



the holding or a substantial part of those premises, or to carry out substantial work of construction on the holding or part thereof and could not reasonably do so without obtaining possession of the holding.

Suppose, for example, that a landlord has a retail premises which the landlord intends to renovate in three to five years, but which is currently unoccupied. The landlord might consider granting a lease of the premises to a tenant on a short-term basis and then, in due course, relying on ground (f) to resist the grant of a new tenancy. However, there are three potential problems relating to such a plan:

- the nature of the works required to satisfy ground (f);
- delays inherent in the court system; and
- compensation.

In order to establish ground (f), the landlord will need to show that they intend to 'demolish or reconstruct' the premises or a substantial part of the premises, or 'carry out substantial work of reconstruction' on the holding or part thereof. Returning to our hypothetical example, suppose the premises in question is a beautiful 16th century timber-framed building, albeit one which has seen better days. If the landlord's intentions are to renovate the premises while retaining the original features in so far as possible, then they may find that the proposed works do not fall within ground (f). Following the decision of the Supreme Court in *S Franses Ltd v The Cavendish Hotel (London) Ltd* [2018] UKSC 62, [2018] All ER (D) 19 (Dec), it is clear that a landlord cannot simply add works to their proposed scheme so as to ensure that ground (f) is made out. The landlord's intention to do these additional works would be conditional on them being necessary to obtain possession (or, in other words, the landlord would not undertake them if the tenant left voluntarily) and, as Lord Sumption made clear, such a conditional intention does not suffice for ground (f).

Even if our hypothetical landlord is confident that their proposed scheme meets the requirements of ground (f), the tenant can require them to prove the same at trial. Here we run into our second problem—the delays inherent in the court system. Figures published at the end of 2022 showed that the mean time for multi- and fast-track cases to reach trial had risen to 75.5 weeks. In 2018 a pilot scheme was introduced for an initial period of a year whereby unopposed lease renewal proceedings issued in the county court at Central London were automatically transferred to the First-tier Tribunal (Property Chamber). The tribunal's standard directions provide for a short timetable, but as this pilot

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The Landlord & Tenant Act 1954: end of an era?

With change finally on the horizon, [Julia Petrenko](#) & [Ashpen Rajah](#) outline the long overdue case for reforming the Landlord & Tenant Act 1954

IN BRIEF

► The Landlord and Tenant Act 1954 (LTA 1954) was enacted some 70 years ago. Unsurprisingly, a lot has changed in that time.

► On 23 March 2023, the Law Commission announced that it will review Part II, LTA 1954.

► This article considers the role that Part II, LTA 1954 plays today, and the case for reform.

In short, Part II of the Landlord and Tenant Act 1954 (LTA 1954) confers security of tenure on business tenants. A business tenancy which falls within the scope of LTA 1954 will not determine by the effluxion of time. Rather, the tenancy will continue for so long as the tenant remains in occupation unless it is determined in accordance with LTA 1954 (or in accordance with the common law methods of determination, such as forfeiture, which are preserved by s 24(2)).

A tenant has the right to seek a new tenancy of the business premises, which will be granted by the court unless the landlord can establish one of the grounds of opposition contained in s 30. Proceedings in which the landlord opposes the grant of a new tenancy are referred to as 'opposed proceedings'. Otherwise, if the parties agree that a new tenancy should be granted

but disagree as to its terms, proceedings are referred to as 'unopposed'. Renewal proceedings are heard in the county court.

A case for reform?

LTA 1954 came into force on 1 October 1954. It is not difficult to think of many ways in which the world has changed since then. The birth of the internet in the 1980s has revolutionised shopping, with many consumers now heading online rather than to their local town centre. More recently, the COVID-19 pandemic has accelerated the remote working trend.

Given the many changes which have taken place since 1954, it is perhaps not surprising that the Law Commission, in March 2023, announced a review of LTA 1954. The key questions for the Law Commission will likely include whether LTA 1954 strikes an appropriate balance between landlords and tenants in today's market, and whether the existing scheme could be simplified to be more practical and user-friendly.

One area of tension concerns ground (f). Practitioners will no doubt be familiar with this ground of opposition, which applies where the landlord intends to demolish or reconstruct the premises comprised in

scheme only applies to unopposed lease renewals, it will not assist our hypothetical landlord who will need to prove ground (f), and who may decide not to take the risk of letting the property and delaying the redevelopment project.

Turning to the final problem, supposing that the landlord establishes ground (f) and obtains possession of the premises, upon the tenant quitting the premises the landlord will have to pay the tenant compensation under s 37, LTA 1954, which may cancel out much of the financial benefit of letting the premises in the interim.

All in all, the landlord who intends to undertake works at a date in the not-so-distant future may decide that letting the property in the meantime is not worth the risks.

Of course, one option open to the landlord is to grant a lease which does not benefit from the protection of LTA 1954. Since 1 June 2004 it has been possible for a landlord and tenant to agree to exclude the right to renew the lease without seeking court approval of that agreement. However, the fact that this 'contracting out' process is so frequently used is itself evidence that the security of tenure provisions under LTA 1954 may be failing to strike the right balance between the parties.

Further, there are several traps for the unwary landlord. First, the tenancy must be for a 'term of years certain'. This means that it is not possible to enter into an agreement to exclude the right to renew in relation to a periodic tenancy. Secondly, the landlord would need to know that it is necessary to contract out, and further that the conditions of s 38A, LTA 1954 have to be followed (which require, in summary, service of a 'warning notice' and the execution of a declaration by the tenant confirming that they have received the same, and that they accept the consequences of contracting out).

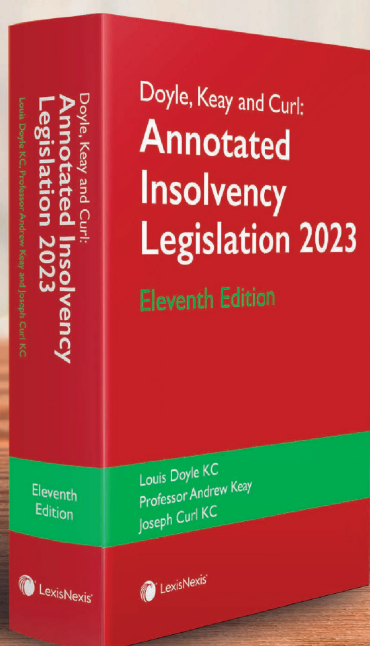
To take another hypothetical example, suppose that a landlord has a vacant unit and is approached by a tenant who wants to start a coffee shop in it. The parties agree, on a handshake, that the tenant can have a weekly tenancy of the premises for a rent of £700. Under the common law, the landlord is entitled to determine the tenancy by giving a notice to quit. However, if the tenant is able to establish that they have a periodic tenancy (as opposed to a tenancy at will) and claims the benefit of the protection of LTA 1954, the landlord will find themselves needing to establish a ground of opposition and dealing with the problems of delay and compensation outlined above.

Another particularly tricky situation is where the parties have correctly followed the 'contracting out' procedure in respect of an initial lease, but then subsequently agree an extension of the fixed term or an addition to the demised premises (to include, for example, an additional room). In those circumstances, the change will take effect as a surrender of the initial lease and a regrant of a new lease. Unless the parties have repeated the s 38A process for the new lease, Part II, LTA 1954 will therefore apply, with the consequence that by agreeing to a variation of the original lease, the landlord will have inadvertently granted the tenant security of tenure.

Final thoughts

The provisions in Part II, LTA 1954 play an important role in managing the relationship between commercial landlords and tenants. The Law Commission's upcoming review should hopefully provide an opportunity to address some of the issues and uncertainties surrounding the current law and to align LTA 1954 more closely with modern commercial practices and expectations. **NLJ**

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