Security of tenure for "contracting out" – the latest Law Commission update



In our previous article, "Security of tenure: out with the old and in with the new?", we wrote about the proposed Law Commission review of the security of tenure provisions in the Landlord and Tenant Act 1954 (the "**Act**"). The first step of that review has now taken place, and the Law Commission's long-awaited interim statement has landed. Contrary to some speculation, "contracting out" of the Act is here to stay. For those keeping a watchful eye on commercial leasing, this means evolution rather than revolution.

Remind me – what's all the fuss about?

The Act's security of tenure provisions, in force for over 70 years, have often been criticised as outdated and unfit for today's commercial property market. Currently, most business tenants with leases longer than six months automatically have security of tenure (that is, a right to renew the tenancy on lease expiry). However, landlords and tenants have the ability to depart from this default position through a formal, process-heavy and somewhat cumbersome, procedure known as "contracting out", which requires the landlord to serve a warning notice in a prescribed form on the tenant (to which the tenant must respond by way of a declaration or statutory declaration).

The Law Commission's 2024-25 consultation focused on whether the current regime should continue in its present form or give way to something new.

1. Market appetite: evolution, not revolution

The consultation tested the market's appetite for change, and invited consultation participants to consider three alternatives:

(i) abolishing security of tenure altogether;

(ii) introducing a "contracting-in" regime; or

(iii) making security of tenure mandatory.

The Law Commission also considered whether the existing exclusions from the security of tenure regime – such as agricultural tenancies – and the current qualifying lease term (of six months) remain appropriate.

2. What did the Law Commission conclude?

The Law Commission's statement made three points clear – in its view:

(i) **the current "contracting-out" model should remain** – it enjoys the broadest support and many consultees felt it best balances the interests of landlords and tenants;

(ii) **the list of excluded tenancies** (such as agricultural tenancies) **should remain unchanged**; and

(iii) **the minimum qualifying term for security of tenure should be increased from six months** to give greater flexibility to the short-term lettings market – though the Law Commission is yet to form a view on what the threshold should be raised to (it has indicated two years – in its second consultation, the Law Commission expects to consult further on this).

The upshot? For now, it is business as usual. "Contracting out" looks set to remain, with a gentle refresh – rather than a drastic reinvention – on the horizon.

3. What's next? Simplification, not revolution

Once the full responses to the first consultation have been published, the sequel will follow: the Law Commission will launch a second, more technical consultation. The focus of this is expected to be on the nuts and bolts of the "contracting out" process – specifically, whether the current warning notice and statutory declaration requirements (widely seen as process-heavy, and ripe for administrative errors) can be streamlined or even replaced by a straightforward clause in the lease (confirming that the tenant will not benefit from security of tenure).

4. Looking ahead

There has been significant debate in the market about whether "contracting out" should be abolished or replaced with another model – but it is now clear that wholesale reform is off the table. This is not hugely surprising, given the disruption such a change would likely bring to the market – and those concerned by this can now breathe a sigh of relief. The good news is that a door has been opened for modernisation and simplification of the current process, which is likely to be welcomed by landlords and tenants alike.

Once the second consultation is complete, the Law Commission will publish a set of recommendations – and it will then be over to the Government to decide whether to change the law.

Given that the Government is currently focused on residential – rather than commercial – property reform, it remains to be seen whether these proposals/reforms will receive sufficient Parliamentary time. So, while we may be inching toward long-awaited change, it could be some time before any reforms are introduced.

If you wish to discuss any of the issues covered in this article, please reach out to your usual Linklaters contact.

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