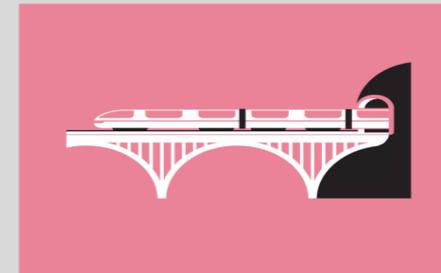
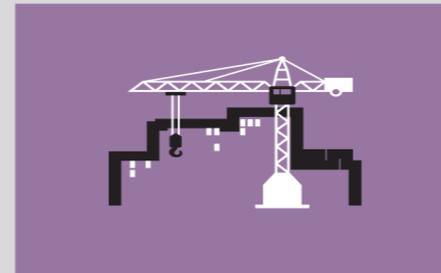


# How will the Law Commission resolve tensions, and with what impact on practice and market behaviour?

*A Paper for The White Paper Conference Company  
Commercial Property Leases Conference 16 May 2024*

**Guy Fetherstonhaugh KC**



Falcon Chambers

[www.falcon-chambers.com](http://www.falcon-chambers.com)



## Experts say review of Landlord and Tenant Act is long overdue

□ The Law Commission's review is welcomed, but opinion is divided about whether it will make a real difference

**Tim Clark**

The 1954 Landlord and Tenant Act has been a mainstay of commercial leases for more than 70 years. However, with time comes age and, according to the government, laws that were last reviewed more than 20 years ago are in dire need of an overhaul.

In confirming last month that the government had asked it to review the Landlord and Tenant Act, the Law Commission said those who used the legislation considered it "inflexible, bureaucratic and out of date, causing extra cost and delay for both landlords and tenants".

It added that the act could also prevent space on high streets and other commercial centres from being occupied.

According to Daniel Levy, head of property at Mishcon de Reya, the act has two key defects: "The first defect is practical; a contested renewal can take



Regeneration game: a desire to get vacant shops back into use is one reason cited for the review of the act

DONNA GIBBS/SHUTTERSTOCK



**Melanie Leech**  
BPF

“Outdated legislation has hindered town centre regeneration”

step in the right direction.

"Outdated legislation has hindered town centre regeneration for years, and it's great to see the government finally make good on its 2020 promise to review it," she says,

"Ideally, the review would be of all commercial tenancy legislation, but even a more limited review of the 1954

the review and helping to modernise the commercial lease system."

### Levelling up

While it is beyond doubt that the act is due a review, the Law Commission's announcement contained references to the government's levelling-up agenda, in particular town

# How long would reform take?



## Comparator: the 2003 reforms

1. Papers discussing reform were prepared by the Law Commission in 1988 and 1992.
2. The Department conducted two consultation exercises in 1996 and 2001.
3. The Department then modified its proposals in the light of the consultation.
4. 2003: the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003.

# Progress this time ...





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**2021:** The Law Commission publishes its ideas for its 14th programme of reform, including reforms to the 1954 Act.

**March 2023:** The project is referred to the Law Commission by the Department for Levelling Up, Housing and Communities, having been announced as part of the Government's Anti-Social Behaviour Action Plan.

**April 2023:** Law Com: “We are in the early stages of the project and are working towards the publication of a Consultation Paper (with an aim for its publication in late 2023).”

**2024:** “We anticipate publication of our consultation paper in Autumn 2024.”

**May 2024:** “maybe next year ...?”

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## Business Tenancies: the right to renew

### Current project status



**Ensuring Part 2 of the Landlord and Tenant Act 1954 works for today's commercial leasehold market.**

Our wide-ranging review will consider in detail how the right to renew business

### Project details

**Area of law**  
Property, family and trust law

**Commissioner**  
Professor Nicholas Hopkins

# Why the delay ...?



# Topics for reform:



**s.23: Tenancies to which Part II applies**

**s.24A: Interim Rent**

**s.30: Grounds of opposition**

**s.34: Rent**

**s.35: Other terms**

**s.38A: Contracting out**

**PACT**

**s.23: Tenancies to which Part II applies/  
s.26: Tenant's request for a new tenancy**



**Fixed  
Term**

*Vs*

**Periodic  
Tenancy**



# s.24A: Interim Rent



1954 : 😄 ... 0

1969: 😲 ... 226

2004: 😵 ... 1,183

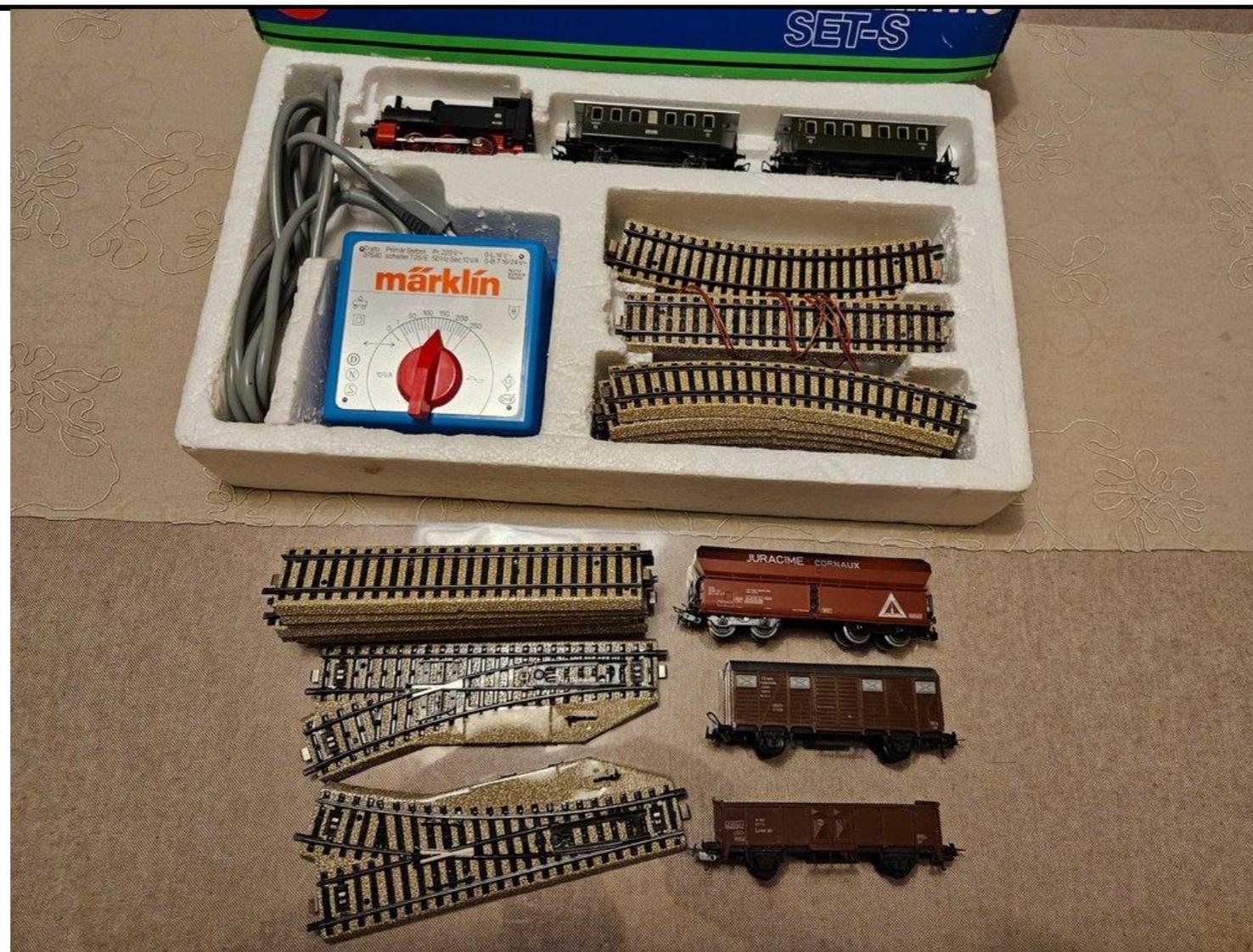
# s.30: grounds of opposition



# s.34: Rent



# s.35: Other terms



# s.38A: Contracting out



## IMPORTANT NOTICE

**You are being offered a lease without security of tenure. Do not commit yourself to the lease unless you have read this message carefully and have discussed it with a professional adviser.**

Business tenants normally have security of tenure – the right to stay in their business premises when the lease ends.

**If you commit yourself to the lease you will be giving up these important legal rights.**

- You will have **no right** to stay in the premises when the lease ends.
- Unless the landlord chooses to offer you another lease, you will need to leave the premises.
- You will be unable to claim compensation for the loss of your business premises, unless the lease specifically gives you this right.
- If the landlord offers you another lease, you will have no right to ask the court to fix the rent.

It is therefore important to get professional advice – from a qualified surveyor, lawyer or accountant – before agreeing to give up these rights.

If you want to ensure that you can stay in the same business premises when the lease ends, you should consult your adviser about another form of lease that does not exclude the protection of the Landlord and Tenant Act 1954.

If you receive this notice at least 14 days before committing yourself to the lease, you will need to sign a simple declaration that you have received this notice and have accepted its consequences, before signing the lease.

**But if you do not receive at least 14 days notice, you will need to sign a "statutory" declaration. To do so, you will need to visit an independent solicitor (or someone else empowered to administer oaths).**

Unless there is a special reason for committing yourself to the lease sooner, you may want to ask the landlord to let you have at least 14 days to consider whether you wish to give up your statutory rights. If you then decided to go ahead with the agreement to exclude the protection of the Landlord and Tenant Act 1954, you would only need to make a simple declaration, and so you would not need to make a separate visit to an independent solicitor.



The Law Society

2nd edition, May 2018

# Surveyors and lawyers involved in tenancy renewals under PACT

Joint guidance note from the Law Society and RICS,  
England and Wales



**Guy Fetherstonhaugh KC**

**Falcon Chambers**

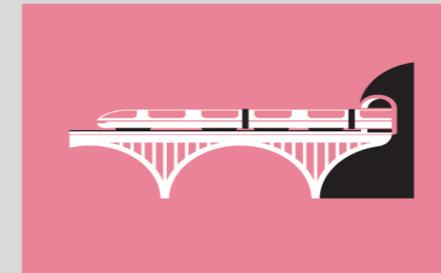
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