

Law Commission Review of the Landlord and Tenant Act 1954. Consultation Paper 1: models of security of tenure

Response from Propertymark

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Background

1. 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.¹

Consultation – overview

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

¹ <https://www.propertymark.co.uk/>

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.

Questions

Q1. 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 2006². 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.

Q2. 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:

(1) mandatory security of tenure;

(2) no statutory security of tenure (abolition);

(3) contracting-in (so that a tenancy only has statutory security of tenure if the parties opt into a statutory scheme); or

(4) contracting-out (so that a tenancy has statutory security of tenure unless the parties opt out of a statutory scheme) (the current model).

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:

² [Government of Wales Act 2006](#)

- 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.

Q3. We invite consultees' views, together with evidence wherever possible, as to what impact a change to the model of security of tenure will have on the parties to tenancies and their advisors; and on the commercial leasehold market.

6. We have outlined the 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).³
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

³ [Non-domestic private rented property: minimum energy efficiency standard - landlord guidance - GOV.UK](#)

could be in the form of improved access to Alternative Dispute Resolution services, which are currently underutilised.

Q4. 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.

Q5. 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.

Q6. We invite consultees' views, together with evidence wherever possible, as to what impact a change to the scope of the 1954 Act would have.

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.

Q7. 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.