

THE 1954 ACT

The changes to the 1954 Act effected by the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 came into force on 1 June 2004. The Order applies to any tenancy in respect of which a notice or request under ss.25, 26 or 27, or an agreement under s.38, is made after that date.

Application of the Act

The scope of application of the Act is largely unchanged: with one exception. The requirement at **s.23(1)** that the holding be occupied *by the tenant* for the purposes of a business carried on by him has long given rise to difficulty where the person carrying on the business, and the person in whom the tenancy is vested, are two different legal entities. This has meant, to give an obvious example, that a business conducted by a company where the tenancy is vested in an individual, albeit an individual with a controlling interest in that company, was not protected by the Act.¹

The Order makes amendments to ss.23, 30, 34, 42 and 46 to remedy this. The Act now protects a company occupying for business purposes where the tenant is an individual with a controlling interest in that company, and a company tenant where the person with the controlling interest is occupying. Parallel amendments have been made to permit individual landlords with controlling interests in companies, and vice versa, to be entitled to object to the grant of a new tenancy under s.30(1)(g) (own occupation), subject to a 5 year rule in respect of the acquisition of the controlling interest to reflect the existing five year rule provided by s.30(2).

More significant changes are made to the provisions relating to the circumstances in which the Act will cease to apply: in particular, to the termination by the tenant of a protected tenancy, and to the exclusion of security of tenure under **s.38**.

Termination by the tenant

By **s.27(1)** of the Act, a tenant who wishes to prevent a continuation tenancy arising under s.24 is required to give not less than three months notice to the landlord to terminate the tenancy on the term date. However, the Court of Appeal in *Esselte v. Pearl Assurance*² confirmed that a tenant could terminate a tenancy by vacating the premises, even before the expiry of the contractual term. Notwithstanding criticism of this decision – the effect of which was that a landlord has no means of knowing whether or when the current tenancy may determine – it has now been given statutory effect by a new **s.27(1A)**: which gives to tenants the option of vacating the premises by the end of the contractual term as an alternative to notice under s.27(1).

The opportunity has also been taken to make **s.27(2)** of the Act more flexible, by removing the obligation of a tenant under a continuation tenancy to terminate by three months notice expiring on a quarter day: such notice can now be given to expire at any time. Express provision is made by **s.27(3)** for the apportionment of rent where the current tenancy is terminated, by such notice, in the middle of a quarter.

Contracting out

Under the previous provisions of the Act, security of tenure could be excluded only by a joint application of the parties to the court for an order under **s.38(4)**. This has been repealed by the 2003 Order; and a new **s.38A** substituted, providing a new basis for exclusion by agreement between the parties. In short, there are two alternative routes to contracting out. Either the landlord may serve on the tenant notice in a prescribed form not less than 14 days before the tenant enters the tenancy, with the tenant or an authorised person signing a declaration confirming receipt of the notice; or (if the parties want to enter into a tenancy very quickly, for example) the landlord may serve the notice at any time before the creation of the tenancy, the tenant then making a

¹ See *Tunstall v. Steigman* [1962] 2 QB 593; *Nozari-Zadeh v. Pearl Assurance* [1987] 2 EGLR 91.

statutory declaration in prescribed form, before an independent solicitor, stating that it understands the implications of its actions. This must be made before the tenant enters into the tenancy “or becomes contractually bound to do so”. These requirements, and the prescribed forms of the various notices, are set out in Schedules 1 and 2 to the Order.

What, for these purposes, does “contractually bound” mean? If it extends to include a conditional agreement for lease, the effect of the section would be to render it impossible to enter into an agreement for lease conditional on compliance with the statutory requirements. It seems unlikely that this was the intended result. On the basis, then, that “contractually bound” refers only to the position where the parties are *unconditionally* bound to enter into a new lease, it is necessary to be alert to two considerations:

- (i) care must be taken to ensure that the requirements of the amended **s.38A** are complied with before any other condition is satisfied, and the contract rendered unconditional. For instance, if the agreement for lease were conditional only on the grant of planning permission, it will be necessary to ensure that the notice and/or statutory declaration under **s.38A** was served and/or received in good time before the grant of planning permission;
- (ii) this may be done by making the agreement subject to a further condition: compliance with the requirements of **s.38A**. Such a condition could be worded so as to be satisfied only upon the expiry of 15 days from the date of receipt of a declaration, or immediately following the receipt of a statutory declaration from the tenant. The tenant would not become contractually bound, unconditionally, until satisfaction of the condition; and the statutory requirements would thereby have been

² [1997] 1 WLR 891.

fulfilled before the tenant became “contractually bound” to take the lease.

Similar provisions as to notice, and declaration, apply to agreements to surrender: previously also required to be authorised by the court. Instead, such an agreement must now comply with an equivalent procedure of a ‘warning’ notice and the signing of a statutory declaration: **s.38A(2), (4)**. An immediate surrender will continue to be a valid method of terminating a tenancy protected by the Act.

The form of notice prescribed by the new rules is relatively simple, requiring the insertion of the names and addresses of the parties to the lease but no further information. There is – contrary to the previous system – no requirement for the agreed form of lease or agreement to surrender to be attached to any of the paperwork, or indeed even to exist, at the time that the notice is served.

Orders obtained from the court under the old regime prior to 1 June will remain effective to exclude the application of the Act even if the tenancies executed thereunder were not completed until after new regime came into force. Article 29(2)(ii) of the 2003 Order provides that nothing in it shall have effect in relation to an agreement “which was authorised by the court under s.38(4) of the Act before this Order came into force”.

Claim to a new tenancy

Perhaps the most significant changes to the 1954 Act are those relating to the claim to, and process of obtaining, a new tenancy.

Initiation of the procedure is unchanged: a landlord’s notice under s.25 or a tenant’s request under s.26. However a post-June 2004 **s.25** notice where the landlord does not oppose a new tenancy must now contain the landlord’s proposals for the property to be

comprised in the new tenancy, the rent to be payable, and the other terms of the tenancy. This information reflects that previously required by PD56 from the tenant in his application to the court for a new tenancy. The requirement for a counter-notice following a s.25 notice has been abolished: although a landlord remains under an obligation to serve a counter-notice to a s.26 request if he wishes to oppose a renewal.

Under the original Act, only the tenant could instigate court proceedings following service of a notice, by making a claim for a new tenancy, and only in accordance with a strict timescale: failure to comply with which frequently had serious and costly consequences (either for the parties, or for their solicitors). Moreover, the emphasis on an early application to court (mitigated, but not extinguished, by the provision for a stay of proceedings under CPR 56.3(4)) did not sit happily with the Woolf-ian trend for negotiation. Both of these aspects have been changed.

The amended Act, in particular **ss.24, 25 and 29**, provides that both landlord and tenant can apply for the grant of a new tenancy to the tenant; in addition, the landlord can make an application for termination of the tenancy. This has the obvious advantage that either party is now able to take the initiative in an application. This was intended to and should right the perceived unfairness arising from the ability of a tenant to drag his feet in renewal proceedings in order to delay vacating the premises.

Under **s.29(4)**, an order for termination of the current tenancy will be made if the landlord establishes, on his application, any of the grounds of opposition set out in **s.30(1)** of the Act. If the court does not make an order for termination on the landlord's application, it must grant a new tenancy to the tenant: **s.29(4)(b)**.

Once any of these applications has been made, no other application may be made. An application under **s.24** to renew a tenancy may not be made by either party if the other has made such an application, and the application has been served: **s.24(2A)**; nor if the

landlord has made, and served, an application for termination under **s.29: s.24(2B)**. For these purposes, then, the order of priority of applications is determined by reference to the order of service, rather than issue.³ This is presumably to stop the common practice of issuing, and then waiting until the last moment to serve the application. Under **s.29**, an application may not be made if either the landlord or the tenant has already made an application under **s.24: s.29(3)**. Notably, and in contrast to the terms of **s.24**, this provision says nothing about the application having to have been served. Thus in this case, it seems that priority will be determined by the date of the making of the application, rather than the date of service: leaving open the possibility of the exercise of tactical delay between issue and service.

The only deadline for the court application either for renewal or for termination is the date specified in the landlord's s.25 notice, or "immediately before" the date specified in the tenant's s.26 request: **s.29A(2)**. The reason for the distinction in the description of these two dates is not clear. The period ending on the relevant date is defined by **s.29A(2)** as "the statutory period".

A tenant's application for renewal cannot be made earlier than two months after the date of making of a **s.26** request, unless the application is made after the landlord has served a counter-notice. There is, however, no limit upon the date before which a landlord can make an application, either for renewal or for termination. There is then a tactical opportunity for a landlord to get in first with an application of one sort or the other.

In a new **s.29B**, provision is made for the extension of the deadline for applications by agreement between the parties. The landlord and tenant can, if they wish, make successive agreements extending the statutory period for making an application,

³ The period of service provided is within two months of issue: CPR 56.3(3)(b) and (4)(b).

thereby extending the current tenancy. It is worth noting, however, that any such agreement:

- (i) must be made before the end of the statutory period or before any other existing deadline expires: **s.29A(2)**; and
- (ii) must, by virtue of the existing **s.69(2)** of the Act, be in writing. This requirement could well be a pit fall which will trap some leaseholders until such time as the workings of the new provisions become more familiar. There appears to be some debate as to whether or not an agreement confirmed only in e-mails would be in writing for these purposes. The authors of the White Book suggest that it would: on the basis of the provision in s.5 and Schedule 1 of the Interpretation Act 1978 that 'writing' includes 'typing, printing, lithography, photography and other modes of representing or reproducing words in a visible form'. However, it has been held by Neuberger J in *Tennaro Ltd v. Majorarch Ltd* [2003] EWHC 2061 that the dictation of a letter over the telephone to the secretary of the intended recipient did not constitute 'written notification' of the contents of the letter. While some doubt remains, the prudent course would be to ensure that any agreement is recorded in a letter.

The length of any extensions agreed under these provisions will be a matter for negotiation. A short extension will keep the pressure on parties to agree terms of a new lease; but may increase not only costs (if repeated extensions are necessary), but also the risk of missing a deadline. Longer extensions of time may be desirable to a landlord or tenant who is seeking to delay negotiations for a new lease, perhaps if better comparable evidence is anticipated. Protracted delay, however, may result in the tenant having to find a large lump sum in back-dated increased rent, a potential problem for both the tenant and the landlord.

If extensions of time are agreed in accordance with **s.29B** after service of a s.25 notice or a s.26 request but the last extension expires without renewal or application to the court it seems that the tenancy will simply come to an end.

Compensation for disturbance

The 2003 Order introduced new provisions for the circumstances in which compensation is to be paid to a tenant on quitting the holding. There are now three compensation cases set out in **s.37(1)** of the Act. The first two are where the court is precluded from granting a new tenancy, either upon a tenant's application under **s.24** or a landlord's application under **s.29**, upon any of the grounds set out in **ss.30(1)(e),(f)** or **(g)** of the Act (uneconomic subletting, the landlord's intention to demolish or reconstruct or the landlord's intention to occupy the premises). The third is where:

- (a) the landlord serves a **s.25** notice or **s.26** counternotice relying on one or more of those grounds, and no others; and
- (b) either no application is made by the tenant under **s.24** or the landlord under **s.29**, or such an application is made but subsequently withdrawn.

The operation of these provisions is not always clear. They do not, for example, deal with the situation where a landlord who has opposed renewal on one of the relevant grounds issues proceedings for renewal rather than instituting an application to terminate the current tenancy. If the tenant proceeds with the renewal, clearly no compensation will be payable as the tenant has not quit the holding. The tenant may wish to vacate, however. He can, in such circumstances, obtain the dismissal of the landlord's application by informing the court that he does not want a new tenancy: **s.29(5)**; but a dismissal is not one of the circumstances contemplated by **s.37**. Nevertheless it seems likely that a tenant would be entitled to compensation in such a case, on the basis that neither of the types of application which the section *does* contemplate has been made.

A different situation was recently considered by Master Moncaster, in the Chancery Division, in *Felber Jucker & Co Ltd v. Sabreleague Ltd* [2005] PLSCS 162. The landlord had served a **s.25** notice opposing a new tenancy on the ground set out in **s.30(1)(f)**. Having served the notice, however, the landlord decided to defer its redevelopment plans, and informed the tenant that it would not oppose a new tenancy. The tenant, having determined to vacate the premises in any event, sought a declaration that, on quitting, compensation would be payable under **s.37**.

The landlord counterclaimed. In the circumstances, it argued, it had no alternative but to apply under **s.29** for an order terminating the current tenancy. As it could not show that it intended to redevelop the tenancy, the court was bound under **s.29(4)(b)** to make an order for the grant of a new tenancy.

The tenant applied to have the counterclaim struck out.

The court found for the tenant: and struck out the landlord's application under **s.29** as a blatant abuse of process. That section entitled a landlord to apply for the termination of a tenancy. In the case before the court, however, the landlord had changed its mind about the grant of a new tenancy prior to the making of the application. The section could not sensibly be read as compelling the court to order a new tenancy even if the tenant did not want one: it had not been intended for a landlord to bring a **s.29** application in order to settle the terms of a new tenancy. The application having been struck out as defective, it was held that it could not be treated as an application within the third compensation case of **s.37** so as to deprive the tenant of its right to compensation under the Act.

Undoubtedly this will not be the last occasion on which the courts are required to consider the operation of the compensation provisions in circumstances which are not directly contemplated by their terms.

Under the original Act the tenant was entitled to a higher rate of compensation if it had occupied the premises for more than 14 years. In Edicron Ltd v William Whiteley Ltd⁴ it was held that the tenant would be entitled to obtain compensation at the higher rate, referable to the rateable value of whole of the premises, even where only part of the premises has been occupied for the requisite period of time. The Act now provides that such compensation will be paid in proportionally depending whether the whole or only part of the premises was occupied by the tenant during the requisite period.

Interim rent

The provisions of the old s.24A of the Act in relation to interim rent were subject to a number of defects. Only the landlord could apply for an interim rent, which proved unfair to tenants stuck with an excessive rent during a continuation tenancy in a falling market. Interim rent was to be valued on the basis of a hypothetical periodic yearly tenancy, as opposed to fixed term, but pursuant to a judge-made practice development over the years was conventionally discounted by a percentage to reflect the statutory obligation on the court, pursuant to s.24A(3), to have regard to the rent payable under the current tenancy.

New provisions are introduced in new sections **s.24A – D**.

Either party may now apply for an interim rent, by application made not more than six months after termination of the tenancy. By **s.24A(2)**, neither party may make an application if the other has made an application and has not withdrawn it. However, by contrast with **s.24(2C)** there is no provision for the other party to be required to consent to the withdrawal. It is potentially possible, then, for an application to be made by one party for interim rent, only for it to be withdrawn after the end of the six months from the termination of the tenancy: thereby depriving the other party of the opportunity to make any application for interim rent at all.

⁴ [1984] 1 WLR 59

Under **s.24B** interim rent is now payable from the earliest date which could have been specified in a s.25 notice or a s.26 request: being the 6 month minimum period under s.25(2) or s.26(2) or the contractual expiry date of the current tenancy. This replaces the previous provision under which interim rent ran from the date on which proceedings were commenced or the date specified in the s.25 notice or the s.26 request, whichever was the later. Prior to the changes, a tenant could seek to defer its liability to pay interim rent by serving a s.26 request specifying the maximum 12 month period for the termination of the existing tenancy. Under the new rules, the start of this liability is, in effect, determined by the date of service of the relevant notice. In a rising market, therefore, a tenant is unlikely to want to serve a s.26 notice as it will thereby itself trigger the obligation to start paying interim rent. On the other hand, where the market rent on the contractual expiry date is anticipated to be less than the current passing rent, the tenant ought to serve a s.26 notice as soon as possible (six months prior to the contractual term date) in order to reduce its rental liability with effect from that date.

Change has also been made to the amount of interim rent. The amount payable will differ according to (a) whether or not the tenant is in the whole of the property comprised in the tenancy and (b) whether or not the landlord has stated he will oppose the grant of a new tenancy.

Where the relevant notice (s.25 or s.26) was given at a time when the tenant was in occupation of the whole property, and the landlord did not oppose the grant of a new tenancy, then under **s.24C** the rent payable at the commencement of that tenancy will be the interim rent. In other words, the new rent will be backdated to the earliest date on which the old tenancy could have been terminated by notice or request.

There are two exceptions to this.

- (i) The first, under **s.24C(3)(a)**, is where either the landlord or the tenant shows to the satisfaction of the court that the interim rent would have been substantially different if it had been determined by reference to values prevailing at the date from which the interim rent runs. This is likely to be the case if the valuation date for fixing the new rent is significantly later than the appropriate date for the purposes of commencement of the interim rent. In this case the interim rent is the rent that the court would have determined if the new tenancy had begun on the date from which the interim rent runs.
- (ii) The second, under **s.24C(3)(b)**, is where the landlord or the tenant shows to the satisfaction of the court that the terms of the new tenancy differ from the terms of the relevant tenancy to such an extent that the interim rent is substantially different from the rent which the court would have determined in the absence of those differences. In this case, the interim rent is the rent that it is reasonable for the tenant to pay while the relevant tenancy continues under s.24.

Where s.24C does not apply – in other words, where the tenant is not in occupation of the whole of the property or where the grant of a new tenancy is opposed by the landlord – the interim rent is the rent which it is reasonable for the tenant to pay while the relevant tenancy continues under s.24: **s.24D**. For these purposes the valuation is to be made on the basis of a periodic yearly tenancy: a reversion to the previous, unsatisfactory valuation basis.

Provision is made under both **s.24D** and **s.24C(3)(b)** for the factors to which the court must have regard in determining this reasonable rent. These include the rent payable under the current tenancy. This, too, is a re-introduction of a previous, unsatisfactory provision, the judge-made discount which applied under the previous s.24A(3).

Compensation for misrepresentation

Under the original Act the tenant was entitled to obtain compensation if at trial the court refused to grant a new tenancy and it subsequently transpired that the refusal was procured by a misrepresentation or by the concealment of material facts. Therefore, in order to obtain such compensation the tenant would have to take the original claim to trial and show that *the court* had been misled by the landlord.

The new provisions in **s.37A** extend the tenant's right to claim compensation to circumstances where the tenant has quit the holding without making an application (or after withdrawing it) and the tenant can show that *he* had been misled by the landlord.

Whilst these changes are welcomed, the tenant still has to prove dishonesty on the part of the landlord. In practice very few tenants, if any (for I have not yet seen a decision in which the tenant has been successful in this regard), succeed in a claim of this nature as the landlord almost always claims that it had the requisite genuine intention to carry out the works etc but subsequently changed its mind.

PROCEDURE

The Civil Procedure Rules have also been amended to take into account the changes to the 1954 Act. The rules now distinguish between opposed and unopposed claims. An opposed claim is a claim for the termination of the tenancy or a claim for the grant of a new tenancy where the new tenancy is opposed either on one of the grounds set out in s.30(1) of the Act or on any other grounds.

Where the claim is for the grant of a new tenancy and the landlord does not oppose the grant of a new tenancy, the claim will be regarded as unopposed even if the terms of the new lease remain in dispute.

The Claim Form

As with the previous procedure unopposed claims are commenced under Part 8 but the usual Part 8 rules in respect of the filing of evidence do not apply. Opposed claims are now commenced using a Part 7 claim form.

Where the claim is a claim for a new tenancy and is brought by the tenant the claim form must include all of the information required under the previous rules. In addition:

- (i) It must state the date upon which the statutory period, or any agreed extension, expires.
- (ii) Under the previous procedure the tenant was obliged to state whether it was aware of anyone with an interest in the reversion of the property whether immediate or in not more than 14 years who is likely to be affected by the grant of a new tenancy. The 14 year period has now been changed to 15 years in order to reflect the increase in the term of the tenancy that can be granted by the court.
- (iii) If the tenant is not in occupation of the property or does not carry on a business there and relies upon the deemed occupation provided by

ss.23(1A) (occupation or the carrying on of a business is by a company in which the tenant has a controlling interest or where the tenant is a company, by a person with a controlling interest in the company), s.41 (occupation by a beneficiary under a trust), or s.42 (occupation by members of a partnership), it must give details in support of that contention. Where the claim is brought by the landlord this information must be included in the acknowledgment of service.

- (iv) It must also state whether he relies upon s.31A which applies where the landlord is relying on ground (f) and the tenant agrees to include a term in the new tenancy which permits the landlord to carry out the said works under the terms of that agreement. Again this information is required in the acknowledgment of service where the landlord has brought a claim to terminate the tenancy.

Applications for a new tenancy by the landlord must also include the information required under the previous rules except that it does not need to give details of the nature of the tenant's business or details of the persons in occupation of the property. In addition the landlord must state:

- (i) the date upon which the statutory period, or any agreed extension, expires.
- (ii) whether the current tenancy includes property besides the holding which the landlord requires to be included in any new tenancy.

Where the landlord issues a claim for the termination of the tenancy the claim form must include the usual details of the property, tenancy and the notices served under the 1954 Act. It must also contain:

- (i) the date upon which the statutory period, or any agreed extension, expires;

- (ii) full details of the grounds upon which the landlord opposes the grant of a new tenancy either by reference to the grounds set out in s.30(1) of the Act or any other grounds upon which the landlord intends to rely; and
- (iii) the terms of any new tenancy that the landlord proposes in the event that its application fails.

Acknowledgment of Service

The requirements in respect of the contents of the acknowledgement of service have also changed in order to reflect the different types of claims which can now be made. The prescribed form for the acknowledgement of service depends upon whether the claim is opposed or unopposed. In general, the requirements for the acknowledgement of service are designed to ensure that all of the information set out above is disclosed in either the claim form or the acknowledgement of service.

Once the acknowledgement of service has been filed the court will give directions.

Evidence

There is no longer a requirement on the parties to serve evidence at an early stage in order to enable the court to give further directions in the matter, presumably because the relevant information is now contained in the claim form and acknowledgement of service. Instead, if the claim is unopposed, no evidence needs to be filed until the court so directs. Where the claim is opposed, the parties are required to serve evidence in accordance with directions from the court and the landlord is required to serve its evidence first, which reflects the practice which developed under the previous rules.

The grounds of opposition are now automatically tried as a preliminary issue unless it is unreasonable to do so.

Stay

As the parties no longer have to issue an application to the court within 4 months from the date of service of the s.25 notice or s.26 request, the defendant no longer has right to request an automatic 3 month stay.

Interim Rent

An application for interim rent can be made in proceedings for the grant of a new tenancy or the determination of the tenancy by way of the claim form, acknowledgment of service or application notice.

Where an award for interim rent has been made and a new tenancy granted to the tenant by order of the court but the tenant applies for a revocation of that order or the parties agree not to act upon it, a fresh application for interim rent can be made by way of application notice in the original proceedings.

In addition, either party can make an application for interim rent by way of a Part 8 claim even where no proceedings for a new tenancy or for the determination of the existing tenancy have been commenced or where those proceedings have been determined, as long as the application is made within 6 months from the termination of the tenancy.

In light of the fact that an application for interim rent can now be made up to 6 months after the termination of the tenancy those acting for tenants need to ensure that if a claim for a new tenancy is settled, the issue of interim rent is addressed in the settlement even where no application for interim rent has been made in those proceedings. If not, the tenant may well find himself faced with an application for interim rent after the consent order has been entered into.

RECENT CASES

Felber Jucker, already referred to, appears to be the only reported decision on the operation of the new regime. There have, however, been four recent decisions of some interest.

Parsons v. George [2004] EWCA Civ 912

The landlord served a s.25 notice on the tenant and then transferred the freehold interest in the property to a third party. The tenant then issued a claim for a new tenancy but mistakenly named the original landlord as the defendant. After the time limit for making the application to court had expired the tenant became aware of its mistake and applied to amend the name of the defendant to that of the third party.

The judge at first instance held that the court did not have power to make the amendment as the 1954 Act was not an enactment which permitted the change as required under CPR 19.5. The Court of Appeal disagreed and held that as applications by a claimant, who was seeking a new tenancy, for permission to change the parties after the expiration of the limitation period were not expressly prohibited by the 1954 Act, the request could be granted if it satisfied the requirements of CPR 19.5.(2) and (3). These requirements were satisfied where the claimant tenant was able to show that it intended to sue the landlord but by mistake named the wrong person as the landlord and the application was made to substitute the name of the correct landlord.

This decision accords with the relevant practice pre-CPR and will continue to be of use where the application is made at the end of the amended limitation period.

Davy's of London (Wine Merchants) Limited v. City of London Corporation [2004] EWHC 2224

The tenant served a s.26 request and applied to the court for a new tenancy. The landlord did not oppose the grant of a new tenancy but wanted to incorporate a redevelopment break clause into the lease. The Judge at first instance ordered that a new tenancy should incorporate the redevelopment break clause which would be exercisable after the first 5 years of the term, on 11 months notice. In reaching that decision he took into account the landlord's plans for the redevelopment of the site and surrounding area. The landlord appealed contending that, in the light of evidence relating to events which took place after the last hearing, the break clause should be operable earlier and at shorter notice.

On appeal the court, exercising its discretion, gave the landlord permission to rely upon the new evidence. This, it was held, did not necessarily mean that the appeal should take the form of a rehearing, rather than a review of the judge's decision; but in the particular case, where the new evidence included additional disclosure and was challenged by the respondent, the appeal was by way of rehearing. In the light of the fresh evidence, the judge's decision was varied to permit the exercise of the break clause by notice served on or after 1 July 2007.

Brighton & Hove County Council v. Collinson [2004] EWCA Civ 678

The Council agreed to grant a lease to Galaxi 3 Limited on the basis that it would be excluded from the provisions of the 1954 Act. The parties duly applied to the court for an order under s.38 of the 1954 Act authorising the exclusion of the tenancy from the protection of the 1954 Act. After the order was granted the Collinson brothers decided to take the lease in their own names rather than in the name of their company.

The Collinson brothers then claimed that they were entitled to a new lease as there had been no order authorising the exclusion of the lease granted to them personally: the only order related to the grant of a lease to Galaxi 3 and such a lease was never entered

into. The Court of Appeal rejected that argument and held that the lease was excluded from the protection of the Act.

This decision appears to go further than that in *Receiver for the Metropolitan Police District v Palacegate Properties Ltd*⁵ where the Court of Appeal sanctioned a departure from the terms of the lease which was authorised by the court. However, it should be noted that the application of this decision is likely to be limited to circumstances where, as here, both parties to the lease knew that it would be excluded from the protection of the 1954 Act.

As has been considered, orders authorising the exclusion of the Act are no longer required after 1 June 2004: under the new regime the parties are able to contract out of the Act where the landlord serves a warning notice on the tenant and, thereafter, the tenant signs the appropriate statutory declaration. However, the decision may continue to have some relevance to the new regime. For example, if the names of the parties to the proposed lease change after the tenant has signed the statutory declaration but before the lease is entered into, it is not yet clear whether the landlord is required to serve a fresh warning notice and obtain another statutory declaration or whether it can rely upon the principles applied in *Collinson and Palacegate*.

Wessex Reserve Forces & Cadets Association v. White [2005] EWHC 983 (QB)

The landlord opposed the grant of a new tenancy of land used for business purposes on the ground in s.30(1)(f) of the Act. With the exception of a small stone shed, all the structures on the site had been installed by the tenant. The tenant contended that the structures were chattels and that the landlord could not found his opposition on an intention to demolish them. The landlord claimed that the structures were tenant's fixtures which formed part of the land. To circumvent a clause of the lease which required the tenant to remove, at the termination of the tenancy, all objects that were

⁵ [2001] Ch 131

part of the land, the landlord unilaterally executed a deed attempting to release the tenant from this obligation.

The court found that the some of the structures were chattels, and some tenant's fixtures. The "premises comprised in the holding" for the purposes of s.30(1)(f) included the fixtures. It was clear, the court held, that the landlord had a genuine intention to demolish these. However, they had failed to show that they had a reasonable prospect of being in a position to do so: the evidence showed that the tenant would remove the fixtures at the end of the tenancy. The tenant was, moreover, entitled to remove them under the relevant clause of the lease: the landlord could not, as it had purported to do, unilaterally strike out that clause.

The stone shed which had existed at the date of the lease did not itself amount to a substantial part of the premises and the demolition of it alone was not sufficient for the purposes of s.30(1)(f). The landlord's opposition failed.