UPWARDS AND DOWNWARDS RENT REVIEWS

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How, legally and practically, will the proposed abolition of upwards-only rent reviews play out, and what substitute mechanisms will parties move to instead?

Introduction:

Just before the Summer recess last year, and slotted in right at the end (literally – as the very last section, and the last of numerous schedules) of the English Devolution and Community Empowerment Bill, the Government (acting through the then Secretary of State for Housing, Communities and Local Government, Angela Rayner) proposed a ban on upwards only rent review clauses ("UORR") in commercial leases. The Bill received Royal Assent on 19 April 2026, but is not yet fully in force.

This paper explores:

- the current leasing landscape in England and Wales;
- why the Government is taking this action;
- the remaining steps for the ban to make it into law;
- exactly what is the mechanism that is proposed to effect a ban;
- To what agreements will the ban apply;
- how this contrasts with what is going on in the rest of the world;
- what is the likely effect on the leasehold market; and
- how the market might seek to defeat or ameliorate the ban.

(1) The current leasing landscape in England and Wales

A rent review clause in a lease is basically a contractually agreed mechanism to adjust rents periodically, often based on prevailing market conditions or calculated according to a method agreed between landlords and tenants. Rent review clauses are commonly included in leases to allow for adjustments, and their operation varies depending on the terms agreed by the parties. For example, reviews can be index-linked, or based on an open market review, or perhaps a combination of both.

Rent review clauses in commercial leases very often provide for a review to be undertaken, or a calculation performed, before being compared to the existing or

"passing" rent payable. The higher of the two figures is then paid by the tenant until the next review date. This, by definition, is an upwards only rent review: the rent payable can only stay the same or increase, it cannot go down.

The government has now put in place statutory provisions to override such contractual agreements. There is some precedent for this: in the agricultural sector, rent reviews are already governed by a statutory framework. Default rent review arrangements apply under the Agricultural Tenancies Act 1995 unless the parties agree otherwise and this Act prohibits UORR, ensuring that rent adjustments can reflect market conditions, including potential reductions.

However, as this paper explores, the introduction of a statutory framework outside the agricultural sector and into commercial leases has much wider implications.

(2) Why is the Government taking this action?

Well, the Government has said[1] that banning UORR would:

> "*Help keep small businesses running, boost local economies and job opportunities and help end the blight of vacant high streets and the unacceptable anti-social behaviour that comes with them*".

That is an ambitious claim for a technical ban on a minor aspect of rent review drafting. It is all the more surprising to find this being said in circumstances where, although the Government says that it consulted before proposing a ban[2], I and others have been quite unable to find *any* evidence of prior consultation.

I have been able to find a very short Impact Assessment dated 15 May 2025, and a Regulatory Policy Committee opinion dated 18 June 2025. The former rehearses old tropes, apparently without supporting evidence. Example:

> "*Upwards Only Rent Review (UORR) clauses artificially manipulate the market to ensure rent prices always favour landlords, regardless of market conditions. This is not only unfair to tenants, but the manipulation of the market creates market inefficiencies …*"

The latter is neither well researched, nor evidenced, nor persuasive. It accepts, for example:

> "*There is limited data quantifying the stated negative impacts on aspects like rents, profits and high street vacancy rates.*"

So, to the question, why is the Government taking this action, I am afraid that I cannot say (although I set out my surmise below). The questions whether a ban is needed;

[1] In the press release accompanying the Bill on 10 July 2025.

[2] Despite a minister saying in response to a question that the Government undertook extensive research and engagement in advance.

whether it is something that the market has been demanding; whether it will have any impact at all, harmful or positive – all obvious questions to which thorough prior consultation would have revealed answers – at the moment remained unasked and unanswered.

It is of course fair to add that a ban has been considered in the past: a previous Government had considered a ban around 20 years ago, and a more recent Private Members' Bill proposing a similar ban had been introduced in 2022, although it did not make significant Parliamentary progress

At best, it seems like the proposed ban is just a crowdpleaser – although how large is the crowd, compared to the opposing mass of those likely to be displeased by the ban, is another unknown, at least at this stage.

Doing my best, and attempting to replicate the Government's undisclosed and unarticulated thought processes in favour of the ban, here is what I consider to be the reason why a ban on UORR might be said to be a good thing.

In Basingstoke and Deane BC v Host Group [1988] 1 WLR 348, Nicholls LJ (with whom Slade and Glidewell LJJ agreed) said:

> "… it is proper and only sensible, when construing a rent review clause, to have in mind what normally is the commercial purpose of such a clause. That purpose has been referred to in several recent cases, and is not in doubt. Sir Nicolas Browne-Wilkinson V.-C. expressed it in these terms in British Gas Corporation v Universities Superannuation Scheme Ltd [1986] 1 WLR 398, 401:
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> > "There is really no dispute that the general purpose of a provision for rent review is to enable the landlord to obtain from time to time the market rental which the premises would command if let on the same terms on the open market at the review dates. The purpose is to reflect the changes in the value of money and real increases in the value of the property during a long term."

To much the same effect, in Equity and Law Life Assurance Society plc v Bodfield Ltd [1987] 1 EGLR 124, the Court of Appeal said:

> "There is no doubt that the general object of a rent review clause, which provides that the rent cannot be reduced on a review, is to provide the landlord with some measure of relief where, by increases in property values or falls in the real value of money in an inflationary period, a fixed rent has become out of date and unduly favourable to the tenant."

Interestingly, these authorities appear to contemplate only *increases* in rental value, and not decreases. A casual reading might therefore suggest that UORR are fine. But of course, they *appear* to be anything but fine, because in a falling market they have the effect that a tenant will *not* end up paying a market rent upon review.

I say "*appear*", because I take the view that to say that an UORR unduly and inevitably favours landlords may be too simplistic an analysis. Consider: if UORR are banned, a landlord may resort to other ways of securing its position, such as charging a higher initial rent, or a stepped rent. Failing that, a landlord may be unwilling to grant a lengthy term to its tenant if the rent is not UORR, with the result that the tenant's security of tenure will be less than it desires. Alternatively, the landlord might propose indexation (which the ban does not prohibit) – a bargain which rarely favours the tenant. I explore these points in more detail below.

(3) Will the ban be implemented as it stands?

The ban on UORR was contained in a big bill, sponsored by the former Deputy Prime Minister Angela Rayner before her resignation, and it contains many Labour party manifesto issues. The Bill is a complicated and extensive Government-sponsored bill and therefore it was always likely that it *would* pass into law – as indeed it now has.

That doesn't necessarily mean that the UORR provisions will be brought into force in exactly their current shape, depending as they do upon secondary legislation – but my sense is that attempts to water down different parts of the Bill will be unlikely to prosper, without a huge amount of lobbying and reasoned analysis why a ban is inappropriate in its proposed form. Many groups in the property industry have already lobbied for the removal or amendment of the provisions or the inclusion of particular exceptions. We shall have to see how effective they are.

For now, the Government's position is that it remains "*committed to formally consulting with stakeholders before the secondary legislation is enacted, to define the possible parameters for implementing caps and collars once the ban is in effect*."[3]

(4) Exactly what is the mechanism that is proposed to effect the ban?

Schedule 37 to the Bill adds two schedules to a very old friend – Part II of the Landlord and Tenant Act 1954, which contain the proposed ban. These two new schedules would be 7A and 7B.

Schedule 7A contains four conditions which, where they apply, will mean that the schedule applies to that particular lease and therefore the ban on upwards only rent review clauses can apply. In summary in order for the ban to apply there must be:

- A business tenancy;
- granted after the date the provisions of the Bill come into force;
- which contains "relevant rent review terms"; which
- include two specific elements.

Looking briefly at some of the key points on those four conditions:

"A business tenancy":

[3] According to an email from

The lease must be one to which Part 2 of the Landlord and Tenant Act 1954 applies.

This does **not** mean that it only applies to leases which have security of tenure under that Act. With very few exceptions, it applies to *all* leases where the tenant is in occupation of the premises for the purposes of its business, whether contracted out of the statutory renewal provisions of that Act or not.

One of the interesting bits to pause on here is the position of a tenant who has sub-let the whole. As we know from a variety of case law under the 1954 Act, that tenant is not "in occupation for the purposes of its business". Therefore, as currently drafted, the legislation creates something of a loophole. If the headlease contains an UORR clause, it appears as though that will **not** be rendered ineffective by the legislation. So the Landlord could use that UORR clause to increase the headlease rent, but the tenant would not be able to rely on any similar clause in the sub-lease provided that the sub-tenant is in occupation for business purposes.

And whilst we're considering sub-letting – a slight detour from considering the conditions in Schedule 7A – most leases require a tenant to sublet on the same or similar terms to that of the lease. So that could mean that a tenant has to include what might be ineffective upwards only rent review provisions in a sublease to fulfil the conditions around subletting in its own lease. Rather odd.

We should say that the Government is alert to these points, and proposed some amendments during the committee stage of the Bill that would deal with them.

"Granted after the date the provisions of the Bill come into force":
The ban will not apply to existing leases or to a lease granted under a contract entered into before the legislation comes into force.

Renewal leases granted after the date of the legislation though WILL be subject to the ban, so the usual principles in a 1954 Act renewal about the starting point for the new lease being the terms of the old lease will not apply to any existing UORR clause in an expired lease.

"relevant review terms":
In summary, there will be "relevant review terms" if the amount of rent will or may change during the term of the lease and that changed rent isn't known and can't be determined at the date the lease is granted.

This will be so whether or not the terms are contained in the lease itself – so it would still be caught if any UORR was in a side letter, a personal agreement, or in some overarching commercial agreement perhaps. Then those "relevant rent review terms" themselves are where the amount of rent will or may change and isn't known and can't be worked out at the beginning of the lease – so a lease with a stepped rent – this much the first year, this much the second year and so on – that arrangement wouldn't be caught. Nor would fixed indexation – e.g. a fixed 5% increase per year – because that can be calculated at the time of the grant of the lease.

"the relevant review terms contain two specific elements":
First - the rent (referred to in the Bill as "the reference amount") is determined by reference to 1) inflation, any other index or multiplier, or 2) a hypothetical market rent, comparables or tenant's turnover; and
Secondly - the amount of the new passing rent could be different from the reference amount (for example a clause which provides for the higher of the result of that calculation/determination or the current passing rent to be paid as the new passing rent).

There's mention of the rent being determined by reference to the amount of the tenant's turnover – it doesn't say turnover generated at the premises demised by the lease but presumably so given that is how leases are drafted – but again the draft legislation could be clearer on that point.

Then if those four Conditions are met – 1954 Act, post-commencement, a rent that might or will change and isn't known at the start of the lease, that changed rent is by reference to indexation or market review or tenant's turnover, but the new passing rent will or could be different from that reference rent – if those four conditions are met Schedule 7A applies - and in particular the all-important paragraph 6.

Paragraph 6 applies in relation to a particular rent review if the amount of the new passing rent determined in accordance with the relevant rent review terms would be larger than the reference amount. It applies also in cases where the amount of the new passing rent would be smaller than the rent under review but still larger than the reference amount. And if paragraph 6 applies the relevant rent review terms are of no effect to the extent that they would result in the new passing rent being larger than the reference amount. Instead the amount of the new passing rent is to be the same as the reference amount.

So considering the steps of paragraph 6 in turn: It applies if having done the indexation, the valuation, the maths of turnover, (and so worked out the "reference amount") the rent review drafting would make the new passing rent (the rent the tenant will pay from the review date onwards) greater than that reference amount - perhaps by saying that the new rent can't be less than the rent payable immediately before the rent review date. It's not an actual ban on upwards only rent review drafting – paragraph 6 simply renders ineffective any such drafting to the extent it would mean that the new passing rent is higher than the calculated rent. And it's not just a ban on upwards only rent review, it also renders ineffective drafting that might look to limit how far a rent might fall at review time.

If we take the most common rent review mechanisms presently seen in turn we can see how paragraph 6 will affect them. A typical open market rent review will work just fine, save for the line that states the new passing rent will be the higher of the rent reserved immediately before the relevant rent review date and the reviewed rent – the reviewed rent will just be the new passing rent, and the line about higher will be ineffective. The notional amount calculated as rent for the premises on a hypothetical letting can still be calculated on the basis of assumptions and disregards, but once that valuation has been done, the relevant rent review can't seek to make the new passing

rent a higher figure. Of course the new market rent might well be higher than the present passing rent if the market has risen in which case that new higher rent will be payable. If the market has fallen though the "higher of" drafting will be ineffective; the new passing rent will be the assessed market rent, regardless of the drop.

(5) To what agreements will the ban apply?

This is tricky. It is necessary to distinguish the following chronologies:

- First, the ban does not apply to existing leases, so in that sense it is not retrospective. Thus, a lease granted on 16 March 2026 with UORR will be allowed to proceed, and the rent will be upwards only in accordance with its terms.
- Ditto in relation to a lease granted on or after 17 March 2026, pursuant to an agreement for lease entered into before that date: the rent in the new lease will be upwards only.
- But, as a result of a Lords amendment to deal with the likely incidence of last-minute surrenders and regrants or reversionary leases, if a lease containing UORR and an option to renew is entered into from ***17 March 2026*** (even if this is before the date the Act comes into force), while the rent reviews during the term will be UO, any regranted or renewed lease will take effect subject to the ban - so in that sense the Act *is* retrospective.

(6) How does a ban contrast with what is going on in the rest of the world?

The two most informative contrasts are with Ireland and Australia.

Ireland banned UORR in 2010 in the Land and Conveyancing Law Reform Act 2009 ("the Irish Act"). This prevented the operation of UORR in new leases (it was not retrospective) and, unlike the English proposals, did not prevent the inclusion of landlord-only triggers in leases, so that landlords could postpone a review where rental values were in decline. Whilst the ban had an initial effect on the Irish market, with landlords being slow to re-let, supply and demand rectified this and resulted in a relatively fast repricing of the market.

In another difference from the English proposals, the Irish Act does not expressly ban collars on how far the rent can be reduced on review. These collars were widely adopted by Irish landlords and more landlords are now including collars of very small percentages, although whether these would survive a legal challenge remains to be seen.

There does not appear to have been any real adverse impact on investment in Ireland because of the ban. When the Irish Act came into force the effects of the global recession in 2008 were still being felt and it may be that the full effect of the change in the law was masked by low values and a recovering market that attracted investment in any event.

Australia: In Australia, all states have in some way legislated to ban UORR, or reviews where the amount of a rent reduction is capped. The bans are limited to "retail leases" which is not uniformly defined in each state.

There was some difficulty based on the differing definitions of tenants and premises to which the ban on UORR applies. This appears to have been taken into account by the legislators here because, as we have already mentioned, the proposed English ban will apply to any lease to which Part 2 of the Landlord and Tenant Act 1954 applies – broadly capturing all commercial leases with limited exceptions.

Research carried out in 2007 found evidence that market reviews disappeared very quickly from Australian retail leases and landlords moved quickly to indexation and stepped rental increases.

(7) What is the likely effect on the leasehold market?

The Government's boast that the ban would "*help end the blight of vacant high streets*" suggests that the ban is intended to apply only to retail premises, stretching perhaps to banks and betting shops (which is the case in Australia – see below). But not so: the ban is intended to apply to *all* business tenancies – so, out of town retail parks; warehouses; industrial premises – everything.

I am not clear why that should be so: in general, high street retail leases are for such short terms, that a rent review clause is unnecessary. I doubt therefore that the ban will have any effect at all on the high street. To the extent that there remain legacy tenancies where the terms are longer, the ban will not affect them, because it is not retrospective.

So how much of an issue will the ban actually be in practice?

There has been a lot of discussion about the extent to which these provisions surprised the industry. It is true that there was no consultation prior to the publication of the draft bill. And, perhaps the position of these provisions, in a schedule right at the end of a Bill which is largely concerned with matters of devolution and local government, might suggest that it was not at the forefront of the drafters' minds.

As I said at the start, the impact of these provisions on the high street is unlikely to be substantial. In other sectors there have, understandably, been some concerns about how the proposals would affect investment. UORR have provided an attractive environment for large scale investment by pension funds. In the future, if the ban is brought in, then investment may slow, which will have an impact upon development, leading eventually to rising prices, as demand is squeezed.

However, some investment analysis shows that the impact of UORR clauses has actually been fairly limited, with the return on investment being only slightly enhanced by UORR clauses over and above what would have been achieved on rents without them.

Might the lack of UORR clauses in a portfolio affect investor confidence because of the potential exposure to a reduction in rents? Research from CBRE Investment Management (published in Green Street News) showed that the primary benefit of UORR is to shield investors from extreme downside risk rather than to boost returns in normal conditions.

That impact is demonstrated in the (small) number of examples of steep decline in rental values e.g. the collapse in City rents during the recession of the early 1990s where income would have fallen by c. 34p in the pound without UORR clauses.

However, the income impact of UORR clauses has generally been modest over the long term – the data suggesting there would have been an average reduction of between 1.7% - 3.1% without UORR.

So whilst the presence of ratchet clauses protected investors from an income fall in extremely challenging market conditions, it should be stressed how rare such significant drops in rental values are.

In the countries where UORR bans have been introduced (see above), there do not appear to be any particular lessons we can learn from their experiences, although the picture is a nuanced one.

(8) How might the market seek to defeat or ameliorate the ban?

Here I consider primarily indexation, turnover rents and stepped rents (although these expedients will not be relevant if the market instead simply opts for shorter terms without review).

Indexation: A rent review which provides that the annual rent is subject to indexation – perhaps tracking the retail or consumer prices index – wouldn't be caught if the rent review was just that and allowed the rent to fall should RPI or CPI fall. Of course usually even an indexed rent is set to be upwards only, and that element would have to be disregarded. Indexation of that sort though has **only** been negative on two brief occasions in the past many years, so effectively indexation is upwards only regardless, but tracking prices rather than rental values. The landlord ends up with an equivalent rent, but maybe not a market rent.

Landlords often say to us that they don't like indexation because they think they can do better - so moving to indexation isn't ideal for everyone.

Sometimes we see a rent review changing the rent by reference to CPI plus 1% - as Condition B refers to rent being determined by reference to inflation or any other index or multiplier it seems that CPI plus 1% or similar would be just another multiplier used to calculate your "reference amount". So if that's all – just CPI plus 1% with no "higher of that or the previous rent" then we think that's just fine. The new passing rent is calculated that way and there's nothing in the relevant rent review terms to say that the new passing rent would or could be different to the calculated

reference amount. We do think though that the draft legislative provisions could be clearer on that point. CPI+1% is becoming an increasingly common mechanism of rent review.

How about indexed rents with a cap and collar – so a rent that changes in line with CPI say, but with a cap on the increase of 4% and a collar on the increase of 1%? Well the cap will still work – the relevant rent review provisions are only rendered ineffective to the extent that they would result in the new passing rent being larger than the reference amount – but the collar wouldn't work – it is a way of keeping the rent higher than it would otherwise be – even a cap of 0% to keep the rent where it is, would be rendered ineffective if in fact CPI had fallen. The accompanying notes to the Bill do recognise that collars have their place in indexed rent reviews in some sectors of the market – maybe that's something for which we might hope to see an exception in due course.

Turnover rents: Then onto rent review where the rent is calculated according to the tenant's turnover. We wouldn't normally consider the calculation of turnover rent year by year as rent review but it does fall into the definition of "relevant rent review terms" – in that the amount of rent may or will change and the amount of rent isn't known and can't be calculated at the start of the lease term. So paragraph 6 applies to each calculation of turnover rent. So if the turnover rent is calculated in the usual way, say 4% of the tenant's turnover and if it is done each year then that is just fine so long as the turnover rent is allowed to go down as well as up – that would mean an end to the ratcheted turnover rent sometimes seen i.e. the higher of what the tenant paid by way of turnover rent last year and the calculated turnover rent for this year. So if the drafting of the legislation stays as it is that will be something that has to change.

Of course often there's a base rent payable alongside a turnover rent – perhaps a discounted percentage of the full open market rent for the premises but a base rent that is payable regardless of whether the tenant's business does well or not. If that base rent is reviewed on an open market basis then it will be caught by paragraph 6 and will have to go up as well as down. If there's a turnover rent that is completely independent of the base rent, then the rules will apply to both separately.

If the base rent is fixed or stepped – so that the amount of base rent that will be payable is known at the start of the term, then that sort of base rent won't be caught by the Schedule.

But what about the common scenario where the turnover rent is calculated as the amount by which a particular percentage of the turnover exceeds that base rent. So that the rent the tenant pays is the base rent plus a turnover top up. Independently assessed, so long as both base rent and turnover rent can go up and down they fit with paragraph 6.

But if paragraph 6 works to override a lease and allow the Base Rent payable to fall, the tenant would pay a greater amount of Turnover Rent, given that say 10% of Turnover would now be that bit more than a Base Rent that is going down. What

Schedule 7A would prevent by way of Base Rent would be replaced by a greater amount of Turnover Rent.

But – and there's a but – we have to consider paragraph 10 of the Schedule. Paragraph 10 is the anti-avoidance provision of the schedule – any agreement, whether in the lease or not is void, if or to the extent that it purports to require the tenant to make a payment in respect of any difference in an amount of new passing rent which results from the operation of any other provision of the Schedule. Which is a long way of saying if the schedule lets the tenant off paying something, the lease can't make provision for the tenant to pay something else to make up for that. So I do think some drafting of a base rent plus a turnover rent might be caught – not if a base rent is fixed or stepped, but if it is a percentage of an open market rent. I'm cautious because I think it all depends on the drafting of an individual lease so it is well worth running the draft legislative provisions over the exact drafting of the lease you are looking at, and I think we could do with greater clarity on that point. But I wouldn't say that base rent plus turnover rent will be prohibited - if your base rent is fixed or stepped and your turnover rent is allowed to go down as well as up then it will work just fine.

A brief word about other paragraphs of schedule 7A – paragraph 7 allows for exceptions to paragraph 6 – the Secretary of State may make regulations allowing those exceptions to all or some of paragraph 6. So we'll have to see what happens there. Paragraphs 8 and 9 allow a tenant to trigger a rent review – simply by giving notice in writing to the landlord and to take whatever "operational actions" are required to enable the rent review to operate effectively. These paragraphs are a result of lessons learnt when Ireland adopted a ban on upwards only rent reviews and some landlords moved to landlord-only triggered reviews, which of course the landlord didn't trigger in a falling market. So paragraphs 8 and 9 allow a tenant to trigger a review, notwithstanding the terms of the lease, and take any necessary steps to make that rent review work – by appointing a valuer for instance.

Stepped rents: a lease providing that the rent will be £X for the first five years, and then £X + Y for the next five years – ie providing for a stepped rent – will not be caught by the ban (even though it is UORR in effect).

Other expedients: the law of unintended consequences, particularly in its application to the property market, teaches us that drafting ingenuity will usually find the weak point in any new legislation. We can expect to see, for example, landlord's breaks where the rent looks likely to decrease upon review, giving the landlord a bargaining position to force the tenant to accept a higher rent in return for retaining its lease. We could also see more frequent reviews, and of course higher initial rents, as landlords seek to find a way around the ban that preserves the value of their portfolios.

(9) What should we all take away from this?

We should bear in mind that nothing has yet been settled, although the Government's direction of travel is evident. As the secondary legislation winds through Parliament, some parts of it may change as a result of industry pressure (although I don't think

that likely). As against any such lobbying, it is worth bearing in mind that some parts of the industry have welcomed the ban, on the basis that it would do away with some of the contention in the landlord and tenant relationship that currently exists.

Assuming that the ban comes into force in the near future, then we can expect that, in relation to existing leases (which will not be affected), nothing will change. But as the ban settles down, and leases are granted with no UORR (or with ineffective UORR), a two-tone market may emerge, with comparable evidence from "new" leases being set against market rent from old UORR leases.

We can also expect more rent review disputes, as tenants who in the past would not have bothered challenging rent review in a falling market, because of the presence of UORR, will now see the point in doing so.

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An earlier version of this paper was delivered to the Arbrix Club on 19 November 2025 by Guy Fetherstonhaugh KC, Falcon Chambers and Will Densham, Partner and Head of Real Estate Disputes at Eversheds Sutherland International LLP