



SELBORNE CHAMBERS

Law Commission Review of Business Tenancies

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Robert Brown notes that changes may be coming to the law on business leases.

The Law Commission has announced (<https://www.lawcom.gov.uk/project/business-tenancies-the-right-to-renew/>) that it is to carry out a review of Landlord and Tenant Act 1954, Pt 2, following a request by the Department for Levelling Up, Housing and Communities. The following terms of reference for the review have been agreed between the two bodies (<https://www.lawcom.gov.uk/project/business-tenancies-the-right-to-renew/>)

“[T]o conduct a wide review of Part 2 of the Landlord and Tenant Act 1954 with a view to modernising commercial leasehold legislation, with an emphasis on:

creating a legal framework that is widely used rather than opted out of, without limiting the rights of parties to reach their own agreements, by making sure legislation is clear, easy to use, and beneficial to landlords and tenants;

supporting the efficient use of space in high streets and town centres, now and in future, by making sure current legislation is fit for today’s commercial market, taking into account other legislative frameworks and wider government priorities, such as the ‘net zero’ and ‘levelling up’ agendas; and fostering a productive and beneficial commercial leasing relationship between landlords and tenants.”

The Government has asked for the review as part of its Anti-Social Behaviour Plan, with the Parliamentary Under Secretary for Levelling Up, Dehenna Davison, saying that the review will “help to make leasing clearer and more easily accessible to small businesses and community groups, reducing the growing number of vacant properties on our high streets and the anti-social behaviour that comes with it”. This perhaps fits with the Government’s Levelling-up and Regeneration Bill

<https://bills.parliament.uk/bills/3155>), which is currently going through Committee Stage in the House of Lords, and includes provisions allowing local authorities to conduct rental auctions of privately-owned high street premises if they have been vacant for over a year (interestingly, cl.194 of that Bill provides that tenancies granted following such auctions are excluded from ss.24–28, 1954 Act).

Any changes are unlikely to be implemented very soon: the current intention is to publish a consultation paper “by December 2023”. Once that has been published, the Law Commission will obviously need to allow sufficient time for interested parties to respond and will then to consider those responses in order to develop proposed policies and a report (and any draft Bill). All of those steps may take some considerable time. By way of example, the Law Commission’s consultation on easements, covenants, and profits à prendre was published in February 2008, with a final report published in June 2011 (a follow-up project on rights to light was completed in 2014). After that, implementation through legislation will take even longer, although it is far from inevitable that any recommendations would be accepted and implemented (e.g. the draft Law of Property Bill produced by the Law Commission to deal with easements, covenants, and profits à prendre has still not been introduced).



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