efficiency of the high street. If anything i see it having a detrimental impact if the option to have Inside the Act and Outside the Act is removed.

- and wider government priorities, such as the "net zero" and "levelling up" agendas; and

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

This is absolute nonsense. Net Zero is not a leasing issue, its a physical one addressed via EPCx. Levelling up is irrelevant here (market related) and as for fostering LL & T relations, this is subject to how LLs see their Tenants and how they invest time in them. Changes to LL& T act wont improve bad landlords!

CQ4A – 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.

I think I have already answered this - no need to change the existing status quo that has worked well for my entire carrer and continues to do so. In fact since the Opt out was simplified it has improved.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

Maybe some improvements around serving notices

CQ5 – 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.

CQ6 – 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

Already answered this

(2) on the commercial leasehold market

Ditto

CQ7 – 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).

Riddiculous question - why does everything have to come back to Diversity etc. This really irritates me!"

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Adam Schofield, Hicks Baker, Personal capacity

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

As a chartered surveyor specialising in Lease Advisory I have spent over 20 years negotiating lease renewals on many different commercial property types. I negotiate protected lease renewals for both landlords and tenants and I negotiate unprotected lease renewals for both landlord's and tenants.

In my experience there are often good and professional relationships with open and frank conversations resulting in fair terms being agreed on lease renewal... however I also find very frequently that one party has an advantage over the other that they are willing to use to gain better than market terms. As such I believe that the abolition of the L&T Act would have a detrimental effect on many (mostly tenant's but some landlord's as well) resulting in leases being renewed on terms that do not reflect the open market on a regular basis.

On the other hand I consider that parties should have a choice and that an option to be inside or outside the Act should remain. However, the default should remain that a lease is protected unless contracted out as otherwise I believe that many landlords will simply refuse to "contract in" which would result in an outcome that largely reflects abolition of the Act.

The primary issue with the L&T Act is not its existence or it's structure but the time and cost of progressing it. The Act simply needs to be updated to allow disputes to be settled quickly and cheaply by property professionals (not courts). An example would be the use of arbitrators or independent experts to settle the matter of the lease terms and rent.

As a result I consider the existing contracting out model to be the best (preferably with some updating to make disputes quicker and cheaper to resolve and to enable property professionals to be used in place of judges wherever appropriate and possible).

CQ3 – 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 parties and their advisers

I am well aware from negotiating lease renewals as a career that the absence of a dispute resolution process (i.e. the L&T Act renewal process) results in landlords using lease renewals to obtain rents well in excess of market rent. Tenant's will often be left with a decision to accept unreasonable lease terms (high rent, landlord's breaks etc...) or incur the costs and disruption of moving premises.

I believe that changing to a model that moves lease renewals into a realm where there is no third party to resolve disputes will result in a split market where tenant's on renewal will often pay more rent than new tenant's will. This is not dissimilar to other business models like breakdown cover or insurance renewals where customers who stay with their existing provided pay more than new customer do.

(2) on the commercial leasehold market

In my opinion the commercial leasehold market is likely to split into two markets, the true open market where parties negotiate lease terms with a backdrop of a tenant being able to "walk away" if terms are not acceptable. And a lease renewal market where tenants will pay a higher rent because often walking away is simply too expensive.

There is a possibility that the current trend to shorter term leases could reverse either because tenant's seek to delay the date when their landlord can "hold them over a barrel" by taking longer leases or because landlord's might insist on returning to 25 year leases to secure long term income (which are now highly unusual).

I believe a loss of the L&T Act will have a notable negative impact on the leasehold market.

CQ4A – 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.

Not Answered

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

Not Answered

CQ5 – 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.

Not Answered

CQ6 – 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

Not Answered

(2) on the commercial leasehold market

Not Answered

CQ7 – 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).

Not Answered

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Not Answered

Gowling WLG (UK) LLP

Role: a professional (legal, property or other professional)

Gowling WLG (UK) LLP ("Gowling") is an international law firm with UK offices in London, Birmingham and Leeds. Gowling has one of the largest real estate legal practices in the UK comprising approximately 300 legal staff.

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

Gowling's practice covers commercial real estate in England and Wales. Many of our clients own or occupy land in both jurisdictions. Although we have no comments on particular considerations for Welsh business tenants, we strongly believe that law makers should aim for the security of tenure regime to be the same in both England and Wales. Consistency will be efficient for the market and everybody involved. Divergence will drive up cost of understanding and transacting portfolios and in the worst case discourage investment in Welsh property due to the additional complexity involved.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

Acknowledging that there are potential benefits of each model, we believe that the current model of security of tenure is so embedded in the real estate market that the disruption associated with a fundamental change outweighs the benefits associated with any other model. The UK real estate market is generally seen as a safe and predictable investment by domestic and overseas investors due to a generally stable regulatory and common law framework in which property is owned and occupied. The concept of security of tenure with the ability to contract out is widely understood by owners, occupiers and property managers.

In our view, the problems, frustrations and uncertainties with the security of tenure arise from the processes, practical implications and interaction of common law and the legislation (rather than the model). It would be easy to say that those problems go away if security of tenure is abolished (for example) but they could also be removed through reform of the existing model without the market having to adjust to a fundamental change.

Another strong argument for a reformed version of the existing model is to avoid two regimes running concurrently. In looking at reforming the current model, it is likely that many reforms

could be implemented for existing and future tenancies, simplifying the reform overall. Running two separate regimes for existing and future tenancies would lead to cost and confusion in the market and additional complexity (particularly for overseas investors who would need two different regimes explaining to them).

CQ3 – 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 parties and their advisers

We have limited the response to this question to high level views assuming no change in scope. A large number of the leases on which Gowling is instructed are contracted out. Mandatory security or abolishing security would immediately remove the contracting out process from the transaction workflow. In theory, this would save time (and possibly cost) on a transaction. However, in the case of mandatory security, it is possible that owners would grant shorter leases leading to more regular transactions and other actions aimed at avoiding protection (e.g. moving tenants between premises), meaning a significant increase in cost to owners and occupiers overall.

Carrying out due diligence on an occupied property would be slightly simpler in the case of mandatory security or abolished security. There would be no need to check whether leases (presumably those granted after reform) had been correctly contracted out.

In the case of mandatory security, advice and support for clients on agreed and opposed lease renewals would significantly increase across the board and presumably be a significant cost to the market at a time when the market is trying to reduce the cost and introduce process efficiency into short term leasing. Strategic advice around obtaining vacant possession would add cost and time to developers because if all occupiers had security there is less certainty and more cost involved in obtaining vacant possession when an owner is ready to commence development.

If a contracting-in model was adopted, advisors would need to adapt to the new process. Fewer leases are granted with security of tenure so there would be less need to undertake the contracting-in process as part of transactions. It would therefore benefit shorter term lower value transactions that are usually the leases that are burdened with the cost and hassle of the contracting out process.

The biggest challenge for advisors would be the fundamental change of working with two different systems depending on the date of the lease. The time and cost of analysing and understanding the security of tenure position on a particular lease would increase and would be significantly more complex across an entire portfolio.

Adopting the contracting-out (current) model would have the least impact. We do not foresee any detrimental impacts and only potential benefits from changes to scope and potential simplification and clarification of the process and law within this model.

(2) on the commercial leasehold market

The impact of different models on the commercial leasehold market as a whole are difficult to comment upon separately from a discussion about scope (see later questions).

Other consultees may be better placed to comment on any potential impacts on rent levels, availability of space and size of the market. However, in our experience, acting for developer clients in particular, it is likely that a developer holding land pending development (for example during a period of site assembly or applying for planning permission) would not make that land available for short term letting if the security of tenure regime did not allow them to do so in a way that enabled them to obtain vacant possession quickly and easily.

CQ4A – 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.

1. [Use Excluded Tenancies] We would be concerned about adding to the current list of Use Excluded Tenancies. We believe that in the interests of simplicity and certainty, the security of tenure position should be clear from looking at a tenancy document in isolation. Factors such as the nature of the parties (original or current (if different)), physical features (or size) of premises or their use do not assist as they introduce factors outside of the tenancy documentation that impact the position. This information is not necessarily readily available to the parties or third parties trying to ascertain the security of tenure position.

The issue with Use Excluded tenancies is that the market's ideas about use will change as society and the way people and business use property changes. Many properties have multiple uses and legislation would need to be clear about the extent, timing and purpose of the use – would it be the use permitted by the lease, or the planning permitted use, or the actual use? Would an ancillary use qualify? We would anticipate difficultly in interpreting any attempt at a binary test based on use set out in legislation. It could lead to potentially odd scenarios, for example (a) where use changes throughout the term of a tenancy and it is difficult to ascertain whether it is in scope or (b) where one occupier is occupying two linked spaces for different uses (e.g. an office and car park or retail and storage – sometimes on different tenancies and potentially with different landlords). This might mean the occupation is within two different regimes, potentially creating a commercial problem.

There are particular reasons behind the current very specific types of Use Excluded tenancy. We think these are appropriate but we do not think it would be appropriate to introduce a large asset class (for example "office premises") within the excluded types.

2. [Duration Excluded Tenancies] We believe that it is right that there should be a short length of tenancy that is excluded from the security of tenure regime automatically (as is the case now with tenancies shorter than 6 months). Going through a process to exclude security of tenure would be out of proportion with the nature and value of a very short tenancy – and if the parties wanted security of longer-term occupation, a very short tenancy would not be what they were agreeing commercially. The current period of Duration Excluded Tenancies should not therefore be reduced (even on a mandatory security model).

Currently, the LTA 1954 aggregates the length of short Duration Excluded Tenancies so that a short tenancy is capable of having security tenure if the tenant has been in occupation for

a sufficient period. We think consideration should be given to removing this, in order for additional certainty on the face of documents. It would be significantly simpler for all concerned if (for example) all tenancies of 6 months or less were automatically out of scope without needing to know other information (i.e. the duration of the tenant's occupation before the tenancy). Although this may seem a prejudicial change to occupiers, we believe that it is not because occupiers entering into successive tenancies of 6 months or less are not in that part of the market who are expecting (or arguably need) the benefits of security of tenure. We do not consider it likely that landlords would use multiple short tenancies to take advantage of tenants and not give security of tenure – we expect that occupiers who sign successive 6 month tenancies also want flexibility or they would seek out longer term commitments elsewhere. In the current regime, some tenants who want 6 month leases might not get them because landlords are unwilling to grant the 3rd successive period which cannot be excluded, forcing tenants to relocate or look for an alternative.

The benefit of widening the class of Duration Excluded Tenancies is directly linked to the impact of any reform of the processes prior to and at the expiry of protected tenancies. For example, if the contracting-out process was reformed so that there was only one element (e.g. an endorsement in the lease), then it would be simple and easy to contract out leases of any length and the benefit of removing leases from scope is reduced. Assuming no major simplification of contracting-out, we believe that it would be appropriate to increase the length of the term of a Duration Excluded Tenancy. In our experience many currently in scope leases of 5 years or less (and a higher proportion of leases of 2 years or less) are contracted-out. There would therefore only seem to be benefits (i.e. reduced administration and additional certainty) arising out of increasing the term of Duration Excluded Tenancies in order to remove the need for contracting out these leases.

We believe that the length of Duration Excluded Tenancies should be informed by market responses from landlords and tenants rather than lawyers. Over recent years, 5 year leases have been popular in retail and leisure and also (but to a lesser extent) other sectors. We expect you will hear from retail and leisure occupiers that 5 year leases should have (or at least be capable of having) security of tenure. In recognition of that, we anticipate that the appropriate place you set the Duration Excluded Tenancy should be not less than 2 years but less than 5 years (so that 5 year leases can benefit from security or be contracted out as may be commercially agreed).

3. (c) [Other characteristics] We do not believe that there are other characteristics that should determine whether a business tenancy has protection. All of the characteristics of a tenancy that are relevant to security of tenure should be clear on the face of the document creating the tenancy. (In recognition of this, we appreciate that the law would need to be clear about the security of tenure position for oral and implied tenancies – but this is not an issue under the current law). Characteristics such as size/floorspace (often an inexact science and subject of disputes in reality), local authority, "town centre" / "high street" locations are examples of factors where the information is not immediately available to the person looking at a tenancy document or negotiating a tenancy. They are not factors where there is necessarily a single source of truth as to that information, which would make analysing or managing a portfolio difficult.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

Yes – the need to adjust scope would vary significantly depending on which model is adopted. For example, more leases need to be taken out of scope if mandatory security is adopted (because it is not appropriate for short leases). Scope is not important for the contracting-in model because it should be up to the parties if they want to subscribe to the statutory security regardless of the tenancy or asset and there is no reason to prevent them from doing so if they want to.

CQ5 – 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.

We agree with the assessment of the potential benefits and disadvantages of reforming the scope of the 1954 Act set out in the paper. We would reiterate that we believe the key principle of reforming security of tenure should be certainty and simplicity. Any reform of scope should be limited to objective criteria that are obvious on the face of the tenancy document and not be based on circumstances that are not fixed, clear and may not be obvious or difficult to verify at a later date.

CQ6 – 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

Changes to the scope which would reduce the burden of the contracting-out process on volume short term leasing (where leases are almost always contracted-out) would be welcomed. Similarly reducing the number of leases where difficult questions about the security of tenure status arise and/or where strategic advice on opposed renewals is required, is likely to be welcomed as efficient and cost saving.

Owners and occupiers are better placed to comment on whether changing the scope would impact their businesses, but in our experience most of them see contracting out as an administrative hassle and cost prior to entering into a tenancy agreement and those occupiers do not expect security of tenure.

There would initially be a time and cost involved in educating the market – but that would be mitigated if the changes resulted in a simple and clear position with limited exceptions.

(2) on the commercial leasehold market

The majority of impact of any change will be absorbed by those directly involved with the leasing process and termination or renewal of leases. We would not see any adverse impact on the market more generally.

CQ7 – 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).

No comment on this question.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Acknowledging that these are issues for the second part of the Law Commissions consultation on security of tenure, we have set out below (in very high level terms) the detailed areas of the current security of tenure regime that cause difficulties for real estate lawyers and their clients. The reason for setting this out here is that we feel it is useful context for our comments on model and scope.

1. Current scope – fix the "Van Staden trap"; remove the aggregating of short-term leases bringing them in scope (s43(3)).

2. Contracting out process – consider simplification and clarify law on current uncertainties around minor defects in process. (If the standard procedure has to be retained, consider a much shorter "cooling off" period). Consider combining the notice + declaration + endorsement requirements into a single requirement within the tenancy document (or if there is no tenancy document, a separate document). Clarify and provide for situations where landlord and tenant change between contractual commitment to enter tenancy and the tenancy being granted.

3. S25 and s26 notices – legislate to fix the registration gap issues for these notices by removing the requirement for the legal owner (i.e. registered proprietor) to serve/receive notices during registration gap (on either side).

4. Surrenders – remove any requirements for a "contracting out" process for surrenders (s38A(2)) – and/or look at extending the ability to enter into an agreement. If not, clarify the ability of parties who are not currently the landlord and tenant to enter into agreements to surrender (for example a tenant contracting with an entity who is in the course of acquiring the reversionary interest).

5. Reviewing, updating and simplifying the grounds of opposition (s30) and particularly the requirements for proving ground (f).

6. Provide greater flexibility for renewal lease terms including flexible rental models (e.g. turnover rent) and provide more certainty on the court's approach to other lease terms and modernisation than is currently offered by common law principles.

PETS AT HOME PLC

Role: a professional (legal, property or other professional)

I am in-house Counsel for a national retailer - with a large portfolio of leasehold interests

If landlord or tenant:

Number of employees: 250 or more

Regions: North West, North East, Yorkshire and the Humber, Wales, West Midlands, East Midlands, East of England, South West, South East, London

Sector(s): Financial, professional, scientific and technical services, Retail and wholesale, Transport and storage, Predominantly retail (462 sites) - but with veterinary and grooming services (within retail sites plus standalones), and distribution centre(s)

CQ1 – 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.

Our experience is that there is no difference between Wales and England so would ask that our responses below are construed as applying to both jursidictions.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

Reasons for retaining current model can be summarised as follows:

• Rebalances power between landlords and tenants in negotiating terms

• Stabilises the rental market by allowing parties to agree a fair market rent, with the option of referral to an independent professional where agreement cannot be reached - this also allows the market to adjust to 'reset' where rental values can be rebased to take into account market conditions and other economic factors - taking inflationary 'heat' out of an overrented market (as happened during the pandemic)

• Encourages and supports investment by tenants by giving security thereby allowing them to fit out and trade and recoup the cost of their investment over the lease term (and any period of renewal)

• Supports a stable and prosperous real estate market by providing a stable supply of both willing tenants and available space

• Provides a framework for landlords to redevelop or reoccupy where fair to do so and provides some compensation for tenants where they are forced to relocate

• Simple and well understood, with relatively modest cost exposure where both parties negotiate openly, but with safeguard protections if either party takes an extreme line

Reasons for rejecting the other models are set out below:

1 Mandatory security of tenure:

• complexity with competing statutory regimes and transitional arrangements

• may discourage longer term landlord investment and inhibit redevelopment, leading to less available properties and tenants bidding for the same space driving up artificially high rental values and reducing the number of viable sites – whilst this might rebalance over time due to market forces, the intervening period would introduce instability into a relatively stable market

• likely to limit lettings to shorter duration to allow landlord flexibility for redevelopment which might also inhibit investment by tenants

2 Abolition of security of tenure:

• loss of tenant protection in negotiations resulting in artificially high rents and unfair terms

• inhibits investment by tenants

• reduced tenant numbers would destabilise the UK real estate market by stultifying rental growth and discouraging landlords from investing

• reversal of current position leading to uncertainty during the transition period

3 Contracting-in option:

• places power in hands of Landlord in negotiations likely resulting in inflated rents

• unlikely that Landlords would agree to grant security without being paid a higher rent

• requires tenants to take on longer lease terms, with greater rental liability and limiting scope for new tenants to enter a market

• discourages and/or limits investment by tenants without the prospect of renewal where returns on capital are not viable during the lease term, or where goodwill is tied to a location – which is almost always the case.

Note our view as to loss of security is based largely on our experience with our Scottish based stores – which although the Law Commission note that there is some form of security in the form of 'tacit' – we do not consider this to be close in comparison to the security offered by the security of tenure in England and Wales, and is in fact open to abuse – as evidenced in our response to question 3 below.

<u>CQ3 – We invite consultees' views, together with evidence wherever possible, as to what impact a change to the model of security of tenure will have:</u>

<u>(1) on parties and their advisers</u>

(1) Potential impact on Pets at Home Plc, with evidence

Financial impact on trading and economic interdependencies

It would be hard to exaggerate the potential impact on our business if substantive changes were introduced which might diminish or even remove security of tenure. To contextualise – in 2024 Pets at Home had a rental liability of £380.8m, against a profit before tax of £132m, which highlights the delicate balance in terms of rental costs and profitability. Every increase in rental liability – pound for pound – reduces our net profit. Changes which might impact the rental values, or erode continuity of trade would have immediate impacts on profitability, shareholder value and have an inflationary impact on consumers. It would be wrong not to consider this against the current economic backdrop of suppressed consumer confidence and spending, and budgetary changes resulting in annual tax increases of £18m in the next financial year which again, will impact directly on net profit. The cumulative impact of these changes further increases the significance to any UK business of a change in rental values.

Rent represents the second largest overhead in our business – as it does for most retailers – and changes to this process would drive up that overhead to a degree that could potentially jeapordise the continued viability of our business across many of our existing sites and would almost certainly preclude us from opening in new locations.

We currently occupy 462 stores on a leasehold basis across the UK, Isle of Man and Channel Islands. Our responses apply to the stores in England and Wales only, given that the other jurisdictions – including Scotland, Northern Ireland and the Channel Islands have different security of tenure arrangements. The portfolio comprises 412 stores in England and Wales, 38 in Scotland, 10 in Northern Ireland plus Isle of Man and Guernsey.

Of those 412 stores in England and Wales all have security of tenure. This is not co-incidental. Our business model requires substantial outlay to fit out a store costing several hundred thousand pounds per store on average and with a minimum payback of five years, during which time we look to establish our business within that location and to build goodwill that will support profitability in future years. Our business model includes a veterinary surgery facility within most of our stores. This is a business which is hugely location dependent as clients require short distances when travelling with sick animals and do not easily switch locations. Whilst this is a unique position for us as a retailer, it also further underpins the need for our business to have continuity and security of tenure is a fundamental facet of this.

As further evidence of our reliance on this model, virtually all of our store leases were taken for an initial 15 year term to allow us to build our business within each specific location. Given recent periods of relative economic uncertainty and notably since the pandemic, it is more usual to renew those leases for shorter terms – usually 5 years. Having security of tenure allows us to still commit to the investment needed to refurbish and repair those stores with the knowledge that there is a continued right to renew at the end of that short term and at a fair rent. If sites are overrented, the statutory renewal process also provides an opportunity to ‘reset’ the rent to a fair market level which helps protect the viability of the site and also avoids us needing to pass on inflated costs to our customers.

A position requiring contracting-in would put the tenant in a compromised negotiating position even at heads of terms stage - to which Landlords are unlikely to be amenable and would expect a higher rental value for this to be agreed.

In the interests of balance, it is true to say that in the past we have had a very small number of sites where space was taken on a short-term basis in the knowledge that the site was to be redeveloped and have then accepted a lease without security of tenure, but this has happened on a very limited number of occasions – probably c.5 sites over a 20 year period – as it would not usually be commercially viable for us to do this. Given our size and the fact that we are an established business, it is inconceivable to consider how a new entrepreneurial tenant could look to invest on this basis.

It is also worth noting that although most of our leases will have been renewed since they were first granted, and half our portfolio will be renewed again within the next 5 years, we routinely use the 1954 Act process for serving and responding to renewal notices and applying for new lease terms, but we have never yet had to run a renewal to full trial. We have instead relied on the protection of the Act in agreeing a fair rent and in negotiating fair terms based on the existing form of lease. In our experience there is sufficient impetus on both parties to act fairly in negotiations knowing that the Court can intervene, and the access to PACT has undoubtedly resolved issues which might have otherwise ended up in further litigation or a store closure. There are certainly elements of the process that could be improved – such as that of interim rent and the arbitrary apportionment of it – but we note that this is to be considered in the next stage of consultation. We are strong protagonists therefore of the current model being retained, but with some minor adjustments. We would welcome the opportunity to contribute to the next stage of consultation.

The position above is very different to the position of our leasehold stores in Scotland which have some limited form of security by way of tacit. This is a very simplified approach whereby the lease is extended by 12 months if a notice is served by either party. It does not provide the protection of the 1954 Act in terms of negotiation or settlement.

We have direct and very relevant experience of how this simplified approach can work in practice. We believe this offers good insight into how the market forces might operate if the current model were abolished or scaled back and this is evidenced in our answer to the second part of this question set out below.

2 Impacts on advisers

Professional costs and complexity

A change to an alternative model would result in additional professional costs for both landlords and tenants - some anticipated and some not.

Any overlap period covering the phasing out of one model and implementation of a new model would be likely to impact the market for an extensive period, during which there will be confusion for stakeholders as to which model applies and a risk of inadvertent misapplication of the different models, with associated costs and losses for both parties.

Where the tenant has significant covenant strength, it might be expected that such leases might contain an option to renew the term, however such options would inevitably increase costs in negotiation and introduce conditions which if not sufficiently well drafted or understood, could lead to further uncertainty and litigation, and unintended consequences, as can currently happen with break options.

Tenants who do not take or cannot afford to take, legal advice would be further prejudiced. In general, and particularly in the wider market, tenants are more likely to be the party without knowledge of, or access to, information about the applicability of the model.

(2) on the commercial leasehold market

(2) Impact on the Commercial Leasehold market

Rental Values

The UK Real Estate market has long been recognised as representing an opportunity for long term investment growth and naturally, given the value of retail parks, most of our landlords are almost exclusively substantial real estate investment funds and pension funds, rather than individuals. Such investors are often overseas entities attracted by the history of long term growth and stability in this area, and as such their primary business model is based on driving investment value through increased rental values. One exception to this would be The Crown Estate – who cite rental income as their primary focus - but for many landlords having a retail park fully let is not their main concern. Their priority is in optimising rental values to the highest possible level to maintain a high comparable base for new lettings, reviews and renewals. Such landlords would therefore be incentivised to drive up rental values by a model which allows them to extricate value for giving security of tenure. Retail parks might suffer with tenants unable to commit to longer terms or the higher rents and this might lead to reduced footfall and limit the number of viable sites.

The current security of tenure model is a cornerstone of the UK Real Estate market. While not perfect, the current model provides a high degree of certainty and simplicity and because it helps balance what would otherwise be the diametrically opposed demands of landlords and tenants, it manages to foster a more symbiotic relationship between the two. Facilitating this supply of tenants and available space has been the basis for the long-term stable growth of UK Real Estate in this market and has helped attract and retain foreign investment, even during periods of recession in the wider UK economy.

Many of our landlords own several sites and retail parks are regularly bought and sold. It is quite common for landlords of cross jurisdictional portfolios to use the Scottish lease expiries and lack of security as leverage to increase higher rents on the sites we hold in England and Wales by including them as ‘linked transactions. The lack of security in Scotland is perceived as a commercial advantage to such landlords in their negotiations and one that is already capitalised on. It is inconceivable to suggest that a similar approach would not be adopted if security were removed in England and Wales.

[REDACTED]

CQ4A – 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.

We are of the opinion that whilst the current opt-out model should remain, there is scope to consider some limited changes to it.

(1) Extent of Excluded Tenancies – where certain tenancies are covered by other legislative provision they should be excluded from the Landlord and Tenant Act – for example, Telecoms leases. This seems appropriate to ensure simplicity, and avoid unintended consequences. Later more specific legislation is more likely to have been drafted with specific intention and with regard to relevant scenarios, and if it was intended that provisions of the Landlord & Tenant Act would be relevant, these will have been incorporated or excluded as appropriate without requiring reference to two different statutory regimes.

(2) Duration Excluded Tenancies – whilst a short, automatically excluded, letting period is sometimes useful, the cumulative periods of 6 months with an additional 6 months amounting to a maximum of 12 months risks uncertainty. Consideration should be given to restricting this to one single period which will allow parties a reasonable period to either formalise their arrangement or terminate it. This could be further assisted by refining the procedure for opting-out.

(3) Characteristics Exclusions – our concern about incorporating such exclusions into statute relates primarily to the consequent requirement for putting in place clear and concise definitions of the characteristics and dealing with their interpretation both at commencement and at any later point during or at the expiration of the term bearing in mind the possible practical changes to the use or nature of the property during the term – deliberately or inadvertently – which could move a letting from being treated as an included tenancy to becoming an excluded one or vice versa.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

Responses to the above may vary if the underlying model were to change but the concerns, particularly in relation to the Characteristic Exclusions would remain.

CQ5 – 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.

Whilst we believe the assessment is generally fair, our perspective of the property sector is that most tenancies are consciously kept within the protection of the 1954 Act and stakeholders have sufficient knowledge of the current model to ensure that where protection is not appropriate, they can adjust and protect their position as necessary. As such, we would oppose any proposal for a change in model. We have not encountered a general requirement for, or for discussion of, any need for fundamental change to the operation of the Act save in relation to some more technical aspects. Our experience is that Landlords are better placed and more able to take advice (from both a knowledge based and a financial position) and thus take appropriate action to arrange for any tenancy to be opted-out if required, as compared to proposed Tenants having knowledge of or being financially able to pursue an opting- in arrangement. Blanket security or no- security models will restrict the negotiation positions of parties, with any possible option arrangements being expensive to create and open to litigation risk.

CQ6 – 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

Our view is that the there is no persuasive argument to move from the current opt-out model or to change the scope of the 1954 Act. The costs and risk implications of a fundamental model change would, in our view, far outweigh any possible benefit received from any other model that could be considered. It is, in our view, more realistic to make certain limited changes to the operation of the existing model where concerns are identified e.g. in relation to the process for opting-out, and we note the intention for these to be considered in the next consultation.

(2) on the commercial leasehold market

It is difficult to advise on this without understanding what changes might be considered in terms of scope and whether this would have a substantial impact or not.

CQ7 – 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).

The groups of individuals listed are those most likely to be disadvantaged by a change to the model which results in a no-security or a contracting-in regime. These groups are more likely to be tenants than landlords, with fewer resources and weaker negotiating positions. They are less likely to be aware of the procedures relating to the models or to be able to afford professional advice. As such, they would be prejudiced by any material change to the model used.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

It would be easy to suggest that legislation passed in 1954 post-war Britain is outdated and no longer relevant, but the premise of this law was to encourage economic growth, stability and investment - all key themes which are no less relevant, or desirable today.

The government of the time recognised that they needed to intervene and that market forces alone were not sufficent to ensure a stable and robust property market. In rebalancing power so that tenants could negotiate for market terms and fair rents, the government were able to support tenants, recognising that without such support, the property market would quickly falter and stagnate and values would fall. Conversely, without a sufficient supply of available properties tenants would be competing for limited space, driving up rental values in the short term to a level which few tenants could afford and inhibiting new tenants from setting up and investing in both new and established businesses.

In areas without this protection, landlords can, and do abuse their power in negotations the effect of which is to create inflationary pressures on business which affects viability, unless such costs are passed onto consumers. This model of security is now very well established and well understood, and its transparency helps create and support a robust UK Real Estate market which has higher growth than many European countries - many of which have more robust legislation to protect tenants - but the current model does not seem to 'put off' foreign investors and indeed attracts both landlords and tenants to invest in the UK.

Michael Large, Setfords Solicitors, Personal capacity

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

I have done 1954 Act litigation in Wales and there is no difference.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

The current model of contracting-out, imperfect as it is, is by far the best option and should be retained: a tenancy has security of tenure unless the parties opt out of a statutory scheme.

The reasons:

Mandatory security of tenure is too prescriptive for all business tenancies.

Abolition however would be an outright disaster for small business and for commercial tenants in this country. If there is a vacuum, predatory private equity will rush in to fill it. See for example the experience of Denmark: https://www.theguardian.com/business/2022/sep/29/blackstone-rebellion-how-one-country-worlds-biggest-commercial-landlord-denmark.

The business tenancy sector in commercial property has already experienced what happens when the Act is effectively abolished, or partially abolished. In the national railway arch portfolio, a handful of landlords have used their monopoly position combined with the overly liberal 2002 contracting out regime to drive out protected tenancies from vast swathes of their restates. This enables them to do whatever they want and to set rents at whatever they deem to be a 'market level'. There is nothing unlawful about this, that is why they did it, but it is a regulatory gap and it is crippling increasing numbers of small businesses.

We already know exactly what will happen in the commercial property market if the Act is abolished, we can see it in the national railway arch portfolio: massively increased rents, shorter leases, decreased levels of occupation, more empty arches and properties. Shorter leases and lack of protection in particular means greatly increased costs for tenants, higher rents, and lack of business continuity.

It is also very obvious to anyone thinking about it that is what will happen if the Act was abolished. Otherwise landlords would not be lobbying so hard for abolition, for a start.

The whole reason behind the Act is to protect those that "do things", the people who build businesses and engage in productive work. It is to protect them against exploitative rentier landlords, who add little or nothing to the wider economy, We know that such landlords inevitably move their profits offshore without paying anything except minimal taxes in the UK (again, this is perfectly lawful, although not good for the UK exchequer). Those reasons behind the Act remain as relevant now as they were in 1954. While it is not perfect, it brings a level of protection to tenants, and levels an unfair playing field somewhat, and provides some protection - which is better than nothing - from monopolists and predators.

The crucial protection for tenants is it gives them an incentive to improve their properties and to build up goodwill in their businesses. Otherwise there is no incentive: the landlord can simply take it all away at the end of the lease. So why would anyone bother to build a business? It is also not conducive to building long-term successful businesses if the landlord can simply take it away once it is built, and either keep it or sell it to a competitor.

'Contracting In' would effectively be abolition by the backdoor as all landlords would simply refuse to allow it. 'Contracting In' merits no further discussion or consideration.

This leaves the status quo - contracting out - as the only sensible option. It is imperfect. It is far too easy and cheap to contract out. This makes the regime vulnerable to monopolistic behaviour and predatory practices. But it is a far better than the alternative, and better than nothing.

Impact on tenant advisors: if the Act was abolished, tenant advisors properly advising their clients will have to advise their clients that: at the end of the lease they will have no rights, and will stand to lose all of the goodwill in their business, and all of their improvements to the property, which the landlord can take without compensation. Plainly this is a massive disincentive to build a business, to work, or to improve a property. Landlord advisors should also be under a duty to tell tenants that this is what they would be signing up to.

CQ3 – 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 parties and their advisers

My answer is effectively the same as above, except I have added a paragraph regarding their advisors at the end:

The current model of contracting-out, imperfect as it is, is by far the best option and should be retained: a tenancy has security of tenure unless the parties opt out of a statutory scheme.

The reasons:

Mandatory security of tenure is too prescriptive for all business tenancies.

Abolition however would be an outright disaster for small business and for commercial tenants in this country. If there is a vacuum, predatory private equity will rush in to fill it. See for example the experience of Denmark:

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The whole reason behind the Act is to protect those that "do things", the people who build businesses and engage in productive work. It is to protect them against exploitative rentier landlords, who add little or nothing to the wider economy, We know that such landlords inevitably move their profits offshore without paying anything except minimal taxes in the UK (again, this is perfectly lawful, although not good for the UK exchequer). Those reasons behind the Act remain as relevant now as they were in 1954. While it is not perfect, it brings a level of protection to tenants, and levels an unfair playing field somewhat, and provides some protection - which is better than nothing - from monopolists and predators.

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disincentive to build a business, to work, or to improve a property. Landlord advisors should also be under a duty to tell tenants that this is what they would be signing up to.

(2) on the commercial leasehold market

My answer is the effectively same as above. The issues are interrelated.

The current model of contracting-out, imperfect as it is, is by far the best option and should be retained: a tenancy has security of tenure unless the parties opt out of a statutory scheme.

The reasons:

Mandatory security of tenure is too prescriptive for all business tenancies.

Abolition however would be an outright disaster for small business and for commercial tenants in this country. If there is a vacuum, predatory private equity will rush in to fill it. See for example the experience of Denmark:

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CQ4A – 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.

The current rules in relation to scope and duration are appropriate.

The exclusion of agriculture and mining leases, with their own schemes, makes sense. It would also make sense to clarify the scope as it relates to essential infrastructure such as telecommunications and energy production.

Having different rules for different types of businesses (ie offices different to shops etc) is a recipe for massive confusion and complexity and should be avoided.

The duration (tenancies of six months or less to be excluded) still makes sense as it did in 1954 and should be retained. I am not aware of any arguments to change this.

The contracting out regime as it stands however is far too easy and cheap to use. It does little or nothing to protect most 'ordinary' business tenants and even less to protect 'vulnerable' tenants (ie disabled, English not their first language, etc).

The current contracting out regime is also woefully ineffective in the face of monopoly owners in local, regional, or sectoral property markets. This needs to be considered urgently but it may be beyond the scope of this consultation.

The business tenancy sector in commercial property has already experienced what happens when the Act is effectively abolished, or partially abolished. In the national railway arch portfolio, a handful of landlords have used their monopoly position combined with the overly liberal 2002 contracting out regime to drive out protected tenancies from vast swathes of

their restates. This enables them to do whatever they want and to set rents at whatever they deem to be a 'market level'. There is nothing unlawful about this, that is why they did it, but it is a regulatory gap and it is crippling increasing numbers of small businesses.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

The current model should be retained. If however it was abolished it would render any considerations about type of tenancy or user or duration, irrelevant.

The contracting out regime as it stands however is far too easy and cheap to use. It does little or nothing to protect most 'ordinary' business tenants and even less to protect 'vulnerable' tenants (ie those without access to professional advice, the disabled, English not their first language, etc). Abolition would of course worsen that as it would affect more tenants.

CQ5 – 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.

I am concerned by the Law Commissions lack of information in this area and the apparent lack of evidence that it has access to, and the apparent lack of investigation into the issues, particularly on the economic side. The Commission is after all talking about the effect on the commercial property market. However the Commission admits to being unaware of (a) the impact of the 2002 changes to the contracting out regime (these are not recent) and (b) similarly, the effect that semi-abolition has already had on large swathes of the commercial property market, in particular the railway arch sector, which provides a perfect 'case study' of what happens when the Act is abolished (or semi-abolished). There also appears to be a lack of understanding of the major players in the market and of the huge impact of 'private equity' firms.

Mandatory security of tenure is too prescriptive for all business tenancies. Abolition would be an outright disaster for small business and for commercial tenants in this country. If there is a vacuum, predatory private equity will rush in to fill it. See for example the experience of Denmark:

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We know exactly what will happen in the market if the Act is abolished, we can see it in the national railway arch portfolio: massively increased rents, shorter leases, decreased levels of occupation, more empty arches and properties. Shorter leases and lack of protection in particular means greatly increased costs for tenants, higher rents, and lack of business continuity.

It is also very obvious to anyone thinking about it that is what will happen if the Act was abolished. Otherwise landlords would not be lobbying so hard for abolition.

The whole reason behind the Act is to protect those that "do things", the people who build businesses and engage in productive work. It is to protect them against exploitative rentier landlords, who add little or nothing to the wider economy and inevitably move their profits offshore. The reasons behind the Act remain as relevant now as they were in 1954. While it is not perfect, it brings a level of protection to tenants, and levels an unfair playing field somewhat, and provides some protection - which is better than nothing - from monopolists and predators.

The crucial protection for tenants is it gives them an incentive to improve their properties and to build up goodwill in their businesses. Otherwise there is no incentive: the landlord can simply take it all away at the end of the lease. so why would anyone bother to build a business?

Contracting In would effectively be abolition by the backdoor as all landlords would refuse to allow it.

This leaves the status quo - contracting out - as the only sensible option. It is imperfect. It is far too easy and cheap to contract out. This makes the regime vulnerable to monopolists. But it is a far better than the alternative.

CQ6 – 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

The business tenancy sector has already experienced what happens when the Act is effectively abolished, or partially abolished. In the national railway arch portfolio, a handful of landlords have used their monopoly position combined with the overly liberal 2002 contracting out regime to drive out protected tenancies from vast swathes of their restates. This enables them to do whatever they want and to set rents at whatever they deem to be a 'market level'. There is nothing unlawful about this, but it is a regulatory gap and it is crippling increasing numbers of small businesses.

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We can therefore assume that a change to scope would have the same or similar effect in local markets:

Exclusion of certain types of tenancy (eg offices to pick an example at random) would inevitably lead to similar results in the commercial property market for offices.

Extension in the time limit at which the Act applies (ie from 6 months to one year) will inevitably lead to similar results for tenancies under one year in duration.

And so forth.

The impact is not hard to predict and we have an actual case study from 2019 to date of it happening in the railway arch sector.

(2) on the commercial leasehold market

See the answer above:

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The impact is not hard to predict and we have an actual case study from 2019 to date of it happening in the railway arch sector.

CQ7 – 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).

The current model should be retained, imperfect as it is.

The contracting out regime as it stands however is far too easy and cheap to use. It does little or nothing to protect most 'ordinary' business tenants and even less to protect 'vulnerable' tenants (ie those without access to professional advice, the disabled, English not their first language, etc).

We have already seen the effect of this process on more 'marginal' groups: for example there are far less LGBTQ+ spaces and nightclubs than there used to be. It is also squeezing the charity sector, ethnic minority businesses, and 'ordinary' non-minority small businesses for that matter.

Making contracting out 'easier' to use will make this worse. we know this as this is the experience since 2002/3.

I have personally seen several hundred cases of individuals 'signing away' their rights either before or after entering into occupation, and most of them lost their businesses as a result. I have seen this from both sides of the fence. Nothing unlawful about it but it really isn't helping the commercial property sector or the economy.

Abolition or a reduction in scope would of course worsen that as it would affect more tenants.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

I would be grateful if the Law Commission would address these questions in the light of the very real experience of the commercial property sector since the reforms of 2002.

I would also be grateful if the Law Commission would think hard about the effect of private equity firms on the sector.

If allowed a vacuum, they will rush in and fill it. That is what they are set up to do. Private equity firms are already doing this in this market. to think anything else would be extremely naive.

Deregulation of this type will also inevitably lead to a "race to the bottom".

Parliament's policy with the Act was to protect small businesses against predatory practices and thereby benefit the wider economy.

There is no evidence that Parliament's policy behind the Act should be changed, nor has the Law Commission mentioned any in this Consultation.

There is no evidence that human nature has changed since 1954. Nor have the fundamentals of the commercial property market, except for one: the existence and activities of private equity firms make the need for regulation and tenant protection more vital than ever.

Where the legislative direction of travel in residential property is (rightly) to increase tenants legal protections, to even consider abolishing commercial tenant protection makes no sense.

Stephen Shapiro, LB Camden, Personal capacity

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: 250 or more

Regions: London

Sector(s): Administrative and support services, Arts, entertainment, leisure and recreation, Charity, Construction, Education, Health and social care, Public administration and defence, Real estate, Transport and storage, Local Authority

CQ1 – 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.

Not Answered

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

The system is understood and in my opinion generally works well in principle. Security of tenure is a benefit to a lot of tenants as a protection against landlords seeking unjustified uplifts in the market. Just as at rent reviews the tenants have redress if the landlord is seeking excessive increases, so does a tenant at renewal, where the rents can actually fall. This is not an option when opted out

Delays are often due to the Court process, and it would improve if the timescales would be shortened, and also if legal arbitrators were used as well as surveying arbitrators, especially in respect of the tenant fault grounds

Also there will be a 2 tier market with significant changes, as parties will look to seek longer leases which will over lap with new leases, causing two different forms of legislation to be in existence for up to 20 years

CQ3 – 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 parties and their advisers

This will be very much a case of the Law of Unintended Consequences as issues will evolve that were unforeseen. Advisors will try and resolve matters far earlier so there are at least 6-9 months of the lease remaining, as opposed to letting leases hold over and then serve Notice. At Camden we have a large number of leases that are holding over, often because it works for both sides

(2) on the commercial leasehold market

By having all leases outside the Act, landlords can state to their tenants if you do not pay the rent demanded, you need to vacate. There is then a short period for them to vacate and relocate (the market is generally not that liquid) so businesses could be forced to close.

CQ4A – 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.

If there is to be an amendment, it is suggested that the Duration Excluded Tenancy period is extended from 6 months to 1 year.

It is not considered that there are issues with the Use Excluded Tenancies or at this stage other types of business tenancy should be excluded. However, this should be regularly reviewed as for example Telecom leases originally were Contracted in, but the new Code has altered that, but they have enhanced powers, which are onerous on landlords.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

Naturally this would have to change if the underlying model changes. If for example it becomes mandatory to be inside the Act, then what happens to Use Excluded Tenancies?

CQ5 – 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.

I am struggling to see any benefit in varying the 54 Act as it stands, as it is clear and provides certainty for all represented parties. It is incumbent upon a party to ensure they are aware of the legislation of running the business, be it fire safety, compliance, reporting their finances to HMRC or renewing their lease, which is why there are professionals to provide advice. Not only are there book keepers and accountants for the financial reporting, but surveyors and lawyers for the lease aspect

CQ6 – 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

Initially any variations will slow down the market whilst everyone is adapting, and with substantive changes what is the position for current statutory leases?

Will a landlord with a tenant on an old lease need to serve a s.25 to bring the lease to an end, or will it automatically become excluded? What happens if a 20 year lease is entered into in early 2025 on the existing legislation, will the renewal be on new or old legislation? this tenant has security and then could loose it

(2) on the commercial leasehold market

The impact is unknown, but small retailers benefit from having security of tenure as not only can they invest, but the reality is they often use this to sell their business for a premium as the incoming tenant can benefit from security of tenure. By excluding this it will rob small businesses of a lifeline or exit strategy from the market

CQ7 – 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).

As above there will be a significant disadvantage to small businesses who will be precluded from selling their business/lease for a premium as an exit strategy

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

One consideration that I have not seen is whether a review of the S.30 grounds has been considered? Is there demand for a new ground going forward that landlords have been frustrated by not being able to use

Trowers & Hamlins

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

Current model acceptable

In general we think that the ability for parties to negotiate whether security of tenure will apply is a good thing as it provides flexibility which is essential in view of the diverse nature of the properties, locations, businesses and landlords and tenants that make up the commercial property market. We would not therefore recommend model (1) or model (2). We also have concerns about the economic impact of abolishing security of tenure as detailed in our response to question 3.

We consider that the current position of contracting out operates as a good starting point in principle and in practice (subject to simplifying the contracting out process to make it more efficient as detailed below) and that there is no reason to change this to a "contracting-in" model instead. The current statutory provisions are concise, easy to understand and cover a significant number of business tenancies effectively.

Make the mechanics of the current model more efficient

At the risk of going over ground more suited to the second part of the consultation process, there is scope to tighten up the current procedure as set out below:

Contracting out:

- The Law Commission should consider abolishing the landlord warning notice procedure altogether. The lease should still include a clause which expressly contracts out of those rights, but it should be sufficient for the tenant's own lawyer to advise them about the implications of that exclusion (which they are expected to do anyway – so no real benefit to the warning notice) and where the tenant is unrepresented, they are always recommended to take their own independent advice on the implications of the lease as a whole.

- If the warning notice procedure is retained:

O A landlords warning notice that a proposed tenancy is to be excluded from the landlord tenant could under the current wording of the act be served at the Heads of Terms stage rather than waiting until all of the terms of the lease had been agreed. This has since 2004 grown to become the standard practice, to the extent now that there are questions as to whether a notice served before all of the terms of the lease had been agreed is even valid. Clarity that the early service of notice would be valid is something that would help to remove any doubt.

O The 14-day period for simple declarations seems unnecessary in circumstances where tenants are being handed a bold notice explaining what their rights are, and they are signing to confirm that they've read and understood that. We accept their signature as confirmation that they've understood the terms of an entire lease, which generally speaking includes much wider and more onerous obligations than 1954 Act protections (so the extra time seems disproportionate in comparison).

O Why do we need a statutory declaration at all? The lawyers administering the stat decs aren't instructed to advise on the implications of the 1954 Act – only the implications of swearing the stat dec – so tenants aren't getting any better advice.

O Clarification as to validity of electronic signature of tenant/guarantor on simple declaration - there remains reluctance on the part of many landlords' solicitors to accept this with a continued requirement for "wet ink" signatures.

O Procedure for guarantors – if the original lease is excluded from the 1954 Act, there doesn't seem to be a logical reason why a replacement lease taken by a guarantor would be a protected tenancy. Guarantors would generally view that lease as a liability anyway so it's less important for them to have a specific warning notice. Even if the original guarantor receives a warning notice, it is unclear if future guarantors also need subsequent notices (suggest that they shouldn't, or that if they should, that should be made clear).

O Procedure for options to renew – similar to the guarantee position, if the original lease is excluded from the 1954 Act, there doesn't seem to be a logical reason why a future lease under an option to renew would be a protected tenancy. So, it should be possible to issue a single notice which covers the original lease and the option to renew.

O Assignments of the benefit of agreements for leases – at present it is necessary to make these conditional on the landlord issuing 1954 Act notices for any nominated assignee, and for that nominated assignee to then sign a declaration, where their identity wasn't originally known. It all seems excessive – especially given that if you assign an existing excluded lease to a new tenant, the new tenant doesn't have to have a warning notice or sign any declaration – the lease is just an excluded tenancy.

<u>Deadlines:</u>

- Removing the deadlines by which proceedings must be issued post service of 1954 Act notices. Although they can be a useful tool tactically to increase pressure, in practice they actually just operate as an unnecessary trap. Whilst it is accepted that the requirement for an application to be made to the court before the date of a s25 notice or s26 request (or for the parties to extend this date by written agreement) is an improvement on the situation that

existed before the 2004 reforms, we see no reason why there needs to be any deadline at all. If either party wishes to have the court determine the terms of the new lease, then is open to either party to issue their own proceedings.

- Having a cut-off date provides no conceptual benefit and exists simply as a trap for unwary tenants that can easily be done away with no loss of fairness between the parties, the functioning of the court or the functioning of the market. The deadlines are in reality an administrative requirement which create a disproportionate risk. We do not consider that it was necessarily intended that administrative errors with deadlines should result in the loss of a valuable right. We consider that the notices should act simply as the proposals they were intended to be and as a precursor to the issue of proceedings should these become necessary at any stage after service. The notices would still trigger an ability to claim interim rent and we consider the current framework in the Act would be adequate even if a new lease was to be completed some time afterwards.

Specialist property tribunal:

- Making Court proceedings more efficient by having a specialist property tribunal deal with claims rather than the county courts, as is currently being piloted on a limited basis.

Possibility of an alternative model?

If a change is to be made then we think that there is scope for additional research which looks at the statistics on exclusions (if these are available) and then considers a further model to reflect any patterns in contracting in/out of security of tenure.

For example, a new model could provide that there was only automatic security of tenure for longer leases, say over 5 years (if this is what the statistics tell us). Some buildings/locations are more suitable for short term tenants and high turnovers and landlords will want flexibility. In those circumstances it is possible that automatic security of tenure is less important and getting rid of the contracting out process could help improve efficiency.

We agree with the opinion expressed at the recent webinar that a sector by sector approach is too cumbersome to work efficiently.

CQ3 – 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 parties and their advisers

Please see our answer below in relation to the commercial leasehold market.

(2) on the commercial leasehold market

We anticipate that abolishing security of tenure completely would have a negative impact on the high street/office/industrial occupation sectors and stifle growth in these areas.

There will be no incentives for tenants to invest in properties and they will be less bothered about their condition.

We anticipate that the abolition of security of tenure entirely could disrupt the commercial property sector with unintended consequences. The 1954 Act was brought in as a response

to landlords taking unfair advantage of a scarcity of commercial property after the second world war, thereby privileging the commercial property investment sector over all other sectors of the economy. At that time, that scarcity was (and arguably remains) much less of a problem in Scotland, which is why the Scottish experience where there is no equivalent of the 1954 Act is not a helpful comparison.

Whilst we are not property agents, we note that in many sectors there remains a scarcity of commercial property available for letting. Without statutory security of tenure landlords would easily be tempted to take that same unfair advantage. The following scenario could easily play out: a landlord will say to the tenant at the end of his term (where there is no security of tenure) that a move to alternative premises will cost that tenant a significant sum (removal costs, temporary disruption of business, relocation expenses etc). A landlord will legitimately ask for rents to be increased if not by that sum, perhaps by something like it by way of rent over and above the amount that a hypothetical incoming tenant would pay (even allowing for fit-out free periods).

That new letting at that artificially inflated rate in turn becomes a comparable transaction for the purposes of other lettings in the neighbourhood and sets the OMV to which the same process of increase will then be added by the landlord of that comparable property. There is potential, therefore, for inflation to be baked into the system.

CQ4A – 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.

One regime

In general we consider that all tenancies should be covered by some sort of modern regime to avoid defaulting to the common law position. Tenancies should, however, just be covered by one regime so that the 1954 Act should not apply where the tenancy falls within another regime, as for example, has happened with telecoms leases.

Expiry of contracted out leases

Our view is also that where tenancies have been contracted out, any tenant (or sub-tenant) that has entered into occupation pursuant to or under a sub-tenancy derived from that excluded tenancy should never be able to acquire protection if they remain in occupation for more than 6 months after expiry of the fixed term. This is contrary to the bargain that was entered into between the parties at the outset of the business occupation and is again an unnecessary potential trap, particularly as it is not clear whether any tenancy at will that is granted pending agreement on terms for a renewal would be effective in the event that negotiations have stalled but the tenant has remained in occupation.

Clarity on types of business occupation

We are conscious that there are many different kinds of business occupation that are caught by the Act, most of which can clearly be categorised as business occupation. A few kinds of occupation throw up some doubt. Usually these areas of doubt arise where a tenant leases the premises so that others can reside in the premises. At one end of a spectrum we have hotels, which are universally accepted as being businesses, even though they involve occupation of parts of the premises by individuals other than the tenant. At the other end of the spectrum, we have landlords who let out premises to residential occupiers under ASTs. Such examples are straightforward but there are many circumstances which lie between these two extremes where clarity would be welcomed. For example:

- More clarity and guidance around properties such as care homes and other buildings which are owned by registered providers and other landlords and used as part of their business of providing residential accommodation. It would be particularly useful for there to be a clarification that a public body exercising its statutory functions is not using the property for business purposes. We have seen discussion of contracting out, for example, where a local authority was acquiring land from a property aggregator business for use as accommodation to alleviate homelessness.

- Currently there is ambiguity regarding 'agricultural' related activities. There are various definitions used, but these commonly follow the 1986 Agricultural Holdings Act and potentially the Town and Country Planning Act 1990. Horse livery (as not "livestock breeding" under the 1986 Act) is commonly accepted to come within the 1954 Act. The growing of fruit counts as agricultural, so we suspect the growing of grapes is agricultural use but that wine production may move it in to commercial 1954 Act territory if processed on site, but may depend on the percentage which could be classed as agricultural as to how it is treated on mixed use sites.

- In development transactions, a landlord will often grant a build lease to a developer. The developer will construct property on that land, grant underleases or direct freehold transfers to buyers, and will then surrender the build lease once the final property has reached practical completion. In this case, two sets of contracting out needs to happen: the build lease itself is contracted out, as is the agreement to surrender the build lease. This seems slightly excessive where both sides are independently represented. This remains the case even in 50:50 joint ventures, where the landlord is a part-owner of the joint venture vehicle which is the tenant under the build lease.

- There also scope for more clarity around providers of serviced office accommodation.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

Nothing more to add here - please see responses to earlier questions.

CQ6 – 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

Nothing more to add here - please see responses to earlier questions.

(2) on the commercial leasehold market

CQ7 – 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).

We do not consider that any changes would have any particular effect on certain groups or individuals with certain characteristics, the focus for commercial security of tenure being on whether a business is being conducted from the property rather than the characteristics of any of the individuals involved.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Pinsent Masons LLP

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

We have no specific considerations or experiences in Wales which would assist you.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

An internal survey of our lawyers who practise in this area found them roughly split between those who would prefer to move to a contracting in system and those favouring the retention of the current contracting out model subject to the mechanism for contracting out being amended.

Those who work in the energy sector (where leases are currently almost always contracted out) were in favour of the contracting in model because it would remove the need to always contract out. Also, most energy leases are granted before work starts on site and when the development starts it is often necessary to move the equipment slightly, particularly in the case of on shore wind projects. This means that the existing lease needs to be surrendered and a new lease of the correct area entered into and the mechanism to contract out this new lease is extremely cumbersome. However, it is acknowledged that reforming the mechanism for contracting out might help to mitigate this.

The current mechanism for contracting out is also cumbersome in the context of energy leases where there can be many years between an option to take the lease being granted and it being exercised whilst all necessary consents are put in place. The contracting out needs to be done before the option can be exercised (because the parties could change before the option is exercised) and this can be difficult and lead to uncertainty.

Another reason to move to a contracting in model is that the market has, in our experience, moved to much shorter lease terms and as a result around 60% of leases being granted are, in our experience, contracted out. If the trend to shorter lease terms continues it is anticipated that the proportion of leases which are contracted out will continue to grow. On this basis, moving to a contracting in model would reduce the burden of contracting out the majority of lease and remove some of the risks and uncertainties associated with contract

out. Again, this is something which could be dealt with by reforming the mechanism for contracting out as an alternative to changing the model.

The current contracting out model has a number of areas of uncertainty, especially where the parties change between the contracting out procedure being undertaken and the lease being completed, which a contracting in model might help to resolve. We have in mind here the position of guarantors (including former tenants who enter into an authorised guarantee agreement) where the landlord when the guarantee is given may not be the landlord when a put option requiring the guarantor to take a new lease is exercised. There are similar concerns around tenants' contractual rights to renew, especially if it is the tenant from time to time who has the benefit of the right. Again as an alternative to changing the model, these issues could be addressed by reforming/clarifying the existing contracting out requirements.

Against this, the contracting out model offers greater protection to "lay" tenants as they have to actively take steps to lose security of tenure rather than needing to be aware that they must take steps to benefit from it. We also accept the fact that contracting out is the established model and so minimises the risk of unforeseen consequences. This is particularly the case during the inevitable transition period where we are concerned about how leases granted pursuant to agreements for lease, tenants' options to renew or landlords' put options in guarantees which had already been entered into would be dealt with.

We are also concerned about increased complexity or confusion when carrying out due diligence on a multi-let property or a portfolio of properties where some of the leases will post-date any change in the model but others will pre-date it or will have been granted pursuant to an agreement for lease or option which pre-dates it, so that landlords purchasing the asset might not always be clear about the status of each lease.

Please note that these are our provisional views within the terms of the consultation, and we may need to revisit or expand on some points depending on what model of security and mechanism are proposed in any future consultation.

CQ3 – 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 parties and their advisers

We have discussed this above in terms of certain sectors favouring a move to the contracting in model and the concerns about identifying the status of an individual lease when purchasing an investment.

As we mentioned above, our experience is that the majority of leases are contracted out and there is a cost associated with doing that which would not be the case if we moved to a contracting in model (depending on the mechanism for contracting in). However, the costs in terms of delay and fees are not often significant and could be mitigated by changing the current mechanism for contracting out. When the cost can be significant tends to be where a tenant is unrepresented and isn't aware of the rights they are giving up, and it might be seen as disproportionate for those tenants to lose those rights by default.

One of our concerns with moving to a contracting in model is that it could lead to additional costs in the short term as people become used to the new system. Whether these costs

would reduce over time will very much depend on any mechanism by which contracting in is achieved.

(2) on the commercial leasehold market

Clients tell us that the ability to contract out a lease makes about 50% of them more likely to let their property, but we have no data on how moving to another model would affect this.

CQ4A – 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.

The scope of Use Excluded Tenancies is well understood and as the consultation identifies this is often because they have protection through other mechanisms. We do agree that tenancies which enjoy the protection of another regime eg the Electronic Communications Code should be outside of the scope of the 1954 Act.

As our previous answers suggest, there is also an argument (if the current contracting out model is retained) in looking at moving energy leases outside of the scope of that model and into a contracting in regime. However, careful thought would need to be given to how energy projects are identified including how any underground equipment and linear infrastructure is dealt with. And there is a concern that this sector based approach would lead to unnecessary uncertainty.

Adding to the scope of Excluded Tenancies would, in our opinion, increase uncertainty and could be open to market manipulation. For example, if tenancies with a rent of more than £40,000 pa are out of scope, would a 5 year lease at a rent of £50,000 pa subject to a 12 month rent free period be in or out of scope since it would produce a rent of £200,000 over the term of the lease as would a lease of 5 years at £40,000 pa with no rent free period? Similarly. if tenancies of premises with a GIA of more than 90 square metres are out of scope, would leases of 2 adjoining units each of 50 square metres be in or out of scope and would it be different if the units were taken at the same time or if one happened to fall vacant, say, 3 years into a 10 year term.

If we move to a contracting in system, then the "ban" on being able to benefit from protection from 2 regimes should remain in place.

Duration Excluded Tenancies can be more problematic especially on the sale of a business or in the event of insolvency. Assuming that the contracting out model was retained, a simple provision that all tenancies granted for a fixed term of less than (for example) 12 months (irrespective of any previous occupation) were outside scope would give certainty. If we move to a contracting in model, then this would be less of an issue.

Similarly, if we retain the contracting out model the fact that periodic tenancies cannot be contracted out seems anomalous especially in the light of the Van Staden case. If the

contracting out model is retained, we would support a proposal that periodic tenancies and those which contain contractual rights of renew (thereby clarifying the operation of s 28 of the 1954 Act) were out of the scope of the 1954 Act.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

We do broadly agree with your assessment of the potential benefits and disadvantages of reforming the scope of the 1954 Act. With the exception of the change to Duration Excluded Tenancies discussed above, any changes in scope are likely to increase uncertainty and could be open to market manipulation.

Whilst a sector based approached could have benefits (especially in the energy sector), given the increased prevalence of mixed used properties and lease this appears to us to introduce complexity and uncertainty.

CQ6 – 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

(2) on the commercial leasehold market

CQ7 – 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).

As mentioned above moving to a contract in model could result in less informed tenants being unaware of rights which they might be able to enjoy. Those tenants are likely to be young and starting out in business.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Whilst we broadly support the retention of the contracting out model, we think that the mechanism to achieve that could be improved so that it provides greater certainty for all parties. We therefore hope that part 2 of the consultation will invite discussion about particular areas of concern and pinch points for practitioners.

In addition, we often encounter issues around the fact that contracting out an agreement to surrender can only be carried out by the parties who are the landlord and the tenant. This causes difficulties, particularly in building leases or in relation to offer back clauses which form part of the alienation provisions of the lease. A similar issue arises in connection with a landlord break clause which, again, can be inadvertently frustrated by the lease having the benefit of security of tenure.

Which ever model is used we hope that the opportunity is taken to review how the statutory renewal process operates and in particular how it can be used to support the move towards decarbonisation of the built environment.

Paul John Raeburn, Raeburn Realty Limited, Personal capacity

Role: a professional (legal, property or other professional) I am a chartered surveyor (General Practice/Valuer) who owns and operates several niche consultancies,advising commercial & leisure landlords & tenants across the whole of UK & ROI.

I also own commercial property investments.

If landlord or tenant:

Number of employees: 1-9

Regions: East Midlands

Sector(s): Retail and wholesale

CQ1 – 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.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

Mandatory would be retrograde;the current system (opt-out) has in my experience worked well since its introduction some 22 years ago.

None,or contracting-in,both effectively amount to removing security of tenure,as in my homeland of Scotland.My experience professionally is that whilst renewal leases can usually still be negotiated in Scotland,the absence of a recourse to dispute resolution means that rentals are often a ransom (accept this,or leave),capitalising on the tenant's concerns about protecting its goodwill,expensive fit-out and also wishing to avoid relocation costs.

CQ3 – 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 parties and their advisers

Please see answer immediately above;by direct comparison with what I have experienced in Scotland compared to E & W in my 30+ years career to date,"ransoming" to inflated rentals is a probable outcome of removing (or changing to "opt-in") security of tenure.This creates obvious risks to businesses and employment.

(2) on the commercial leasehold market

In the secondary and tertiary markets,probably no real material change.In primary markets,perhaps a shift to longer leases than the generally short that have become common since the 2007 economic collapse,so as to protect goodwill and/or fit-out write-off period.

CQ4A – 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.

Yes,there should be exclusions,the details of which will distil from total feedback and which will likely need to be subject to fairly regular review and updating.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

as above

CQ5 – 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.

broadly correct,with my detail qualifications set out herein

CQ6 – 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

A real risk to tenants of being all but ransomed on rent.It happens in Scotland.

(2) on the commercial leasehold market

Probably longer leases becoming the norm on prime properties.

CQ7 – 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).

None considered likely.This is about property,for which statute will provide uniformly.Notwithstanding,any transaction has an element of the personal to it,and human nature is inherently discriminatory,commonly as subtle as simply "preferring" one candidate,tenant or date over another.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Amendments should include measures to significantly lessen the burden on the civil justice system,whilst maintaining access to justice.In that,incorporating a Lease Renewals Protocol (similar to the Dilapidations Protocol) into the CPR - ideally with mandatory mediation pre

trial - makes sense.The PLA advise that fewer than 1% of dilapidations disputes now make trial whilst in parallel,the CEDR report that over 90% of mediations result in settlement.

BCLP

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

No comment

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

From a practical and commercial perspective we are tempted by model (3) since this would streamline our asset management and due diligence processes significantly.

However, we are mindful of the original intention of the Act and the fact that those tenants who may benefit most from the Act are potentially those with the least understanding of the security of tenure provisions. This group may be best served by a default position of security rather than needing to request it. If we were to retain the current model i.e. option (4), we would suggest some significant revision to the contracting-out process and also: the interim rent regime; notice requirements that exacerbate registration gap issues; and section 34 valuation issues; to name a few. We look forward to discussing those suggestions in more detail in future consultations.

CQ3 – 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 parties and their advisers

As real estate solicitors, we are generally more affected by the mechanics of the chosen model, rather than the choice of model itself.

(2) on the commercial leasehold market

The impact of a fundamental change to a model that has been used for decades, that is deeply entrenched in the commercial leasehold market, is difficult to predict.

However, it would bring risk and uncertainty, and would inevitably provide fertile ground for expensive litigation (as is always the case with new legislation). There would need to be

detailed transitional provisions that would probably prove difficult for SMEs and individuals to navigate and understand, and could also displace the bargaining power that those types of businesses currently enjoy/need more than the large corporates.

CQ4A – 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.

(1) We would like to see electricity sub-stations included within this category, particularly given the statutory protection given through the Electricity Act 1989

(2) This category should be less nuanced (e.g. the fact that three six month tenancies in a row are caught, whilst one on its own isn't) and increasingly the excluded duration to 12 months would be more reflective of the market and the growth of pop up retail and F&B units

(3) No - clarity is key here.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

If model (3) were adopted then we would suggest that there should be no restrictions – the decision for the parties to bring the lease inside the protection of the Act should simply be a commercial one based on the specific circumstances.

CQ5 – 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.

Agreed

CQ6 – 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

A change in scope might allow a greater use of licences (as opposed to leases) within the market. These are generally easier to understand for tenants and quicker and cheaper to put in place. Currently a risk averse landlord will opt for a contracted out lease where vacant possession is key and there is any doubt as to the occupational status.

(2) on the commercial leasehold market

As above, a change in scope to exclude all tenancies automatically or to widen the Duration Excluded Tenancies might encourage the use of leases over licences and would speed up some transactions

CQ7 – 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).

No comment

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

No comment

Ward Hadaway LLP

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

We do not consider there to be any particular considerations that apply to the reform of security of tenure in Wales, that do not equally apply to England.

We have not experienced any scenarios where we considered that the model of security of tenure should be different, solely due to the property being located in Wales.

Generally speaking, we consider that the commercial leasehold market varies between different parts of Wales, in much the same way that it varies between different parts of England.

Consequently, we see no reason for different security of tenure models to apply between England and Wales – i.e. just because a property sits on a particular side of a historical border within one legal jurisdiction.

In the absence of any obvious justification, we consider that a different model for Wales would amount to unnecessary complication and division within the same single legal jurisdiction.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

Whichever model is selected, we consider that there are likley to be pros and cons for landlords and the tenants. A "perfect" model that considers and is able to adequately balance all of the competing interests of a landlord and tenant, which will no doubt change over time as the commercial property market also changes, is arguably unachievable.

On balance, we consider that the current contracting out model should remain.

However, it being over 20 years since any changes were made to the Landlord & Tenant Act 1954 (i.e. primarily the process for contracting out), we consider there to be scope for reform of this model. We consider, for example, that:-

(i) the model could be made more relevant / a better fit for the modern commercial leasehold market;

(ii) a number of perceived inadequacies / deficiencies could be dealt with;

(iii) there is scope to simplify parts of the model (to include further simplification to the contracting out process);

(iv) there is scope to reduce landlord and tenant costs incurred working within the model; and / or

(v) there is scope to generally reduce delay and variations in delay depending where in the country a property is located by reason of Part II Landlord and Tenant Act 1954 proceedings generally falling within the jurisdiction of the "stretched" County Court system.

We note that the sort of detail to take account of the above points is likley to be the focus of the Law Commission's further consultation.

The Law Commission estimates that the UK commercial property market is worth in the region of £900 billion, with circa 55% of that rented. As the Law Commission notes, it is difficult to predict what impact a change of security of tenure model will have on the commercial leasehold market. Adopting the £900 billion / 55% figures though, just a 1% impact looks set to have circa a £5 billion impact, albeit that could be positive as opposed to negative. In reality, we consider that the impact could be larger. For example, any impact could be expected to trickle down and impact employment and/or other sectors of the economy linked with the occupation of property. Further, it may cause the split between occupied and rented commercial property to shift.

In our view, the current contracting out model remains largely fit for purpose and is capable of being reformed to suit the modern day etc. We consider that pursuing this option to achieve the goals of the project is likely to have the least unplanned and quickest positive impact on the UK commercial property market and wider economy. We do not favour wholesale change for the sake of it, just because the current model is 70 years old. The current model has stood the test of time for a reason. We believe that it remains largely fit for purpose, is desirable and works.

We do not favour a mandatory security of tenure model. Fundamentally, we consider that absolutely removing the ability of a landlord and tenant to agree that there be no security of tenure unnecessarily restricts the ability of the landlord and tenant to freely contract and unnecessarily "artificially" interferes with natural market forces. This basic model was originally adopted when the Landlord & Tenant Act 1954 was enacted, but changed in 1970 and we consider that the reasons for that change largely stand now as much as they did 55 years ago.

If a mandatory security of tenure model is, however, to be recommended, we believe that it would be most approriate to utilise the current Landlord & Tenant Act 1954 with the contracting out provisions removed, but with reform as proposed above to make it a better fit for the modern commercial property market.

With regard to the no security of tenure model, we do not favour this. In our experience, most (we estimate 75%+) commercial leases that we get involved with have security of

tenure. In the modern day, we consider that this is not just because security of tenure is the default position. It assists with justifying both landlord and tenant investment in property and therefore we believe is a pillar of economic growth and stability.

Security of tenure is now so trite commercial landlord and tenant law that we consider that if it were abolished, the market would evolve to contractual options to renew becoming common place. In our view, this would be undesirable. We believe that it would unjustifiably shift the balance of power too much towards landlords and likely create costs, uncertainty and an overcomplicated market. Fundamentally, we consider that it would likley create many different security of tenure regimes, depending on individually negotiated options. This could also create many opportunities for litigation to the extent that options contracts fail to deal with all eventualities. In general, the Landlord & Tenant Act 1954 has evolved to deal with all scenarios that arise upon renewal or termination.

In relation to a contracting in versus a contracting out model, we repeat that our experience is that circa 75%+ of commercial leases that we get involved with have security of tenure. We therefore consider that security of tenure should remain the default and contracting out the exception, albeit reform as to how the is to occur should be considered. We do not feel that it is appropriate to switch to requiring the majority to contract in, to save the minority contracting out.

CQ3 – 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 parties and their advisers

We answer this question below. They are all part of the commercial leasehold market, in particularly the parties to tenancies.

(2) on the commercial leasehold market

As the Law Commission notes, it is difficult to predict what impact any change of security of tenure model will have on the UK commercial property market. The bigger the change in model though, we consider the more likley and more unpredictable the change to the market may be.

As it would be the most fundamental change of model, we consider that a change to a no security of tenure model will have the biggest impact on the commercial leasehold market. We consider that this impact will initially likley be negative and will take longer to recover from than any other contemplated change that might have a negative impact, essentially whilst the market takes stock and seeks to assess how after 70 years of reasonable stability, a brand new commercial landlord and tenant landscape is going to operate etc.

We are presently unsure how a change to a mandatory security of tenure model would impact the commercial leasehold market. If the majority of leases presently have security of tenure, there will be no change per se for the majority. Further, we suspect that a tenant prepared to take a contracted out lease will still take a secure lease. The impact on the commercial leasehold market will therefore likley depend on whether the minority of landlords that would otherwise wish to let on a contracted out basis, will either not let at all or leave the market. The end result will also likley depend on any change to the scope of

leases caught by the Landlord & Tenant Act 1954 and any changes to how the present security of tenure model is to operate on a mandatory basis.

We consider that how much a change to the current model of security of tenure is likely impact the commercial leasehold market will clearly depend on the extent of the changes made. Given the market's familiarity with the current model and Landlord & Tenant Act 1954 however, we consider that impact this way will be easiest to accurately predict. We also consider that for the same reasons, the market will be more resilient to change by this route and consequently this is why we consider that this is the best route to bring about desirable change to make our security of tenure model fit for the future and promote growth.

We do not consider that a simple change from a contracting out to a contracting in model will have any particular impact on the commercial leasehold market. The end result for the market will be the same, just achieved in a very slightly different way.

CQ4A – 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.

We do not consider the current scope of the Landlord & Tenant Act 1954 security of tenure model to be particularly out of date or problematic. We agree, however, that it is healthy to debate whether reform is desirable.

We agree that an area potentially ripe for reform is where there is another regime performing a similar protective function. Two competing regimes generally creates unwanted uncertainty and litigation. The most obvious example is in respect of Electronic Communications Code ("the Code"), although the issue of overlapping regimes is arguably already being adequately addressed by the transitional provisions to the Code and amendments to the Landlord & Tenant Act 1954, and the overlapping regimes will diminish over time.

Overridingly, we consider that the criteria for whether a tenancy attracts security of tenure or not, should be kept as simple as possible. In this regard, we consider that the current limited criteria based on duration and use, largely works well.

We consider that criteria too open to interpretation should be avoided. That will create uncertainty and fertile ground for litigation. An example would be a criteria linked to location, in say a "town centre". We anticipate it being difficult to create a satisfactory one size fits all definition of a "town centre" that would not be likley to subject to litigation.

We consider that linking security of tenure to the rent payable is generally undesirable. It is widely accepted that rental values vary throughout the country and this distorts this criteria. Such a criteria risks creating different security of tenure regimes and therefore different property markets in different areas of the country according to land value.

Similarly, we do not generally consider it desirable to link security of tenure to location. Businesses generally choose a location that suits the needs of the business, practically and financially. Security of tenure for a business that has located in say a rural area is in our view likley to be just as important as it is to a business that has located in say a town centre or prime industrial area. Indeed in this example, the rural business may have fewer viable alternatives if it had to relocate!

We have similar views in relation to a criteria based on floor area. A strength of the UK economy is that it is extremely diverse. We find it difficult to justify a business that operates out of a smaller property, either due to overall business size or business model, being treated differently in relation to security of tenure than a business that operates out of a larger property, again due to overall business size or business model.

We consider that too many criteria could become problematic. Whether all or just one criteria need be met for security of tenure to apply or not, the more criteria there are, the greater the risk of unjust, inconsistent, conflicting and/or unintended consequences being created.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

We do not consider that our answer above would change depending on whether a contracting in or contracting out model were to be recommended. The considerations are largely the same.

If a no security of tenure model were to be recommended. our answers would clearly be superfluous.

If a mandatory security of tenure model were to be recommended, then given the resultant lack of flexibility, that might warrant more careful consideration of when security of tenure will and will not apply. We envisage, however, that we would re-iterate our view that the greater the number of criteria to be considered, the greater the risk of unjust, inconsistent, conflicting and/or unintended consequences being created.

CQ5 – 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.

We consider that the Law Commission's assessment of the potential benefits and disadvantages of reforming the scope of the Landlord & Tenant 1954 Act at paragraphs 4.1 – 4.61 of the Consultation Paper is comprehensive and we are broadly in agreement with it.

It highlights very well that is difficult to arrive a "perfect" scope that is sufficiently simple so as to be workable whilst adequately balancing all of the competing interests of a landlord and tenant, which will no doubt change over time as the commercial property market also changes.

CQ6 – 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

We answer this question below. They are all part of the commercial leasehold market, in particularly the parties to tenancies.

(2) on the commercial leasehold market

Only if the scope of the Landlord & Tenant Act 1954 fundamentally changes so that a large number of tenancies that presently have security of tenure, will lose it going forward, do we consider that a change to the scope of the Landlord & Tenant Act 1954 will have a noticeable impact on the commercial leasehold market.

The more one might move toward a no security of tenure model by other means (i.e. by a change in scope that reduces the number of tenancies that benefit from security of tenure), the more there is likley to be an impact along the lines of described in relation to a no security of tenure model at question 3.2.

CQ7 – 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).

We do not consider that changes to the security of tenure model or scope of the Landlord & Tenant 1954 Act will result in specific advantages or disadvantages to certain groups or to individuals based on certain characteristics (in particular age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation).

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

N/A

Mark Barley, Womble Bond Dickinson (UK) LLP, Personal capacity

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

This choice is the closest to the current model, so is the least disruptive to the commercial property market and the law behind it, on a macro level. It allows key amendments to be made to the system of security of tenure (which are needed) but avoids unnecessary scrapping of a base system that has worked broadly satisfactorily for 70 years now, thus standing the tat of time. The commercial property market in England and Wales is not hopelessly broken, so an overly radical reform of it is not necessary. Certainly reforms are needed, but not a wholesale scrapping .

CQ3 – 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 parties and their advisers

Anything other than keeping the basic current model and reforming that will send a shockwave through the market, and lead to uncertainly and most likely unintended consequences. Parties and their advisers are well versed in the market, and how it operates from a legal perspective - yes there areas that need reforming and updating, but those needed reforms are much better brought in (so as to ensure a smooth transition) in the context of a reform to the current model, not its abolition and replacement with a wholly different model.

(2) on the commercial leasehold market

Anything other than reform to the current model will introduce a new way of operating into a model that has seen 70 years of successful service. Abolishing security of tenure altogether will make investment by tenants in their premises and businesses that much harder (due to the fear that the investment will be lost at the end of the tenancy); making security mandatory in all cases will dampen the market for redevelop met, as tenant will not be able

to be shifted on when a property is ripe for redevelopment. A balance between the two is required, and the current act and its model provides that balance in a way that has found an equilibrium in the market after 70 years of bedding in - let us not needlessly upset that balance by overhasty or over-zealous reforms.

CQ4A – 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.

We would not favour at all use excluded tenancies. There is clearly the scope for far too much argument and uncertainty as to when such an exclusion would operate and how:

- how would a particular use be defined? it is easy to see very many borderline cases as to when the use may or may not be within a definition, leading to completely undesirable uncertainty as to whether security exists or not ;

- when would the definition have to be satisfied - start of tenancy, end of tenancy, at all times in between, when a matter gets to trial et etc?

- how can a sensible decision be made as to what categories of tenancy should be excluded or not? How would such a decision stand the test of time?

We would favour the widening of duration excluded tenancies. This can simply be done without any equivocality. It would provide greater flexibility to both landlord's and tenants in the market, without sacrificing certainty of outcome.

We would not support giving other types of tenancy (eg based on size of premises, or number of employees) security or not. Again this comes down to the difficulties of definition and timing.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

No - the answer is the same whatever model is adopted.

CQ5 – 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.

We agree with the conclusions you reach in paras 4.59-4.61.

CQ6 – 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

We consider that widening the scope of tenancies' that do not have protection, provided that is limited to duration tenancies, and not any other criterion, will benefit the market by giving more flexibility to both landlords and tenants and their advisers, whilst being easy to understand and easy to implement with certainty.

By contrast , any change in the regime that is seeking to widen the scope of excluded tenancies by other criteria runs a grave risk of prompting uncertainty and litigation. That is only good for the lawyers, not the market - any market needs certainty to operate effectively - one only needs to look at the way in which the telecoms market has been plunged into uncertainty and litigation by the (now not so) new telecoms code to see how detrimental overly ambitious or detailed reforms can be.

(2) on the commercial leasehold market

See answer above

CQ7 – 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).

No comment

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

The 1954 Act broadly works. It is a regime that everyone in the market is more or less familiar with. There are many bits of it that certainly do need looking at and reforming/updating, but this is in the way of tweaks rather than radical reform. In our view, the meat of this consultation should come in your second paper, when you indicate you will be looking at all other aspects of the 1954 Act

that are not covered by this Consultation Paper.

Camilla Lamont, Landmark Chambers, Personal capacity

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

I cannot usefully comment having no relevant experience in Wales

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

In my view the status quo ought not to be changed in this respect unless there is a demonstrable justification for doing so and I am not aware of any such justification.

Whist elements of the current legislation and the conduct of opposed and unopposed lease renewals could no doubt be improved, these are matters to be dealt with in the second consultation. Otherwise the current model in my view strikes the right balance.

Mandatory security of tenure would in my view hamper the property market and would bring about a very serious barrier to future development, which is precisely not what the UK economy needs. I cannot see any justification for imposing security on parties against their will.

I do not favour the abolition of security. The reasons for security of tenure being introduced still resonate, particularly loss of goodwill. If there was no security, landlords would hold all the reins and could exploit vulnerable sitting tenants. One only has to look at the very substantial case law dealing with the quantification of damages in professional negligence cases concerning the Act to see that the loss to a business in real terms of losing security can be significant.

Further small local businesses (particularly in A1/A3 use classes) should be protected as the locality of the premises is often vital to their success and security enables them to invest in their businesses with confidence. There are still many sectors where the 1954 Act has a vital role to play, particularly retail and hospitality. The Act is well understood and many parties do not contract out out of choice. Expecting tenants to protect themselves with contractual options up front is not realistic and likely to be a trap for the unwary. Drafting options is a technical business and their operation is often uncertain and can lead to

litigation. Further options do not have the flexibility of the Act. One cannot foresee in advance what changes, for example, might be required to lease terms. This is particularly so in relation to "green lease" terms. One of the main criticisms of the Act is that it operates too slowly to modernise leases; contractual options are ineffectual in that regard as lease terms have to be agreed up front, possibly years before the option is exercised.

A contracting in system would probably be tantamount to abolishing security in the first place. It would put the burden of the procedure not being followed correctly on the tenant. Many tenants will not have the know how or confidence to ask for security and landlords are likely to push back against such requests. Further, in many cases the tenant will not be represented and there are likely to be numerous instances in which contracting in fails on technical grounds due to procedures not being followed inadvertently.

CQ3 – 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 parties and their advisers

If there was no security, landlords would hold all the reins and could exploit vulnerable sitting tenants. One only has to look at the very substantial case law dealing with the quantification of damages in professional negligence cases concerning the Act to see that the loss to a business in real terms of losing security can be significant. Further small local businesses (particularly in A1/A3 use classes) should be protected as the locality of the premises is often vital to their success and security enables them to invest in their businesses with confidence. There are still many sectors where the 1954 Act has a vital role to play, particularly retail and hospitality. The Act is well understood and many parties do not contract out out of choice.

Expecting tenants to protect themselves with contractual options up front is not realistic and likely to be a trap for the unwary. Drafting options is a technical business and their operation is often uncertain and can lead to litigation. Further options do not have the flexibility of the Act. One cannot foresee in advance what changes, for example, might be required to lease terms. This is particularly so in relation to "green lease" terms. One of the main criticisms of the Act is that it operates too slowly to modernise leases; contractual options are ineffectual in that regard as lease terms have to be agreed up front, possibly years before the option is exercised.

A contracting in system would probably be tantamount to abolishing security in the first place. It would put the burden of the procedure not being followed correctly on the tenant. Many tenants will not have the know how or confidence to ask for security and landlords are likely to push back against such requests. Further, in many cases the tenant will not be represented and there are likely to be numerous instances in which contracting in fails on technical grounds due to procedures not being followed properly. It will not be in the landlord's interests to correct any such errors. Landlord's are better able, generally, to protect themselves.

Changing the model will inevitable cause some confusion and result in errors being made by lawyers representing parties and the parties themselves.There are likely to be transitional arrangements if the law is changed which can be a trap for the unwary.

(2) on the commercial leasehold market

Mandatory security of tenure would in my view hamper the property market and would bring about a very serious barrier to future development, which is precisely not what the UK economy needs. I cannot see any justification for imposing security on parties against their will and there will be unintended consequences such as some landlords withdrawing properties from the market.

My main concern regarding imposing mandatory security of tenure would be in relation to the impact on development. Although there is a redevelopment ground of opposition (f), this is itself a barrier to development in my view. It is in practice very difficult to oppose on ground (f) unless the landlord is demolishing entirely and even then the timing of possession being secured is uncertain to an unacceptable extent. The situation is compounded when the landlord wants to develop a very large site with multiple tenancies with different term dates. In my view the operation of ground (f) needs to be looked closely in the second consultation as it has become a technical minefield for landlords to overcome and in my view makes some developments unviable. It certainly does not encourage development. If security were mandatory then as a quid pro quo t it should be made much easier for landlords to oppose where the property is ripe for development.

CQ4A – 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.

I do not see any justification for changing the extent of the Use Excluded Tenancies.

In particular I would not favour a change to exclude certain tenancies from security of tenure on the basis of their use or size, as I do not see the justification for change and amendments of that nature would inevitably lead to unnecessary complexity and uncertainty in the operation of the Act which should be avoided so far as possible.

I do consider however that there could be some merit in extending the Duration Excluded Tenancies by including slightly longer short term tenancies (so to extend the current exemption to apply to one off terms of say up to 12 months rather than 6 months). If the parties simply envisage the grant of a one year term, there seems little reason to require them to contract out given the procedures that need to be followed). The cut off will always be arbitrary of course.

In my view the Law Commission could also usefully consider whether security for tenure under the Act should be enjoyed in relation to periodic tenancies, which are often created inadvertently on holding over and the like. As such tenancies have protection, this is often a problem for landowners/ landlords. Given that a periodic tenancy is technically only a tenancy from period to period, there would in my view be logic for treating them as short term arrangements that should not enjoy protection - although I can also see that a periodic tenant who doesn't have a fixed term certain may equally need some protection, if not more protection. The point is not easy but it worthy of consideration in my view as it has significant ramifications in the real world.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

My views would be broadly the same, but if security were mandatory there would be a greater case for extending the extent of the Duration Excluded Tenancies to include longer tenancies that are intended only to be temporary (say 1 year). Possibly, tenancies for an even longer period (including those granted where the tenant had previously occupied under another tenancy) could also be excluded where they are granted by a landlord who intends to develop the property within a defined period. This would promote certainty in the development sector.

CQ5 – 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.

Yes, I thought the discussion in the paper was comprehensive. I very much agree with the sentiment that there needs to be a compelling justification to change the scope of the 1954 Act. I also consider that reforms which increase the complexity of the Act, introduce distinctions or definitions that are open to differences in application or interpretation are best avoided, as is any change requiring longstanding and complicated transitional provisions. I would have liked to see greater consideration of the question of whether periodic tenancies should be covered, which is a question as to the scope of the Act. Possibly this could be the subject of separate consideration in the second consultation.

CQ6 – 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

It would create uncertainty and potentially lead to litigation unless the change was a simple one, such as increasing the period of 6 months to 12 months. Even then, inevitably some (particularly tenant advisors) will fail to appreciate the impact of reform and so tenants may think they have protection when they don't.

No such change could apply retrospectively as that would operate unfairly on parties who have arranged their affairs on the basis of the existing litigation. There would therefore need to be a dual system potentially for many years which has its own disadvantages as the Act will become more complicate to navigate particularly for those who are not represented.

(2) on the commercial leasehold market

I am speculating but I would imagine that the market might welcome the extension of the Duration Excluded Tenancies to encompass 12 month tenancies but I think that any reform which renders the Act more complicated would be unwelcome, particularly were certain "uses" to be excluded from protection as this will simply encourage litigation and lead to uncertainty as to whether particular tenancies were protected or not. Certainty in the commercial leasehold market is important.

CQ7 – 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).

I can't comment on this

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Maggie Stobo, MFS Resolution, Personal capacity

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

I have considered the options:

1) Large landowners who have an interest in maintaining control over their estates will put up strong opposition to mandatory security of tenure, result in delay from any change from happening.

If legislation is ultimately introduced, they will find a loophole.

2) No security of tenure is a drastic option that would adversely affect some tenants. How would existing protected tenants be compensated for loss of security? (& landlords couldn't be expected to pay a one-off compensation for something that might never happen)

3) Contracting in is effectively the same as abolition, as within a very short time, there would be no tenancies contracted in.

4) The only option remaining is to keep the existing scheme. There are undoubtedly serious problems with it (i.e. cost and delays of referring a case to court for determination of a rent only dispute) but the system is generally understood. Change is urgently needed to speed up the process to ensure an acceptable and cost-effective dispute resolution process. I see a more realistic prospect of urgent change happening if the problems with the existing framework are addressed rather than an attempt to find a more solution. completely. I envisage that fierce opposition by stakeholders to a more drastic change (i.e to mandatory security or to abolition) would result in nothing happening for many years, if ever.

CQ3 – 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 parties and their advisers

(2) on the commercial leasehold market

CQ4A – 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.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

CQ6 – 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

(2) on the commercial leasehold market

CQ7 – 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).

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

This is a general observation on the scope of the consultation.

In my experience in the commercial sectors with which I am involved (retail, restaurant, office and industrial) the problem with the 1954 Act is not the scope of tenancies that covered by the Act. The main problem is the way the Act provides for disputes to be resolved. The Court system cannot cope with the volume of renewals, the mechanism is prohibitively costly to most tenants, and as a result the current system of lease renewals is unsatisfactory.

This doesn't mean the solution should be to change the scope of tenancies that are covered.

I would prefer the consultation to look at the most efficient and effective way for those disputes to be resolved: they need to be cost-effective, proportionate, swift and reliable (i.e. by a person/tribunal/body well suited to the task.). The parties must have confidence in the dispute resolution process.

The right to have a lease renewal fairly decided should not be granted only to the party with the deepest pockets able to play the system. Get it right and many of the problems with the existing framework can be resolved.

I urge the consultation to extend its review of "Scope" to examine the procedure for deciding terms for renewal. Rather than consider whether different categories of tenancy are included or excluded from scope of the Act, it might be more helpful to review the procedure for deciding how terms of renewal are decided (Court, Arbitration, Expert Determination Mediation, Adjudication). Some means of dispute resolution might be better suited to say higher value/types of properties than others.

Ashurst LLP's Real Estate Dispute Resolution team

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

We consider that the contracting-out model should be retained but the process for contracting-out should be simplified. We will not detail the particular problems with the current contracting out process in this response as we understand that is likely to be a focus of the Law Commission's second consultation paper, should the Law Commission recommend the retention of security of tenure.

One of the keys reasons we support the retention of a contracting-out model is that we consider the other proposed models to be unsatisfactory. Our thoughts are as follows:

1. We are strongly against the introduction of two of the suggested models: mandatory security of tenure and no security of tenure.

a. Mandatory security of tenure: This model would disincentivise the letting of premises, especially where landlords have future plans for their property (such as redevelopment), as it would hinder the landlord's ability to recover possession of its property and potentially put the landlord's plans at risk. This model also fails to promote freedom of contract between the parties: there are frequently situations where tenants do not want security of tenure (for example, where a tenant is lined up to take possession in the future and a charity takes a short lease of the space in the interim at low or no rent) and mandatory security of tenure would provide such tenants with an unnecessary level of protection.

b. No security of tenure: We perceive the main downside of this model to be a lack of protection for tenants. Unsophisticated tenants may be unaware that a contractual right to renew is something they could negotiate at the outset. Those tenants who do know that a right to renew is something they could negotiate may find that they do not have the bargaining power to do so. At lease expiry, such tenants may lose premises that are integral to their business or they may be pressured into accepting unfavourable lease terms (such as above market rent) as the landlord will know that the particular premises are of importance to

that particular tenant. A corollary to this is that we may find tenants are unwilling to invest in premises – e.g. they may opt to run their business online, or not invest in the premises itself through good quality fit-outs - if they do not know whether they are going to be permitted to stay in the premises.

Whilst the parties to the lease would be free to negotiate a contractual right to renew, that is a right that the parties currently have (subject to contracting-out first) and we do not routinely see parties opting to do so. The removal of the hurdle of contracting-out before negotiating bespoke rights may be beneficial to sophisticated parties who are negotiating more complicated leasing arrangements (such as large infrastructure projects) but is likely to be of little benefit for more commonplace leases. The introduction of this model would likely result in more negotiated rights to renew, the drafting of such clauses would vary making it more difficult for parties to manage their portfolios at lease end as the renewal process would likely be different for different leases. The burden of this is likely to impact tenants more than landlords, as landlords will have more power to adopt a portfolio renewal approach and negotiate this into all of their leases. There could also be increased levels of litigation on the interpretation and operation of such clauses.

2. Contracting-in model: We do not consider that the contracting-in model strikes the right balance of fairness between landlords and tenants. At present, if a lease is not properly contracted out, the landlord suffers the repercussions of the tenant benefitting from security of tenure, however, the landlord would still benefit from the grounds set out in the Act for opposing renewal. With a contracting-in model, the position would be reversed, except there would be no grounds upon which the tenant could oppose being removed from the premises if they failed to contract-in properly. Any contracting-in process would need to be very simple, otherwise it would be prohibitive to tenants who may fail to follow the process correctly and thereby lose security of tenure. Further, unsophisticated or unrepresented tenants may not know that security of tenure is something they should request.

We do consider there to be upsides to this model – if parties want to negotiate bespoke renewal rights, they would not need to contract-out first. In addition, we do come across a significant number of contracted-out leases and moving to a contracting-in model would remove a procedural hurdle to lease completion. However, a significant number of leases are still within the Act and we suspect that the proportion of new leases that are contracted-out is likely to fluctuate over time as trends in the commercial leasehold market change. Since COVID we have seen some tenants requesting shorter leases and such tenants do not necessarily want to stay in their premises at lease end, however, we are also starting to see a resurgence of retail in residential/suburban areas and experiential retail – such tenants may be more invested in particular premises.

3. Contracting-out model: We consider that the contracting-out model should be retained in a simplified form as it would strike the fairest balance between landlords and tenants. Tenants should know that security of tenure is an option, and we consider the easiest way to achieve this would be to provide tenants with security of tenure unless they expressly opt out. As mentioned above, we consider it to be fairer for a landlord who fails to contract-out properly to be left with a lease that benefits from security of tenure, rather than a tenant who fails to contract in properly to be left with no security of tenure, because the landlord would have the safety net of the grounds of opposition to renewal – there is no equivalent safety net for the tenant. However, the contracting-out process is too cumbersome and should be simplified (for example, by requiring the inclusion of a statement on the front of the lease that the

tenant will not be automatically entitled to renew the tenancy at lease expiry). We also consider that retaining this model is the course of action which is least likely to result in unintended consequences for the commercial leasehold market.

CQ3 – 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 parties and their advisers

Our answers to this question are largely captured in our response to Consultation Question 2. In addition to the points already raised:

• If a simple contracting-in or contracting-out model is adopted, the time and costs incurred in completing leases are likely to be reduced and there would likely be less litigation concerning the contracting out process and less professional negligence claims concerning contracting-out.

• If security of tenure is abolished and the parties choose to include a renewal right, the time and costs incurred in completing a lease may increase as the renewal right is likely to be heavily negotiated.

(2) on the commercial leasehold market

Our answers to this question are largely captured in our response to Consultation Question 2. In addition to the points already raised, if security of tenure is abolished:

O smaller tenants that lack bargaining power could be excluded from the market as they may not be able to justify the expense of a fit out if they are unable to stay in their premises.

O we may see longer leases that include tenant break rights. That may result in increased levels of litigation between landlords and tenants and for professional negligence claims against solicitors as break clauses are a common cause of litigation.

O if landlords do not want to agree renewal rights, we may see greater levels of incentives at the beginning of the term such as rent-frees or contributions towards fit-out.

CQ4A – 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.

(1) We consider the scope of Use Excluded Tenancies to be appropriate.

(2) The current scope of the Duration Excluded Tenancies can be a problem for landlords when the tenant of a contracted out lease wishes to hold-over for a short period, as it may be disproportionate from a time and costs perspective to enter into a new contracted-out lease but there is a risk that the tenant will argue that they now benefit from security of tenure if a

contracted-out lease is not agreed. We consider that prior periods of occupation should not be included in assessing whether a tenancy is a Duration Excluded Tenancy. We also consider that the six month period should be extended to 12 months. In addition, from a due diligence perspective, in order for a buyer to ascertain whether a tenancy of six months or less is a Duration Excluded Tenancy, they must have access to previous leases or make enquiries of the seller in relation to prior occupation – this provides an unnecessary layer of complexity.

(3) We consider that when a contracted-out lease expires, and a tenant remains at the premises for such a period that they benefit from a periodic lease, that periodic lease should not benefit from security of tenure, unless the tenant is allowed to remain in occupation for a period equal to the threshold for a Duration Excluded Tenancy (which we suggest should be 12 months). Such a measure would protect landlords from the risk that, by allowing a tenant to hold over for a short period, the tenant acquires security of tenure.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

We consider the assessment to be broadly correct.

CQ6 – 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

Our views on this question are largely covered in our responses to earlier consultation questions. However, we would add that the operation of the commercial leasehold market is not solely about providing premises to businesses. A significant proportion of foreign investment into the UK is concentrated in commercial real estate. Even relatively small changes could impact investment decisions and should not be taken lightly.

(2) on the commercial leasehold market

Our views on this question are largely covered in our responses to earlier consultation questions. However, we would add that the operation of the commercial leasehold market is not solely about providing premises to businesses. A significant proportion of foreign investment into the UK is concentrated in commercial real estate. Even relatively small changes could impact investment decisions and should not be taken lightly.

CQ7 – 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).

No

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Geoffrey Pentecost, JLL, Personal capacity

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

From consultation with my colleagues practising in Wales, the general themes do not differ to those in England

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

The existing legislation is well understood and provides a base position for the parties for negotiation or dispute resolution if necessary. Having said that, the legislation requires a root and branch overhaul to suit a fast moving market place.

CQ3 – 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 parties and their advisers

I am advocating a complete overhaul of the legislation to provide much greater certainty for both parties so that renewals are much more efficient and cost effective to operate. This will be beneficial to the parties, their advisers and the market.

(2) on the commercial leasehold market

A much more efficient market.

CQ4A – 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.

I believe that there is a strong case for all leases of less than 3 years being excluded tenancies. This is a short term commitment and it is not reasonable in my view for an occupier to have the benefit of a short flexible lease as well as the benefit from security of tenure.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

I broadly agree and support reforming the scope of the 1954 Act in line with my earlier responses.

CQ6 – 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

Changing the scope and mechanics of the 1954 Act should facilitate a much more efficient and cost-effective operation of renewals providing much needed certainty for both parties and their advisers.

(2) on the commercial leasehold market

It would greatly increase the efficiency of renewals in the market to the benefit of business occupiers and property investors.

CQ7 – 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).

I am not advocating a change to the current model but improvements to the scope and mechanism of the 1954 Act which should be beneficial to all groups.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

The 1954 Act has become very outdated over the years and, despite various amendments, has not kept pace with the modern commercial world. Overhaul of the legislation is overdue but of course the commercial market is a broad church with differences in sector, use, geographies and unit size. I think the current model can still strike the right balance between investor and occupier subject to a major overhaul of the legal and valuation mechanism.

Howard Thompson, H W Thompson & Co, Personal capacity

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

The 1954 L & T Act covers England and Wales and I see no valid reason for change

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

The current system works perfectly well, save for the Court process when used. The other three options would impact both landlords and tenants and due to the uncertainty caused, would lead to a devaluation of all commercial properties and in turn drive a 'coach and horses' through the current pension provision.

If amended so that Courts are replaced by experts, akin to the current PACT process, that should be sufficient to retain the sophisticated property market that the UK currently enjoys.

CQ3 – 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 parties and their advisers

As above.

(2) on the commercial leasehold market

As above

CQ4A – 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.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

If the L & T Act is reformed as previously stated ie with the development of the PACT process, then no problem. If amended by any of the other three options, the whole property industry will be under threat.

CQ6 – 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

(2) on the commercial leasehold market

CQ7 – 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).

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

James Portugal, James Portugal Ltd, Personal capacity

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

Not Answered

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

Whilst not being perfect for every scenario (no model will ever satisfy everyone all of the time), it has functioned well enough for the last 50 years, and in my experience (as a Chartered Valuation Surveyor specialising in commercial landlord and tenant matters), continues to do so. The 1954 Act exists to protect business tenancies and in my opinion, any significant change could undermine that.

CQ3 – 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 parties and their advisers

(2) on the commercial leasehold market

CQ4A – 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.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

CQ6 – 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

(2) on the commercial leasehold market

CQ7 – 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).

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Victoria Quinn, Wilkin Chapman LLP, Personal capacity

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

I haven't had sufficient experience in Wales to comment.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

The current model as it stands balances the position of the parties well with a safeguard for those tenants that aren't advised or particularly sophisticated (those sorts of tenants could be taken advantage of)

CQ3 – 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 parties and their advisers

any change will require a bedding in process and education/knowledge shares which will take up time. Provided that change is well manage the impact will be absorbed over time.

Fees may increase depending on the model adopted

Ideally both parties want a time and cost efficient process. That can be achieved under the current model

(2) on the commercial leasehold market

May see increased rents where it's a mandatory model

CQ4A – 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.

6 months isn't sufficient 12-18 months would suit the current market

All business tenancies should be included

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

CQ6 – 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

It will require a transition and bedding in period and knowledge shares to allow navigation.

That will take time on the part of the advisors and also parties will have to adopt new processes which may incurr costs

(2) on the commercial leasehold market

CQ7 – 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).

I don't think proposed changes will particularly

impact on those with certain characteristics, it's an education piece that will cross all characteristics

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Nigel Madeley, Personal capacity

Role: a professional (legal, property or other professional)

I am a solicitor employed in private practice but am responding with my own views.

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

N/A

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

The current system has been established for many decades without a great deal of opposition or dispute. I can only think of 5 or 6 significant cases over a few decades (contrast that with the amended Electronic Communications Code).

I qualified in 1983 and have not come across the expression of strong views in favour of abolition, or indeed for it to be made mandatory.

I would say that the economics might now favour some form of security of tenure more than they did in 1954. While the situation with goodwill may have changed a little with on-line business, it seems to me that tenants now need to invest more to fit-out a shell or property in need of updating than they did back then. That suggests to me that there can only be a greater need for security of tenure than 70 years ago.

In terms of the current government policy of focussing on growth, the tenants carry on the day-to-day businesses and I see no good argument water-down their protection (I was brought up on the 1970/80s 'institutional lease' for which I could never understand the justification - at least that has bitten the dust).

CQ3 – 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 parties and their advisers

I would imagine that a tenants would need to consider with more care their need for a longer term to recover any investment they make in the property. Admittedly the Landlord and Tenant (Covenants) Act 1995 assists here with the (almost) abolition of original tenant liability (so that a longer term is not the albatross it was previously), but this will still result in some market disruption.

The corollary is that landlords may have to provide more facilities so that tenants do not need to invest as much, but as a lawyer I know too little about the effects of taxation and accounting treatment on these decisions.

I suspect that that market could do without any of this (that said, I suspect that 'two-tier' markets are more spoken about than actuality).

(2) on the commercial leasehold market

Please see above.

CQ4A – 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.

I would say in passing that I think the Electronic Communications Code is a bit of a mess. I think it was over-ambitious to try to shoehorn one type of protection over 3 distinct types of legal device - contract, easement and lease - that have very different rules, especially about transmission of obligations. Keep it as simple as possible.

Infrastructure is and always has been a particularly difficult subject to address with private law legal devices (see for e.g. Railways Clauses) and it's even worse when the market-actors are private companies that are effectively being licenced to make private profits out of public provision (including what is effectively compulsory purchase) to the detriment of a private law sector (site owners, in the case of the Electronic Communications Code).

A further example of the difficulty with 'use exclusion' can be seen with leasehold enfranchisement and the problem of defining a 'house' (but, perhaps in fairness, only in London and not in the Valleys).

A 'plus' factor however is the developing approach of the courts to statutory interpretation and the recognition that the policy behind the legislation is an issue to be considered, however tenderly the courts tiptoe towards it (understandably). Legislation can't cover all eventualities any more than parties with their contracts and there must be some scope for carefully considered judicial 'activism'.

I thought the discussion of the 'complex example' was illuminating and helpful.

I agree that there is merit in reconsidering duration exclusion. In my experience not that much use is made of the 1954 Act 6/12 months' exclusion and perhaps that could be extended.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

I would like to say that the 2-stage approach to this consultation is well-thought out. As a lawyer, I have less to contribute than most to this stage, but having read a lawyers' response, much of which I disagreed with, I wanted to set out my own views. I do agree that this stage is market and economics-led (including the effect of tax). Legal technicality can follow.

I did suggest to a lawyers' organisation that they might try to take a quantitative approach and attempt to record how many leases they acted on in a year and how many were contracted out by using some simple tech (I am something of a technophobe (don't seek my views on 'A so-called I'). I thought this might help the Commission.

CQ5 – 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.

I agree with para 4.58.

CQ6 – 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

I'm afraid I have little of practical use to add here, except to say that the 2003 reforms to the method of contracting-out didn't really hit the spot. I suspect that the 'warning notice and declaration' procedure could be watered down to something like a signed statement on the front of the document (not a million miles away from the Prescribed Clauses (that irritated at the time but, with one exception (excluded easements) has been accepted in practice). This might need an explicit statement that the tenant has received, or has chosen not to receive, legal advice.

(2) on the commercial leasehold market

I leave this to more market-focussed responses.

CQ7 – 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).

I have no evidence.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

None.

Osborne Clarke LLP

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

A contracting out model has the potential to strike a reasonable balance between the interests of landlords and tenants. While the 1954 Act is predominantly aimed at protecting tenants, there are a number of protections conferred on landlords which should be retained (for example, interim rent and the requirement for the tenant to give three months notice rather than simply walking away leaving the landlord with a void).

Mandatory security of tenure would have a further detrimental impact on development proposals. Much of the market currently contracts out of security of tenure so this model would not reflect commercial realities.

No statutory security of tenure or an opt-in regime would require a tenant to instruct advisers to protect its position. Both options would be detrimental to tenants by putting them in a weaker bargaining position than they are in currently.

CQ3 – 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 parties and their advisers

The current model offers flexibility for the parties to consider whether security of tenure rights could be beneficial (but the current process for contracting out is in serious need of reform and causes considerable delays to the market). Therefore we suggest current model is kept but with the contracting out process radically simplified to benefit the market generally in allowing for quicker transactions for contracted out tenancies and reduced legal fees. This should be coupled with wider reforms to address other commonly experienced issues which we appreciate will be the subject of the second consultation.

No security of tenure or a contracting-in regime would put greater pressure on tenants to incur the costs of advisers in order to procure contractual provisions enabling them to renew

their lease if desired. Tenants, particularly smaller businesses, often proceed without instructing a solicitor (I am afraid I have no relative percentage figures). Such tenants often do not consider security of tenure at the outset, understanding the ordinary meaning of the phase 'term end date' to mean that they will have no right to remain in the property after the end of the term and do not raise the point during initial negotiations to take a lease. It is only when the lease comes up for renewal that the tenant realises the importance of being able to remain in the premises where it has built up goodwill and spent money on fit-out.

As mentioned in the response to Question 2, mandatory security of tenure is likely to hamper redevelopment to the detriment of the economy and does not reflect the fact that many lettings are currently contracted out. We are also likely to see increasingly inventive route being tried by landlords to seek to avoid falling within the scope of the regime, e.g. occupation under licences and moving tenants around to remain within the bounds of a licence - this would not serve commercial interests and will increase legal costs, litigation and uncertainty.

(2) on the commercial leasehold market

Comments from larger commercial owners hoping to develop their land suggests that much usable land is kept out of the lettings market, which could be put to use by local business owners occupying on short occupation arrangements pending planning consent for a development. However, the perception is often that the legal fees involved in ensuring that an occupier cannot obtain security of tenure and the considerable risk if there is technical error in the contracting out process, does not justify the letting.

The current contracting out model puts a lot of pressure on landlords to re-serve notices for minor updates to documents/minor errors, and makes many legitimate business dealings unduly cumbersome (for example agreements for lease where the freehold changes hands prior to completion of the lease, or pre-emption rights for tenants where the future lease is intended to be contracted out). In addition, unfairness (and additional legal costs) result from landlords finding that those occupying under very informal arrangements have obtained security of tenure. The sector is a minefield for the smaller commercial landlord who does not want to incur solicitors fees which seems somewhat unreasonable.

Tenants, particular where not represented, also find it difficult and burdensome to be asked to swear a statutory declaration in front of an independent solicitor. While High Street firms used to readily provide this service for the nominal fee, it is becoming harder for tenants to find a solicitor willing to take time out to do this. However, these drawbacks can be addressed through tweaking the current system which is preferable to full-scale reform. This has the benefit of being something of a 'known' quantity.

CQ4A – 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.

Use:

Arguably, hospitality, retail and leisure are the sectors likely to benefit most from security of tenure due to the good will associated with particular premises. Restricting security of tenure to these use types would however, put the onus on those undertaking expensive fit out works in other types of premises, to seek contractual renewal clauses in their leases. We consider that it is likely to be very difficult to pin down use as a basis for security of tenure, and we could see non-protected use types seeking to incorporate a protected element in an effort to fall within the regime, and difficulties arising over changes of use, neither of which would be beneficial for the economy.

However, the limited category of serviced office arrangements will be relatively straightforward to define and it would be very beneficial if that type of occupation could be automatically excluded from the security of tenure protections. It is not appropriate for that type of occupation arrangement to benefit from security due to the obligations on the part of the landlord, and intention that it is flexible and easily adaptable to changing economic circumstances.

Duration:

We suggest that tenants should be required to occupy for a period of 3-5 years before they become entitled to claim security of tenure. The current limit of 6 months means that many landlords don't risk letting someone occupy property for fear that the timing slips and they end up with a secure tenant.

Characteristics:

We suggest that it should not be possible for a secured tenancy to arise by implication. A written contract must be required.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

We do not believe that mandatory security of tenure is an appropriate model to regulate business tenancies. However, if security of tenure were to be mandatory, we would recommend that only leases for 10 years or longer should benefit to reduce the risks of disrupting the economy. It would also be worth giving detailed consideration to restricting use types that can benefit to premises with a primary business use of hospitality, retail or leisure which are most likely to benefit from good will attached to a location. Tenants carrying out expensive fit out in other types of premises are likely to have instructed solicitors who can advise them on including contractual rights to renew. However, as previously mentioned, the correct balance is more likely to be struck by retaining the current contracting out model with modifications.

CQ5 – 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 consultation paper sets out the relevant consideration in a good level of detail. It is particularly useful to bear in mind the benefits of having a flexible, easily understood regime that will not need regular reform in order to keep up with economic changes, or that is regularly before the courts for interpretation.

CQ6 – 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

Increasing the minimum term and requiring written tenancy agreements before security is obtained would reduce uncertainty and unnecessary legal fees. It would also encourage appropriate use of property pending development.

In considering scope, the aim should be to speed up transactions which are not intended to create a secure tenancy such as a short term letting or serviced office letting, and reduce risks where the parties did not think that security of tenure would apply such as unwritten periodic tenancies. At present, there is too much working around the 1954 Act rather than the Act working for the benefit of business. This creates undue uncertainty (is occupation a licence as described or is it in fact a secure tenancy?), legal costs, and vacant property.

(2) on the commercial leasehold market

We would hope that a greater number of short term lettings would be encouraged if landlords were not afraid of not being able to remove occupiers when it wanted to begin redevelopment. There is also potential to speed up transactions that are not intended to benefit from security with lower legal fees, and an easier to understand position for landlords and tenants.

CQ7 – 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).

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

NHS Wales Shared Services Partnership - Legal & Risk Services

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: 250 or more

Regions: Wales

Sector(s): Health and social care

CQ1 – 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.

The law should apply equally to England and Wales to avoid confusion.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

Everyone is familiar with the current process. There is no need for abolition, this will simply cause more confusion.

A mandatory model is not acceptable. Landlords and tenants need flexibility, depending on the specific circumstances of the property (its current use and future use) and the parties, and whether a lease is contracted in or out is part of the commercial negotiations stage between the parties.

What would be better is to tweak the existing model to deal with any adverse issues identified e.g. doing away with the whole requirement of serving notice and statutory/simple declaration process. It is unnecessary, time consuming, incurs unnecessary costs and causes delays. Simply labelling a lease as contracted out or contracted in should be sufficient or a simple clause in the lease doing the same.

Another current failing of the current model which should be addressed is the default position, even if there is no agreement in place, is that the occupation is to be afforded security of tenure protection if the occupier remains in situ for sufficient time. This means that informal arrangements are afforded protection and this seems to be very onerous on landlords and places tenants (who were happy to take occupation without formal terms being agreed) in an unfairly advantageous position. Informal arrangements should not attract security of tenure as, in practice, on such arrangements this has not been considered and often it is to facilitate short term occupations (which can run on beyond 6 months) or continued occupation (where negotiations are delayed – not entered into as parties are happy to continue on the same terms without appreciating the security of tenure implications). Security of tenure should only be acquired if it is acknowledged by the parties and that this is the case in a formal lease. This is a much fairer position and reflects that it is

a commercial point for negotiation – much like a rent free period or option to renew, neither of which would be implied in the absence of express agreement.

The questions would then arise as to, if there is a formal lease but this omits to make a statement in relation to security of tenure, should it be deemed inside or outside of the Act. The omission of such a statement would appear to evidence that it was not expressly agreed that the lease was to be afforded protection and as such it should be excluded. The deemed protection would only, in practice, affect landlords who were not being legally advised and in the current climate where property documents are intended to be more user friendly and the law more transparent this does seem to somewhat counter intuitive. If a tenant wants security of tenure protection on such an agreement, they can of course negotiate this and include a clause providing for it.

CQ3 – 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 parties and their advisers

As I have already set out above, it is unnecessary to overhaul the whole process. This would be time consuming, costly and add to more holes/confusion. Simply tweaking the current process to deal with practical issues/gaps such as highlighted above would be of more assistance.

(2) on the commercial leasehold market

Please see above commentary.

CQ4A – 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.

A current failing of the current model which should be addressed is the default position, even if there is no agreement in place, is that the occupation is to be afforded security of tenure protection if the occupier remains in situ for sufficient time. This means that informal arrangements are afforded protection and this seems to be very onerous on landlords and places tenants (who were happy to take occupation without formal terms being agreed) in an unfairly advantageous position. Informal arrangements should not attract security of tenure as, in practice, on such arrangements this has not been considered and often it is to facilitate short term occupations (which can run on beyond 6 months) or continued occupation (where negotiations are delayed – not entered into as parties are happy to continue on the same terms without appreciating the security of tenure implications). Security of tenure should only be acquired if it is acknowledged by the parties and that this is the case in a formal lease. This is a much fairer position and reflects that it is a commercial point for negotiation – much like a rent free period or option to renew, neither of which would be implied in the absence of express agreement.

The questions would then arise as to, if there is a formal lease but this omits to make a statement in relation to security of tenure, should it be deemed inside or outside of the Act. The omission of such a statement would appear to evidence that it was not expressly agreed that the lease was to be afforded protection and as such it should be excluded. The deemed protection would only, in practice, affect landlords who were not being legally advised and in the current climate where property documents are intended to be more user friendly and the law more transparent this does seem to somewhat counter intuitive. If a tenant wants security of tenure protection on such an agreement, they can of course negotiate this and include a clause providing for it.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

I simply do not know. What I do believe however is that improving the current model would be better and more cost and time effective for all concerned rather than replacing it with another model which no doubt will have its own problems.

CQ5 – 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.

I do not have anything to add, other than the comments already raised above.

CQ6 – 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

Please see previous comments.

(2) on the commercial leasehold market

I cannot comment, I am a lawyer not a surveyor/valuer.

CQ7 – 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).

No

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Please see previous comments and suggestions.

Stephens Scown LLP

Role: a professional (legal, property or other professional)

The response has been prepared on behalf of Stephens Scown LLP following an internal consultation amongst a steering group of transactional and litigation lawyers who are frequently instructed on 1954 Act matters.

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

I do not believe 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. All proposals I make are for reform in England and Wales.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

The current model should largely be retained, and the majority of business tenancies should have security of tenure.

Generally, contracting out is the best model as it balances the (generally) superior negotiating position of the landlord.

There is certainty and familiarity within the market via the current model. The impact that a complete change to the model of security of tenure would have to current commercial landlords and tenants, their advisors and the commercial leasehold market generally, would be costly and disruptive to implement and any amendment is likely to cause a shift in the balance of power in favour of either landlord or tenants.

CQ3 – 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 parties and their advisers

If the 1954 Act was abolished and no security of tenure was offered, tenants would be less likely to invest in leasehold properties due to concerns about their tenancies not being extended.

If protection offered under the 1954 Act was increased and security of tenure was made compulsory, this may drive landlords to leave the commercial property market due to concerns that they would not be able to reclaim possession of their properties. This would lead to fewer properties being available on the rental market and the increased competition for properties would result in tenants have less negotiating power and increased rents due to lower supply and higher demand.

The current security of tenure model is well established. If a significant change is introduced to security of tenure, there is likely to be an extended period of uncertainty or instability while parties to tenancies and their advisors get used to the new system.

(2) on the commercial leasehold market

CQ4A – 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.

(1) The current types of tenancies which are use excluded should remain, however it would be beneficial to have more clarity regarding what regime will govern a tenancy if it falls within competing regimes (for example an FBT where the farm business has diversified and the business run from the land could now fall within the definition of business governed by the LTA 1954.) In such cases, the tenancies should be governed by the regime under which tenancy was originally commenced. Telecommunication leases should not be excluded from the LTA 1954 regime

(2) The current general requirement is that a tenancy needs to be granted for a period of 6 month or longer to fall within the scope of the 1954 Act. This period should be extended to 2 years. This would create certainty for both landlord and tenant and would encourage investment by the landlord

(3) Other considerations should be that residential tenancies should remain excluded, even if the tenant is working from home. Tenancies at will should also remain excluded. The model should be amended in relation to periodic tenancies (which should be contracted in rather than being automatically protected). Leases of wind turbines should be excluded.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

No, the tenancies which should be offered security of tenure (whether this is contracted in, contracted out or mandatory) should remain the same regardless of which model is chosen.

CQ5 – 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.

Yes, Consultation Paper 1: models of tenure correctly identifies the potential risks and benefits of reforming the scope of the 1954 Act.

CQ6 – 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

All tenancies under 1 year in duration should be excluded from automatic protection, however the parties should be able to opt in to have security of tenure for such tenancies. This should reduce the amount of litigation arising from the 1954 Act for short leases of between 6 and 12 months as these will not automatically be protected. This would also encourage the use of space which is otherwise empty as landlords can agree a short lease in space which they have development plans for without the concern of being unable to reclaim possession (and the risk of costs of having to pursue an opposed lease renewal claim) or having to pay statutory compensation.

(2) on the commercial leasehold market

CQ7 – 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).

No evidence that the current model or any changes would disadvantage certain groups.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

David Farrington, Glenny LLP, Personal capacity

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

I do not practice in Wales so therefore cannot comment.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

Security of Tenure is important especially for tenants. It forces a landlord to directly engage with a tenant upon lease renewal where a Market Rent based on market evidence will be agreed rather than a rent which is based on the aspirations of the landlord. It also ensures that if a tenant has undertaken improvements to the property and they have been documented via a license then improvements cannot be rentalised. I believe the current model of having to contract out is the best model. It has been tried and tested for over 70 years which I believe is testament to the current regime's success. Whilst some occupiers are now demanding greater flexibility, I believe security of tenure is still important especially when acting for tenants and trying to protect their position.

CQ3 – 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 parties and their advisers

A change will cause uncertainty to all parties involved especially if the changes are unclear. If security of tenure is abolished in its entirety, landlords will be favoured as they will be able to demand rents from tenants without providing market evidence to support their opinion. Equally a tenant could find that they could be displaced from their property even if they have been in occupation for many years and have not been in breach of any lease obligations. It would also result in negotiations being fairly non existent unless safeguards were put in, which would then compromise and limit the role of advisors.

If contracting in were to become the norm, it could result in the vast majority of occupiers not benefiting from security of tenure thereby forcing more occupiers to vacate upon lease expiry.

(2) on the commercial leasehold market

If security of tenure is abolished in its entirety, this could result in significant rental growth. Equally, it could result in a lot of tenants deciding to vacate upon lease expiry and look to acquire alternate accommodation which suits their operational outgoings more favourably.

If contracting in were to become the norm, it is possible that there would be greater relocation requirements upon lease expiry and as a result landlords would incur void costs and reletting fees which they otherwise would not need to. Voids in some market would therefore likely increase which in turn would result in capital values depreciating. Landlords then may have to offer incoming tenants greater incentives and as a result the terms of the lease may not be as favourable than they would have been if there had been a lease renewal.

CQ4A – 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.

It is appropriate as it treats landlord and tenants fairly. It provides both parties with the opportunity to negotiate terms which are in line with market evidence upon renewal.

I believe the current extent of the Use Excluded tenancies are appropriate and do not need to be reformed.

I believe the extent of the Duration Excluded Tenancies is appropriate as I consider it is fair and reasonable for a tenant to be in occupation of a property for a considerable period of time in order to benefit from protected rights.

I do not consider that there are other business tenancies which should be excluded from the 1954 Act.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

My views do not differ.

CQ5 – 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.

I think the potential benefits and disadvantages are summarised well. I do not believe there is unwanted protection. Whilst some markets are seeing shorter lease terms as a result of tenants wanting greater flexibility, I question whether an occupier would be thinking that they would not want to remain in occupation upon expiry when they have just completed on a lease. If a tenant did not have security of tenure but then subsequently found out that the space they occupied suited their business requirements very well, without the security of tenure they could be forced to pay considerably more in rent and on unfavourable terms

upon renewal. As a result I disagree that there is too much protection. Whilst protection could initially be seen as unwanted by some occupiers, I believe that it is always better to have right under the Act.

I agree that one of the disadvantages would be that in the interim there would be uncertainty surrounding whether leases had security of tenure or not which in turn could result in landlords and tenants having to incur unnecessary expenditure on professional fees.

CQ6 – 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

My answer is the same as my answer to question 3 in Models of Security of Tenure.

(2) on the commercial leasehold market

My answer is the same as my answer to question 3 in Models of Security of Tenure.

CQ7 – 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).

I do not believe this to be the case.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

I believe that the current mode of resolution for contested lease renewals benefitting from security of tenure being decided by a judge is an outdated model and an incorrect approach. I believe the existing system is flawed given that an individual who is not an expert in undertaking rental valuations and who does not have knowledge on commercial real estate market practices can hand judgements on the aforementioned subjects. I believe that the concept of lease renewals being referred to court is an unnecessary expense for landlords and tenants and not the best use of the judiciary system's time. I am of the opinion that the role of ADR such as pact should be the compulsory method of resolving contentious lease renewals. I believe that this is the most fundamental element of the Landlord & Tenant Act 1954 which needs reforming.

Field Seymour Parkes LLP

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

No comment to make.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

We recommend continuing with an adapted version of the current regime for contracting-out.

Bargaining power tends to be on the side of the landlord and it is more likely to have unrepresented tenants then unrepresented landlords, and therefore the presumption of security of tenure is fair and helpful. Unless there is a presumption of security of tenure many tenants will not know that there is something to which they could be entitled and it is therefore right that it is only removed by an express procedure rather than imposed by a procedure.

If there was no security of tenure then tenants would be much more likely to have wasted costs in fitting out and relocation than otherwise, being detrimental to business. Fitting out costs are very material in many cases.

CQ3 – 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 parties and their advisers

(2) on the commercial leasehold market

We recommend modest changes to the process of contracting out and therefore having moderate impact on the letting market as it currently operates.

We would anticipate an increase in forced relocations and dilapidations disputes if security of tenure was to be excluded from all tenancies. This would increase costs in the market. That would have an impact on transaction costs as well as wasted costs incurred by occupiers who would then have to find alternative premises and refit.

Conversely, if security of tenure is imposed on all tenancies there will be reluctance on the part of landlords with potential redevelopment sites to earn revenue and support operational businesses with temporary lettings. This is therefore not recommended either.

Compensation on vacating is too low to compensate for wasted fit out costs and enforced relocation costs , and a higher multiplier (say 2 or 4x RV, rather than 1 or 2 x) would be appropriate

CQ4A – 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.

We acknowledge the overlap between telecommunications leases protected by the Electronic Communications Code and the 1954 Landlord and Tenant Act. It is frustrating and rather pointless to exclude security of tenure from telecommunications leases under the 1954 LTA only to have the operators assert code powers and this duplication should be rectified.

There is considerable merit in extending the duration of an excluded tenancy from 6 months to 12 of even 48 months and for the aggregation of occupation before security of tenure can be derived to be increased from its current period of 12 months to 48 or 36 months. This would considerably simplify the granting of short-term commercial tenancies in anticipation of redevelopment without needing to go through any contracting-out process.

The process of simple or statutory declarations is unnecessarily complicated. It should be sufficient for any tenant to sign a statement in the body of the lease itself that they are aware of the rights that they are giving up, having previously received a notice. We would recommend that the signature in this respect is immediately following the relevant clause in the tenancy.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

No comments.

CQ6 – 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

No further comments.

(2) on the commercial leasehold market

CQ7 – 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).

We do not foresee any of the named characteristics as being particularly adversely affected by this issue, without making prejudicial assumptions about the nature of the persons with those characteristics and their capability to enter into commercial leases. Matters of capacity and understanding apply in any contract or commercial lease at present and any changes to the law in this respect would not materially differ.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

We would be interested in the participation in the consultation process, as and when applicable.

Michael Lever, Personal capacity

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

About half-way through the consultation terms of reference, rightly or wrongly, and with respect, I decided I'd had enough of your considering the possibilities - and time running out to comment - instead would contribute the following:

Established in 1975,I specialise in rent review and business tenancy advice for landlords and tenants in the commercial property market in England and Wales. I began my career in the commercial property market after leaving school in 1967. to begin working for Montagu Evans & Son, as was, in central London before working in a branch office of my father's firm - he was a chartered surveyor - becoming an equity partner a couple of years later, together with two colleagues, when my father reorganised the structure of that office. I am not a chartered surveyor or a lawyer. I am self-taught. I have dealt with more than 5000 properties and my current workload is 120 instructions. Principally shops, to a lesser extent industrial premises, occasionally offices, and increasingly but still occasionally other uses, for example a boatyard, a gym, and so on. My regular clients are private landlords, including a few full-time professional landlords, small multiple retailers up to about 25 branches, industrialists. I have a minimum current rent level of not less than £25,000 pa for taking on work for new clients. In my experience, lower rent parties are likely to shy away from wanting to incur egal costs, To complement my services, I write about rent review and business tenancies, and for the past 3 years I've been a guest editor for. Property Law UK. Last year. I wrote a monthly series: 'How to do a lease renewal.'

Almost inevitably, whenever instructed to act for a landlord or a tenant for a lease renewal, I start by saying "it should be easy to explain what happens on a lease renewal, but it is not'. Even for more experienced landlords and tenants, the number of permutations is sometimes so difficult to grasp that there is no alternative than to continue explaining, despite the signs of boring the listener.

For a start, landlords and tenants generally do not differentiate between a ‘lease’ and a ’tenancy’. I explain that the lease is the document containing the contract. I say that on expiry of the contractual term, the tenant would have the right to apply for a new tenancy or no legal right to remain in occupation. Where there is no right to remain in occupation, the contracting out (s24-28 LTA54 exclusion) will either be in the lease or a separate document. For one client, ascertaining whether a tenancy is inside or outside has caused many problems when on transfer of the lease the separate document cannot be found because it wasn’t handed over. Merely, I say because the document contains a blank exclusion clause doesn’t mean that the lease is outside the Act.

Frankly, it doesn’t make sense for an exclusion to be in one of two places. In my view, that needs reform. I would suggest in the lease, not separately. The fewer related documents, the better. Similarly, I do not understand why the need for the contracting out procedure on its own; it would make more sense to include it in the draft lease on a new letting to be effective, as is the lease, on completion. Doing away with the need for separate declarations, the parties to a commercial contract, which is what it is, should be trusted to know what they are doing.

Before the law changed, the tenant had to give notice within 2 months whether it wanted to renew. Now that a tenant doesn't, and because a tenant doesn’t have to communicate its intention in advance, a landlord has no idea whether the tenant wants to renew or not. The only way to force the pace is for the landlord to apply to the court. In my experience, generally landlords are reluctant to do so because in doing so, it sets in motion the court case management proceedings. It would be better if the previous system were reinstated with the tenant having to give notice not within 2 months but with 3 months. The theory that negotiations for the renewal can be concluded in principle within 6 months doesn’t allow for a volatile market. I tend to leave negotiations until near to the end date of the notice, and when acting for the tenant rely hopefully on the landlord’s preference to extend the end date by agreement.

Whether a lease (tenancy) is inside or outside the Act depends upon the difference in bargaining power between the landlord and tenant. I have a private investor landlord client whose experience of his bank tenant playing the system resulted in the landlord having to refund about £150,000 in rent. The renewal took 5 years and 3 months to finalise for the grant of a 3-year lease. The bank has now announced closure - surprise, surprise. For a new letting, there is no way my client wants a new lease inside LTA54 as avoiding the LTA54 procedure is top of his list. I am recommending that the new lease is outside the Act, with the tenant having an option to renew.

The norm back-door method for transferring leases inside the Act to outside is when the tenant wants to sub-let. The underlease is to be outside the Act. Almost every draft lease nowadays would contain that requirement.

Small tenants and local traders like to have their leases inside LTA54 because bank loan criteria require a certain term of at least 8 years, so inside the Act makes the possibility more likely the tenant can sell their businesses as a going concern. Larger retailers and bigger companies aren’t so concerned because they think it would be unlikely for the landlord to not renew because of the impact on the landlord’s investment. Inside the Act as a default where the Rateable Value is less than ‘x’ would be a good idea. Optional otherwise.

There are 3 ways to renew a lease where the tenant has renewal rights. 1. The formal procedure, statutory notice, etc. 2. Informal subject to contract. 3 Restructuring.

3 is normally proposed 2 or 3 years before the earliest date for the formal procedure, 12 months before the contractual term expiry. The advantage to both parties is to avoid the cost of court procedures. The advantage to the tenant is certainty of renewal. The advantage to the landlord, easier to remortgage the investment and a secure investment. Way 3 and 2 normally involve experienced parties, as the entire matter is subject to contract.

12 months when valuating ahead is akin to prediction. A notice can be served, but does the tenant respond? Not often. Where the landlord opposes renewal then 12 months ahead is reasonable as then the tenant is not pressured to find somewhere else. But otherwise, 6 months for a renewal is plenty.

Renewal under the Act shouldn't be as convoluted as it has become. The interim rent concept, for example, is nonsense. The renewal term should start on the date immediately following expiry of the existing term. It's all very well the interim rent being the same as the market rent, unless at the interim rent valuation date it can be shown to have been substantially different, but that doesn't mean the term commencement date. Playing the system enables the tenant to have a longer term than necessary.

Where a renewal goes to substantive hearing, the tenant should not be allowed to discontinue. Mere responsibility for the landlord's costs is not enough; the tenant vacating despite months of haggling is a sour experience for a landlord. if a tenant wants to terminate, then the last date for doing so should be on expiry of the existing lease, unless by agreement. Having a 'by agreement' provision would enable a temporary remaining pending relocation or whatever.

The statutory compensation on non-renewal at one or two times Rateable Value doesn't amount to much for low RV premises. Landlords can avoid paying it altogether simply by including one or more of the noncompensatory grounds in the s25 notice. Unless the tenant confirms which ground it is not objecting to, the landlord can reason that no compensation is payable.

On balance, I think the default position should be inside the Act - but only if all or most of the suggestions I have made are introduced. If not, then outside the Act will become the norm, by stealth.

CQ3 – 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 parties and their advisers

(2) on the commercial leasehold market

CQ4A – 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.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

CQ6 – 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

(2) on the commercial leasehold market

CQ7 – 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).

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

CMS Cameron McKenna Nabarro Olswang LLP

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

As a firm, we do not have significant experience of business lease renewals in Wales and therefore cannot comment on this question in any detail.

CQ2 – 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.

Model choice: Contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

Reasons

2.1 Our view is that departure from the current position (Option 4, the contracting-out model) would unfairly distort the balance of power between landlords and tenants in the commercial property market.

2.2 However, we do consider that the current model for contracting out a tenancy from the protection of the LTA 1954 could be significantly improved. To make the process more efficient and reduce costs for landlords, tenants and their advisers, the process of issuing warning notices and giving declarations/statutory declarations could be dispensed with or simplified.

2.3 Caselaw shows that the contracting out process does give rise to disputes. The exclusion wording in leases could be amended to try to avoid litigation over procedural matters such as the form of the statutory declaration. Simplifying and streamlining the current position would also avoid issues around the surrender and re-grant of existing tenancies agreements if the process model changed.

2.4 Our view is that adopting either Option 1: mandatory security of tenure or Option 2: abolition of the 1954 Act would disrupt the balance in the market too much across a large variety of sectors and neither of these Options would be workable in practice.

2.5 Whilst mandatory security of tenure may appear to benefit tenants, this would not necessarily be the case in practice. Tenants would need to serve a Section 27 notice (probably incurring legal costs in doing so) to guarantee that their leases expired on the contractual termination date, or risk arguments as to whether vacant possession of the premises was achieved by then, even where they do not wish to renew. This also forces

landlords to incur costs in serving Section 25 notices to terminate the existing leases (whether or not a renewal is opposed), even where it was never the tenant's plan to take one.

2.6 Conversely, abolition of security of tenure does not give tenants sufficient protection to invest in their businesses. Tenants may be concerned about risking investment on extensive tenant fit-out where a landlord can decide not to renew the lease. Abolition would also mean no controls on the imposition by landlords of onerous conditions on renewal such as unsuitable lease lengths or disproportionately high rent. This would not necessarily be suitable for landlords either where tenants will only take renewals on unfavourable terms, particularly where the balance of power is with the tenant and not the landlord. With interim rent being unavailable, there will inevitably be disputes as to what should be paid by the tenant to remain in occupation after lease expiry whilst the terms of any new lease are negotiated.

2.7 We believe that negotiating parties should be free to agree to the terms they wish – and keeping a contracting out (or contracting in) model provides that. Such a contrast to the current position would also require existing arrangements to be re-examined, at wasted costs. We see no data analysis to push either of these contrasting approaches.

2.8 Whilst contracting-in could be beneficial, it is likely that issues similar to those which exist in the current model could arise. As such, the change to the statutory position may not be worth the cost/benefit analysis. Further, portfolio landlords could simply refuse to adopt the contracting-in model. That approach, unlike the current position, would put smaller tenants in a worse negotiating position, losing the benefit of their goodwill for example, where they could be effectively held to rental ransom. This, in our view, marks a significant departure from the intention behind the 1954 Act.

CQ3 – 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 parties and their advisers

Model 1 – Mandatory security of tenure:

• Landlord appetite for short term lettings: Landlords might prefer to keep sites void rather than risk tenancies that could hinder / delay redevelopment plans in view of the increased litigation risk and potentially reduced profit margins due to statutory compensation for tenants. In turn, this could negatively impact the value of a landlord's investment if voids are more likely to be seen and of increased duration. This could risk deterring investment in the commercial property market. A similar hesitancy in entering into agreements with statutory security of tenure can be seen in respect to the 'new' Telecoms Code. Here, the inability to contract out has arguably seen landowners increasingly reluctant to let space to operators due to the resulting inflexibility and litigation risk that cannot be mitigated by contracting out. It is unlikely that this risk could be mitigated by break clauses (on the assumption that, as is the case now, a landlord exercising a contractual break right would still be required to prove a statutory ground(s) for termination as well).

• Market Demand: If the stock of short-term and flexible lets is reduced, the increase in competition for space could see feasibly see rental values for short-term leases soar. Such

increases could particularly prejudice those tenants in volatile sectors and / or with short-term business plans.

• Hardened Negotiations: Landlords could become less flexible in negotiations for the 'first lease', knowing that this would set the tone for all future renewals that would be subject to court-determined terms, thereby delaying the speed at which leases can be granted.

• Flooding the courts: In CMS's experience, the majority of commercial leases are presently contracted out of the 1954 Act. There are concerns that mandatory security of tenure would flood the court system, leading to delays and increased costs in determining lease renewal claims.

Model 2 – Abolish the 1954 Act:

• Risk of imbalanced bargaining position: Tenants could become disadvantaged by Landlord's freedom to eject them at the end of the contractual term, potentially creating an imbalanced bargaining position at renewal. Without court-determined lease terms (particularly as to rent), the market could become skewed – particularly in areas with relative low supply of a particular type of stock.

• Valuation Skew: Similarly, if there weren't transitional provisions that would take existing leases with security of tenure out of this regime on expiry (as there was in the 'new' Telecoms code), leases with pre-reform security of tenure would become highly valuable on renewal and assignment, distorting open market rent valuations.

• Contractual Renewal Rights: While parties could agree on contractual renewal rights, the form of these would inevitably vary. This variety and departure from established legal principles under the 1954 Act would deprive legal practitioners of the benefit of existing case judicial decisions. This would therefore risk increasing the number of disputes as to renewal terms (and therefore potentially the costs borne by the parties).

• Long-term Planning: Tenants' ability to undertake long term business planning could become increasingly impaired as a result of uncertainty as to their future occupation. It could also risk them losing good will accrued over the term of the lease (particularly with regards to retail and hospitality premises).

• Freedom of Contract: The inability to freely negotiate security of tenure could be seen as an intrusion into contractual freedom.

Model 3 – Contracting-In Model:

• Process Swap: although this is arguably simply swapping one process for another, assuming that the majority of commercial leases are presently contracted out of the 1954 Act (which is our experience), it could benefit both landlords and tenants in that they would not have to incur the time and cost involved in this process in that majority of cases.

• Landlord impact: the present risk of a tenant inadvertently accruing security of tenure (e.g. where an implied periodic tenancy arises) contrary to the parties' intentions is unacceptable to landlord clients that we have discussed this matter with. Landlords incur significant fees and time in seeking to mitigate this risk. A contracting-in model would provide certainty for the parties on this point and could see parties incur reduced legal fees in the process.

• Tenant impact: in the event that the contracting-in process were to be invalid, the ramifications for the relevant tenant could be significant and so is arguably contrary to the spirit of the 1954 Act in supporting tenants. Whilst this may be less of a risk for well advised, established commercial tenants, the risk of inadvertently missing the opportunity to obtain security of tenure for 'smaller' tenants would likely be greater than is the case under the current system where a tenant has to knowingly agree to waive this right.

Model 4 – Current Model:

• No impact: Maintaining the current model is not anticipated to impact parties to tenancies and their advisors / the commercial leasehold market more generally. The current model is deemed suitable, but there are areas for reform that will be addressed in the second part of the consultation.

• Reform required: Nevertheless, this should not be a barrier to reforming the current model which can be adapted to address some of the above issues and concerns (e.g. averting the risk of tenants inadvertently accruing security of tenure contrary to parties' stated intentions).

(2) on the commercial leasehold market

See above.

CQ4A – 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.

Extent of the Use Excluded Tenancies

4.1 We consider that the current extent of Use Excluded Tenancies in the 1954 Act is appropriate.

4.2 We do not consider that infrastructure leases such as for windfarms (mentioned in the Consultation paper) should be included within the category of Use Excluded Tenancies. It would be difficult to define with precision which infrastructure should be excluded (because the arrangements are very technical).

4.3 For projects of this magnitude, the 1954 Act, in its current form, does not work well. For example, the fact that the court can only order a new lease of up to15 years is not long enough for these types of leases and causes significant issues in finding comparables for valuation. This results in the landlord and tenant having specific negotiations over contractual protections. Despite this issue (and the likely impact on UK plc's growth and energy security goals) the principle of security of tenure remains important for infrastructure leases.

Extent of the Duration Excluded Tenancies

4.4 We consider that the current extent of Duration Excluded Tenancies is appropriate.

4.5 We can see the benefit of widening the extent of the Duration Excluded Tenancies. We consider that a lease for a term of up to 2 years should be excluded from statutory security of tenure. Prior periods of occupation should be ignored, to simplify the position (currently, prior periods of occupation encourage landlords to contract out very short term tenancies where there is any doubt as to whether statutory security of tenure applies). The term of leases in the commercial market has over the years become shorter and many leases are for 5 years or less. Therefore, we consider the consequences of excluding leases for 5 years or less would be too significant (it would render security of tenure unobtainable for the majority of tenancies), and 2 years of less to be a reasonable compromise that moves from the current 6 month model (which is no longer fit for purpose) to a model that increases certainty for both landlords and tenants and supports the overall objective of reducing administration, cost and delay. This exclusion is less significant if the contracting-in model is adopted (since the default position is that the lease is contracted out).

Should other types of business tenancy be excluded from the scope of the 1954 Act

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

4.7 We consider that periodic tenancies should be excluded. Such tenancies may slip under the radar on due diligence for the purchase of a property.

4.8 The fact that they may attract statutory security of tenure is problematic and they may interfere with the landlord's redevelopment or other plans for its property. When a crucial economic driver is the promotion of growth, landlords should not be constrained in redeveloping properties by statutory rights pursuant to a tenancy that they may know nothing about.

4.9 To exclude periodic tenancies would create certainty for tenants and would avoid unnecessary costs engaging in disputes over the issue.

4.10 In addition, any revised 1954 Act should make clear that where notice under sections 25 or 26 have been served but no court proceedings brought ahead of or at the statutory deadline, the tenant cannot acquire new protection simply by remaining in occupation; the basis of occupation should be made clear: either as a trespasser or tenant at will.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

4.11 Our answers to this question would not differ if Option 3 or Option 4 was recommended. We do not believe that either Option 1 or Option 2 are viable models.

CQ5 – 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.

5.1 Subject to the points made in our responses to the other Consultation questions, we generally agree with your analysis.

CQ6 – 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

Use Excluded Tenancies

6.1 We consider that the existing scope of the Use Excluded Tenancies is appropriate. As set out above in our answer to Question 4, we do not consider that the exclusions should be extended to cover other types of tenancies such as infrastructure leases for windfarms or leases of telecommunications sites.

6.2 The various regimes for Use Excluded Tenancies either provide a contractual basis e.g. in large infrastructure projects, or a statutory basis e.g. a telecommunication lease to adequately deal with occupation of the property or site. These regimes provide a structure and or procedural basis that is adapted to that type of tenancy.

6.3 The parties to tenancies and their advisors will be familiar with the current scope of Use Excluded tenancies, and understand the procedures and requirements. Broadening the scope of Use Excluded Tenancies to include those tenancies is likely to make the existing statutory Act more complex and increase the costs for the parties to tenancies.

Duration Excluded Tenancies

6.4 We believe there is a benefit to widening the scope of the Duration Excluded Tenancies. We consider that the period under which a lease term receives security of tenure should be increased from the current six-month regime.

6.5 Our view is that the period should be increased to a term of at least 2 years and possibly years, with any prior periods of occupation to be ignored. Our reasoning is that the term of leases in the commercial market has over the years become shorter and many leases are for 5 years or less. If the period were increased to 5 years, then many leases would not receive security of tenure

6.6 We consider that by excluding leases of a term of 2-3 years or less, this would give landlords more certainty about how to they can deal with the premises at the end of the contractual term and support the overall objective of reducing administration, cost and delay. Although it would mean that, for leases of 2-3 years or less, tenants would be unable to contract into statutory security of tenure, our experience is that very few leases of 2-3 years or less currently have statutory security of tenure.

6.7 If the Law Commission chose to increase the period to 3 years, this would align with the current system for registration at the Land Registry, where leases of more than 3 years can be registered.

6.8 We consider that periodic tenancies should be excluded, including those that arise whereby the property continues to be occupied following the expiry of a statutory deadline without a protective application having been made to court. Such tenancies may slip under the radar on due diligence for the purchase of a property or during the regular asset management of a property. The fact that they may attract statutory security of tenure is

problematic as this regime creates the potential for a differing basis of occupation of the property which was not intended by the parties.

(2) on the commercial leasehold market

See above.

CQ7 – 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).

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

This response is submitted on behalf of CMS Cameron McKenna Nabarro Olswang LLP (CMS)

About CMS

• We are an international firm of solicitors with one of the largest real estate practices in the UK.

• We have offices in London, Aberdeen, Bristol, Edinburgh, Glasgow, Manchester, Reading, Liverpool and Sheffield.

• In addition to our UK offering, the CMS Real Estate Sector practice is the largest real estate specialist team in Europe and one of the biggest worldwide, providing full-service legal assistance in all real estate matters.

• We have over 800 lawyers, in 73 offices worldwide.

• We have wide-ranging expertise in commercial, mixed-use and residential property issues.

• We have the largest Real Estate Disputes team in England, with more than 55 fee earners, working in three locations.

• The Real Estate Disputes team acts for a broad range of clients in the commercial property sector (in all use classes: eg. offices, retail, leisure, industrial, hospitality, data centres, PBSAs etc), acting for both landlords and tenants, including institutional funds and other investors, developers, asset managers and occupiers.

Pieter Boodt, Russell-Cooke LLP, Personal capacity

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

CQ2 – 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.

Model choice: Contracting-in (so that a tenancy only has statutory security of tenure if the parties opt into a statutory scheme);

Reasons

Security of tenure is still important to many tenants, so abolishing the 1954 act regime entirely would adversely affect a considerable number of tenants and their businesses.

However, the vast majority of commercial lettings that I deal with are contracted out and altering the mechanics for granting leases with security of tenure would make our work easier and would better reflect the way the commercial leasehold market has evolved. Both tenants and landlords now appear to value flexibility over security/certainty and our legislation should be updated to reflect that.

CQ3 – 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 parties and their advisers

See comments above.

(2) on the commercial leasehold market

See comments above.

CQ4A – 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.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

CQ6 – 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

(2) on the commercial leasehold market

CQ7 – 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).

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Richard Dell, Moore Allen and Innocent, as head of Commercial Property for the firm

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

CQ2 – 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.

Model choice: Contracting-in (so that a tenancy only has statutory security of tenure if the parties opt into a statutory scheme);

Reasons

I do believe that there are circumstances where the protections of LTA 1954 should apply (High Street Retail/Large Offices/Factories/distribution warehouses etc...), but that the protections should not be automatic: There are a vast number of small, short term, commercial lets (where 'outside the act' is the norm and the tenant is unrepresented) that are currently forced to go through the 'contracting out' process on a regular basis. If the mechanism were flipped, there would be many fewer, large scale, long term lets, which would be subject to the process. Both parties are often represented in these cases, and so this is easier for all to navigate: the costs are small in comparison to the duration and rent.

CQ3 – 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 parties and their advisers

Cost and hassle reduced for tenants of small, low value, short term lets.

Timescales for letting shortened for Landlords of such properties.

Minor additional cost and inconvenience added to both sides of larger, professionally represented, transactions.

(2) on the commercial leasehold market

Negligible: Reduced red tape on small lettings.

CQ4A – 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.

I believe that the types of letting which are 'Use Excluded' is probably appropriate, but the 'Duration Excluded' could be extended to include any lease granted for a period of less than 3 years (to align with the 'Deed' rules) or 7 years (to align with the 'Registration' rules), with repeated use of short agreements remaining excluded (i.e: a 9 year occupancy on a series of 3 year agreements would not get caught up): Flexibility is key.

These comments are made Without Prejudice to my view that the 'opt in' model would be the most sensible.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

Yes, the adoption of an 'opt in' model would negate the need for complicating the 'Duration Excluded' provisions.

CQ5 – 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.

Yes.

CQ6 – 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

This would entirely depend on which changes were made and what sector one was operating in. This question is impossibly broad.

(2) on the commercial leasehold market

As above.

CQ7 – 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).

No.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Ian Campbell, SHW, Personal capacity

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: 50-249

Regions:

Sector(s):

CQ1 – 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.

CQ2 – 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.

Model choice: Contracting-in (so that a tenancy only has statutory security of tenure if the parties opt into a statutory scheme);

Reasons

CQ3 – 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 parties and their advisers

(2) on the commercial leasehold market

CQ4A – 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.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

CQ6 – 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

(2) on the commercial leasehold market

CQ7 – 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).

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Tom Seabrook, Gunnercooke LLP, Personal capacity

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

Not Answered

CQ2 – 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.

Model choice: Contracting-in (so that a tenancy only has statutory security of tenure if the parties opt into a statutory scheme);

Reasons

I am not convinced that a one size fits all approach is appropriate given the disparity in landlords and tenants involved in the market. They range from unsophisticated individuals up to business savvy multi nationals. Ideally, the less sophisticated parties would enjoy a higher degree of protection but I am open to ideas on how to achieve this!

However, parties should generally be free to contract as they wish so I would not favour a situation where all or not leases are protected.

CQ3 – 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 parties and their advisers

The position is already to a large extent governed by the negotiating strength of the parties. The 'norm' is a protected tenancy currently. Where such a model is in place then the landlord already has some ability to regain possession. However, I would suggest it would be fairer if landlords could regain possession at the end of even a protected lease for any reason subject to more realistic compensation for the outgoing tenant. Protected leases are often a break on progress of developing towns and cities.

(2) on the commercial leasehold market

CQ4A – 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.

Contracting in would avoid situations where tenants enter properties under informal arrangements and then seek to claim protection, usually from unsophisticated landlords. Even if protection were the norm, there should be considerable scope to grant short or intermediate tenancies where protection is not automatically obtained and without the time and expense of the current formal contracting out regime.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

CQ6 – 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

(2) on the commercial leasehold market

CQ7 – 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).

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Nick Gardner, Time Retail Partners, Personal capacity

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

CQ2 – 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.

Model choice: Contracting-in (so that a tenancy only has statutory security of tenure if the parties opt into a statutory scheme);

Reasons

I advise owners and occupiers in the retail sector, focussing on large Shopping Centres. In my experience the vast majority of new leases taken in the last 4 -5 years have been Outside the Act and the administration of this is disproportionate, costly and time consuming.

In a situation where the parties can 'Contract In', the protection of the Act is still available to specific cases, but the default of leases being outside the Act reflects current market practice in the retail sector.

CQ3 – 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 parties and their advisers

A change to a contracting in model would result in quicker and cheaper transactions and would be a model that reflects current market practice.

At the same time, this structure could also accommodate the cases where it is important for a tenant to have security, for whatever reason.

The current '54 Act is heavily weighted in favour of the Tenant and is incredibly costly to administer through legal and surveyor costs and a switch to a presumption in favour of contracting out would address all of these issues.

(2) on the commercial leasehold market

Lease renewals would become quicker and cheaper and the burden on our Court system would be reduced considerably.

CQ4A – 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.

I strongly believe the appropriate model is to Contract In to the Act, with a default position that all leases should de Outside and for that reason I don't think any of the exclusions/inclusion under the current '54 Act are appropriate any longer.

Use Excluded Tenancies

I only deal with retail and leisure properties, so this is not in my field of expertise and would prefer not to comment.

Duration Excluded Tenancies

Leases have become much shorter in the retail sector, most now only 5 or 10 years. Where leases are for a term of 5 years or less, parties are exposed to protracted and costly renewal proceedings at every renewal - not something that was envisaged when the '54 Act was conceived or even amended. If a version of the '54 Act remains in place I would propose to automatically exclude leases less that 3 years term certain and perhaps even 5.

Types of Business Tenancies.

Due to the costs and legal requirements of Court Proceedings, I do not consider the '54 Act is appropriate for tenancies with low rents. With this is mind I would propose that properties with rents below; say £50,000pa are automatically excluded.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

My comments above would apply to any model that retains the 1954 Act.

CQ5 – 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.

Yes - the consultation paper correctly identifies the benefits and disadvantages in reforming the Act.

CQ6 – 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

1. Impact on the parties and advisors

Depending on which model is chosen a change could:

- speed up transactions

- reduce costs

- remove tactical application of the Act

- more closely mirror the market

(2) on the commercial leasehold market

2. Impact on Commercial property Market

If a model reduces the security of tenure on the majority of tenancies, it could:

- be a catalyst for longer leases

- Unlikely to impact Investment market

- possibly discourage investment in fitting out properties if no security

The evidence to support these comments is evident across Europe and even Scotland where no security exists and the leasehold property market functions effectively

CQ7 – 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).

None perceived

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Capital Law Limited

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

None, and we deal with leases in both England and Wales.

CQ2 – 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.

Model choice: Contracting-in (so that a tenancy only has statutory security of tenure if the parties opt into a statutory scheme);

Reasons

a. Preferred Model

In our opinion, the model should change to one of contracting-in.

b. Unintended Security of Tenure – Initial Lease

Both landlord and tenant clients should be able to agree fundamental terms of their lease arrangement without a detailed understanding of security of tenure under the Landlord and Tenant Act 1954. Where security of tenure is inadvertently created simply by entering into a lease (possibly in circumstances where legal advisors are not involved), this can disadvantage both parties (Consultation Paper paragraph 2.12). A tenant does not necessarily benefit from security of tenure where it did not intend for a continuing tenancy to come into effect given that 3 months' notice will have to be served to bring the lease to an end.

c. Unintended Security of Tenure – Variations creating a Surrender and Re-Grant, Contractual Renewals, Renewal of Licence

Parties may have entered into a contracted out lease and find that subsequent actions, in error, create security of tenure. It is not uncommon to encounter this in the following contexts:

- A variation to a lease which is 're-granted' by operation of law;

- A renewal of a lease (pursuant to a contractual option to renew) without the renewal lease being contacted out prior to the agreement to enter the initial lease; and

- A renewal of a licence for less than 6 months where the licensee has been in occupation for longer than 12 months.

The current rules should not create traps for the unwary.

d. Defects in Process

Even if the parties have agreed upon a lease being contracted out, security of tenure can arise without this being intended by either party. This may arise in a number of ways:

- The form of lease entered into differing from the one agreed at the point at which the landlord's warning notice was served. This defect is possible as a result of lack of clarity within the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003. Our view aligns with PLC:

'Under the pre-June 2004 procedure, the form of the lease had to be in "substantially" the same form as the draft submitted with the court application and referred to in the court order (Receiver for the Metropolitan Police District v Palacegate Properties Ltd [2000] EWCA Civ 33) …Any amendment that affected the term or the extent of the premises made the order ineffective. There has been no case law on this point dealing with the current procedure. In practice, it is unlikely that the courts will deviate from the previous approach.'

- Incomplete details in the endorsement within the lease despite a warning notice being served and a simple or statutory declaration having been made.

- Lack of certainty as to whether the warning notice is valid. The prescribed form of notice does not include details of the premises and absence of any such detail can lead to uncertainty that the notice relates to the lease to be entered into.

- Authority to enter into a declaration. The landlord may encounter difficulties establishing whether the declarant had the authority to make the declaration. Such confusion is avoided where the position of security of tenure is established conclusively within the lease itself.

The uncertainties which can arise can cause major uncertainties for investors and developers.

e. Process - Principle

See point 5c below regarding the principle that contracting in (or out) should be addressed within the contract itself. The parties should be allowed to set out within the contract any terms regarding renewal (whether this is by agreeing security of tenure applies or agreeing the renewal terms within the contract (notably where the renewal term exceeds 15 years, given section 33 of the Act)).

f. Process – Time and Cost

Tenant clients, having already agreed to a lease being 'contracted out', normally are frustrated by the requirements of the contacting out process (we agree with paragraph 1.10, that this is an 'annoyance'). The simple declaration is rarely used given the delay required between the declaration and the entering into of the lease. It is often inconvenient for clients to find and visit an independent solicitor. We believe this factor alone is a 'compelling reason' (paragraph 3.120) for a change in the model.

If we are acting for the tenant in making the declaration we have to factor in the cost of the time in attending another solicitor and liaising with the client in relation to authority to act. There is inconsistency in the amount charged by solicitors to witness and some solicitors are not familiar with the process which can increase the risk of defective declarations.

CQ3 – 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 parties and their advisers

a. Landlords

We would not anticipate that a change in the model as we support (contracting in) would have a material impact. As stated above, this still involves the parties deciding at the outset whether security of tenure applies.

b. Tenants

As 3a and see 2 above on costs savings.

c. Advisors to Landlords

We would not anticipate that a change in the model as we support (contracting in) would have a material impact. We would still be expected to advise on security of tenure as a concept.

A change to the process in conjunction with a change in the model (for instance, whether security of tenure applies simply being set out in the terms of the lease) could provide a saving in time and cost.

d. Advisors to Tenants

See Response to 3.c. In addition, as the majority of our lease transactions involve excluding security of tenure, a replacement model of contracting in would provide a saving in time to us and cost to the client.

(2) on the commercial leasehold market

We do not consider a change of model from 'contracting out' to 'contracting in' will have any noticeable effect on the market since both approaches involve the parties agreeing at the outset whether security of tenure applies. The process itself does not - in our experience - lend itself to parties considering that security of tenure is the norm.

A change in the model as supported by us would retain the concept (at least in theory) of there being a twin market here: rents being higher in exchange for security of tenure.

CQ4A – 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.

1. With the changes which we advocate in this Response, we do not consider a further expansion to be required. Further, we foresee that further distinctions around use may result in disputes concerning whether the exclusion applies in a particular case (for instance, what amounts to 'retail').

2. A 'rule of thumb' seems to have emerged that tenancies of 5 years of less are expected to be contracted out. We would therefore consider it appropriate for these to be Duration Excluded Tenancies and we note paragraph 1.21 reporting on research which suggests half of all new commercial leases are for a term of 5 years or less. In rare circumstances, the parties may wish to have security of tenure apply for such leases and a solution here would either be for 'contracting in' to apply or for a longer term to be agreed with mutual break options.

3. No

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

See above

CQ5 – 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.

a. Point at which Contracting Out is Considered

The Consultation Paper suggests at paragraph 3.105 that the current process for contracting out provides a valuable opportunity for a tenant to consider whether it should be contracting out. We would argue that the process for contracting out (or in) simply follows the decision made at the outset between the parties, when Heads of Terms are being agreed.

b. The Default Position and the Decision whether to Contract Out

We note paragraph 3.3 of the Consultation Paper which states: '….we have a system of security of tenure where the default position is that the business tenants are entitled to security of tenure, unless [the lease is contracted out]'. We do not consider that the current process plays any material part in the parties favouring one route over another. Whether the system is one of contracting in or out, we would not agree that any default position involves any degree of 'entitlement'. We do not agree - as paragraphs 3.104 and 3.109 suggest – that a contracting in model would mean that a tenant is in a weaker position than under a contacting out model: in both situations the parties are considering whether the 'additional protection' is appropriate, as mentioned in paragraph 3.109. The change to a contacting in model should not involve 'a significant change in the market' (paragraph 3.114), particularly if the process was changed, since the current regime is neutral as to whether security of tenure should apply (merely creating a default position does not imply that such a default position is in any way preferred).

c. Ignorance of the Law

Paragraph 3.80 of the Consultation Paper posits that contractual options may be less well known and understood than statutory security of tenure. In our experience, clients are aware of the possibility of agreeing contractual renewals but often are unaware of the security of tenure rules. Paragraph 3.112 of Consultation Paper puts forward an argument that an inadvertent creation of an unprotected tenancy could take place under a contracted in model. That seems unlikely: parties are more likely to consider that they are agreeing to exactly what the lease states.

d. Significance of Security of Tenure – Limitations of the 1954 Act

Paragraph 2.26 of the Consultation Paper suggests at where security of tenure is in place, 'the landlord is forced to negotiate and renew'. The summary at paragraph 2.28 rightly refers to a renewal being the 'default' position only, since a ground of opposition may apply. In practice, a tenant will often have significant uncertainty as to whether a renewal will take place (in the main, by reason of development or the landlord requiring occupation). The inability of the court to grant a renewal of more than 15 years (1954 Act, s 33) may not be of be of great value to the tenant where the original lease is of much greater duration.

e. Impact of Changing Model

Paragraph 3.8 of the Consultation Paper highlights 'potential uncertainty and unpredictability generated by a change to an alternative model'. We have highlighted in the response to Question 2 that the current law can create uncertainty (the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 did not assist in this regard). Paragraph 3.64 rightly highlights risks of defects in the contracting out process.

We also believe that changes can, with proper consideration, result in certainty and predictability. In response to paragraph 3.14, complexities around changes to the law and how 'existing tenancies' may be treated should be surmountable (see: the Landlord and Tenant (Covenants) Act 1995).

f. Turnover Rents

We agree with the suggestion at paragraph 3.47 of the Consultation Paper that the 1954 Act is not particularly well suited for turnover rent leases. If a change in model is not likely, a change in the scope of the Act with regard to renewal terms would be welcome.

g. 'Model' and 'Process' Distinction

We appreciate that Consultation Paper 1 focusses on the 'model' and Consultation Paper 2, depending on the responses received, would focus on the process or operation of that model. This distinction is unsatisfactory as observations around the model inevitably take in considerations around how the model operates in practice. Paragraph 3.90 of the Consultation Paper suggests that 'contracting in' would still involve a statutory process although this is then countered by paragraph 3.91: the process can be amended in conjunction with the change in model.

Specifically, it is worth focussing on the term 'Contracted Out' (or Contracted In'). Addressing whether security of tenure applies to a lease could simply rest on what the contract states, and so following the concept of freedom of contract. This is touched upon within paragraph 3.10. A prescribed clause in a lease could be the statement that:

'the lease *[is][is not] a protected tenancy' (* delete as applicable)'.

Such a clause should also be accompanied by an explanatory note (along the lines of the notes set out in the currently prescribed landlord's warning notice).

We appreciate that - in the absence of a choice being made - there should be a 'default' position at law and in our opinion this should be that the lease does not attract security of tenure (in other words, the contractual term on the face of the document is the agreed term): see our response to Consultation Question 2.

CQ6 – 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

a. Advisors to Landlords

There would be cost and time savings by not issuing contracting out paperwork where changes were brought in through any of the following:

- Contractual (as opposed to procedural) contracting in or out

- Changes to Duration Excluded Tenancies (see Response 4b)

See Response 5 above

b. Advisors to Tenants

See Responses 3 and 5 above, with the cost and time savings here being in relation to advising the tenant regarding the relevant declaration.

(2) on the commercial leasehold market

No impact.

We note the comments within paragraph 1.39 as to changes in supply and demand within the market, leading to different periods which are either a 'landlord's market' or a 'tenant's market' and, as a result, potentially different periods in which security of tenure is more or less prevalent. We would add that within either a contracted out or contracted in regime there is in theory two markets in operation (with or without security of tenure). Accordingly, we do not believe that the chance of scope which we advocate would change the commercial leasehold market.

CQ7 – 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).

No

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

N/A

Pradera Lateral

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

CQ2 – 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.

Model choice: Contracting-in (so that a tenancy only has statutory security of tenure if the parties opt into a statutory scheme);

Reasons

There are two common scenarios in the industry we are in (large retail shopping centres) both mean that the fact that Landlord and the Tenant have to contract out of the 1954 Act adds more time and money to deals when this really isn't necessary.

Starting with small kiosk style commercialisation (market stall style operations). These are always contracted out of the 1954 Act. The rents paid and the duration (designed to be short) mean that it is never intended by either party that the occupation attracts security of tenure.

The effect of having to contract out of the 1954 Act means that a medium-term licence ends up involving the unexperienced tenant/licensee having to deal with a solicitor to get the process correct. Statutory declarations by their very nature being complicated and needing to involve a third party. This is an unnecessary and additional cost for those parties on short/medium term low value deals.

A situation where security of tenure was only available by opt in, would mean this whole process would run in a much more efficient and cost-effective way and tenants/licensees could easily extend their occupation.

At the other end of the spectrum for us, we have well advised retail tenants who can just as easily ensure that they are contracted into the 1954 Act if they have the advantage in negotiations, as the Landlord can ensure they are contracted out if they do. The real issue here is delay rather than cost.

We are also of the view that it is unlikely the consultation would promote no security of tenure, but this would also be a preference for our business. Contractual lease terms are averaging between 5-10 years, a substantial period of time after which either the occupier or landlord may have changed their operation meaning the premises are no longer suitable. It

does not seem right that in a managed retail estate such as a shopping centre the Owner does not have the ability to change the occupier to meet customer demands and ensure the longevity and success of the centre. Often the retailer is of considerably larger scale than the landlord and has no need of these additional protections.

CQ3 – 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 parties and their advisers

Impact on Landlords

Reduced Flexibility in Lease Terms:

With mandatory security of tenure, landlords lose some control over lease renewals, tenant selection, and rent adjustments. This will impact their ability to react to changes in market conditions or optimise rental income based on demand.

If a tenant is locked into a lease with guaranteed renewal rights or fixed rental terms, landlords might be unable to capitalise on improving market conditions, which will reduce the value of the property or their income potential.

Difficulty in Evicting Tenants: Exiting tenants at the end of the contractual term

In the absence of flexibility at the end of the lease , a landlord would find it difficult or expensive to replace the existing tenant with a new tenant even if their business situation or the rental property's conditions change. To ensure the retail market is thriving it is critical to bring new and fresh offers to the retail destination to ensure it remains interesting and compelling to customers. Without the ability to change occupiers it could create long-term tenancy situations that do not align with the landlord's strategic goals in meeting consumer demand.

Decreased Property Value and Liquidity:

The ability to curate tenants and adjust rental terms impacts the marketability and resale value of a property. If landlords are unable to negotiate lease terms that align with their investment goals, their property may be viewed as less desirable, leading to a potential decrease in asset value and reduced liquidity.

Higher Costs of Managing Tenancies:

As the landlord loses flexibility, it may become more expensive to manage or maintain properties. For example, if rent increases are restricted or tenants are more difficult to remove, landlords may have to rely on alternative legal avenues, resulting in increased legal costs.

Impact on Tenants

While tenants benefit from security, they may lose some ability to negotiate better lease terms over time as they may find that landlords are less willing to make significant changes to the property or upgrade facilities if they cannot reclaim that investment through flexible lease terms or rent increases.

Tenants could find themselves "stuck" in a location for a longer period than they originally desired, as if more businesses simply stay where they are (due to challenges involved in relocating) this may stagnate the market.

It is critical to the success of the retail tenants that the environment they are in remains fresh and changes are made to the retailer line up to ensure the retail destination remains appealing to customers.

(2) on the commercial leasehold market

The impact of changing the security of tenure model (particularly if there is mandatory security of tenure) could easily effect the value of landlords assets.

The ability to curate the asset the landlord owns is a key driver on how the asset is valued, and if mandatory security is imposed, the value of large-scale assets could decrease in a very significant way.

The value of an asset, especially large-scale commercial or residential properties, is largely driven by its potential income generation—in particular, the rental income it can provide. When landlords can curate or control tenant turnover, rent increases, and lease renewals, they can adjust the asset's income potential to maximise its market value.

If mandatory security of tenure is introduced, the landlord's ability to adjust rents to market value, remove underperforming tenants to replace them with new more popular and successful tenants diminishes. As a result, the asset may not generate as high a rental income as anticipated because its tenant mix is not optimised to meet consumer demand. particularly if long-term tenants are paying below-market rents or if there’s a limitation on how much rents can increase over time.

Decreased Liquidity and Marketability

While tenant stability may seem like a positive, the inability for landlords to adjust their tenants or lease terms to meet market conditions makes the property less attractive to potential investors and customers. For example, an investor purchasing the property may see the risk of being stuck with long-term tenants in unfavourable contracts. The potential income might be capped, and this could result in a lower return on investment, leading to a reduced market value of the asset.

For larger institutional investors or landlords with a portfolio of assets, the ability to sell or divest a property at the desired price is crucial. If a property is encumbered by long-term leases with little flexibility, this reduces the likelihood of a profitable sale or exit strategy. The buyer might factor in these limitations, offering a lower price for the asset.

Reducing the landlord's ability to adjust rents, remove tenants, and manage their properties dynamically, the mandatory security of tenure could significantly depress the market value of large real estate assets which have already been significantly devalued in the last ten years.

CQ4A – 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.

To the extent that we have any comment on this question that is provided in the answers to Chapter 3.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

To the extent that we have any comment on this question that is provided in the answers to Chapter 3.

CQ5 – 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.

To the extent that we have any comment on this question that is provided in the answers to Chapter 3.

CQ6 – 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

To the extent that we have any comment on this question that is provided in the answers to Chapter 3.

(2) on the commercial leasehold market

To the extent that we have any comment on this question that is provided in the answers to Chapter 3.

CQ7 – 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).

No

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Transport UK

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: 10-49

Regions: West Midlands, East Midlands, South East

Sector(s): Real estate, Transport and storage, Act on behalf or Railway operators

CQ1 – 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.

Not Answered

CQ2 – 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.

Model choice: Contracting-in (so that a tenancy only has statutory security of tenure if the parties opt into a statutory scheme);

Reasons

This will allow easy in easy out agreements to be granted without the risk of protected tenancies being created. It will speed up the letting process and generate revenue opportunities otherwise locked. It will also reduce legal costs providing greater flexibility to both Landlords and Tenants.

CQ3 – 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 parties and their advisers

A change to a presumption to a contracted-out agreement would have no material effect on parties' advisors. The change could however prejudice individuals who are not professionally represented. Many SME's want to sell their businesses which is harder with a contracted-out lease unless the Landlord agrees to cooperate with the Tenant.

(2) on the commercial leasehold market

We believe that the commercial leasehold market in stations would benefit from the introduction of a change to make the general presumption excluded from the 1954 Act protection. SMEs do not need to be tied into long leases which they cannot break even if they can no loner afford the rental.

This will allow easy in easy out agreements to be granted without the risk of protected tenancies being created. It will speed up the letting process and generate revenue opportunities otherwise locked. It will also reduce legal costs. It would also support the requirements of the ORR Catering Study to tender more opportunities to increase demand and retail offer at stations.

CQ4A – 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.

1. Yes. In so far as Agricultural tenancies are concerned, but not for standard business tenancies.

2. No. It is our view that all tenancies should be defaulted outside of the security of tenure provisions of the current 1954 Act

3. Yes. It is our view that all tenancies should be defaulted outside of the security of tenure provisions of the current 1954 Act

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

Yes, we agree with the arguments for and against changes to the 54 Act and protection afforded to tenancies.

CQ6 – 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

A change to a presumption to contracted in would in our opinion have no material effect on parties' advisors. The change could however, prejudice individuals who are not represented.

(2) on the commercial leasehold market

We believe that the commercial leasehold market in stations would benefit from the introduction of a change to make the general presumption excluded from the 1954 Act protection. It will speed up the letting process and generate revenue opportunities otherwise locked. It will also reduce legal costs.

CQ7 – 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).

No data and no evidence known that would suggest that any one group would be adversely affected by the proposed change to the 1954 Act.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

We would however like to see the review of the assessment of compensation when terminating a protected lease as RV is not considered to be a reasonable or appropriate solution for all circumstances. Railway lettings deal with compensation via amortisation clauses, and we believe that this is more appropriate; enabling tenants to still obtain bank funding without the security of a protected lease.

Revantage Real Estate Limited

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

We do not believe there are particular considerations for Wales. We think any differences in regime between England and Wales would lead to confusion and add cost and hassle to the market – especially the operation of portfolios of assets in both England and Wales – especially if that meant even more differences in regime across the UK nations than already exists.

CQ2 – 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.

Model choice: Contracting-in (so that a tenancy only has statutory security of tenure if the parties opt into a statutory scheme);

Reasons

Revantage Real Estate provides corporate real estate services to the Blackstone group (the global leading real estate investor) and various entities across the Blackstone group. Revantage also directly manages some real estate assets acquired by Blackstone. Revantage is involved with asset management and leasing, development management and property management all with significant exposure to the issues arising from security of tenure. Our views are based on our experience managing and valuing assets of various types and providing these services. We refer to tenancies that we see when advising on, valuing and providing our services on the portfolios containing those tenancies.

In our experience, most tenancies do not have security of tenure because they have been contracted-out. That means time and money has been used to reverse the default security position. Most contracted-out tenancies are for shorter terms and the premises are at the smaller end of the size spectrum.

Tenancies of bigger premises, attracting occupiers of greater covenant strength for longer terms would usually have security of tenure by default – and both landlords and occupiers would generally accept that unless there was a particular commercial reason not to adopt that position (e.g. a pending redevelopment). There is therefore a place for security of tenure in this part of the market. Our choice of the contracting-in model reflects that these are the transactions where parties are better placed to undertake an additional administrative process (the contracting-in process) correctly without it affecting time or cost.

The shorter-term tenancies of smaller units tend to attract occupiers who do not particularly want or attach any value to security of tenure – but more importantly they do not want to go to the trouble of contracting-out. It creates more documents, correspondence, process and cost which can lead to delays accessing the premises because of the risk to the landlord in allowing any sort of fast access without compromising their need to correctly contract-out.

We do not think that tenants who do not have security of tenure are any more or less likely to renew and it is very common for landlords and occupiers of tenancies to engage early about renewal or exit regardless of whether there is security of tenure. Early engagement is mutually beneficial because if both parties are willing for occupation to continue, it can save time and cost on both sides of having to plan for relocation/vacant property.

CQ3 – 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 parties and their advisers

The change would reduce cost and process on high turnover short term leasing that does not usually benefit from security of tenure because they are almost universally contracted-out. It is not a negotiation issue because landlords would simply not agree to lease premises on these terms with security. Removing the burden of the contracting-out process would benefit both large scale landlords in delivering fast and efficient access to premises for SMEs but would also benefit the SME occupiers by speeding up the leasing process and reducing complexity.

It would also remove problem of defective contracting-out processes leading to uncertainty and (in the worst case) disputes. It does not make sense that administrative errors in process or other minor issues (e.g. missing documents or evidence or lack of authority) lead to significant issues arising from short term, low value tenancies.

(2) on the commercial leasehold market

We do not think that a change in the model to the contracting-in model would have any effect on the market in terms of the availability of space or values.

CQ4A – 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.

We are not aware of any significant problems with the current scope of use excluded tenancies. We do not think that there is any need to extend the scope and would be concerned that doing so would add additional uncertainty into the security of tenure regime. Uncertainty leads to more difficult analysis and valuation of portfolios and adds to practical complexities over lease termination. At a time when most landlords who provide space are

looking to make the leasing process more efficient, needing to contract-out (or contract-in) at different times based on use is an unnecessary complexity.

We do think there is scope to change the current length of duration excluded tenancies. The market has generally settled on a position where shorter leases are contracted-out and longer leases have security of tenure. The length of duration excluded tenancies could be extended to reflect this common market position and take some administrative pain out of transactions. However, if the model was changed to contract-in, that would also mitigate this because then the contracting-in process could easily form part of those more sophisticated, complex and higher value transactions with minimal impact on the parties or their advisors.

We do not think any other factors should be part of the scope of the security of tenure regime. It would be too complicated in particular to base the regime based on geographic location, size of premises or status of the parties.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

As mentioned in the previous answer, there would be significant benefits in extending duration excluded tenancies if the model remained contracting-out. We would suggest it would be essential to take most short term tenancies (at least 5 years or less) out of the regime if it was mandatory. Abolishing security or adopting the contracting-in model reduces the need to change scope.

CQ5 – 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.

We broadly agree with the assessment. However the key point is there is an opportunity for efficiency gains in the market by removing security of tenure (one way or another) from short term, lower value tenancies without any material adverse impacts of changes to market behaviour.

CQ6 – 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

This is covered in the previous answer. There is an opportunity here to make transactions easier.

(2) on the commercial leasehold market

This is covered in the previous answer – we do not think changing the scope by extending duration excluded tenancies would have a material impact on the way the market operates as the majority of existing short term tenancies are contracted-out.

CQ7 – 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).

We do not believe so but we have not considered this in detail in the context of this particular legal reform.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

We have particular concerns about the way the regime operates around lease termination and look forward to picking this up in the second part of the Law Commissions work on this project. In particular there is a concern that the regime is not necessarily being used for the right reasons and is used as a tool for negotiating position for occupiers who intend to leave anyway rather than as a tool to remain in occupation. Particular consideration should be given to the uncertainties around the ground (f) termination process and the evidential requirements for showing an intention to redevelop and the level of compensation payable to tenants.

Steven Redshaw, Pradera Lateral, Personal capacity

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

Not Answered

CQ2 – 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.

Model choice: Contracting-in (so that a tenancy only has statutory security of tenure if the parties opt into a statutory scheme);

Reasons

There are two common scenarios in the industry we are in (large retail shopping centres) both mean that the fact that Landlord and the Tenant have to contract out of the 1954 Act adds more time and money to deals when this really isn't necessary.

Starting with small kiosk style commercialisation (market stall style operations). These are always contracted out of the 1954 Act. The rents paid and the duration (designed to be short) mean that it is never intended by either party that the occupation attracts security of tenure.

The effect of having to contract out of the 1954 Act means that a medium-term licence ends up involving the unexperienced tenant/licensee having to deal with a solicitor to get the process correct. Statutory declarations by their very nature being complicated and needing to involve a third party. This is an unnecessary and additional cost for those parties on short/medium term low value deals.

A situation where security of tenure was only available by opt in, would mean this whole process would run in a much more efficient and cost-effective way and tenants/licensees could easily extend their occupation.

At the other end of the spectrum for us, we have well advised retail tenants who can just as easily ensure that they are contracted into the 1954 Act if they have the advantage in negotiations, as the Landlord can ensure they are contracted out if they do. The real issue here is delay rather than cost.

We are also of the view that it is unlikely the consultation would promote no security of tenure, but this would also be a preference for our business. Contractual lease terms are averaging between 5-10 years, a substantial period of time after which either the occupier or landlord may have changed their operation meaning the premises are no longer suitable. It does not seem right that in a managed retail estate such as a shopping centre the Owner does not have the ability to change the occupier to meet customer demands and ensure the longevity and success of the centre. Often the retailer is of considerably larger scale than the landlord and has no need of these additional protections.

CQ3 – 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 parties and their advisers

Impact on Landlords

Reduced Flexibility in Lease Terms:

With mandatory security of tenure, landlords lose some control over lease renewals, tenant selection, and rent adjustments. This will impact their ability to react to changes in market conditions or optimise rental income based on demand.

If a tenant is locked into a lease with guaranteed renewal rights or fixed rental terms, landlords might be unable to capitalise on improving market conditions, which will reduce the value of the property or their income potential.

Difficulty in Evicting Tenants: Exiting tenants at the end of the contractual term

In the absence of flexibility at the end of the lease , a landlord would find it difficult or expensive to replace the existing tenant with a new tenant even if their business situation or the rental property's conditions change. To ensure the retail market is thriving it is critical to bring new and fresh offers to the retail destination to ensure it remains interesting and compelling to customers. Without the ability to change occupiers it could create long-term tenancy situations that do not align with the landlord's strategic goals in meeting consumer demand.

Decreased Property Value and Liquidity:

The ability to curate tenants and adjust rental terms impacts the marketability and resale value of a property. If landlords are unable to negotiate lease terms that align with their investment goals, their property may be viewed as less desirable, leading to a potential decrease in asset value and reduced liquidity.

Higher Costs of Managing Tenancies:

As the landlord loses flexibility, it may become more expensive to manage or maintain properties. For example, if rent increases are restricted or tenants are more difficult to remove, landlords may have to rely on alternative legal avenues, resulting in increased legal costs.

Impact on Tenants

While tenants benefit from security, they may lose some ability to negotiate better lease terms over time as they may find that landlords are less willing to make significant changes to the property or upgrade facilities if they cannot reclaim that investment through flexible lease terms or rent increases.

Tenants could find themselves "stuck" in a location for a longer period than they originally desired, as if more businesses simply stay where they are (due to challenges involved in relocating) this may stagnate the market.

It is critical to the success of the retail tenants that the environment they are in remains fresh and changes are made to the retailer line up to ensure the retail destination remains appealing to customers.

(2) on the commercial leasehold market

The impact of changing the security of tenure model (particularly if there is mandatory security of tenure) could easily effect the value of landlords assets.

The ability to curate the asset the landlord owns is a key driver on how the asset is valued, and if mandatory security is imposed, the value of large-scale assets could decrease in a very significant way.

The value of an asset, especially large-scale commercial or residential properties, is largely driven by its potential income generation—in particular, the rental income it can provide. When landlords can curate or control tenant turnover, rent increases, and lease renewals, they can adjust the asset's income potential to maximise its market value.

If mandatory security of tenure is introduced, the landlord's ability to adjust rents to market value, remove underperforming tenants to replace them with new more popular and successful tenants diminishes. As a result, the asset may not generate as high a rental income as anticipated because its tenant mix is not optimised to meet consumer demand. particularly if long-term tenants are paying below-market rents or if there’s a limitation on how much rents can increase over time.

Decreased Liquidity and Marketability

While tenant stability may seem like a positive, the inability for landlords to adjust their tenants or lease terms to meet market conditions makes the property less attractive to potential investors and customers. For example, an investor purchasing the property may see the risk of being stuck with long-term tenants in unfavourable contracts. The potential income might be capped, and this could result in a lower return on investment, leading to a reduced market value of the asset.

For larger institutional investors or landlords with a portfolio of assets, the ability to sell or divest a property at the desired price is crucial. If a property is encumbered by long-term leases with little flexibility, this reduces the likelihood of a profitable sale or exit strategy. The buyer might factor in these limitations, offering a lower price for the asset.

Reducing the landlord's ability to adjust rents, remove tenants, and manage their properties dynamically, the mandatory security of tenure could significantly depress the market value of large real estate assets which have already been significantly devalued in the last ten years.

CQ4A – 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.

To the extent that we have any comment on this question that is provided in the answers to Chapter 3

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

CQ6 – 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

(2) on the commercial leasehold market

CQ7 – 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).

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Stone King LLP

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

CQ2 – 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.

Model choice: Contracting-in (so that a tenancy only has statutory security of tenure if the parties opt into a statutory scheme);

Reasons

We would like to begin by thanking the Law Commission for its work on this subject so far. This is an area of property law which is due for review, and we have found the Law Commission's materials to be engaging and informative.

By way of very brief introduction, we are making this submission particularly with the charity sector in mind.

Charities can, of course, find themselves in the role of landlord or tenant. 1954 Act rights can be a significant disadvantage for a charity as landlord but can be a benefit for a charity as tenant. However, whilst there was good reason for the system originally, it does not seem appropriate that in today's property world 1954 Act rights can arise when none of the parties intend it.

Many of the land-owning charities that we act for are not experienced in property leases and, as landlord, may seek to enter into low-value leases out of a desire to partner with other organisations in good faith. Due to the low value and general context of good faith, it may seem disproportionate to those charities to obtain (and bear the cost of) legal advice. Consequently, 1954 Act rights can be given away accidentally and potentially at great detriment to the charity landlord.

Further, in the charity sector where governance and the importance of making express decisions about disposing of charity assets is crucial, the fact that rights can mistakenly be given away is problematic. There is a strong case for landlords only giving such rights away knowingly.

We also find that the process of excluding 1954 Act rights can seem strange and difficult to explain to clients. Tenants do not expect the possibility of additional rights. The principle that additional rights can be given away without going through a process that normally does not

add anything, does not sit well within the context of parties believing they are putting in place a document that outlines all of the terms of a deal.

Our experience of the 1954 Act exclusion process is that it adds time and cost to the process of putting a lease in place, without adding benefit.

Consequently, we would promote either: (a) the principle of an exemption from the 1954 Act for leases where the landlord is a charity, or (b) an "opt in" regime.

We would be very pleased to assist further if that would be welcome, and we would like to thank the Law Commission for undertaking this project.

CQ3 – 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 parties and their advisers

(2) on the commercial leasehold market

CQ4A – 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.

We would like to begin by thanking the Law Commission for its work on this subject so far. This is an area of property law which is due for review, and we have found the Law Commission's materials to be engaging and informative.

By way of very brief introduction, we are making this submission particularly with the charity sector in mind.

Charities can, of course, find themselves in the role of landlord or tenant. 1954 Act rights can be a significant disadvantage for a charity as landlord but can be a benefit for a charity as tenant. However, whilst there was good reason for the system originally, it does not seem appropriate that in today's property world 1954 Act rights can arise when none of the parties intend it.

Many of the land-owning charities that we act for are not experienced in property leases and, as landlord, may seek to enter into low-value leases out of a desire to partner with other organisations in good faith. Due to the low value and general context of good faith, it may seem disproportionate to those charities to obtain (and bear the cost of) legal advice. Consequently, 1954 Act rights can be given away accidentally and potentially at great detriment to the charity landlord.

Further, in the charity sector where governance and the importance of making express decisions about disposing of charity assets is crucial, the fact that rights can mistakenly be

given away is problematic. There is a strong case for landlords only giving such rights away knowingly.

We also find that the process of excluding 1954 Act rights can seem strange and difficult to explain to clients. Tenants do not expect the possibility of additional rights. The principle that additional rights can be given away without going through a process that normally does not add anything, does not sit well within the context of parties believing they are putting in place a document that outlines all of the terms of a deal.

Our experience of the 1954 Act exclusion process is that it adds time and cost to the process of putting a lease in place, without adding benefit.

Consequently, we would promote either: (a) the principle of an exemption from the 1954 Act for leases where the landlord is a charity, or (b) an "opt in" regime.

We would be very pleased to assist further if that would be welcome, and we would like to thank the Law Commission for undertaking this project.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

CQ6 – 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

(2) on the commercial leasehold market

CQ7 – 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).

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Blackstanniland Ltd

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

CQ2 – 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.

Model choice: No statutory security of tenure (abolition);

Reasons

As a specialist landlord and tenant chartered surveyor for 27 years it is substantially overdue that security of tenure provisions of the '54 Act are abolished. I say this despite much of my job entailing significant work and therefore fees from the existence of security of tenure from both landlord and tenant clients. The provisions have not been fit for purpose for many years and undermines the workings of the property market.

There has been a self-interest from property professionals and in particular the RICS in not addressing this obsolete law which is fundamentally against the interest of the market. This is counter productive as lease turnovers are reduced due to tenant inactivity caused by security of tenure. Therefore, there is little or in my nothing for the profession to be gained by maintaining the status quo. Most of the rest of the world, or indeed parts of the UK manage to operate perfectly well without this layer of bureaucracy. Ultimately the consumers, namely the landlords and tenants are the sufferers through unnecessary legal and property professional fees and property availability stagnation. The move should also be welcomed by the Courts, as any freeing of unnecessary law will assist the current backlog in court hearings. It should not have taken this long for this antiquated situation to be reviewed.

I would suggest in order to relay fears of immediate change to existing tenancies with security of tenure that security is removed at lease renewal or at the expiry of a set deadline of say 10 years, whichever is the earlier.

CQ3 – 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 parties and their advisers

Short term impact would be limited if my above suggestions are taken into account. Long term impact will be positive to the whole market for both property owners and business occupiers.

(2) on the commercial leasehold market

Removal of security of tenure will free the market and simplify the workings for all consumers. Market activity will increase in the long term.

CQ4A – 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.

Security of tenure should be abolished, see my comments.

I would urge the consultation members not to resort to amending/ tinkering. Simplification is paramount as an outcome to enable the market to agree lease term and renewal option as they see fit. The changes made in the 1996 L&T Act did practically nothing to change the waste that is incurred in fees and time. Do not be tempted by this type of approach yet again.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

CQ6 – 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

1. it would speed up and commercialise transactions. It is or should be a commercial market, there is absolute no need for security of tenure in 2024.

2. more transaction would result negating fears of fee reduction for property professionals.

(2) on the commercial leasehold market

Deletion would be wholly positive.

CQ7 – 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).

I cannot possibly foresee any impact on such issues. Irrelevant in the extreme.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Christopher Jessel, Personal capacity

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

Not Answered

CQ2 – 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.

Model choice: No statutory security of tenure (abolition);

Reasons

I retired from practice in 2008 but even then virtually all commercial landlords required contracting out. The principal exception was for a building which took in occupiers who intended to be there for a short time at low rents who could not afford their own legal advice. Experience with contracting out meant that the tenant and the client's agent had to attend a meeting with the judge who carefully explained the position to the tenant at some length.

The present law is therefore a trap for unadvised landlords. I handled an instance where a farmer admitted the operator of a microlight business to use a field not required for a year or so at a low rent. The farmer thought it was a simple matter and he did not need to take advice. When he wanted the field back the occupier claimed protection.

Another instance involved a subtenant under a contracted out fixed term sublease with rent payable quarterly. The intermediate landlord became insolvent and its liquidator disclaimed the lease so that the sublease went with it. The head landlord without advice accepted rent from the subtenant which gave the subtenant security on a common law protected quarterly tenancy direct from the head landlord.

CQ3 – 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 parties and their advisers

It might be necessary to protect tenancies which are partly residential, probably by bringing them into the residential code.

If the existing contracting out procedure was no longer necessary it would make the grant of a new business tenancy simpler, quicker and cheaper.

(2) on the commercial leasehold market

The experience of the Agricultural Tenancies Act 1995 is that lack of security does not inhibit tenants from taking a tenancy. it might be necessary to provide a minimum period of notice to determine a tenancy and possibly a procedure for fixing rent. The 1995 Act also provides for compensation for improvements but my experience is that the provisions in the Landlord and Tenant Act 1927 for improvements are rarely invoked. I can only recall one instance and that was as part of a negotiating tactic and not intended seriously.

CQ4A – 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.

Both 1 and 2 seem unduly complicated. Use Excluded would be difficult to define and would not allow for changes in types of use which can not be predicted.

Duration Excluded would create arbitrary distinctions. They would not apply easily to periodic tenancies,.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

CQ6 – 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

The law has inevitably become complicated and full of exceptions as you point out. Any further changes to scope would make it even more incomprehensible to lay persons. The object of reform should be to simplify. At present the law works to the disadvantage of unadvised landlords particularly where the rent is modest or even nominal where it would be unduly expensive and time-consuming to take legal advice, even if the persons involved realised there might be a legal problem.

(2) on the commercial leasehold market

Any further complications would add to the expense of granting leases and therefore on the rent a landlord would want to receive to recover costs, or possible the rent a tenant would be prepared to pay, having regard to the other costs involved in fitting out and taking new premises.

CQ7 – 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).

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Martin Kidd, Vokins Chartered Surveyors, Personal capacity

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

CQ2 – 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.

Model choice: No statutory security of tenure (abolition);

Reasons

A substantial number of tenants do not understand the implications of contracting out when entering into a lease. It would therefore be fairer to have all tenancies contracted out so that everyone is fully aware of the position at expiry, and negotiations can continue on a level playing field.

CQ3 – 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 parties and their advisers

Heads of Terms would be more standard as they would automatically exclude security of tenure.

(2) on the commercial leasehold market

It would encourage tenants to have a 'Plan B' lined up well in advance of expiry to present to the landlord as an alternative to renewing the tenancy.

CQ4A – 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.

All tenancies should be excluded

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

All tenancies to be excluded

CQ5 – 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.

An additional benefit will be that occupiers will be much more aware in future that there is no guarantee that they will be able to renew their tenancy upon expiry.

It will encourage them to think well in advance of the expiry date and to endeavour to enter into discussions with the Landlord in order to get an agreement in place. Surrender/regrants of leases will likely become much more common place so as to give both sides certainty of future occupation.

CQ6 – 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

As stated previously, by excluding all tenancies, it will encourage earlier discussions between landlord and tenant to have something in place prior to expiry, or else certainty on a void situation.

Early surrenders and regrants will become more common place.

(2) on the commercial leasehold market

Possibly lower rents being offered by tenants as there will be no guarantee of a renewal if all tenancies are excluded .

Longer leases with mutual break options may be preferable to shorter term tenancies, to avoid legal costs when more frequent renewals take place

CQ7 – 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).

No comment to make

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Nothing further

Derek Bruce, City St George's, University of London, Personal capacity

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

Not Answered

CQ2 – 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.

Model choice: No statutory security of tenure (abolition);

Reasons

Having practised both in England/Wales, Northern Ireland and Scotland, I have readily come to the conclusion that the English (and Welsh) approach as being cumbersome, expensive and unnecessary in most parts. Some of the provisions become complicated for those who do not have wider professional support. Continuing a scheme invented during war time is now inapprorpiate to sustain (although some might well argue we are at war!).

I consider it critical that if security of tenure is abolished, that three safeguards must be installed:

1. Parties can have access to one or more (limited number) os statutory tenancy agreements (much of previous effrots by the Law Society and RICS seem to flounder, quite often due to a lack of the benfits and cheaper costs associated with using them);

2. A greater emphasis should be used around a very Scottish way of using lease extension provisions when a property is first demised - this approach is relatively common in Scotland and indeed, in some continental jurisdictions;

3. Limited statutory extension rights should be provided for rather than endeavoruing always to put a landlord to task to prove grounds or tenants to defend against them. I am not advocating tacit relocation which applies in Scotland nor the limited rights under the Tenancy (Shops) Act - it needs to be thought through in a more 21st century way (and as noted with Scotland also reviewing it business tenancy set up).

More detailed aspects of statutory trigger notices etc need to be thought through but I accept this is not part of this consultation but should be seen as a matter which frames my responses.

CQ3 – 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 parties and their advisers

IMPACT 1 - on the parties to tenancies and their advisors

This is a wide ranging question given that one existing (although potentially subject to change) plus 3 other forms of security of tenure provisions are proposed. Three key things need to be the outcome of the review:

1. Faster with some automatic triggers to start the renewal off

2. Cheaper - which could be set against one or more common formats of tenancy (how many times does the wheel need to be invented)

3. Less impact from statutory provision which can often be complicated to understand and expensive to defend against when the legislation is less than clear - rely more on the freedom to contract

The big challenge will be to cast off the old from the mid-20th Century and invoke a scheme fit for the 21st which will not be set against parliamentary expediency during a time of war!

(2) on the commercial leasehold market

IMPACT 2 - on the commercial leasehold market

(a) The issues surrounding section 34 assumptions and disregards set against somewhat constrained options on how a new rental framework can come into place as part of a lease renewal and (b) the very messy situation over interim rents where 'the relevant circumstances' can mean what a court thinks they mean give uncertainty on the outcome over, not just the rent, but other renewal lease terms following the interim rent period.

Being able to agree terms in an open market setting will have two benefits - (a) leasing terms will follow market based evidence and the negotiating strength of the parties and (b) the fettering of the reneal terms set against the old lease terms will be removed.

CQ4A – 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.

the extent of the Use Excluded Tenancies is appropriate; - exceptions should only apply if other statutory provision applies (e.g. telecoms Code, agricultural tenancies) - howver, I consider that all tenancies under 3-years should be excluded.

the extent of the Duration Excluded Tenancies is appropriate - see above

there are other types of business tenancy (or business tenancies with certain characteristics) that should be excluded from the scope of the 1954 Act - I consider there are issues which rest around mixed-use properties, especially those with commercial and residential elements - particularly over enfranchisement rights

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

Of course!

CQ5 – 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.

This review is long overdue but I consider there are two wider benefits:

1. bring all parts of the uk under the same framework - even where crofting law prevails! we can learn much across jurisdiction applications

2. remove the 'red tape' and the situatiosn where the law can punish a party who fails to act (but then witness the outcome of B&M Retail Limited v HSBC Bank Pension Trust (UK) Limited [2023] EWHC 2495 (Ch).

CQ6 – 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

There could be two resultant outcomes:

1. a situation where existing and new tenancy arrangements sit side by side in the market place and then the courts have to sort out the muddle (e.g. Cornerstone Telecommunications Infrastructure Ltd (Appellant) v Ashloch Ltd and another (Respondents) [2022] UKSC 18

2. complexity and costs could rise

(2) on the commercial leasehold market

This is difficult - history shows us that the enactment of the Rent Act 1977 all but killed off the residential tenancy market and the Housing Act 1988 enhanced it until the latest round of statutory interference. The impact can therefore significantly impact the supply-demand balance.

CQ7 – 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).

From my professional practice, I never experienced an equality matter impact the commercial market. It usually comes more down to whether the tenant can pay!

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

I am please the Commision is now looking at this. Thank you.

Some years ago I thought this was a great area to look at as part of undertaking a PhD - never got the time (yet). Having taken students to European countries, or taught students from different worldwide jurisdictions, it is evident that property markets can be very open at ome end of the spectrum or heavily controlled by statutory or codified provision.

Some of the downsides can be that rent controls can be very restrictive on the dynamics of the commercial property market and if statutory protection becomes very strict (as, for example in France), the dynamics of commercial property fitting the needs of consumers and businesses can become disconnected.

Ratcliffes Chartered Surveyors

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

CQ2 – 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.

Model choice: No statutory security of tenure (abolition);

Reasons

It is welcome news that the Law Commission is to review the regime giving business tenants security of tenure in the 1954 Act.

As a Chartered Surveyor with over sixty years experience in most aspects of commercial property, although specializing in High Street retail, I have worked with the L&T Act' 54throughout my professional career. I have firmly held the view for the past forty years that it is has become an anachronism, no longer necessary or fit for purpose, which should be abolished in its entirety.

I now hold to this view even more strongly as the retail property rental and capital value collapse over the past 15 years now results in 5 year Lease renewals being the norm, as a consequence of which the Act has become a Tenant's Charter.

In all other aspects of business, once a contract has expired, neither party has the right to insist on its renewal if the other party disagrees. Why should commercial property be any different?

A look at the original purpose of the Act will be helpful. As the post-war governments enacted legislation to change the country from its war-time economy to a peace-time one, with most of the major English city centres shattered by Luftwaffe enemy action, there was a concern that the commercial premises our businesses needed was in such short supply that legislation to protect them and the occupational firms was necessary and so was introduced by this Act.

Similar legislation was never enacted in Scotland, due to the lesser bomb damage suffered there, excepting the Clydeside and Leith Docks. As a consequence, when commercial property Leases fall due for renewal, there is a level Scottish playing field for both Landlord and Tenant to play on.

By contrast, in England and Wales at Lease renewal, the Tenant held all the face cards and even more so now that security of tenure enables 5/3 year Lease renewals to be the norm.

In 2003, recognising the pressure the Courts were under in dealing with referred disputes, the Law Society and the Royal Institution of Chartered Surveyors set up a joint initiative Professional Arbitration on Court Terms (PACT) as a form of alternative dispute procedure to the Courts

This is a process where the determination of the Lease renewal terms is delegated to an independent third party , with the consent of both parties. It has proved ineffective because, being even-handed, it removes the Tenant advantages that a Court hearing provides, and so Tenants will rarely agree to use the PACT process to settle a disputed Lease renewal.

In the 1960's, when I entered the profession, the typical commercial lease was for 21 years, with septennial upward only rent reviews. A blue chip Tenant might secure a rent review after 14 years.

In the 1970's, due to increasing inflation, the typical lease evolved to a 25 year term with quinquennial upward only rent reviews. For a brief period in the mid 1980's triennial rent reviews occurred, but these were not sustained and ended by the 1989/90 recession.

In the early 1990's, some major retailers, such as WH Smith, fearful of the impact on their High Street sales that the emerging internet and online sales might have, would only renew expiring 25 year leases for a 5 year term.

In the event, the percentage of sales that migrated on-line during the 1990's was not a game changer and gradually, nudged by the government confirming it would sign new leases for a 15 year term, the market settled down and 15 years became the normal term, but still with 5 yearly upward only rent reviews, despite tenant attacks on the rent review mode.

In 1992, the UK economy began its unprecedented run of 60 consecutive quarters of growth, ended in 2008, in the so called "Lehman/Woolworth" Quarter Four Recession, when both the financial and the property markets hit the buffers.

In 2010, businesses were further badly damaged by the business rates revaluation of commercial premises, and retail property in particular, due to the Valuation Office having undertaken its revaluation in the peak market conditions of April 2008, for implementation in April 2010, by which time shop rents had in many cases halved, due to the severity of the retail recession.

The Government refused to listen to pleas by hard-pressed occupiers and especially the shopkeepers, because whilst retail is only some 5% of GDP, it pays 25% of the business rates bill, and is an easily collected tax, with minimal evasion.

Government then exacerbated the situation by stupidly deferring the next business rates valuation to 2015, so that rateable values could not start to reduce until April 2017.

With stronger business activity within the M25 ring, and Central London in particular, this meant that struggling retailers in Bolton were effectively subsidising the flourishing retailers in Bond Street, for longer than should have been the case. In the present decade the first

four years and 2019 before that have been torrid for both Landlords and Tenants in retail property.

2019 saw a spate of major retailers entering administration, whilst allowing some retailers to emerge from administration with the retention of their profitable shops, having shed the Lease liabilities of their loss making shops, in a phoenix-like process, which had been supposedly banned by the Insolvency Act, 1986.

In March 2020 the Covid pandemic struck, with the government requiring non-essential retailers to close their shops in much of the two following years.

In February 2022, as a consequence of Putin's invasion of Ukraine, energy prices spiked and the cost of living crisis reduced disposable income spend - a further blow to the hard pressed retail sector.

Today in 2025, a two-tier retail leasing market has developed, which demonstrates exactly why the Landlord & Tenant Act, 1954 distorts the market, seriously favouring the Tenant in the Lease renewal process, due to the security of tenure provisions and the requirement that disputes are settled by way of a Court Hearing and not by an appointed Independent Expert Surveyor, as the more even-handed rent review dispute procedure allows.

A Tenant's service of a Section 26 Renewal Notice now often proposes a rent at half the rent payable on the expiring Lease, a reduced 5 Year Lease term, a Tenant's option to determine the Lease after 3 years (rarely exercised but nevertheless damaging to the Landlord's reversion), and rent payments amended from quarterly to monthly in advance. Apart from perhaps improving the rental offer, the other terms have become a Lease renewal norm, which a Landlord would be very unlikely to improve on if taking the renewal dispute all the way to a Court Hearing, for settlement by a non-expert Judge.

However, should the Landlord gain possession for some reason, either on grounds of development or because the Tenant decides to vacate, there is every chance that with some competition for the property, a new letting will be secured for a 10 or 15 year term, at an open market rent and possibly with rents still payable quarterly in advance. My firm can cite three such examples in 2024. – See Appendices.

So in the early 2020's, the security of tenure provision in the L&T Act, 1954 enables a 5/3 year Lease term; a rent settlement below market rent; denies the Landlord a following catch up rent review; and severely distorts the market in the Tenant's favour. The Act has become a Tenant's Charter.

Furthermore, in the event that the Tenant serves Notice to renew, takes several months or more in negotiations and then decides after all to vacate and relocate, where the agreed terms had reflected a reduced interim rent, the Tenant is entitled to full repayment of the overage rent under the interim rent provisions, with no compensation to the Landlord for the further period from expiration to vacation or for his abortive professional costs, as the Tenant just walks away.

In these circumstances, the Tenant should lose the right to the interim rent repayment, or at the least to 50% thereof.

When 25 year Lease terms were the norm and even when 15 years became the typical term, the Landlord could be sanguine that on Lease renewal, whilst he would be unlikely to secure the full open market rental value, because the Act ultimately requires a dispute to be resolved at a court hearing if terms could not be agreed, which would usually persuade a Landlord to settle in the end, he could at least look forward to the more even-handed process at the time of the first rent review. Now with 5 year terms typical at renewal the Landlord faces the unfair Lease renewal terms on a quinquennial basis, with no future rent review provisions to secure an open market rent.

Faced with several Lease renewals in the early 1990's and likely to receive 5 year term offers on expiring 25 year Leases, Ratcliffes gave thought as to how we could best protect our Landlord clients from the diminution of value that would result from a 5 year Lease term.

Of the several grounds on which a Landlord can obtain possession of his property, the only realistic one is ground f – in the event that he wishes to redevelop the premises. Where appropriate, we therefore secured planning permission to redevelop a year or more prior to the Lease expiration and then served a Hostile Section 25 Notice requiring possession at the end of the Lease.

The consequences then were, either that possession was taken and the consented development ensued, or if the Tenant put forward significantly attractive terms of Lease renewal, that the Landlord might be persuaded to set aside his firm and settled intention to develop and accept the Lease renewal terms offered.

Over the twelve or so years from 1995, when we first implemented this strategy, over 100 Hostile Section 25 Notices were served on retail properties under our management. Approximately half were then developed and half were renewed, with several developed and then reoccupied by the original tenant.

From 2009/20210 onwards falling rents and excessive rateable values negated this option,which unfortunately still remains the case today.

In summary, the central purpose of the Landlord & Tenant Act, 1954, to protect scarce commercial premises and allow the occupational Tenant to remain in occupation and in business, because there may have been few suitable premises for him to relocate to in post war England, is no longer the case. The Act is now an anachronism which massively favours the Tenant and hugely disadvantages the Landlord in a 5 year Lease term renewal. It should be abolished in its entirety, thereby allowing open market negotiations at Lease expiration as pertains perfectly satisfactorily in Scotland.

Furthermore, because the Lease renewal process as prescribed within the Act requires disputes to be settled by way of a Court Hearing, Tenants can prevaricate, applying for a number of time extensions to the Court, with no serious intent to settle until the Landlord concedes to secure a renewal.

We presently have several cases where the Leases expired two or three years ago and there is little a Landlord can do to expedite the process, other than by settling on the Tenant's terms.

Finally, if the Act is not abolished in its entirety, at the least the renewal process should be amended to require disputes to be settled by an appointed Independent Expert Surveyor,

acting as an Arbitrator under the PACT provisions, and not by way of a Court Hearing. This would significantly reduce costs, delays, and the work load on our over-burdened Courts.

CQ3 – 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 parties and their advisers

(2) on the commercial leasehold market

CQ4A – 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.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

CQ6 – 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

(2) on the commercial leasehold market

CQ7 – 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).

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Shoosmiths LLP

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

We are not aware of any specific considerations that would apply to property in Wales. Unless there are compelling reasons for a different approach in Wales, we would favour a regime that applies equally across England and Wales to ensure commercial and legal consistency. A difference of approach in one of the jurisdictions may risk tenants inadvertently gaining or losing security of tenure through lack of awareness or failure to observe particular formalities applicable in that jurisdiction.

CQ2 – 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.

Model choice: Not Answered

Reasons

As we act for a wide range of landlords and tenants across different market sectors, each of whom will have their own views on the most appropriate model, we offer no opinion on the model of statutory security of tenure that should apply.

CQ3 – 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 parties and their advisers

Depending on the model that applies, the impact of that model needs to be considered in relation to existing landlord and tenant relationships. For example, the tenant under a lease that is contracted-out has the right to underlet the whole or part of the premises but it is a condition of granting the underlease that the underlease is contracted-out as well. If a mandatory security of tenure model were to be adopted, the tenant could not underlet without being in breach of its own lease covenants. This could be addressed either by exceptions to the mandatory model or deeming provisions that provide that the tenant is not in breach if it lets under the new model (although the freeholder would then be placed in a position that it had not expected of being subject to an undertenant who has the right to renew its tenancy).

Similar consideration needs to be given to any restrictions on letting in any loan agreements or charges between the landlord and a lender. Will the landlord still be able to comply with

those restrictions if there is a covenant, say, not to let without ensuring that leases are contracted-out.

Similarly, the impact of any changes needs to be considered in relation to contractual obligations in the lease to grant a new lease on the same terms (other than to the contractual term and rent). These may arise in relation to a contractual right to renew the lease or a guarantor's obligation to accept the grant of a new lease if the tenant's lease is disclaimed or forfeited.

As to the impact on advisors, this will be wide-ranging but also its impact will depend on the extent of the changes to the security of tenure model (and clarity of its detail). For lawyers it will include:

● Training to introduce the new law and any new procedures required to comply with it. Training will be required both for core-real estate lawyers who act on the grant of a lease as well as form real-estate litigators who deal with lease renewals;

● Advising clients of the changes including client briefings and training for in-house lawyer clients (if required);

● For property litigators analysing new procedures for terminating tenancies that have security of tenure and any statutory forms, new court procedures, timetables;

● Updating precedent leases and agreements for lease (both firms' own precedents as well as industry standard precedents such as the Model Commercial Lease and precedents offered by content providers such as Practical Law, Lexis and others);

● Changes to document automation versions of leases, both internally and those offered by external providers such as Clarilis, who have automated the Model Commercial Lease;

● Re-writing internal know-how and practice guides; and

● Preserving knowledge of the current security of tenure system. Depending on the transitional provisions that apply when any changes in the law are introduced, it may be necessary to preserve know-how in relation to the 1954 Act for a considerable period. If, for example, a 25-year lease is granted with security of tenure under the 1954 Act just before a change in the law, and the 1954 Act procedures apply at the end of the tenancy to terminate any rights to remain in occupation, any section 25 or section 26 notices required at the end of the lease will be dealt with by lawyers who are likely to have little or no knowledge of the 1954 Act. We have recent experience of this in a different context. The Landlord and Tenant (Covenants) Act 1995 nearly 30 years old. Junior lawyers have rarely come across "old" tenancies and are at a loss when considering how privity of contract, privity of estate and the provisions of the Law of Property Act 1925 apply in relation to "old" tenancies. We are having to re-train them on the old law.

Lawyers in larger firms will have dedicated professional support teams and will be well equipped to deal with the changes but, if the changes are extensive, it will require a considerable amount of time and resources. Experience from dealing with other major changes in the law such as the introduction of the Landlord and Tenant (Covenants) Act 1995 or the Land Registration Act 2002 suggests that this will require several months work. Whilst the changes to the 1954 Act may not be as extensive as these Acts, changes to the

1954 Act will require separate training for those involved at the beginning of a tenancy and those involved in the termination and renewal of tenancies.

The Law Society, local law societies and commercial training organisations will need to be involved in providing training.

(2) on the commercial leasehold market

We cannot comment on the commercial impact of changes on the commercial leasehold market. A question for rent review surveyors to consider is whether any changes would have an impact on rent reviews under new and existing leases. If the balance of the parties' rights changes, this could have an impact on the level of rent payable. It is not just new leases to which this might apply. For existing leases, any changes in the ability of the tenant to renew the existing lease (or not) might have an impact on the rent payable under the lease. Any changes in how the covenants in the lease are interpreted in relation to underletting might have an impact on rent reviews under the existing lease.

Another question to consider in relation to the impact of the changes is how any change in the model of contracting-out will affect the renewal of leases that were granted under the 1954 Act provisions where the tenant has security of tenure. The terms the parties agreed for the existing lease may well have been influenced by whether the lease had security of tenure. If the model were changed to "opt in" or "no security of tenure" but the tenant has the right to renew on substantially the same terms as the existing lease, specific provision will need to be made for the parties to vary the existing terms (or for the court to settle any changes required) to reflect the change in the contracting-out model that applies when the lease is renewed. We are assuming, in this case, that if an existing 1954 Act lease is renewed after the changes come into force, the new regime will apply to the renewed lease even if the 1954 Act procedures applied at the end of the existing lease.

CQ4A – 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.

Use Excluded Tenancies

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Use Excluded Tenancies are helpful where there is an alternative scheme to regulate the tenancies such as agricultural tenancies and Code tenancies and avoids doubts over which regime applies.

Where there is no alternative scheme, which is the case for some licenced premises and mining leases, the justification for use exclusion is less clear. The repeal of section 43(1)(d) by the Landlord and Tenant (Licensed Premises) Act 1990 suggests that use exclusions where there is no alternative regime is problematic. Mining leases are rare in practice so we

cannot comment on whether the current exclusion from the scope of the 1954 Act creates a problem. Generally, we are not in favour of removing tenancies from the scope of the security of tenure provisions without there being an alternative regime.

The consultation specifically refers to leases of energy production sites such as windfarms (to which might usefully be added solar PV sites, battery storage sites, communal heating and power plants). Removing such leases from the scope of the security of tenure provisions without an alternative regime leaves the tenant with only such contractual rights as may have been agreed which may be inadequate to protect the commercial investment made by the tenant. Tenants of existing leases that have security of tenure may lose that security if their leases fall to be renewed under the new regime and a no security of tenure model has been adopted.

Duration Excluded Tenancies

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Duration excluded tenancies are helpful and, if a model is adopted that retains security of tenure, this should be retained. We think that there is merit in extending the current six-month limit to, say, 12 to 18 months with similar business continuity provisions included. Caution needs to be exercised in setting the length of duration excluded tenancies. If the period is too long (say 5 years), then there will be cases where tenants may want a 5-year tenancy with security of tenure but cannot achieve this and you have effectively created a dual model security of tenure system, which we understand that you want to avoid.

When the duration excluded provisions are being considered, greater clarity will be needed in framing the exception. Under the existing provisions in section 43(4) of the 1954 Act, it is not clear whether the 12-month rule applies at the start or end of the tenancy. For example, the tenant can be granted an initial lease of 6 months outside the scope of the 1954 Act. The lease could be renewed for a further 5 months. If the tenant is then granted a second 5-month lease, is that lease within the scope of the 1954 Act? When it is granted, the tenant has not been in occupation for more than 12 months but, at the end of the term of that lease, it will have been in occupation for 16 months. Is that sufficient to give the tenant security of tenure at the end of the term of the lease?

One option with duration excluded leases may be to say, if a longer excluded period is adopted, that any renewal to the tenant (or to a business successor of the tenant) is within the scope of the Act and, if contracting out is retained, should be contracted-out if the intention is that the tenant should not have security of tenure.

Other characteristics

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We have serious concerns about introducing other characteristics that determine whether a tenancy is within scope. The suggested characteristics in the consultation paper leave too much room for uncertainty and litigation as they are based on metrics that are subjective or variable. When do you apply the metrics (at the start, throughout or at the end of the term), how do you prove whether a metric has been met (at the end of a 10 year term, evidence of the position at the start of the tenancy may have been mislaid). Looking at some of the characteristics proposed:

Rent

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What is the rent?

If the tenant pays a rent inclusive of insurance, service charge, utilities, etc is the whole of the rent included?

How to rent free periods affect the calculation? If there is a rent-free period, is this taken into account or excluded?

How do variable rents affect the position? Particularly with turnover rents, the landlord and the tenant will not know at the start of the lease whether it is in scope if it is not clear whether the base rent and turnover rent for the first year of the term will be more or less than the scope threshold?

How do rent reviews affect the scope? If a lease is granted with a rent below the threshold and a rent review increases it above the threshold, does the lease become a lease in scope (assuming that the tests are applied not just on the grant of the lease).

Given the regional variation in rent, the provisions could operate unfairly. If the Co-Op has a lease in London paying a rent of £50,000 and a lease of identical premises outside London paying a rent of £39,000, why should one lease be in scope and one outside scope? Both premises are valuable assets for the tenant. Depending on the concentration of retailers, the lease outside London might be the more valuable of the stores in terms of profitability but be the lease that has no protection.

Location

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We do not think that a location test is justified as a point of principle and, depending on the test applied to determine location, could be difficult to apply in practice.

In the example given in the consultation of a lease is a town-centre, how is a town centre defined? As a matter of principle, should a lease to say, Tesco, of a store in a town's high street be outside the scope of the provisions where a lease of similar space and rent on the edge of a town be within scope?

Area

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How is area measured? Who makes the determination?

Even with codes of measuring practice, there can be disputes about what is and is not included in the calculation of the internal area, see Kilmartin SCI (Hulton House) Ltd v Safeway Stores plc [2006] EWHC 60. It is too subjective to be used as a characteristic to determine scope.

What happens if the tenant carries out alterations that increase the internal area above the threshold? Does the lease then fall within scope?

If the test is applied throughout the term of the lease, what happens if the code of measuring practice changes with the result that what was previously thought to be under the threshold is now above it?

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

To the extent required, this is covered above.

CQ5 – 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.

Yes.

CQ6 – 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

See our response to Consultation Question 3.

(2) on the commercial leasehold market

See our response to Consultation Question 3.

CQ7 – 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).

We have no evidence or data to answer this question. However, we believe that any impact of changes to the model of security of tenure needs to be considered in relation to leases to businesses operating in the living sector whose clients could be elderly or disabled. If, for example, security of tenure was removed completely, would this unfairly impact elderly or disabled people if they could no longer stay in their care home if the lease to the care home operator could not be renewed because security of tenure has been removed completely?

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

This response reflects the views of the Shoosmiths LLP. We have one of the largest real estate teams in the UK, working nationally across our 13 locations, with over 475 people. Our commercial offering advises a range of the leading real estate businesses operating in the UK market. Clients primarily comprise developers, investors, funders, retail and leisure occupiers, social housing bodies and major corporates.

The views expressed in this response are not intended to reflect the views of any client of Shoosmiths LLP.

Hogan Lovells

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

CQ2 – 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.

Model choice: Not Answered

Reasons

Background and Context

Hogan Lovells is a law firm with a client base that includes a number of commercial property landlords and investors, as well as commercial occupiers. As a consequence, we do not express here the firm's view as to whether statutory protection for commercial tenants under the Landlord and Tenant Act 1954 ("LTA 1954") should be abolished or retained. However, we do wish to set out some relevant context and observations as to the difficulties presented by the current statutory regime.

We also recognise that some of the more general statements we make are more relevant to more professionally managed real estate as that tends to be our experience.

Historical application of statutory protection under LTA 1954

The Landlord & Tenant Act 1954 is an old piece of legislation that responded to a particular situation that existed at the time, and to a property market that was much smaller and considerably less diverse and sophisticated than it is today. There was much less variety in terms of types of landlord and tenant too. Today, there are many different types of landlord (from large institutions to small-scale landlords), investors and occupiers/tenants. Tenants range from very well advised sophisticated occupiers with significant commercial clout through to small individuals who might hold just one property for running a small business. Landlords similarly range from the largest professional investors to a landlord who may own just one or 2 properties for their pension. One size fits all is therefore a difficult model to apply.

The current 70 year old statutory regime was intended to improve the position of commercial tenants when it came to negotiating their continued occupation of premises at the end of their lease, in discussion with a landlord that was perceived to be in a stronger bargaining position. That once-perceived imbalance of power does not exist universally now between

landlords and tenants. Occasions where an unscrupulous landlord might seek unscrupulously to evict a commercial tenant at the end of its lease are, these days, the exception rather than the rule. And today, many tenants/occupiers hold a strong bargaining position in lease negotiations. For example, the nature of the retail property sector has been transformed in recent years by the pandemic, economic factors and the rise of online retail. In the retail sector, the stronger bargaining position is more likely to be in the hands of the tenant than in the hands of the landlord, particularly where the tenant is a large and well-established commercial entity and/or where the property location has become less desirable or valuable. The 1954 Act is arguably not reflective of modern commercial property relationships and the protections it gives to some tenants might actually have the effect of causing stagnation rather than flexibility, dynamism and economic growth.

Arguably, the ability for a landlord in a strong bargaining position to insist that a lease is "contracted out of" the 1954 Act also means that those tenants who are in a weaker bargaining position do not benefit from the protection of the statutory regime in any event. Evidence suggests that tenants who benefit from the protection of the 1954 Act regime tend to be larger, established commercial entities with sufficient bargaining power and who tend, by contrast, to take longer term leases than smaller operations anyway.

Security of tenure is to an extent an illusion anyway. Leaving aside the ability of the parties to agree that the 1954 Act should not apply to a lease and "contract out of" the regime, if the landlord can prove one of the statutory grounds for recovering the property, the tenant is not then able to stay (albeit it can recover some rateable value based compensation). Arguing over the landlord's right to take possession, against a well-resourced landlord, can cost a lot of money in terms of hard cost spent on fees and process to obtain to a renewal lease, and significantly more in terms of time and internal resource in achieving that. It is also true that a tenant can force their landlord to go through a very expensive legal process in such disputes, even where the landlord has sound statutory grounds for opposing renewal. Again, that seems contrary to the commercial interests of both landlords and tenants, who find themselves sinking significant amounts of time and money into a legal process. It may also contribute to stagnation in their relevant property markets, rather than promoting growth and improvement. A contractual option to renew, where needed, in industry standard terms which the model commercial lease [see the Model Commercial Lease "option to renew" clause: https://www.modelcommerciallease.co.uk/downloads/download-category/leases/] provides, is a simpler and more effective solution for tenants. With the contractual option, the tenant can stay in occupation by exercising its contractual right without being concerned about the landlord seeking to take back possession by relying on statutory grounds. This would also free up courts and reduce litigation.

The four models

You have asked us to consider four models that might be relevant going forward (and to propose others). These range from:

1. No security of tenure

2. The existing security of tenure structure

3. Contracting in where agreed by the parties

4. Mandatory security of tenure for everything

Our favoured approach

As noted above, we do not express a view as to whether or not the 1954 Act regime should be abolished. But we would observe that – with or without the benefit of the 1954 Act - a commercially more powerful party, whether that is the landlord or the tenant, will be better placed than the other to determine whether a lease is “inside” or “outside” the Act, so that the stronger of the two parties will achieve a better result for itself in any negotiation or statutory process. As such protection from eviction is a limited right in practice. And it may not be available even if the lease is inside the Act if the landlord can prove a ground for possession.

If security of tenure was removed, the ability of parties to contract freely (including as to the terms of a contractual right to renew or adoption of the model commercial lease option) may be fairer and might encourage economic growth and improve sustainability and environmental impact in the built environment. There may be a case for promoting the use of contractual renewal rights whether or not the 1954 Act is retained, with parties choosing to contract out of the cumbersome and inefficient statutory regime and to adopt a commercially agreed renewal right instead. Reform also allows the opportunity to make other changes to the landlord and tenant system for the benefit of both parties, and to encourage economic growth and sustainability.

CQ3 – 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 parties and their advisers

(2) on the commercial leasehold market

CQ4A – 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.

CQ4B – We invite consultees’ views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

CQ5 – 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.

CQ6 – 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

(2) on the commercial leasehold market

CQ7 – 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).

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Areas for reform

As regards reform of the existing regime, we would propose that the following are addressed in part two of the consultation process. These are, we believe, worth bearing in mind when dealing with part one of the consultation process, envisaging possible outcomes if there was insufficient political appetite for abolition. Some of these were set out in the BPF 2016 recommendations and are still relevant today.

1. Automatically contracting out leases originally granted for a term of less than five years (and ensuring that that unprotected status continues for any period of occupation after expiry of the fixed term of that lease). Industry evidence seems to suggest that the majority of leases granted for a term of less than 5 years are expressly contracted out already. Renewal processes for such short leases are also the most disproportionately lengthy and expensive.

2. Simplifying the “contacting out” procedure by removing the procedural requirements on the landlord and tenant to serve a declaration and notice, and replacing it with a statutory warning notice on the face of the lease itself which explains the implications of the 1954 Act not applying to the Lease.

3. Procedural improvements to the statutory regime to reduce the time and cost spent by the parties in complying with the procedure and negotiating a new lease within the rigid statutory framework by having:

(a) a fixed valuation and term commencement date which is calculated either by reference to the term date of the existing lease or the dates in the statutory renewal notices, which would make deciding the new rent (and interim rent) more straightforward

(b) an early neutral evaluation process for rent disputes, to avoid unnecessarily long renewal processes driven by lawyers and valuers at the expense of the parties and burdening the court system

4. A presumption in favour of the landlord’s right to take back possession in the renewal process where it can show that it needs possession to carry out remodelling work that might currently fall short of statutory refurbishment or redevelopment but that will improve the environmental and sustainability credentials of the premises. This could be coupled with equivalent limitations on a Telecoms Code Operator’s ability to remain in occupation of a property that the landlord seeks to remodel (again on improvement/sustainability grounds).

5. A presumption on renewal, in favour of incorporating any new sustainability clauses that

the landlord might seek to introduce into a renewal lease as long as those sustainability clauses do not impose a cost burden on the tenant that is disproportionate to the benefit it receives, or is adverse to its business.

6. Encouraging more widespread adoption of contractual renewal rights negotiated between the parties (with the industry encouraging adoption of a standard “model commercial lease” form of contractual right).In addition, the position of tenants could be improved by further reforms to landlord and tenant law as follows.

7. Greater regulation of dilapidations claims at the end of a lease in keeping with the environmental and sustainability agendas i.e., sensibly restricting what a tenant should be required to remove, and in many cases, send to landfill, and what ought to remain in the property.

8. Dealing with planning and heritage constraints that can impede remodelling (not just redeveloping and rebuilding) existing buildings so that they are more efficient environmentally and fit for the future.

9. Resolving the current unintended consequence of the Landlord and Tenant (Covenants) Act restricting/preventing assignments to group companies or a guarantor.

10. Until the Land Registry has dealt with the current significant backlog and its resourcing issues, provide that a new owner who has not yet been registered as landlord or tenant (as the case may be) can have conduct of the renewal process on its own behalf prior to becoming the registered owner.Further observations on the law of landlord and tenant and land developmentAlthough these are not necessary related to the landlord and tenant economic growth and sustainability agenda directly, it would also be useful to consider:

1. Addressing the rights of light blockage that exists with many urban remodelling situations, with an alternative regime to be addressed in part two of the consultation.

2. Addressing the unintended consequence of the law that by underletting for the rest of the term a tenant inadvertently assigns its leasehold interest.

3. Abolishing the ability to convert 300 year plus leases (with no forfeiture rights) into freeholds, on the basis that the leasehold structure is useful for stewardship of urban environments, placemaking and the creation of thriving urban neighbourhoods.

4. Advances in digitisation of leases and lease documentation where documents are Land Registry compliant.

5. Modernising the law relating to the service of statutory and contractual notices to make better and more routine use of electronic means of delivery

Niall Helferty, Kuits Solicitors, Personal capacity

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

CQ2 – 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.

Model choice: Not Answered

Reasons

CQ3 – We invite consultees' views, together with evidence wherever possible, as to what impact a change to the model of security of tenure will have:

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(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.

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CQ5 – 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.

CQ6 – We invite consultees' views, together with evidence wherever possible, as to what impact a change to the scope of the 1954 Act would have:

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(2) on the commercial leasehold market

CQ7 – 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).

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Having considered the Consultation Paper 266 dated 19 Nov 2024, I note with interest that whilst Appendix 1 discusses Landlord & Tenant options under ss 25 & 26 of the Act, no reference appears to be made in the Paper concerning s.27 of the Act.

It is trite to say that s.25 & s.26 Notices require no less than 6 & no more than 12 months' to be given at the time of service. However, the same rules do not apply to s.27 Notices.

Under the Act, a s.27 Notice requires a minimum of 3 months' notice to be given by a Tenant to its immediate Landlord, to terminate a tenancy. However, there is no maximum period of notice prescribed by the Act.

This is in my view concerning and is something that needs to be addressed, immediately.

I am not aware of any direct authority on this particular point and learned authors similarly appears no wiser on the point – paras 3-124 & 3-125 of Renewal of Business tenancies (6th edition) (Reynolds & Clark) refers accordingly - the relevant section is attached for ease of reference.

Consider a scenario in which a Tenant, prior to a Landlord serving a valid s.25 Notice, serves a (valid) s.27 Notice, setting out a notice period/termination date in 5 or 10 years. How does a Landlord respond? It is not able to serve a s.25 Notice in response and/or make any application to Court for a renewal lease or interim rent pursuant to the Act.

It leaves the possibility of a Tenant being able to hold premises hostage and to potentially apply pressure to Landlords in consequence – this cannot be the intention of Parliament when drafting the Act and would on its face appear to be in absolute countenance with public policy and the intention of the drafters.

This uncertainty fundamentally increases the likelihood of parties incurring costs and time of satellite litigation, within an already flooded Judicial system.

In short, I consider an amendment to the current 1954 Act is required, imposing a maximum period of notice for s.27 Notices; in addition to this issue being considered generally within the remit of the current consultation process.

A V Barker, Personal capacity

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

CQ2 – 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.

Model choice: Not Answered

Reasons

I write to make representations in respect of this consultation.

I have a degree in economics and law from Cambridge and am a retired solicitor. As I will explain later I own a farm.

There should be an unrestricted ability to contract out of the security of tenure provisions of the Landlord and Tenant Act 1954, that is, the right to renew (or alternatively the law should provide that security of tenure applies only when the parties contract in).

Restricting the ability to contract out to tenancies of just six months is a block on useful economic activity. For example, where one party would like to let a property but not to give indefinite security of tenure and another would like to rent it, accepting that there will not be security of tenure beyond whatever period the parties agree, it is harmful to provide that security of tenure must apply notwithstanding any agreement to the contrary. The 1954 Act provides for renewal as many times as the tenant likes, absent special circumstances such as redevelopment. Security of tenure beyond the period for which the owner wants to let a property can substantially depreciate the value of the property with the result that, to protect himself, the owner has to leave it lying empty rather than let it.

There are many kinds of property and an infinite variety of circumstances in which parties let, or would like to let, it. The idea that the security of tenure provisions of the 1954 Act are needed to prevent landlords depriving shopkeepers or craftspeople of their premises and therefore their livelihoods is out of date. In a typical high street many shops are occupied by large, nationwide companies. Many small businesses are today on industrial estates (fairly rare in 1954) where, even if a tenant had to vacate at the end of an agreed tenancy, similar premises in that or another site would be available.

Limiting the ability to contract out of security of tenure to, for example, lettings of no more than six months (as in the 1954 Act) adds complication to the law and is to the disadvantage

of tenants. If letting property indefinitely will be against the owner's interests the landlord cannot, without harm to himself, agree a period longer than six months even if he would be happy to enter into a letting for, say, several years or a letting which continues until either party gives notice. The result will be that the tenant has less security.

Furthermore, cases inevitably occur where security of tenure produces an unjust result, for example, where someone who is not knowledgeable about the law lets property for an agreed period without realising that the tenant will have security of tenure. The tenant may know about security of tenure or may promise that he will vacate at the end of the agreed letting but changes his mind when that time comes.

Security of tenure where the tenant does not need it also has a value-shifting effect. It shifts part of the value of the property to the tenant in that, if the owner wants to end the tenancy after the agreed tenancy ends, the tenant can demand payment of part of the property's value for a surrender. The 1954 Act should not have this effect.

For transparency I should mention my own circumstances. I own a farm. It includes certain farm buildings and small paddocks which are not suitable for modern farming. I am happy to let these to a woman who lives nearby and runs a business of looking after horses. If she were to have indefinite security in respect of this part of my farm it could in future get in the way of something which was needed for the farm and/or have the effect, even without that situation, of greatly reducing the value of the farm as a whole. I therefore cannot continue to let the buildings and paddocks to her if she will have security of tenure. (She does not grow crops or rear livestock on my farm so it is the 1954 Act which would apply, not the agricultural holdings legislation.) I have set out my personal situation, but my knowledge of economics and my experience in legal practice convince me that making it impossible to contract out obstructs economic activity and causes problems in many unforeseen and/or unnecessary situations.

CQ3 – 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 parties and their advisers

See above.

(2) on the commercial leasehold market

See above.

CQ4A – 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.

See above.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

See above.

CQ5 – 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.

See above.

CQ6 – 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

See above.

(2) on the commercial leasehold market

See above.

CQ7 – 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).

See above.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

Falcon Chambers

Role: a professional (legal, property or other professional)

If landlord or tenant:

Number of employees: Not Answered

Regions:

Sector(s):

CQ1 – 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.

We are not aware of any relevant differences that suggest that a different approach should be taken in relation to Wales.

CQ2 – 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.

Model choice: Not Answered

Reasons

We consider that the answer to this question should really be governed by conditions in the market, upon which we are not best placed to comment. We confine ourselves to pointing out some relevant considerations.

Some will say that security of tenure should be the starting point, given that in large sectors of the commercial property market, there will be an imbalance of power between landlord and tenant. It should not be assumed that many smaller retail tenants will be advised fully at the point of entering into a lease. If that is right, then it will be better for the default position to be protection. We note that it could also be said (whether correctly, we do not know) that a guarantee of some security is likely to encourage investment in the endangered high street.

Imbalance in favour of landlords will not always be the case, of course, but where there is greater equality, the parties are likely to be fully-advised, and have sufficient commercial power to negotiate for themselves.

There will also be cases where larger retail tenants are able to dictate their own terms, and need no statutory assistance.

Quite where the correct line should be drawn will become clearer as replies to this consultation (and, importantly, its accompanying survey) are studied.

If the conclusion that appears appropriate at the end of this evidence-led exercise is that default security of tenure with some contracting out should be continued, then our firm view, based upon our own extensive experience in the courts, is that with the current regime should be replaced by light-touch opting out.

We say that because our view is that the present contracting out processes are too complex, and fraught with pitfalls (see, for example, the TFS litigation - TFS Stores Ltd v The Designer Retail Outlet Centres (Mansfield) General Partner Ltd [2019] Bus LR 1970, Ch, and subsequently the Court of Appeal ([2021] EWCA Civ 688, CA)). We consider that it should be enough that, in cases where the parties are content to contract without protection, there be a statutory wording (in plain English) endorsed on the face of the lease, making clear that the parties are agreeing to contract on an unprotected basis. The wording should explain that this means that the tenancy comes to an end on its expiry, and will not be continued beyond that, nor carry with it a right to a new tenancy, and that a new tenancy will need to be negotiated if the tenant wishes to stay. One could, for instance, envisage a requirement of any lease documentation (draft and executed) to include, say, on its first page, a simple notice stating e.g:

"This Lease does not confer security of tenure. So when the lease expires, you will have to vacate the premises unless the landlord agrees otherwise. If you consider that you need legal advice as to the implications of having no security, you should first seek such advice before signing this document."

This is plain English - not lengthy so as to confuse and stating what is essential: no security and a requirement to vacate at the end of the contractual term. That, it may be said, is all most tenants need.

We consider that there is also a case for allowing parties who have entered into a tenancy which has statutory security of tenure which neither wants, to be able to relinquish that security by mutual agreement during the term. This is relevant to informal periodic tenancies, which we discuss in relation to Question 4.

CQ3 – 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 parties and their advisers

Our suggested change to security of tenure is likely to reduce transaction costs at the start of the lease, and professional liability if a defective contracting out process has been followed (allowing the tenant to extend the term of their lease by deploying legal proceedings).

(2) on the commercial leasehold market

We cannot comment in detail on the effect on the commercial leasehold market.

CQ4A – 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.

We do not think there is any need to reform the category of Use Excluded Tenancies. This is well-understood.

We consider that, if statutory security of tenure is to be retained (which as we have said should depend upon evidence from the market), then there will be a case for extending renewal rights to periodic tenancies (which presently are only protected in relation to termination). We are aware, however, that there are numerous instances in which periodic tenancies arise from unthinking further courses of dealing by the parties, for example following expiry of a contracted-out fixed term. We do not see why the parties cannot agree, if they so wish, for that tenancy to be retrospectively contracted out by agreement.

We don't think there are other types of tenancy that should be excluded from the 1954 Act, particularly when the reforms introduced by s.61 of the Product Security and Telecommunications Infrastructure Act 2022, relating to code agreement renewals under the 1954 Act, are given their effect.

We think that the light-touch contracting out we have proposed (in the event that statutory security is to be retained) will mean that expanding classes of excluded tenancies is unnecessary.

CQ4B – We invite consultees' views as to whether their answer would differ depending upon which underlying model for the 1954 Act is recommended.

We do not think that our answer is affected by the security of tenure model adopted. We can however see that an opt-in model may be fairer in the case of parties who have drifted into a periodic tenancy relationship without proper consideration.

CQ5 – 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 1954 Act is well-understood, and has largely been a success. As we have said, the question whether wholesale reform (to include abolition) should be determined by the market. But we do wish to make two points.

First, experience suggests that fundamental changes to the statutory model are likely to require a long bedding-in period. This is likely to result in some uncertainty and litigation. We would point to the 2003 Reforms, which introduced complexity, and scope for technical points being taken. By contrast, if the existing statutory security model is retained, but with a lighter-touch contracting out mechanism, this will be unlikely to have similar detrimental consequences, and will therefore be more likely to be welcomed.

CQ6 – 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

As we have just said, wholesale changes can have undesirable consequences that may take some time to work their way through the market and into the public consciousness. The reforms brought in in relation to the Electronic Communications Code have generated, in that small corner of the law, a lot of litigation. Wholesale changes are likely to lead to complex transitional provisions, the chance of a dual regime operating while tenancies negotiated before any new law run out, and a lengthy familiarisation period with early uncertainty. We suspect that the market will not welcome the other costs associated with radical change, such as set up costs and so on.

(2) on the commercial leasehold market

See above.

CQ7 – 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).

We are not able to comment.

CQ8 – Please tell us anything you wish us to know which is not addressed elsewhere in this consultation.

A periodic tenant, unless one whose periodic tenancy has arisen expressly after the expiration of a fixed term, is unable to seek a new lease under the 1954 Act. Only a tenant who is a tenant for a “term of years certain exceeding one year” or granted for a term of years “and thereafter from year-to-year” can seek renewal by serving a s.26 request. This has caused particular problems within the context of cases under the Electronic Communications Code and has generated much litigation. We see no reason why a periodic tenant should not have the opportunity of initiating the 1954 Act procedure for renewal, in the event that continuing statutory security of tenure is the model that the market requires.

We have further points but they are relevant to the next stage of this consultation.