

The rise and fall of the Landlord and Tenant Act 1954

Is the sixtieth anniversary of the Act a cause for celebration or commiseration?

Jon Mowbray and **Ryan Diamond** consider its strengths and weaknesses

As the Landlord and Tenant Act 1954 celebrates its 60th birthday this year, there is evidence of a growing feeling that it has had its time and that its demise would not be mourned.

Chronic shortage

The Act provides a tenant occupying premises for the purpose of its business with a statutory right to renew its lease on substantially the same terms at a market rent. While the landlord can oppose a renewal, it can only do so on limited statutory grounds, for example that it intends to occupy the premises itself or redevelop them.

If renewal is successfully opposed on such grounds then the landlord is liable to compensate the tenant.

The Act was introduced in the post World War II period when there was a chronic shortage of commercial property, particularly in those towns and cities that had borne the brunt of the wartime bombing raids. The concern was that tenants were vulnerable at the end of their contractual term to having to meet significantly increased rents in order to remain, or risk losing the benefit of goodwill and improvements made to the premises upon vacation.

Those who are pressing for abolition of the Act argue that the economic environment is very different now and that the renewal of leases should be a matter for the market free from statutory intervention.

They point to Scotland and continental jurisdictions as evidence that a free-market approach works effectively and fairly for both landlords and tenants. Most vociferous appear to be landlords of retail property, who consider that

they are faced with the double whammy of lease lengths getting shorter, but tenants still enjoying the protection of the Act.

Such landlords complain that not only does this affect the value of their reversion, but also restricts their ability to effectively manage their assets. Landlords of shopping centres and significant interests in high streets are prevented, they claim, from being able to manage the tenant mix so as to maximise footfall which they ultimately see as to the benefit of the retail occupiers.

They also remark that many retailers are large, powerful organisations and are far removed from the downtrodden shopkeepers that they say the Act had in mind.

Hansard evidences that in the debates in both the Commons and the Lords in the early 1950s



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there was a relative consensus that security of tenure should be granted to retailers. It was the proposal to extend this to 'professional occupiers' that was more controversial. The view was expressed by some that the likes of accountants and solicitors generated little goodwill – in their premises rather than generally.

Fit for purpose

Realistically, it is difficult to see there being sufficient political will, whatever the outcome of the election next year, to abolish the Act. Energy may therefore be better directed to considering how the Act can be reformed to make it more fit for purpose in the 21st century property market.

The Act has undergone reform on two previous occasions. Most fundamentally, the Law of Property Act 1969 introduced a procedure whereby a court could permit the exclusion of a tenant's right to security of tenure, thereby giving birth to the 'contracted out' lease.

Increasingly, however, it was considered that the court process introduced unnecessary expense and delay. It was proposed instead that it be replaced with a notice and declaration procedure whereby specific health warnings would be given to the proposed tenant about what rights he would be giving up by agreeing to a contracted-out lease.

These changes were introduced by the

Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 and came into effect on 1 June 2004. While these procedures are now very familiar to practitioners, they are often seen as, at best, an administrative burden and, at worse, presenting risks that leases will not be effectively contracted out, particularly if there is any change to the form of the lease at the eleventh hour.

Absent of abolition, the most significant change would be to reform the Act so that parties had to 'contract in' to its security of tenure provisions rather than 'contract out'.

A particular attraction of such a proposal would be to remove the concern that occupiers may inadvertently obtain statutory protection.

For example, where parties agree what they consider to be a licence to occupy commercial space, but it being subsequently determined that what had, as a matter of construction, been granted was a tenancy - a licence as opposed to a tenancy not attracting the protection of the Act.

Another example is where a tenant remains in occupation of premises following the expiry of a contracted-out lease, terms are agreed for a new lease outside the Act, but this is not completed.

As time passes, the risk increases of the occupation being construed as a periodic tenancy inside the Act.

The objection to such a change would be that

those tenants who do not enjoy the benefit of professional advice may not appreciate the potential to enjoy the benefits of the Act. This really comes back to the original policy objectives behind the introduction of the Act in relation to protecting what were perceived as 'vulnerable' tenants.

However, it could be argued that such a tenant is getting exactly what they think they are getting. If, for example, a tenant is offered a lease of premises for a term of, say, three years, they enter into the arrangement knowing that at the end of that period they will have to vacate or come to terms with the landlord and they manage their business accordingly.

Potential abuse

If this is a step too far, then perhaps the introduction of a further statutory ground of opposition to the grant of a new tenancy could be introduced to address the complaint raised, particularly as regards retail landlords, referred to above. Could a landlord be able to oppose renewal on a ground akin to 'good estate management'?

This would require careful drafting as there is clearly a risk of it introducing an unwelcome degree of uncertainty and potential abuse. However, it is not unknown territory – there already being case law on the subject in the context of landlords relying on a similar ground to oppose applications to assign or sublet.

Reliance on such a ground should probably entitle a tenant to compensation and this would be likely to provoke a review of the current provisions which entitle the tenant to one times the rateable value or two times if the business has been in occupation for more than 14 years.

This package was viewed as 'arbitrary' even when the Act was introduced, given it took no account of the actual losses suffered by the tenant. It does have the attraction of certainty over a more subjective analysis of compensation on a case-by-case basis, but even then does one or two times rateable value remain appropriate or should the multipliers be reviewed?

What the above highlights is that it is difficult to tinker with one part of the Act in isolation. This may support those who are in the 'if it ain't broke' camp. However, it is considered that the Act, at its advanced age, requires at least an MOT to ensure

that it is still roadworthy. SJ



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