Real Estate:UK

Real Estate:UK response to the Law Commission's Business Tenancies: the right to renew. Consultation Paper 2: modernising security of tenure

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2. We connect UK and international investors with the insight, networks and opportunities that make the UK one of the world's most dynamic and investable markets. Working closely with national governments and their agencies, as well as regional and local leaders, we promote the UK real estate sector as a premier destination for capital. Through direct engagement with ministers, policymakers and advisers, we help shape a regulatory environment that unlocks growth and builds investor confidence.

3. We support thriving communities across the UK through the homes, workplaces, critical infrastructure such as logistics, retail and leisure centres our members build, maintain and operate.

Overview

4. We welcome the Law Commission's second consultation on Part 2 of the Landlord and Tenant Act 1954 (the Act). There are significant opportunities to reform the Act. It is essential that the Act operates in a smoother manner for the benefit of both owners and occupiers, that the scope of disputes and the time and cost of resolving them are reduced, and that it supports wider economic and social objectives such as investment in buildings and the decarbonisation of the built environment.

5. We particularly support the Law Commission's proposals to simplify the contracting-out process and reform of periodic tenancies. The high number of leases that are contracted-out each year makes it essential that transactional friction is reduced. There is significant potential to remove much of the unnecessary administrative burden and uncertainty associated with the current process.

6. It is also vital that lease renewal and the wider dispute resolution process is improved so that agreement between parties is encouraged and delay and costs are reduced. We believe that a number of reforms will support this. In particular, we would encourage:

- A fixed valuation and commencement date for new leases. This would eliminate a source of delay and opportunity for tactical behaviour from the renewal process.
- Greater use of tribunals, so that disputes can be resolved by specialists within shorter and more efficient timescales.
- More use of alternative dispute resolution (ADR) to enable parties to resolve disagreements more effectively.

7. We also consider it a key priority for the Act to better enable investment into the built environment, particularly for the purposes of decarbonising buildings. The current Act is an obstacle for modernising leases and incorporating green lease terms at renewal. It also does not adequately enable retrofit which is used to improve the sustainability of buildings, while at the same time, favouring less sustainable approaches to redevelopment.

Response to consultation questions[1]

Consultation Question 1: We provisionally propose that periodic tenancies (both express and implied) granted to new tenants be excluded from the scope of the 1954 Act. Do consultees agree?

8. We agree that periodic tenancies granted to new tenants should be excluded from the scope of the 1954 Act. Situations in which periodic tenancies lead to security of tenure arising from what are expected to be short term rolling arrangements are in our view a clearly unintended consequence of the Act.

9. Were new periodic tenancies clearly removed from the scope of the Act, this would enable greater commercial use of such arrangements than at present. Commercial circumstances where it would make sense for parties to agree a periodic tenancy include where there is uncertainty about periods of occupation such as development contexts, retail kiosks and other meanwhile uses.

10. Currently, property owners grant fixed term leases in such circumstances to avoid the protection provided to periodic tenancies. To avoid the inconvenience of renewing a fixed term lease every two years, they will usually grant a longer lease than required and include break clauses. This in turn creates a larger upfront SDLT charge, calculated over the length of the contractual term, rather than SDLT charges that more closely track the tenancy. Were new periodic tenancies excluded from the

[1] RE:UK has not provided responses to every consultation question, focusing on those questions where our members have particular experience or views.

Act and therefore not liable to obtain security of tenure, the simplest option for all parties would be to agree an appropriate initial fixed term period, followed by the continuation of a rolling tenancy (or grant of a new fixed term tenancy if chosen by parties).

Consultation Question 2. If express written periodic tenancies continue to be within the scope of the 1954 Act (contrary to our provisional proposal in Consultation Question 1 above), we provisionally propose that it should be possible for the parties to contract out. Do consultees agree?

11. Yes, we agree that contracting out should be allowed if written periodic tenancies do remain within scope of the Act. This would bring them into line with fixed term leases.

Consultation Question 3. We provisionally propose that any fixed-term tenancy, or express periodic tenancy (whether written or oral), granted to an existing protected tenant should be within the scope of the 1954 Act. Do consultees agree?

12. Our understanding is that this is intended to prevent an existing occupier losing protection as a result of a periodic tenancy arising. We agree that in such circumstances this is reasonable.

13. It is worth noting, however, that it will mean that the status of a written periodic tenancy will not always be able to be determined from the document itself, as it will depend on whether the occupier previously had protection. Parties instead will need to consider prior existing agreements. While written periodic tenancies are currently rare, they may become more widely used following reform.

Consultation Question 4. For any such fixed-term or express written periodic tenancy that is within the scope of the 1954 Act, we provisionally propose that it should be possible for the parties to contract out. Do consultees agree?

14. As with question 2, we agree that any such tenancies within the scope of the 1954 Act should be able to be contracted out.

Consultation Question 5. If the chaining provision is retained, we provisionally propose that its trigger point should match the duration threshold (which we provisionally propose should be 1 or 2 years). Do consultees agree? Please explain why.

If the chaining provision is retained, we provisionally propose that it should be triggered if the tenant will have been in occupation for the specified period by the expiry of that tenancy (rather than at the commencement of the tenancy). Do consultees agree? Please explain why.

If the chaining provision is retained, we provisionally propose that only occupation by the tenant should be taken into account, and occupation by the tenant's predecessor should be irrelevant. Do consultees agree? Please explain why.

15. If the chaining provision is retained, we agree that the proposals in question 5 would represent simplification. Our preference, however, is for the chaining provision to be abolished. We provide a fuller answer about the chaining mechanism and duration mechanism in question 7.

Consultation Question 6. We provisionally propose that all express and implied periodic tenancies granted to existing (unprotected) tenants and other occupiers should be excluded from the scope of the 1954 Act. Do consultees agree? Please explain why.

16. We agree as this will prevent any unintended consequence whereby a protected tenancy arises following expiry of a contracted-out lease.

Consultation Question 7. We provisionally propose that the duration threshold and chaining provision be reformed as follows. Either:

(1) the duration threshold should be set at 2 years and the chaining provision should be retained ("Option A"); or

(2) the duration threshold should be set at 1 year and the chaining provision should be abolished ("Option B").

We invite consultees to tell us which option they prefer and the reasons for their choice.

If consultees do not agree with either Option A or Option B, we invite consultees to explain what combination of reforms to the duration threshold and the chaining provision they would prefer (if any) and their reasons.

17. Neither option A nor option B fully reflects our preferred approach. We favour the abolition of chaining because of the certainty this provides, while a two-year duration threshold would remove more leases from the administrative frictions associated with the Act.

18. In our response to the first consultation we called for the duration threshold to be raised to five years. In calling for this we were mindful of the high proportion of leases under five years that are already contracted out – around 80% of all such

leases. This in turn would significantly benefit the majority of parties to such leases, who currently have to go through the process of contracting-out.

19. We also noted other concerns including the costs and timescales of renewing a protected lease which can take between one and three years. For shorter leases, the cost imposed on parties of frequent protected lease renewals is not proportionate to benefits accrued and increasing the duration threshold to five years would remove significant burdens from the Courts.

20. We continue to believe that a longer duration exclusion would have considerable benefits for all parties and would reduce the frictions associated with agreeing a new lease and renewing a lease.

21. A considerable benefit of removing the chaining provision is the simplicity and clarity that it provides to parties. Without the chaining provision it is possible to determine from the lease alone whether the tenancy is protected or not. This is not the case with chaining where there can be doubt and uncertainty about prior periods of occupation and when the chaining provision began. For this reason, we favour option B (an abolished chaining provision but duration threshold of one year) over option A (a longer duration threshold but a retained chaining provision).

22. We do however encourage the Law Commission to consider abolishing the chaining provision and setting the duration threshold at two years. A duration threshold that only increases to one year will be a considerable missed opportunity to simplify leasing for shorter tenancies and remove frictions associated with the Act, losing many of the benefits that two years would provide.

23. A one-year duration threshold also creates notable practical difficulties for leases that typically last a short period over one year as will often happen in short-term retail settings. Often a retailer looking to take a lease to cover Christmas trading will look for a lease that covers two Christmas periods to maximise benefits. In such circumstances they will ideally look to occupy the premises in September, stay for two Christmas periods and remain for the March quarter. A one-year lease is particularly impractical where leases are granted on quarter days and the lease might be granted on Christmas Day and then expire on Christmas Eve the following year.

Consultation Question 8. We provisionally propose that the current contracting-out procedure should be replaced with a new process, whereby contracting out would take place within the lease. A contracted-out lease would need to contain:

(1) a prescribed warning indicating that the parties agree the lease is contracted out and explaining to the tenant (in similar terms to the current warning notice) the implications of doing so; and

(2) a prescribed declaration signed by the tenant on executing the lease, confirming that they have read and understood the terms of the warning.

Do consultees agree? Please explain why.

In order that the prescribed warning and declaration are prominently displayed within the lease:

(1) we provisionally propose that the prescribed warning and declaration should be included in outlined text box(es) in the lease. Do consultees agree?

(2) we invite the views of consultees as to whether the prescribed warning and declaration should be displayed in a particular position within the lease (for example, at the start of the lease, or at the end of the lease by the signature block). If so, where should they be displayed?

(3) we invite the views of consultees as to whether there are any other ways in which the prescribed warning and declaration could be displayed in the lease to ensure tenants are aware of them and their importance.

If consultees do not agree that the current contracting-out procedure should be replaced with the new process set out in paragraph 14.11 above, what improvements, if any, do consultees consider should be made to the current contracting-out process? Please explain why.

24. We welcome the Law Commission's proposals to simplify the contracting-out process. We have long suggested that the current process should be replaced with a warning notice of prescribed form on the front of the lease. Such a change would offer considerable simplification and benefits to property owners and occupiers alike.

25. Contracted-out leases are extremely widely used across the market. Our own data provided by members suggests that around 50% of commercial leases are contracted-out of the Act. This rises to 65% for new leases agreed since January 2020 and to roughly 80% for shorter leases of duration below 5 years. It is therefore essential that the process is as streamlined as possible.

Excessive paperwork and burdens

26. The current contracting-out process results in a disproportionately high administrative burden. There is an ever-present concern of minor defects in the process, and missing paperwork or evidence. This creates an excessive requirement to advise and protect against the process not being followed properly or paperwork going missing. To mitigate these risks, parties will duplicate steps and maintain extensive audit trails as evidence that the process has been followed correctly.

27. The current process in which mistakes in the contracting out process are relatively common can lead to unnecessary disputes arising over whether the lease is inside or outside the Act. This could be a result of missing details such as a date within the document, even where the document has been signed and dated overall and it is clear that the intention of both parties at the time was to contract out.

28. There is also a notable effect where the landlord or tenant's interest is traded which creates transactional frictions including cost and delay. It is common to find that the notice or the declaration or both are not kept safely with the relevant papers and therefore, assignees and subsequent landlords will not be aware whether the right process was undertaken before the lease was "contracted out". In the case of disposals specifically, purchasers might require additional contractual protections or indemnities to mitigate against any uncertainty that has arisen.

Use of signing authorities

29. One of the areas of friction that arises is for attorneys acting as signing authorities. Owners will need to verify that the attorney has signing authority and also that this authority has been granted by the appropriate person. In particular it is notable that the authorisation for signing documents that parties have granted currently might not extend to reading, understanding and confirming the warning notice. Considering how to reduce frictions associated with signing authorities generally would be beneficial, including specifically for whether current signing authorities could be extended to reading, understanding and confirming the proposed warning notice. This would avoid a period where new signing authorities need to be granted to reflect proposed changes to the contracting out process.

Delayed occupation

30. An important consequence of the current process is that it delays occupation and speedy commencement of the tenancy, which is valued by both owners and occupiers alike. Because of the complexity of the process, our members often spot errors in the relevant paperwork, requiring the process to be repeated and further delaying occupation. In our response to the first consultation, we gave the example

of a member who had audited the contracting-out process across their portfolio. They found that 10% of contracting-out paperwork contained errors when first completed, requiring the process to be repeated. In some cases, particularly for less experienced occupiers, the process had to be repeated multiple times.

31. Members report that simple declarations are rarely if ever used and steps then needed to complete the statutory declaration add additional friction and delay for seemingly little if any benefit. For example, an independent solicitor is required to witness the declaration even though there is no expectation that they will offer legal advice to the tenant.

32. This then creates difficulties for occupiers to locate a solicitor, especially if this is needed at short notice at an inconvenient time, for instance just as the weekend is about to start. Members report frequent cases where an occupier might have lined up contractors for a Saturday, only to be trying to locate late on a Friday afternoon a solicitor to witness the declaration before they can access the premises. While this occurs with even large, experienced occupiers, the prospect is increased for occupiers who might not have been aware of the need for the requirement to witness the declaration and might find difficulty locating an independent solicitor at short notice.

33. The actual cost of a lawyer might be minimal – of just a few hundred pounds – but any delayed occupation creates real costs and inconvenience for tenants who are already incurring overheads in terms of staffing, suppliers, finance and other costs without having the opportunity to occupy the premises and to utilise it productively.

34. Similarly, property owners will also be losing income during this time. In our response to the first consultation, we noted the example of a lease with rent of £100,000 per year. Each day of delay would amount to almost £275 of lost income for a property owner. Where occupiers do not sign the statutory declaration, this loss of income over the two-week period increases to almost £4,000.

The warning notice

35. We strongly support the simplification of the warning notice. We are though mindful that the simpler the process is, the less the possibility is of disputes arising over whether contracting out has validly taken place. The prospect of requiring tenants to sign an additional declaration on top of signing the lease therefore raises the possibility of disputes around whether there has been a defect in the signing of the declaration and whether one signing has been validly completed but not the other. Because of this, we would favour there being only one set of signatures needed to

complete both the lease and contracting-out, which can be done when the signature block is completed.

36. We recognise the importance of tenants understanding the rights that they are giving up and support a clear warning notice prominently displayed at the front of the lease. Further attention should then be drawn to this in the signature block which could make clear that, by executing the lease, the tenant acknowledges the contracting-out provisions.

37. Our concern is that the need for the lease to be signed twice is unnecessary, adds friction, including the need to check the process has been completed adequately, while also raising the potential for the process to be invalidated and disputes arising despite the intention of both parties to contract out. Similarly, while we support the location of the prescribed warning being clearly specified, we are concerned that prescribing detailed aspects relating to its format such as form of the text box surrounding it could create scope for technical mistakes that are otherwise avoidable, without providing any meaningful additional protection to tenants.

Consultation Question 9. We provisionally propose that the following contracting-out process should apply to agreements to enter into a lease in the future (such as agreements for lease, options to renew and guarantees).

(1) The future lease would be contracted out by undertaking the same process as set out in Consultation Question 8 – that is, via the inclusion of a prescribed warning and declaration in the lease.

(2) Prescribed wording should also be included in the agreement itself, explaining that the future lease would be contracted out. Doing so would impose a contractual obligation on all parties requiring them to contract out the future lease, if and when it comes to be completed. The obligation would bind any successors in title to the original parties to the agreement.

(3) Failing to include the prescribed wording in the agreement would not prevent the future lease from being contracted out. Instead, it would mean that no party could require the future lease to be contracted out.

Do consultees agree? Please explain why.

In order that the prescribed wording is prominently displayed within the agreement:

(1) we provisionally propose that the prescribed wording should be included in outlined text box(es) in the agreement. Do consultees agree?

(2) we invite the views of consultees as to whether the prescribed wording should be displayed in a particular position within the agreement (for example, at the start of the agreement, or at the end of the agreement by the signature block). If so, where should it be displayed?

(3) we invite the views of consultees as to whether there are any other ways in which the prescribed wording could be displayed in the agreement to ensure tenants are aware of it and its importance.

38. We recognise the purpose of a similar contracting out process applying to agreements to enter into a lease in the future.

39. One area in particular where this could lead to uncertainty is where contracting-out is not specifically mentioned in the agreement for lease, but is included in the form of lease attached to the agreement. Agreements for lease will commonly attach the agreed form of the future lease, which the parties can require one another to enter into once the conditions in the agreement for lease have been satisfied.

40. Under the current proposals, despite the prescribed notice being included in the attached form of lease, no party could require the future lease to be contracted out if it is not in the agreement. Where the intention to contract out is included in the agreed form of lease, this should constitute a clear agreement between the parties that the future lease will be contracted out.

Consultation Question 10. We provisionally propose that it should be possible to contract out all written tenancies within the scope of the 1954 Act, not just fixed-term tenancies. Do consultees agree? Please explain why.

41. We agree that parties should be able to contract out of all written tenancies in line with answers to previous questions.

Consultation Question 11. Under the current law, it is possible for an unauthorised sublease to have security of tenure where the unauthorised sublease is granted out of an unprotected headlease. We invite the views of consultees, together with reasons, as to:

(1) whether the law should be changed; and

(2) if so, how broad the change should be. For example, should it apply only where the headlease is contracted out or should it apply when the headlease is unprotected for other reasons?

42. As a point of principle, it should not be the case that unauthorised subleases should be able to have security of tenure. We would expect this to be the case in all circumstances, therefore we would favour a broad change. This could include a simple rule that subleases granted out of a contracted-out headlease are not capable of acquiring security of tenure.

Consultation Question 12. The validation process for agreements of surrender

43. We agree that if the validation process is retained for agreements to surrender, it should mirror the new process for contracting out. A consistent approach helps to simplify the Act.

Consultation Question 13. If a validation process is retained for agreements to surrender, and reformed as set out in Consultation Question 12, we provisionally propose that it should be possible for tenants to enter into such agreements with prospective landlords, provided that the validation process is complied with. Do consultees agree? Please explain why.

44. We agree. If a validation process is retained for agreements to surrender, there does not appear to be a reason why a tenant should be prevented from entering into such an agreement with a prospective landlord, provided that the relevant validation requirements have been complied with.

45. The inability to have an agreement to surrender with a prospective landlord makes it more difficult to structure deals where such circumstances apply, adding in additional complications and the need for parties to seek additional advice.

Consultation Question 14. If a validation process is retained for agreements to surrender, we provisionally propose that the law should be clarified to ensure that it is possible to enter into a valid agreement to surrender part of the demised premises (provided the validation process is undertaken). Do consultees agree? Please explain why.

46. We agree that it would be beneficial to clarify the law to enable agreements to surrender part of the premises.

Consultation Question 16. We have provisionally proposed that, if the validation process is retained for agreements to surrender, it should be reformed (see Consultation Questions 12 to 14). In light of these provisional proposals, do consultees think that the validation process should be retained or abolished for agreements to surrender? Please explain why.

If consultees think that the validation process should be retained for agreements to surrender, should it also apply to express written surrenders of protected tenancies? Please explain why.

47. We question whether the validation process needs to be retained. An agreement to surrender necessarily involves the tenant agreeing to give up the tenancy and therefore security of tenure.

48. While agreements for surrender are much less common than contracting out, members have noted that mistakes do occur during the process which leads to delays. Therefore removing the validation process for agreements to surrender would provide a modest simplification of the Act.

49. We have not though discussed aspects of the proposals for the validation process in detail with members and therefore do not express a firm view on whether the validation process should be retained.

Consultation Question 18. Our provisional conclusion is that the test used by courts to decide the "other terms" of a renewal tenancy (which is, essentially, that set out in section 35 of the 1954 Act and interpreted in the case of O'May) should be retained. Do consultees agree? Please explain why.

50. There is a significant role for buildings to play in addressing environmental concerns. In their *Progress In Reducing Emissions* Report, 2026 (p. 59), the Climate Change Committee, an independent, statutory body, established under the Climate Change Act 2008, reported that in the sixth carbon budget period (2031-2037) buildings are expected to be the highest emitting sector.

51. In our view, the Act must enable leases to be adjusted over time as new and evolving statutory and regulatory regimes emerge that seek to address carbon emissions and other environmental, social and governance (ESG) challenges. The management of modern commercial property buildings increasingly requires obtaining information necessary for regulatory reporting and coordinating environmental performance across a whole building.

52. While section 35 provides the courts with a wide discretion, the sector's experience is that the current s35(1) of the Act as interpreted in the O'May case operates in practice as an obstacle to the incorporation of new lease terms on environmental sustainability. This is particularly significant where proposed terms respond to legislative or regulatory developments, or to other matters not contemplated at the time of the original lease.

53. Members – both property owners and advisers report that green lease provisions that are accepted on new lettings are resisted or significantly watered down on protected renewals. One adviser gave the example of recent retail and restaurant lease renewals that are protected under the Act where only limited EPC and MEES-related provisions were agreed. More extensive green lease obligations that would commonly be considered on new lettings, such as: energy data sharing; sustainability cooperation obligations; environmental reporting and green fit-out requirements, have generally not been pursued and the parties largely reverted to existing lease obligations with only limited modernisation.

54. Members particularly note that there is difficulty getting data sharing clauses into protected renewal leases that would be issued as standard in new leases. Notably such clauses tend to only be agreed where occupiers are shown not just that the clauses will result in no cost implications, but that the clauses will provide overall savings. While occupiers have extensive ESG priorities themselves, part of the disconnect is that data sharing is viewed as a property owner priority rather than an occupier priority.

55. The evidence we received from members is nuanced. It is not the case that all green lease terms will be rejected at lease renewal particularly where they are less onerous. Rather, the position of occupiers in protected renewals enables occupiers to routinely resist terms which creates a barrier to agreement and makes the incorporation of even modest provisions that modernise leases difficult.

56. One larger property owner reported that almost any protected renewal lease that included new green lease provisions would simply be returned with the terms removed and the response that the terms were not in the existing lease. This can extend the negotiation process, with the lease going through an additional two or three turns while the landlord decides whether, and to what extent, to water down the provisions in order to secure agreement.

57. Similarly, an adviser reported that proposed green lease provisions being resisted as far as the preparation of witness statements. It might only then be when owners lay out the reasons for the provisions, and occupiers are asked to sign a statement of truth saying that they do not agree to green leasing provisions that the objections to the provisions are withdrawn. This is because the provisions are difficult to reconcile with occupiers' publicly stated sustainability policies.

58. To agree renewal leases, property owners will have to water down green lease provisions or simply not pursue certain green lease provisions because legal advice suggests that the proposed terms would not be regarded as reasonable

modernisation within the context of a protected lease renewal. In such a context, the absence of litigation around green lease terms is less an absence of friction between owners and occupiers around such terms and more a reflection of how the legal starting point within the Act determines bargaining positions and leads property owners to compromise their positions due to wider commercial considerations and the need to agree the new lease.

59. Examples of green lease terms that are easier to agree include: co-operation on sustainability initiatives; sharing utility consumption and environmental performance data; covenants not to do anything that would adversely affect the EPC rating; landlord access for EPC assessments and energy surveys; and reasonable co-operation with building-wide sustainability programmes. Terms that occupiers will object to include: positive obligations to improve the EPC rating; obligations to carry out energy efficiency works at the tenant's cost; a requirement to return the premises with the same or a better EPC rating; indemnities covering the landlord's MEES compliance costs; and obligations to fund building-wide improvement projects.

Wider impact of frictions – regulatory and commercial

60. A central concern is that the difficulty of modernising lease terms means that protected leases may fail adequately to reflect related regulatory frameworks and how such frameworks continue to evolve. But additionally, the O'May principle tends to prevent the updating of protected leases in ways which support effective modern commercial property management. This has a commercial impact on asset management and the ability of the sector to invest into and improve assets – which would in turn provide benefits to occupiers and the wider economy. It also restricts efforts to reduce energy, water consumption and waste, as well as efforts to decarbonise heat sources. Thus, the principles risk locking in - for indefinite periods where there may be successive renewals - inefficient energy and water use and higher than desirable levels of greenhouse gas emissions.

61. From a regulatory perspective, the MEES regime requires property owners to achieve minimum levels of EPC ratings. As set out by the Government in July 2026, these are due to significantly increase in 2031. Property owners will need to meet these levels in order to let or continue to let property (subject to certain exemptions). In such situations, amended clauses (e.g. in relation to tenant's alterations) or entirely new lease clauses (e.g. in relation to EPCs) may legitimately be necessary to enable compliance with these regulations and to prevent occupiers prejudicing the compliance of owners.

62. We note the Law Commission's observation at paragraph 6.48 that a court would in any event consider how a renewal lease might adapt to a regulatory regime in reaching a “fair and reasonable balance”. However, the Commission also acknowledges at paragraph 6.93 that even an express provision requiring the court to consider, as a relevant circumstance, the fact that the parties did not contemplate a particular term when the original lease was granted would not guarantee that the MEES regime would be treated as a relevant circumstance. This lack of certainty is of concern where property owners are subject to regulatory requirements, breach of which may result in significant financial penalties.

The operational and commercial importance of modern lease terms

63. From a commercial perspective, occupiers, investors and lenders are increasingly prioritising environmental performance of buildings. They do not just base this on statutory measures such as EPC ratings, but also voluntary accreditations such as BREEAM and NABERS. In some sectors major occupiers may simply not consider taking space within buildings unless the premises meets relevant ratings. Similarly, where a property owner is seeking additional funding, a lender might insist on compliance with specific ESG criteria in order to lend at a more favourable rate. Where the landlord cannot easily secure the data from the occupiers, it will have no means of ratifying its figures in terms of carbon emissions or reduction.

64. In premises with multiple occupiers there is an additional importance of ensuring that lease terms are aligned. For instance, terms of all but one tenant in a building might contain similar green lease provisions – such as paying into the service charge in a particular way, with an outlier lease that does not include those terms. This could prevent the owner making improvements that enhance the sustainability of the asset because there is a lack of consistency in lease terms.

65. Similarly, lack of access to occupier energy data is a key obstacle to landlords’ ability to improve the energy performance of buildings. Securing energy data from tenants is a pre-requisite to informed energy management and to focused and effective landlord improvement plans. This was highlighted in the then BPF's 2024 report, *Energy Data, Buildings and Net Zero – Closing the Data Deficit*, which found that lack of access to energy data hampers effective and timely action and slows the property sector's decarbonisation. This decarbonisation would ultimately also have benefits for tenants, including through the potential energy cost savings associated with more energy-efficient buildings, while enabling wider decarbonisation of the built environment.

66. Improving the environmental performance of buildings increasingly requires active cooperation between landlords and tenants. Lease provisions dealing with matters such as data sharing, access, alterations, improvement works and the allocation of costs provide the legal framework through which that cooperation can take place. Where older leases do not contain those provisions, the renewal process provides an important opportunity to modernise the lease. If the Act makes it materially harder to introduce them on protected renewals than on a new letting, it can inhibit the practical management and improvement of existing buildings.

67. This does not mean that environmental objectives should automatically justify the imposition of additional obligations or costs on occupiers. The interests of owners and occupiers will not always be aligned and the allocation of cost and risk, interference with an occupier's use of its premises and the practical impact of proposed works are legitimate matters for negotiation. The concern is that the existing renewal framework should not itself create an unnecessary obstacle to reasonable modernisation.

The impact of O'May on green lease terms:

68. It is important to be clear, we do not consider the O'May principle itself to be inherently uncertain. Rather, section 35(1), as interpreted by O'May, acts to create obstacles to modernising lease terms. For the sector, and as suggested by the examples we have received from members, reasonable changes to leases that have security of tenure are noticeably more difficult than it is for unprotected leases. This has a different impact on green lease clauses as against more "standard" lease terms. These latter terms typically remain relatively stable over time and therefore for such lease terms the continuity of terms that underpins the O'May principle both makes intuitive sense and is relatively unproblematic.

69. In contrast, on the regulatory side, EPC and MEES regulations, underlying EPC methodologies and other relevant regulatory requirements, and, on the non-regulatory side, sustainability-related building certifications and market expectations, are relatively recent or can all change considerably over the period of successive renewals. As a result, entirely new forms of lease clauses may be required, while existing lease terms (e.g. in relation to tenant alterations) that were appropriate when the existing tenancy was granted may no longer adequately enable the effective environmental management and performance of the building at renewal.

70. The few decided cases which are relevant show a lack of understanding on the part of parties' advisers and the courts of the EPC Regulations. *Clipper Logistics v Scottish Equitable PLC* (2022) is an example of this. In this case the court declined to agree a

clause which provided an indemnity for the costs of a new EPC (which would likely have been minimal) if tenant alterations invalidated an existing EPC, but agreed the inclusion of an obligation on the tenant to "return the premises to the Landlord with the same EPC rating as it has at the date of this Lease as evidenced by the EPC dated 1 June 2021". Given the 10-year validity period of EPCs, the 2021 date of the EPC and the lease term of 10 years there was a reasonable chance that the relevant EPC would have expired at lease expiry. Given the 2022 change in EPC methodology which meant fossil fuel heated premises would likely secure a lower rating this obligation might require the tenant to carry out improvements to secure the same EPC rating as the 2021 EPC.

71. In *Saville-Edells & Saville Edells v Jan (2021)* the landlord sought terms to protect the EPC of the property (specifically for tenant cooperation with the landlord in obtaining an EPC and prohibiting the tenant from obtaining its own EPC and where one was required to use an assessor selected by the landlord) and prohibiting tenant alterations adverse to the EPC. The court did not order these terms notwithstanding that the entire burden of compliance with EPC and MEES regulations rests on the landlord who has a legitimate interest in protecting the EPC rating and the quality of the EPC assessment (it being widely accepted that the quality of EPC assessors can vary). The terms the landlord sought did not impose any cost burdens on the tenant and were simply a response to the landlord's need to manage its own compliance with new regulations.

72. The decided cases have undermined confidence that courts applying the s35(1) and the O'May test are properly taking account of the MEES regime and the wider societal interest in tackling climate change by ensuring improved energy efficiency and reduced carbon emissions. The weight given to the obligations agreed by the parties in the original lease can mean that, for green leases, insufficient account is taken of developments in wider sustainability regulation and requirements, even though these may bear considerably upon the appropriate terms at lease renewal. Without enabling new terms to be introduced – for instance data-sharing provisions for new leases – existing terms simply do not reflect regulatory frameworks that have been introduced and what they require of property owners. Similarly, even where existing lease terms are reproduced, a changed regulatory environment can change the burdens of responding to obligations.

Options for reform:

Codify Existing Law

73. We agree that this is unlikely to result in significant benefits.

Market Based Approach

74. For the reasons given in the consultation this may be difficult to apply in practice

A guided or presumptive approach

75. In the absence of mandatory terms which we comment on below we agree that reform based on this approach would be of benefit.

Mandatory Green Lease Provisions:

76. In our view, reform should not simply focus on introducing further express relevant circumstances for the purposes of section 35(1). There are strong reasons to mandate some basic green lease provisions in clauses in contested and uncontested 1954 Act renewals. In particular, there are clauses required to respond to the current and evolving regulatory framework and enable the environmental management of a building. This is particularly the case for clauses that do not impose material extra burdens on tenants, financial or otherwise. We propose these would relate to EPC protection clauses or clauses on data sharing.

77. Our 2016 submission noted a number of clauses which we consider to be market standard. It is also worth noting that the RICS Lease Code 2020 suggests that consideration should be given to including 'green' provisions in leases and encourages parties to include provisions relating to sustainability and the environment which urge cooperation between the parties to ensure the property is used as sustainably as possible. While this is not legally binding, it demonstrates an expectation that modern leases should contain sustainability provisions. It is also increasingly common market practice to include green lease terms in new leases across the commercial real estate sector.

78. The Law Commission refers to the varying levels of clauses in the BBP Green Lease Toolkit as evidence of the difficulty in mandating any green lease clauses. In fact, in relation to data sharing and EPC protection the toolkit only provides one level of clause which reflects the importance of a minimum level of requirement in these areas. We would support either these clauses or clauses which satisfy the requirements of these clauses (leaving flexibility for the parties or the court to determine the precise drafting) being mandated under s35. In the case of data sharing this could be limited to energy data as a minimum. Provision for consequential amendments in the existing lease terms could be included in any requirement for such clauses. As we noted above, the importance of data sharing is

that it is a pre-requisite to understand usage and improve the energy performance of buildings.

79. Alternatively, if mandating specific clauses is problematic there are a range of ways that basic green lease clauses can be incorporated into leases in practice while ensuring appropriate safeguards for occupiers combined with the flexibility to fit with the wide range of leases subject to the act. For instance we have considered that where a property owner can justify the introduction of a lease term by reference to changes in the wider legislative or regulatory framework, the term should be permitted where the tenant is unable to show that the terms are unfair.

80. While a significant question is raised as to why there should be a more prescriptive approach for renewal leases as opposed to new leases, there are important differences between new leases and protected renewal leases. For any new lease, either party is free to desist from entering into a contract as is the case with renewals for leases that have contracted out security of tenure. By way of contrast a protected renewal already contains a prescribed approach to setting disputes at lease renewal. The risk is that in determining the bargaining arrangement in a way that differs substantially from mutually agreed contracts, it risks reproducing environmentally obsolete lease terms indefinitely without taking into account wider regulatory frameworks or practice that has evolved to incorporate such frameworks.

Consultation Question 19. As explained in Consultation Question 18, our provisional conclusion is that the test used by courts to decide the “other terms” of a renewal tenancy should be retained. Notwithstanding that provisional conclusion, we invite consultees’ views on a guided approach to resolving disputes where the other term(s) in dispute relate to environmental matters. The approach would cause environmental matters to be a “relevant circumstance” for the court to consider when applying the existing law.

The scope of the “relevant circumstance” that the court should consider could be “narrow” (limited to the MEES Regime and its underlying policy of bringing buildings up to certain minimum standards) or “wide” (concerned more generally with environmental and sustainability concerns).

It would be possible to incorporate additional “relevant circumstances”. For example, the nature and extent of environmental terms being agreed in other units in the same building; and/or any benefit to, or adverse impact on, the landlord and tenant of including or not including the term(s) sought.

We invite consultees' views on the possibility of reform outlined above, together with any evidence to support any view expressed.

81. While we favour a more mandatory approach that allows for the incorporation of basic green lease clauses on data sharing and EPC protection, if the Law Commission does not recommend this, RE:UK strongly supports a guided approach under which environmental considerations are treated as a relevant circumstance for the purpose of section 35.

82. As we indicated in our response to question 18, there are considerable differences between ordinary lease terms that remain relatively stable over time and green lease terms which are driven by changing regulatory regimes and reporting requirements which can change considerably over the course of a lease. We also set out in question 18 how the failure to take into account environmental matters can have detrimental commercial impacts on assets and reduce investment into buildings.

83. As the Law Commission notes in the consultation, a guided approach would require courts expressly to consider the environmental matters as a relevant circumstance when determining whether changes to existing lease terms are reasonable. This inclusion of the consideration however would not displace the O'May principles or require particular clauses to be included.

84. There are important environmental and societal reasons to facilitate the inclusion of appropriate green lease clauses into leases at renewal, both of which relate to the Law Commission's terms of reference including: "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". According to the Climate Change Committee's 2025 progress report, UK buildings accounted for around 19% of UK carbon emissions, which understates levels when additional embodied carbon emissions are taken into account.

85. We believe therefore there is a strong reason to encourage, and make clear that, environmental considerations should be a relevant circumstance in s35. The wider framing of a relevant circumstance is our preference given the need for flexibility in circumstances where environmental and sustainability issues are the subject of evolving regulatory frameworks and wider market concerns. In particular as the impacts of climate change become ever more apparent there is increasing focus on the resilience of buildings to climate induced impacts which in turn may in due course affect the availability or terms of funding and insurance for buildings and the conditions, including possible requirements for adaptation work to a building. A

reform framed too narrowly around the MEES regime risks becoming outdated as the focus of legislation and challenges shift.

86. The risk is that a more narrow scope would exclude relevant considerations as regulation and concerns evolve. In particular, a narrow focus on MEES as the relevant circumstance:

- Is unlikely to facilitate the inclusion of terms relating to data sharing to support regulatory reporting.
- Would more easily become prey to changing regulatory circumstances, potentially becoming irrelevant if the rules change materially.
- Ignores the risk of changing environmental priorities and concerns such as the potential need to carry out resilience and adaption works
- Ignores a landlord's wish to exceed mere regulatory compliance or rely on exemptions where there are wider environmental or commercial reasons for improving the energy performance of the building. Increasingly, owners and investors appreciate there is a wider risk that the market will discount assets that do not meet expected environmental standards with the availability of an exemption not being viewed as an adequate solution from the point of view of the sector.

87. A broad scope would still leave in place O'May tests including the essential fairness test but would provide the landlord with an opportunity to make specific arguments in particular circumstances, for instance, in relation to data sharing or the ability to carry out adaption works where this would reduce insurance premiums or improvement works which could result in energy cost savings for tenants and reductions in emissions. A relevant circumstance with a sufficiently wide a scope as possible is important to maintain flexibility.

88. If the Law Commission does not favour a wide formulation, we would nevertheless support a narrower guided approach focused on the MEES regime and its underlying policy in preference to retaining the existing position without any express environmental relevant circumstance.

89. While we have a strong preference for mandating at least certain basic green lease clauses, we can nevertheless see that a guided approach could provide a sensible balance, retaining the protections of the O'May principles, while introducing

additional flexibility to take account of environmental considerations and the wider frameworks property owners must operate in.

90. Given the decided cases we refer to in our response to Q18, we think the wider guided approach would have the benefit of underlining the importance of environmental matters and thereby encouraging a better understanding of relevant regulation by parties and courts and would encourage a faster "greening" of renewal leases than the existing approach is achieving which is important given the transition to net zero in accordance with the UK's binding 2050 target and the wider societal interest in mitigating and adapting to climate change.

91. We believe that an additional benefit here is that while allowing courts to consider environmental considerations it would also indicate to parties themselves that it could be appropriate to incorporate green leases terms, which in turn could support mutual agreements where proposed terms are reasonable to both parties.

Additional Relevant Circumstances

92. 6.139 asks about additional "relevant circumstances", including, the nature and extent of environmental terms being agreed in other units in the same building. We do not consider that the presence of equivalent terms in leases of other units in the building should itself be a specified relevant circumstance. This could disadvantage property owners seeking to introduce reasonable modernisation across buildings where older leases do not yet contain such provisions. However, there may be circumstances in which the implications of a proposed term for the effective environmental management and performance of the building as a whole are relevant, and the court should remain able to take these into account.

93. We agree that any benefit to, or adverse impact on, the landlord or tenant should be taken into account. However, we consider that these matters already form part of the essential fairness assessment under O'May and therefore do not need to be identified as an additional relevant circumstance.

94. If additional "relevant circumstances" are specified, they should be specified to be non-exhaustive so that they do not become restrictive and they leave the parties free to bring to the court the circumstances which are most relevant to the property and transaction in question

Consultation Question 20. We invite the views of consultees as to whether the rent under a renewal tenancy should, or should not, include the equivalent of a rent-free fit-out period that would be given to a hypothetical new tenant of the premises in the open market.

If the 1954 Act is reformed to permit the tenant on renewal to obtain the equivalent of a rent-free fit-out period, we invite the views of consultees as to how that objective should be achieved.

If the 1954 Act is reformed to prevent the tenant on renewal obtaining the equivalent of a rent-free fit-out period, we invite the views of consultees as to how that objective should be achieved, in particular whether an additional valuation assumption should be introduced, and if so what that assumption should be.

95. There is currently uncertainty in the treatment of fit-out rent-free periods on 1954 Act renewals, which has resulted in the issue being considered in a number of County Court cases. It is important that the legislation is clarified to provide a clear and consistent approach rather than leaving the issue to be determined through further litigation.

96. We consider that the approach should, as far as possible, be consistent with established rent-review valuation practice, under which an allowance for an incoming tenant's fit-out period would ordinarily be disregarded in arriving at the appropriate rent (commonly known as a “net effective rent”). This is in line with the rent review provisions of the Modern Commercial Lease, which is generally used as an exemplar across the market.

97. This would prevent the issue that currently arises where the provision of an equivalent fit-out allowance for a renewing tenant who is already in occupation results in an unjustified reduction in rent to account for a cost or interruption that the tenant is not ordinarily incurring.

98. We therefore favour a clear statutory provision that, in determining the renewal rent, a rent-free period attributable to fitting out the premises should be disregarded. This should be targeted specifically at fit-out incentives only and should not disturb the wider disregards and assumptions which apply under section 34.

Consultation Question 21. Where the original tenancy includes a turnover rental model, we provisionally propose that the court should be capable of ordering the model be carried forward into the renewal tenancy. Do consultees agree? Please explain why.

99. We agree that, where the original tenancy contains a turnover rental model, the court should be capable of ordering that model to be carried forward into the renewal tenancy.

100. Turnover rents and other alternative rental structures are an established feature of parts of the commercial property market. The Act must be capable of accommodating rental models which parties have chosen to adopt previously. As discussed in our answers below, there is considerable complexity involved in introducing turnover elements, but clarifying that such arrangements can be carried forward where they were agreed previously would remove uncertainty in the existing law.

Consultation Question 22. Whether the court should be capable of ordering that the rental model in the renewal tenancy shall be different from the rental model in the original tenancy (by changing from a rack rent to a turnover rent, or vice versa).

101. We are extremely cautious about giving the court a broad power to impose a different rental model on the parties on renewal where one party is opposed. Turnover arrangements can be mutually beneficial and the Act should facilitate their use where parties choose to adopt them. However, this is different from requiring a party to adopt a fundamentally different rental model through the renewal process. The starting point for the Act should be that the existing rental model for the tenancy should be the starting point for the renewal tenancy. A materially different rental model should not ordinarily be imposed where one party objects to that change.

102. A different rental model fundamentally alters the relationship between owner and occupiers, which was recognised within the consultation. Where a turnover model is introduced this introduces greater risk for owners and exposure to the underlying business of occupiers. This can have important impacts on the level of income certainty associated with an asset, including its valuation and ability to secure funding, meet existing funding covenants, and invest into the property, all of which can have wider effects across a portfolio of leases. We have heard from some members that for these reasons they can be reluctant to grant turnover mechanisms for protected leases because they create additional uncertainty about future income over successive renewals. Operationally, it can also mean owners need to spend more time overseeing and understanding business performance to understand and manage these risks.

103. It is important to recognise that there are considerable differences between turnover models, for instance the level of commercial risk associated with arrangements with smaller and larger turnover elements. Not only should the starting point be that the court does not change between models (e.g. from a rack rent to a turnover model) but there should be no meaningful alteration in the balance of turnover and base elements without agreement by parties.

Consultation Question 23: If the court is empowered to order a turnover rent in a renewal tenancy, we provisionally propose that the court should decide on the rental model:

(1) based on what model a hypothetical landlord and tenant would agree for a renewal tenancy, where the tenant is operating the same business as the sitting tenant; and

(2) having regard to any potential detriment to one or other party from a change of model and any consequential changes to the "linked other terms".

104. We consider that the existing rental model should be the starting point when determining whether a different rental model should be ordered on renewal. The party seeking the change should be required to justify that departure, reflecting the principles which apply under O'May to changes to other terms of a renewal tenancy.

105. Current open-market practice should be an important consideration in determining whether such a change is justified, including whether the proposed rental model would be agreed between a hypothetical landlord and tenant for comparable premises. However, the existence of such arrangements in the market should not, by itself, be sufficient to justify changing the existing rental model.

106. Market practice is extremely varied and reflects difference in location, occupier businesses and how owners manage their wider portfolio. It is difficult to see that a hypothetical landlord and tenant will accurately represent a single market standard as opposed to one out of many potential rational arrangements which participants would be willing to enter into, each of which benefit or impose costs on parties in different ways.

107. Members also report that where turnover leases are agreed, they almost always involve an individually negotiated personal agreement tailoring terms from whatever the turnover would be on a standard basis in order to cater for the way that particular tenants operate their businesses.

108. While a court might be reluctant to order a change of model if applying the *O'May* test, this reflects the importance which the Act already places on continuity and may instead point to the case for greater flexibility in the *O'May* test more broadly. Given that changing the rental model can materially alter the commercial allocation of risk between the parties, we consider that a departure from the existing model should similarly require justification. We agree, however, that the court must have regard to any potential detriment caused to either party by a change in rental model.

Consultation Question 24. If the rental model in a renewal tenancy changes from the model under the original tenancy, we invite the views of consultees as to how the court should decide disputes about the introduction or removal of "bespoke turnover provisions", and consequential changes to "linked other terms".

In particular, should the court decide disputes by considering what "other terms" are agreed in the current open market for tenancies which adopt that rental model?

109. We agree that, where the court orders a change in rental model, O'May would be too restrictive for determining wider terms. Current open-market evidence should be central to determining the detailed provisions required to give effect to that model and any consequential changes to linked terms.

110. However, turnover rental arrangements are highly bespoke and there is no single standard turnover model across the market. As noted, appropriate provisions can depend on the nature and location of the premises, the occupier's business, but also accounting practices, and the particular rental structure adopted. Comparable evidence may therefore identify a range of approaches rather than a single set of terms which the court can readily apply.

111. The court should nevertheless have regard to the terms which landlords and tenants are agreeing in the current market for comparable tenancies adopting the relevant rental model, without assuming a level of standardisation which does not exist in practice.

112. Any consequential changes to other terms of the tenancy should be limited to those reasonably required to enable the new rental model to operate effectively. A change in rental model should not provide an opportunity for wider changes to the commercial bargain between the parties.

Consultation Question 25. When a turnover rent model has been agreed or determined, we invite the views of consultees as to how the court should determine (a) the base rent, (b) the turnover percentage, and (c) the turnover threshold (which collectively we refer to as the "turnover components").

In particular, can the valuation assumptions and disregards be changed so that the sitting tenant's actual business model (and potentially the sitting tenant's actual turnover) are taken into account, but the sitting tenant's goodwill and existing occupation of the premises are disregarded?

113. We consider that current open-market evidence should provide the starting point for determining the components of a turnover rent, including the base rent, turnover percentage and turnover threshold.

114. As noted however in our answer to the previous question, turnover arrangements are highly bespoke and therefore there are significant difficulties in practice. While the market can inform the court, it does not necessarily supply a single objective answer to these questions.

115. Any terms of turnover arrangements must take into account the business being operated from the premises, its business model and its actual turnover in determining the appropriate components of the turnover rent.

116. We therefore support adapting valuation assumptions and disregards so that relevant evidence about the sitting tenant's business and turnover can be taken into account, while continuing to disregard value attributable to the tenant's goodwill and existing occupation.

Consultation Question 26. If the 1954 Act is reformed pursuant to Consultation Questions 21 to 23 above to cater better for turnover rents, we invite the views of consultees as to whether those reforms should apply equally to any rental model. 7.107

We provisionally propose that the Secretary of State be given a power to make regulations in respect of renewal tenancies which contain alternative rental models, to provide for different valuation assumptions and identifying "other terms". Do consultees agree? Please explain why.

117. We agree in principle that the Act should be capable of accommodating alternative rental models beyond turnover rents. Commercial rental models continue to evolve and the legislation should not unnecessarily prevent rental structures which parties have chosen to adopt from being carried forward on renewal.

118. As the Law Commission notes, some alternative rental models may already be capable of being accommodated within section 34. For example, an index-linked rent can potentially be determined by reference to the current market rent for a tenancy containing equivalent index-linked provisions. Where the existing framework is capable of accommodating a rental model, we would prefer to rely on that framework rather than introduce additional statutory rules.

119. A particular issue can arise, however, where legislative change affects the rental terms which the parties are able to agree. A notable recent example of this is the Government's proposals to end upwards-only rent reviews (UORRs).

120. A protected lease may currently contain an open-market UORR. If legislation prevents that mechanism from being reproduced on renewal, simply retaining an open-market review but allowing rents to move both upwards and downwards would not necessarily reproduce the commercial bargain originally agreed by the parties. The downside protection may have been an important reason why the owner was willing to agree an open-market review in the first place.

121. This could have particular implications for owners such as pension funds and insurers seeking certainty of income, as well as other investors for whom greater rental volatility can affect financing arrangements and investment across a wider portfolio. Had UORRs not been permitted when the original lease was agreed, the parties might instead have agreed a different rental model, such as indexation.

122. We therefore suggest that section 34 should allow the court, where a change in law prevents the existing rental mechanism from being reproduced, to have regard to the relevant circumstances. These could include the nature and effect of the legislative change, the original rental arrangement and current market practice. This would allow the court to consider whether a different rental model, such as indexation, would provide a fair and reasonable outcome in the changed legal circumstances.

123. This would not preserve UORRs through another mechanism. The party seeking a different rental model would need to justify that change. Rather, it would recognise that legislation may itself have changed an important element of the existing commercial bargain and allow the court to take that circumstance into account.

124. We are cautious about giving the Secretary of State a broad power to introduce different valuation assumptions and approaches to other terms through secondary legislation. Changes to the valuation framework could have significant consequences for the commercial bargain between owners and occupiers.

125. Parties entering into a protected tenancy do so based on the statutory renewal regime that applies at the time, expecting continuity through renewal cycles. A broad power to alter that regime subsequently could therefore create uncertainty about the basis on which a future renewal will take place and potentially discourage parties from entering into protected tenancies.

126. If such a power is introduced, it should therefore be appropriately limited, subject to consultation with the sector before regulations are made and subject to the affirmative procedure to ensure scrutiny. A further concern is how any changes

would apply to existing protected tenancies, including the potential additional complexity of different renewal regimes applying to different tenancies.

Consultation Question 27. We provisionally propose that the commencement date of the renewal tenancy, and interim rent provisions, be reformed as follows. Either:

(1) the valuation and commencement date for the renewal tenancy would be fixed at a date that is specifically linked to the section 25 or 26 notice (on which, see Consultation Question 28 below), largely removing the need for interim rent provisions ("Option A"); or

(2) the existing valuation and commencement date of the renewal tenancy would be retained, and the existing interim rent provisions would be retained but simplified by setting out one basis of assessment ("Option B").

We invite consultees to tell us which option they prefer and the reasons for their choice.

If consultees do not agree with either Option A or Option B, we invite consultees to explain what reforms to the renewal tenancy commencement date and the interim rent provisions they would prefer (if any) and their reasons.

127. We strongly support fixing the valuation and commencement date for the renewal tenancy at a date that is specifically linked to the section 25 or 26 notice.

128. Fixing the valuation and commencement dates will remove a considerable source of contention from the lease renewal process, including the opportunity for one party to seek to delay the valuation date for tactical advantage in order to secure a more favourable outcome. This can contribute to delay in a lease renewal process which may already take between one and three years, even for relatively short leases.

129. Fixing the date will save money for parties, simplify the process, narrow the points in dispute and reduce the administrative burden on the courts. Aligning the valuation and commencement dates will considerably reduce the need for interim rent applications, as in most cases the interim rent will be the same as the rent payable under the new lease. While there will be some circumstances where there will be a need to calculate interim rents, such as those identified in the consultation, our 2016 submission to the Law Commission estimated that the change could result in a reduction of around 1,400 applications a year following any such changes.

130. By way of contrast, only simplifying the existing interim rent provisions would not solve the major practical problems of the current approach – the overall length of

the renewal process, delays caused by tactical behaviour and the costs associated with this.

131. Some members have suggested that a fixed date also means that market conditions can change materially between the valuation date and when the renewal is agreed. This can weigh against the potential benefits of the certainty created by a fixed valuation date, including reducing tactical behaviour and shortening the overall renewal process.

132. We also recognise the concern that fixing the commencement date could mean that, where a renewal takes a significant period to conclude, part of the term of the new lease will already have elapsed by completion. This could result in parties having to begin the next renewal process sooner than at present. We do note however that parties will often agree to backdate renewal leases. Although we do not have data on the prevalence of backdating, members report that it is common. This means that in practice in such situations there is already an accelerated lease cycle for many leases.

133. For those leases that are currently not backdated, the length of the renewal process currently means that very often two back-to-back five-year leases, with two-year renewal negotiations will end up amounting to 14 years of occupation. While this isn't surprising for parties who understand how the Act works in practice, it can be very surprising for parties who are less familiar with the Act.

134. The potential impact of the proposals on the lease renewal process is also closely related to the length of time that protected renewals take. This compares unfavourably with renewals for contracted-out leases which can be agreed in a matter of weeks where parties are motivated to achieve this. A fixed valuation date should itself help streamline the renewal process and remove an element of dispute and source of tactical delay.

135. The length of the renewal process for protected leases also reflects the fact that the current dispute resolution process and court timelines are too long, do not encourage parties to agree at an early stage, and do not effectively promote the use of ADR such as PACT to resolve issues. We therefore consider that fixing the valuation and commencement dates should go hand-in-hand with reforms to make the renewal and dispute resolution process quicker and less costly.

Consultation Question 28. Under Option A, we invite the views of consultees as to whether the valuation date should be (a) the 6-month-expiry-date, or (b) the expiry date specified in the section 25 or 26 notice.

136. In considering the appropriate valuation date we note that both options will provide considerable benefits over the current approach.

137. We recognise the advantage of the valuation date being the 6-month-expiry-date, which will eradicate gamesmanship, simplify the process and provide clarity for owners and occupiers.

138. We also note that market prices can adjust more slowly in a rising market than a falling market. In falling markets in sectors such as retail, vacancies will rise, creating downward pressure on rents. In a rising market where there is limited vacant space, even when achievable rents are rising, valuation evidence will accumulate more slowly because there are fewer transactions. Such mechanics disadvantage owners vis a vis occupiers where the expiry date is fixed, while a valuation linked to the service of a notice provides both parties with an element of flexibility.

139. Even though the date specified in the section 25 or 26 notice provides some scope for parties to serve the notice for tactical reasons, it still greatly reduces the overall scope of tactical behaviour, reducing it to one narrow option.

140. While we do not specifically endorse either of the two approaches, we do endorse their ability to considerably simplify proceedings.

141. We do note a further option which would be to give parties the flexibility to agree an alternative valuation and commencement date where such flexibility is needed, while using the statutory date as a backstop where parties do not agree.

Consultation Question 29: Under Option A, where the demise and/or the "other terms" of the renewal tenancy are different from the continuation tenancy, giving rise to a significant difference in the level of rent, we provisionally propose that the rent payable during the continuation period should be adjusted accordingly. Do consultees agree? Please explain why.

142. We support this proposal. Where changes to the demise or other terms would result in a significant difference between the rental value of the continuation tenancy and renewal tenancy, an adjustment is necessary to ensure that the rent payable during the continuation period appropriately reflects the tenancy actually enjoyed during that period.

Consultation Question 30. Under option A, where a renewal tenancy is not executed, we provisionally propose that the interim rent should be assessed as the open market rent for a hypothetical tenancy with the same provisions as the continuation tenancy. Do consultees agree? Please explain why.

We invite the views of consultees as to whether the assumed duration of that hypothetical tenancy should be:

(1) the actual duration of the continuation tenancy;

(2) the duration that would have been granted had a renewal claim completed; or

(3) a yearly tenancy, on the assumption that the premises are already fitted out.

143. We consider that the assumed duration of the hypothetical tenancy should be the duration that would have been granted had the renewal claim completed (Option 2). This provides the most appropriate basis for assessing the open market rent during the continuation period.

144. We note however that the length of a proposed tenancy will often be in dispute. Therefore our suggestion is that option 2 is linked to normal market practice.

145. Option 1 is likely to result in a shorter assumed term, which could produce a lower open market rental value, as shorter leases can attract lower rental values. In such situations the interim rent payable to the landlord would be reduced simply because the renewal tenancy was ultimately not entered into.

146. We would not favour Option 3, based on assuming a yearly tenancy. Valuers will commonly value longer leases and therefore valuation under Option 2 will be a simpler exercise. In markets where annual leases are rare any valuation may bear little resemblance to normal market practice. This complexity would be compounded where the continuation period extends over multiple years.

Consultation Question 31. Under Option B, we provisionally propose that the interim rent should be assessed as the open market rent for a hypothetical tenancy with the same provisions as the continuation tenancy. Do consultees agree? Please explain why.

We invite the views of consultees as to whether the assumed duration of that hypothetical tenancy should be:

(1) the actual duration of the continuation tenancy;

(2) the duration of the tenancy that was granted or, if no renewal tenancy was in fact granted, the duration of the tenancy that would have been granted had a renewal claim completed; or

(3) a yearly tenancy, on the assumption that the premises are already fitted out.

147. Although we strongly support Option A, if Option B is favoured, we agree that the assumed duration should be the duration of the renewal tenancy that was granted or, where no renewal tenancy was granted, the duration that would have been granted had the renewal claim completed (Option 2).

148. This reflects our answer to question 30 and provides a consistent basis for valuation as the duration of the tenancy actually granted or which would otherwise have been granted. It is also consistent with current law relating to the assessment of an interim rent.

149. The assessment of interim rent can be complex even for experienced valuers because of the hypothetical basis on which it is determined. Ensuring that the assumed duration of the hypothetical tenancy reflects tenancy lengths commonly granted in the market would help to reduce that complexity.

Consultation Question 33. We invite the views of consultees as to whether a procedure should be created allowing the parties to apply for an interim adjustment of the rent, pending the agreement or determination of the renewal rent and interim rent.

If consultees consider that such a procedure should be created, we invite:

(1) evidence as to the negative impacts of the current absence of such a procedure; and

(2) views as to how the practical difficulties of creating such a procedure can be overcome.

150. We would be concerned that this would be unnecessary and would create complications

Consultation Question 36. There are three requirements that a landlord must satisfy in order to rely on Ground F: (1) the landlord must hold an intention; (2) to carry out redevelopment work on the termination of the tenant's tenancy; and (3) the landlord could not reasonably undertake the work without obtaining possession.

We make no proposals to reform the first and third requirement. In relation to the second requirement, we invite consultees' views on whether the existing list of works that can be relied on by a landlord to satisfy Ground F – demolition, reconstruction and substantial construction – is sufficient.

We also invite consultees' views on three options to reform the list of works:

(1) Option 1 – expanding the categories of works that can satisfy Ground F and including a purpose/motive filter (paragraph 8.141 and following).

(2) Option 2 – expanding the categories of works that can satisfy Ground F with no purpose/motive filter (paragraph 8.156 and following).

(3) Option 3 – replacing the categories of works that can satisfy Ground F with a general test based on whether substantial works are intended.

151. Our longstanding view is that the existing list of works does not adequately enable retrofitting of commercial property buildings and other types of 'less visible' redevelopment work which are increasingly common. For instance, retrofit, rather than demolition and rebuild are increasingly demanded by the planning process, while modern methods of construction enables works that aren't simply structural in nature. Similarly, the type of works needed to meet energy efficiency regulations and bring premises up to standards typically involve less visible redevelopment or reconstruction work. This includes upgrading M&E systems to all-electric systems, replacing heating and ventilation systems, or significant interventions to the facade, particularly replacing windows.

152. Such works are often just as intrusive and substantial as other types of redevelopment work that are well understood to meet the criteria of Ground F. We therefore believe that the correct principle for assessing whether works qualify for Ground F is whether they constitute substantial works which genuinely require possession, rather than whether works take any particular physical form. If a landlord has a genuine intention to undertake substantial work, there should be equality across the type of works proposed and the nature of the works shouldn't determine whether Ground F is satisfied. The clear remedy for this would be to provide greater clarity within the Act that retrofit, refurbishment and other types of work meet the requirements of ground F.

153. The disconnect between the wording in the Act and the types of work increasingly undertaken creates considerable uncertainty for parties about whether certain types of works are allowed under the Act. This uncertainty results in additional costs and delay as a result of disputes that arise about whether works qualify for Ground F. The uncertainty and additional costs are a deterrent to investment into property and ensuring that uses are modern, productive and sustainable.

154. The uncertainty that the current Act creates for refurbishment and retrofit deters and discourages it as an alternative to full redevelopment. It is clearly desirable not to discourage retrofit where this is the best approach to redevelopment for all

parties. The wider risk is that uncertainty over the scope of Ground F, or an unduly restrictive approach to the types of works that qualify, can incentivise landlords to overspecify works in order to ensure proposals satisfy courts that works are sufficient for Ground F. This incentivises plans to incorporate structural elements into works that meet the current requirements of Ground F even where such works are less sustainable.

Consultees views on three options to reform the list of works

155. We think that option 3, a general test based on whether substantial works are intended would be the most appropriate option. It would better enable sustainability improvements and would provide clarity that such works do meet the requirements of Ground F. It would also avoid disputes about, whether replacement of an existing building system constitutes construction work.

156. We would also encourage consideration to be given to aligning the wording of Ground F with similar provisions in legislation affecting residential property, in order to provide consistency of drafting across legislation. An example of such wording is found in Ground 6 in Schedule 2 of the Housing Act 1988.

157. The more general, substantial works test is preferable to an expanded list of works that comply with ground F, which could create greater scope for dispute about whether works meet the expanded list of works. As types of work continue to evolve, a more specific list might not cover new types of works – as has been the case with the current list. We do not favour a purpose/motive filter as we believe that the motive of works should not be the relevant fact in considering whether Ground F is met.

Consultation Question 37: We invite consultees views as to

(1) whether the options to reform Ground F would enable landlords (if they wish to do so) to bring properties to the standard required by the MEES Regime; and

(2) whether it would be appropriate specifically to reference the MEES Regime in Ground F to enable landlords to bring properties to the standard required by that regime.

In each case, please explain why.

158. The current list of works that satisfy Ground F places substantial limits on the ability of landlords to bring properties up to standards required by the MEES regime. Were a general test along the lines of option 3 introduced, we believe this would allow

landlords to better bring properties up to required standards, where the nature of works is substantial.

159. We question what a specific reference to MEES would achieve, as the property owner would need to prove that the works are substantial enough to require vacant possession – which would indicate that the works would meet the requirements for any reformed Ground F.

160. We would caution against relying on specific reference to MEES to cover works related to wider environmental sustainability considerations which do not specifically relate to MEES. For instance air conditioning systems which are MEES compliant are increasingly needing to be upgraded or replaced because they no longer function as a result of climate change and wouldn't be covered by any MEES specific reference.

Consultation Question 40. We invite the views of consultees as to whether the basis for calculating compensation for non-renewal should change from being based on a multiple of "rateable value" to being based on a multiple of the current rent.

Do consultees foresee particular challenges and/or unfairness in using the current rent in respect of particular rental models (for example, those based on turnover)?

161. We favour retaining rateable value as the basis for calculating compensation for non-renewal. The existing approach has the important advantages of simplicity, certainty and predictability.

162. Using rateable value means compensation can be calculated by reference to an independently established figure without requiring parties to determine what constitutes the relevant rent or introducing a further area for dispute into the lease renewal process. Being able to accurately predict compensation payments is particularly valuable in development contexts where certainty of costs is needed to accurately assess the viability of projects.

163. We would be concerned that using current rent could create difficulties beyond turnover rents. Depending on the structure of a transaction, questions may arise as to what should properly constitute the current rent for these purposes, including whether the relevant figure should simply be the headline rent or some measure of the effective rent payable. This could lead to disagreement between parties, and their respective surveyors, as to the appropriate figure on which compensation should be calculated. It may also produce arbitrary outcomes where the parties have agreed a rent above or below the prevailing market level for reasons particular to that transaction.

164. Leases, particularly where they are index-linked or contain stepped rents, may be structured in particular ways over the period of the lease. The compensation payable could therefore depend significantly on the particular point in that rental structure at which the tenancy comes to an end and could potentially affect parties' willingness to adopt rental arrangements which would otherwise suit their commercial needs.

165. We therefore do not consider that the potential benefit of bringing the compensation figure closer to the current rent outweighs the additional complexity and uncertainty which would be introduced. We also agree that the Act should not require landlords to pay bespoke sums to compensate for tenant losses. Such an approach would introduce considerable scope for dispute, increasing costs and potentially generating additional litigation.

Consultation Question 41. We invite the views of consultees as to whether the calculation of compensation for non-renewal should be based on a system of stepped multipliers. If so, we invite views as to how the system of stepped multipliers should work.

166. We do not consider that there is a strong case for introducing a more detailed system of stepped multipliers and favour retaining the existing distinction between standard and higher rate compensation.

167. We recognise that the compensation produced by the existing system will not always appear appropriate to the circumstances of an individual case. We have heard examples where the level of compensation may appear inadequate from an occupier's perspective, but also circumstances where the payment can represent a significant and potentially disproportionate cost for the property owner.

168. Introducing additional stepped multipliers would not necessarily resolve these issues, while adding complexity to the compensation regime. The existing approach has the benefit of being straightforward and transparent. The amount of compensation is very easy to determine simply by using the Valuation Office Agency website. At the same time, the approach recognises through the higher rate that longer periods of occupation should attract a greater level of compensation.

Consultation Question 42: We invite the views of consultees as to whether the multipliers for standard rate compensation (namely, 1 x rateable value) and for higher rate compensation (namely, 2 x rateable value) should be increased or reduced, and if so why.

169. We favour retaining the existing multipliers of one times rateable value for standard rate compensation and two times rateable value for higher rate compensation.

170. As discussed in question 41, we recognise that the compensation produced by these multipliers will not always reflect the particular circumstances of an individual landlord or tenant. It is though difficult to identify a general adjustment to the multipliers which would produce consistently fairer outcomes. Increasing or decreasing the multipliers would address concerns in some cases while exacerbating them in others.

171. On balance, and in the absence of a clear basis for identifying alternative multipliers which would produce better outcomes across the market, we favour retaining the existing rates.

Consultation Question 43. If a single threshold point for higher rate compensation is retained, we invite the views of consultees as to whether 14 years is still the suitable threshold. If not, what should it be and why?

172. We favour retaining the existing 14-year threshold for higher rate compensation. We recognise that typical commercial lease lengths have shortened since the threshold was introduced. However, it does not obviously follow that the threshold for higher rate compensation should reduce correspondingly. The threshold determines when a materially greater statutory entitlement arises and this is not obviously linked to the lengths of leases across the market. Two consecutive five-year leases for instance amounting to ten years occupation is a relatively short period of occupation to then receive higher rate compensation.

173. While the existing compensation regime produces different outcomes depending on the circumstances of individual landlords and tenants, we do not consider that reducing or increasing the threshold would necessarily address these issues. In the absence of a clear case for an alternative, we favour retaining the existing 14-year threshold.

Consultation Question 44. We invite the views of consultees as to whether the formula for higher rate compensation for non-renewal, and any provisions for stepped multipliers, should be set by secondary legislation.

174. We favour retaining the existing approach, with the key elements of the compensation regime remaining in primary legislation. While placing the formula wholly in secondary legislation would allow it to be adjusted more readily in response to changing market conditions, we do not consider that this flexibility outweighs the benefits of certainty and parliamentary oversight. Changes to the level and structure of statutory compensation can have important financial consequences for both

property owners and occupiers and differ widely across sectors and regions. It should therefore be subject to appropriate parliamentary scrutiny.

Consultation Question 45. We invite the views of consultees as to whether the ability to exclude compensation should be abolished, so that all protected tenancies benefit from the right to compensation.

If not, we invite the views of consultees as to whether the threshold for the ability to exclude compensation (when the tenant has occupied for a short period) should remain at 5 years or change. If it should change, what should the threshold be? Please explain why and include any relevant evidence of market practice.

175. We do not consider that the ability for parties to agree to exclude the tenant's right to compensation should be abolished. We are not aware of the existing ability to exclude compensation causing significant problems in practice.

176. The provisions provide useful flexibility around periods of shorter occupation. For example, a tenant may occupy a premise for a short period towards the end of an existing lease. The ability to exclude compensation can prevent the potentially unfair outcome of such a tenant becoming entitled to significant statutory compensation when the tenancy ends.

Consultation Question 47. The forum in which almost all lease renewal disputes are currently decided is the county court. We invite the views of consultees as to which of the following options they prefer.

(1) Option 1 – greater use of the High Court: all disputes (both unopposed and opposed renewals) would continue to be decided by the courts, but greater use would be made of the High Court for higher value and/or more complex claims.

(2) Option 2 – move lease renewals to the Tribunal: all disputes (both unopposed and opposed renewals) would be decided by the Tribunal.

(3) Option 3 – split jurisdiction: opposed renewals would continue to be decided by the courts; however, unopposed renewals would be decided by the Tribunal.

(4) Option 4 – other change: change is needed to the current law, but in a different way to any of the reforms proposed in Options 1 to 3.

(5) Option 5 – no change to the current law: disputes would continue to be decided primarily by the county courts.

If Option 2 or 3 were implemented, we invite the views of consultees as to what powers to award costs the Tribunal should be given.

If Option 3 were implemented, it could be combined with Option 1, so that:

(1) all unopposed lease renewals would be decided by the Tribunal;

(2) most opposed renewals would be decided by the county court; but

(3) the highest value and/or the most complex opposed renewals would be decided by the High Court.

We invite the views of consultees as to whether, if Option 3 were implemented, it should be combined with Option 1.

177. In broad terms we strongly endorse both the need for reform of current dispute resolution processes and also changes that will make the current process for resolving disputes more streamlined and efficient.

178. Defining features of the current approach of deciding cases through the County Court involve: long drawn out timescales for settling disputes; lack of consistency in decision making with cases being decided by judges who might lack relevant experience; high costs; adversarial and tactical behaviour; and a lack of incentives to reach agreements at an early stage.

179. Our views on reform of the forum for renewal disputes are informed by three broad considerations:

- There should be greater use of specialist tribunals, so that disputes are dealt with promptly and efficiently by a forum with the appropriate expertise to determine such cases.
- There should be a clear and accessible route to the High Court for more complex or significant cases where this would be the appropriate forum. This in turn should remove some of the current pressures on other parts of the process.
- Alternative dispute resolution procedures including PACT are currently under-utilised. Greater use of them could provide a quicker way to resolving some disputes and remove some of the overall pressure on the court and tribunal system. We discuss ADR in more detail in our response to Question 52.

180. Of the options we support option 4. This is because we see merits in options 1, 2 and 3. We support greater use of the high court and support the use of the Tribunal for many cases, including the potential to use it for opposed renewals where appropriate. Similarly not every case including unopposed renewals is appropriate to be determined by a tribunal where the nature of the matters in dispute warrants this.

Greater use of the Tribunal and specialist expertise

181. A central benefit of using the Tribunals is to ensure that disputes are decided in a forum with the appropriate expertise to do so. Currently, complex matters are often heard by judges without a specialism in property. Such judges can find it understandably difficult to weigh up complex and competing evidence about issues of which they are not familiar. Because of the lack of expertise of judges, many cases are settled before trial so parties can avoid the possibility of a poor outcome decided by a judge whose expertise lies outside of real estate.

182. In one case of a rent dispute a member provided the example of a judge without relevant specialist valuation experience presiding over a case involving disagreement over the renewal rent for a retail unit where the passing rent was approaching £1,000,000. The valuations of the respective parties were around £500,000 apart based on differing expert valuation reports.

183. Despite the significant commercial value at stake, the judge overseeing the case specialised in intellectual property law. The judge themselves noted the difficulty of a non-specialist judge coming to a conclusion when expert witnesses are so far apart, albeit the case did not end up in a full trial because negotiations continued after the trial began and agreement was reached.

184. In such cases, the ability of a forum to draw on its own independent valuation expertise and evidence could considerably improve outcomes, ensuring that renewal rents more accurately reflect values in the market and support a fairer and more credible system overall.

Opportunities for the Tribunal to reduce timescales

185. The current approach of using County Courts is subject to protracted timelines. This can be worsened where papers are lost or sealed papers not received back in a timely manner. There is also an overall lack of clarity on timescales, including whether cases might be transferred to a different court. Further uncertainty is created

because it is not clear until judges are assigned whether they will be familiar with requisite aspects of the Act.

186. Delays and uncertainty created by the process can have significant impacts on business planning. If a property owner does choose to oppose the lease renewal, they are unable to predict when court dates might be scheduled, and therefore are unable to predict with any certainty when the lease could actually end if the opposition is successful. This creates particular uncertainty in cases where there are redevelopment plans for the property as noted below.

187. Our expectation is that a dedicated tribunal specialising in renewals, with more of a fixed structure will be able to expedite the process faster and more effectively than courts at the moment. We note the example of the Tribunal Pilot Scheme in the Central London County Court as an example where parties have had positive experience in terms of the efficiency of the process and timescales against which it operated. Members have also noted that the timescales led to parties needing to negotiate and do so quickly which was perceived to reduce the ability of parties to maximise negotiating leverage by prolonging the renewal process as long as possible.

188. While we have heard anecdotal evidence that tribunal decisions can be more likely to lead to appeals, this needs to be balanced against the benefits of the prospect of a faster process overall for parties which we believe would bring considerable benefits.

Cost and adversarial nature of the process:

189. A notable feature of the current process is its adversarial nature. Only a small minority of lease renewals ultimately end up at trial. Rather, the timetable set by a court is used by parties as a framework to manage the process, within which negotiations take place and agreement is usually reached. The protracted timescales however can encourage parties to use delay and uncertainty to their advantage and has a significant influence on the way in which parties negotiate. The court process can therefore contribute to a more adversarial approach to negotiations even where the dispute will ultimately be resolved by agreement.

190. The existing process also requires parties to incur significant costs in preparing for litigation, even where proceedings ultimately settle. The process of informal negotiations coupled with County Court directions for the exchange of expert witness evidence and statements (a few months before trial) is a major source of both delay and cost. Notably, cases can see the costs associated with obtaining expert valuation, instructing external solicitors and KCs, reach hundreds of

thousands of pounds for each side. (Detailed examples were provided in our response to the first consultation).

191. Such considerations reinforce the potential benefits of a more timely and specialist process. A tighter time scale will compel parties to reach agreements faster, providing benefits beyond the cases which are determined by court currently. Specialist forums will reduce the role of highly polarised expert valuations, which contributes to a more adversarial renewal process than is necessary.

Use of the High Court

192. We strongly support a clearer and more accessible route to the High Court for appropriate cases, particularly opposed renewals.

193. The current protracted County Court timelines have significant consequences for development schemes where property owners are seeking vacant possession. The delays and uncertainty create obstacles which can jeopardise the overall viability of projects if timescales are protracted.

194. Notably at paragraph 10.66, the consultation raises the concern that for Ground F cases, information about redevelopment plans may be provided late or plans may change during litigation. However, the length and uncertainty of the existing process can be an underlying reason for this. Where a hearing may not take place for a considerable period, owners may be reluctant to incur the cost of developing plans in detail significantly in advance of the point at which possession could realistically be obtained.

195. The cases that would benefit from a clearer route to the High Court are not necessarily restricted to opposed renewals. Unopposed renewals where landlords are seeking redevelopment breaks can be vital for certainty around future vacant possession for large schemes, while reducing the possibility that occupiers can exert undue leverage on proposals.

Allocation between forums

196. While we support greater use of the Tribunal, we recognise that not every lease renewal dispute will necessarily be most appropriately determined by the Tribunal. There is a strong case for substantially greater use of the Tribunal for unopposed renewals where rent and similar matters are well suited for determination by a specialist forum. However, an unopposed renewal can involve disputes about several different terms of the lease, potentially combining valuation, property and legal

issues. Conversely, the fact that a renewal is opposed does not necessarily mean that every issue involved requires determination by a court.

197. It is not clear to us that the distinguishing feature between opposed and unopposed renewals is complexity. Many unopposed renewals are themselves highly complex. It might be more appropriate to say that opposed renewals will sometimes cover questions of law and that these questions should be decided in a court, rather than a tribunal.

198. The important overall principle is that the framework should allow cases to be heard by an appropriately specialist forum and should provide an effective route to the High Court where the nature or significance of the issues warrants it. Similarly, lawmaking capacity would also be enabled by an appeals process that includes referral to the High Court, but could also include other appropriate forums with lawmaking capacity, including an Upper Tribunal.

199. While we recognise that a system in which different cases are heard by different forums can create awkward difficulties around jurisdiction, we don't think that this should be an obstacle to greater use of the Tribunal and benefits that this will bring. And for instance, it would be relatively easy to transfer unopposed cases to the Tribunal even where they start as opposed renewals. We would also support applicability disputes being determined by the Tribunal to avoid concerns around jurisdiction but also because they involve matters often requiring appropriate expertise.

What powers to award costs should tribunals be given?

200. For routine unopposed renewals, the general principle should be that each party bears its own costs. This reflects existing practice and provides parties with certainty as to their potential exposure to costs. Tribunals should nevertheless have the power to award costs where a party has engaged in unreasonable conduct.

201. We also note that there should be some flexibility to depart from the general principle in cases involving substantial contested issues where there is a clear outcome in favour of one party. An unopposed renewal can involve complex and heavily contested issues. Such an example would be where a property owner seeks the inclusion of a redevelopment break clause and is required to provide substantial evidence in support of its position. We therefore consider that the Tribunal should have an appropriate discretion to award costs in such cases, while avoiding a position in which costs routinely follow the event in ordinary unopposed renewals.

Consultation Question 48: We invite the views of consultees as to whether a bespoke pre-action protocol should be created for lease renewals and if so:

(1) whether separate protocols should be created for opposed and unopposed renewals; and

(2) what the protocol(s) should include.

202. While we are in favour of steps that lead to meaningful engagement between parties and potential consensual agreements at an earlier stage of the process, we are unsure whether a bespoke pre-action protocol would effectively facilitate this especially for unopposed renewals.

203. To work, pre-action protocols would need to avoid parties simply 'going through the motions' to demonstrate that they are complying with the protocols. Parties and advisers already understand the broad steps involved in renewal negotiations and these follow on from proceedings being issued which then lead to steps such as exchange of evidence. Therefore, it isn't clear that more codification would lead to earlier or more meaningful engagement. Instead it could see steps duplicated or additional requirements introduced, delaying more productive stages of the process.

204. Rather than specific protocols being needed, there may be greater benefit in considering how parties can be incentivised to engage constructively at an earlier stage. Members have noted a lack of incentives to ensure that parties approach the process in a constructive or sensible manner, and avoid circumstances where parties end up incurring unnecessary costs. Instead of adding additional procedural requirements on parties that are already engaging constructively, this would see appropriate consequences for failures to engage or act in a constructive manner. Were sanctions to be considered, this should be reserved for cases of more egregious behaviour, rather than reasonable positions that parties have taken.

205. Similarly, members note that the period following service of a section 25 notice or section 26 request during which there can be relatively little engagement. There may be merit in limited, light-touch requirements at specified points during this period to ensure that discussions are progressing.

Consultation Question 49. We invite the views of consultees as to whether standard case management directions should be created for unopposed renewals, opposed renewals or both.

We invite consultees to tell us about any particular matters they consider should be included in such standard directions.

206. We support the creation of standard case management directions for both unopposed and opposed renewals.

207. Standard directions are already widely used in practice. Members have noted that the 2021 Central London County Court template is commonly used for unopposed renewals, while other county courts also have their own standard templates. There is therefore an existing body of practice on which standard directions could build.

208. Standard directions are particularly important given that only a small minority of unopposed renewals ultimately proceed to trial. Rather, the timetable set by the court provides a framework within which negotiations take place and agreement is usually reached.

209. They would also provide benefit where directions have been issued that are not appropriate for the case (for instance because it has not been recognised that the case concerns matters under the Act). Parties would then be able to ask the court to issue the appropriate directions.

Consultation Question 50. We invite the views of consultees as to whether the approach in CPR Part 36 (which, broadly, sets out prescribed costs sanctions which apply in the event that a party fails to accept a settlement offer, which they do not go on to better at trial) should be adapted to create a similar regime for lease renewals and, if so:

(1) what types of disputes it should apply to – in particular, whether it should apply only to unopposed renewals (or specific categories of unopposed renewals, such as rent-only disputes); and

(2) how such a scheme would work.

210. We do not consider that CPR Part 36 needs to be adapted. A Calderbank offer already provides an appropriate and flexible mechanism for making settlement offers which address costs. Part 36 is unlikely to be well suited to renewal disputes which will often involve a number of different issues. They may be more workable where there are one or a small number of discrete issues in question, but we do not consider that this justifies the creation of a separate Part 36 regime for lease renewals.

Consultation Question 51. We invite the views of consultees as to whether each party to a lease renewal dispute should be given the right to refer the dispute to non-determinative ADR, such as early neutral evaluation or mediation. Under such a scheme, if one party exercised the right, the other party could not object.

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If such a right were introduced, we invite the views of consultees as to:

(1) whether the right should apply to unopposed renewals, opposed renewals or both;

(2) when, during the lease renewal process, the right should be capable of being exercised;

(3) what, if any, form of non-determinative ADR such a scheme should prescribe; and

(4) otherwise, how such a scheme should work.

211. We support the use of non-determinative ADR in lease renewal disputes, but do not support giving either party a unilateral right to require the other party to participate. ADR is most likely to be effective where both parties are willing to engage constructively in the process. Requiring participation where one party does not wish to engage risks parties simply going through the motions rather than facilitating meaningful resolution.

212. We would therefore favour an approach under which non-determinative ADR, including early neutral evaluation or mediation, is available and actively encouraged, but requires the agreement of both parties. We also note a difficulty raised by members about early neutral evaluation, that it may require substantial number of witness statements and expert evidence to be collated before any evaluation can take place, which could lead to front-loading of work and therefore of costs at an early stage.

Consultation Question 52. We invite the views of consultees as to whether the 1954 Act should be amended to include provisions which promote and/or incentivise the use of ADR within lease renewal disputes (in a similar way to the approach taken in the Electronic Communications Code). For example, provisions could be introduced into the 1954 Act (or any related secondary legislation) which:

(1) require section 25 and 26 notices to include prescribed wording, explaining the possibility of resolving lease renewal disputes using ADR and any costs consequences of unreasonably failing to engage with ADR;

(2) require landlords and tenants to consider using ADR before issuing proceedings;

(3) enable landlords and tenants to serve notices on one another, setting out the serving party’s wish to undertake ADR (but not mandating the other party to take part); and/or

(4) state that the court (or Tribunal, if some or all lease renewals were transferred to the Tribunal under Option 2 or Option 3 set out in Consultation Question 47 above) must take into account any unreasonable refusal to engage in ADR when any costs award is considered after trial.

We invite consultees to tell us their views about any other ways they consider ADR should be promoted or incentivised in lease renewal disputes.

213. We support measures to promote and incentivise the use of ADR in lease renewal disputes. As we noted in question 47, greater use of ADR will provide a quicker way of resolving some disputes and remove some of the overall pressure on the court and tribunal system. We consider, as noted in question 51, that ADR is most likely to be effective where both parties are willing to engage constructively.

214. While it is difficult to mandate any specific approach to ADR, because the circumstances of each case will vary, there is benefit in encouraging its use at an appropriately early stage. Before ADR can be effective, however, the parties will generally need to have identified and sufficiently narrowed the issues in dispute. While we do not have specific recommendations on how greater use of ADR earlier in the process should be achieved, finding ways to enable this is something we would strongly encourage.

215. Members are broadly positive about PACT and its potential to save parties time and money in resolving disputes. There is an acknowledgement, however, that it is underused. Members have noted that PACT is suitable for use where rent or the length of term is in dispute, but is less suitable where there are multiple issues in dispute. Therefore to be seen as an effective tool for use, generally issues in dispute need to have been narrowed down.

216. A further barrier to its use is that the terms on which cases are referred to PACT need to be negotiated. This increases costs and can itself be complicated to agree. While there is useful guidance from RICS on the terms upon which to refer to PACT, uptake could be enhanced by developing standard terms of referral for discrete issues.

217. It was also noted that where one party proposes the use of PACT, the process of arranging the referral can itself be used by the other party as a way of delaying the renewal process where one party is motivated to do this. A protocol or established process setting out the steps to be completed within specified periods of time could make PACT more effective and give parties greater confidence in using it.

218. Members have also noted that procedural requirements which prompt parties to consider ADR during the renewal process can be useful. For example, existing requirements to confirm whether ADR has been considered can prompt advisers to discuss the available options with their clients. Similar mechanisms could help ensure that ADR is actively considered in lease renewal disputes without requiring parties to participate.

219. We also support appropriate costs consequences where a party has unreasonably refused to engage with ADR. This would only be appropriate in cases of unreasonable conduct rather than penalising parties for maintaining legitimate positions on genuinely disputed issues.

Consultation Question 53. We invite the views of consultees as to whether there are any specific problems with the way in which Applicability Disputes (by which we mean disputes about whether a tenancy benefits from protection under the 1954 Act) are resolved currently.

We invite the views of consultees as to whether, if the law is changed so that all unopposed and opposed renewals are decided by the Tribunal (Option 2 in consultation Question 47), Applicability Disputes should also be decided by the Tribunal rather than the court.

We invite the views of consultees as to whether, if the law is changed so that unopposed renewals are decided by the Tribunal but opposed renewals continue to be decided by the courts (Option 3 in Consultation Question 47), Applicability Disputes should be decided by the Tribunal or the court.

220. We understand that Applicability Disputes are relatively rare in practice. Where they do arise, in line with either option 2 or option 3, we consider that they should be determined by the Tribunal as a preliminary issue. This would avoid any unnecessary jurisdictional issues between the Tribunal and the courts.

Consultation Question 54: We invite the views of consultees, together with evidence where possible, as to:

(1) the scale of the problem caused by the registration gap solely in dealings with the 1954 Act (and not on a wider commercial leasehold basis);

(2) whether there are any other issues arising out of the registration gap in the context of the 1954 Act that we have not identified; and

(3) whether it is desirable to amend the 1954 Act to deal with the registration gap issue bearing in mind that it will introduce inconsistency with other statutory, contractual and common law frameworks.

221. We agree that the registration gap creates difficulties in the operation of the Act, which can create significant unnecessary administration, inconvenience and burden for parties. Where issues arise they can be difficult to resolve, be ongoing and workarounds when they are found are imperfect.

222. For example, for lease renewals, the registration gap leads to delays and cost, while changes of ownership that occur can lead to more substantive problems. It can also require transactions such as agreements to surrender and relocations to be structured carefully to avoid unintended consequences where the identity of the relevant parties may change during the process.

223. To better understand impacts of Land Registry backlogs, we gathered member evidence on this in early 2025. We have shared the paper separately with the Law Commission for reference.

224. The paper supports problems identified by the Law Commission. Certain notices, including renewal notices, must be given by the entity in which the relevant legal estate is vested, while court proceedings for lease renewals must be taken in the name of the relevant legal owner. Where a property has been sold but the transfer has not yet been registered, the seller may therefore need to remain involved in the renewal process notwithstanding that it no longer has the economic interest in the property.

225. This can result in additional administration, delay and cost. Registration gap provisions commonly require the seller either to appoint the buyer as its agent or to cooperate with the buyer until registration takes place. Industry-standard provisions dealing with these issues can themselves extend to several pages which need to be reviewed, negotiated and finalised. The registration gap can also create difficulties for other transactions and active asset management, including lease renegotiations and modifications, agreements to surrender and relocations.

226. There can also be consequences for relationships between new landlords and their tenants. In one example involving linked shopping centre sales, the continuing registration gap caused confusion amongst tenants as to which party they should engage with, including around notices which needed to be served on multiple parties. Responses were delayed because the legal owner had to await instructions from the beneficial owner, with additional costs arising each time the legal owner

needed to become involved. More generally, this continuing reliance upon the seller can create particular difficulties if the seller becomes insolvent or otherwise ceases to be readily available.

227. Additionally, tenants face difficulties because they may have no way of knowing that an unregistered change of ownership has taken place. Consideration should therefore be given to protecting tenants who reasonably serve notices on the registered owner without knowledge of an unregistered change of ownership.

228. These difficulties are significantly exacerbated by the length of current registration delays. In our 2025 work, members typically reported delays of 18 to 24 months for larger and more complex transactions, although we have also heard of individual cases involving registration gaps exceeding three years. The wider administrative impact is considerable. At the time, we estimated that the legal sector alone was spending around 12,000 additional days each year simply chasing and updating clients on the status of registrations in the backlog. This estimate relates to the registration backlog generally rather than specifically to dealings under the Act, but illustrates the scale of the underlying administrative burden that problems associated with registration gaps are creating.

229. The most obvious way to reduce these difficulties would be to ensure that HM Land Registry (HMLR) is sufficiently resourced to reduce registration delays. Some of our recommendations we have provided to HMLR include:

- To make it easier to apply to the Application Management Service (AMS) for handling complex commercial transactions or for HMLR to triage applications themselves.
- Widening the criteria for AMS
- Better publication of AMS – so that all relevant legal professionals and stakeholders are aware of it.

230. We support other measures to mitigate the impact of the registration gap while significant delays persist. These could include enabling a new owner who has not yet been registered as landlord or tenant, as the case may be, to conduct the renewal process on its own behalf prior to becoming the registered owner.

Consultation Question 55. We have presented a range of options to deal with the issue of the registration gap, and the problems it creates, within the context of the 1954 Act. We invite the views of consultees as to which of the following options they prefer.

231. We support an approach which enables a new owner who is awaiting registration to serve and receive the notices necessary to conduct the renewal process and, where necessary, to conduct renewal proceedings on its own behalf. This would reduce the need for the outgoing legal owner to remain involved in the process solely because registration has not yet been completed. Any such approach should also protect a tenant who reasonably serves a notice on the registered owner without knowledge of an unregistered change of ownership.

232. We do however recognise potential difficulties in changing rules around land ownership and that it could create inconsistencies with wider legal frameworks. If reform is practical, it should therefore be confined as far as possible to addressing the practical difficulties which arise in operating the renewal machinery during the registration gap.

Consultation Question 56: We invite the views of consultees as to whether occupation by Government Bodies should be dealt with in the same way as occupation by group companies and beneficiaries under trusts. (In other words, to allow the occupation by one Government Body to constitute occupation of the tenant in circumstances where the tenant is a different Government Body.)

We invite the views of consultees as to whether there are other circumstances that are similar to those we have explained regarding occupation by Government Bodies, which consultees believe should be dealt with in the same way as occupation by group companies and beneficiaries under trusts. Please explain why, including any evidence of the scale of the problems being caused in practice.

233. While we have not discussed this question in detail with members, given the wide range of potential occupiers within the public sector, we would have concerns about how the proposal might affect a property owner's ability to manage tenant mix. This can be particularly important in sectors such as retail, where active place management may require owners to maintain an appropriate mix of occupiers and uses across a property or wider estate.

Consultation Question 57. We provisionally propose that a landlord should be able to serve a section 25 notice on a tenant that is not in occupation at the time the notice is served, provided that the tenant has a protected tenancy. Do consultees agree? Please explain why.

234. We agree with the proposal. It is sensible that a landlord should be able to serve a section 25 notice on a tenant which is temporarily out of occupation, particularly

where that tenant may subsequently return to occupation and regain protection under the Act.

Consultation Question 58. We invite the views of consultees as to whether the categories of tenant who can serve a section 26 notice should be expanded and, if so, which tenants should be able to serve a section 26 notice.

235. Given the proposed reforms to periodic tenancies and the duration threshold for fixed-term tenancies, we do not see a strong case for extending the ability to serve a section 26 notice to tenants who are currently unable to do so.

Consultation Question 61. We invite the views of consultees (together with evidence wherever possible) as to whether the 1954 Act makes adequate provision for a landlord to obtain vacant possession where it is planning to undertake large-scale and/or complex redevelopment projects.

If consultees believe the 1954 Act makes inadequate provision for such developments, they are invited to give views about what amendments to the 1954 Act are necessary.

236. We consider that the current framework can create significant practical difficulties for large-scale and complex redevelopment projects, particularly where a site comprises a number of separately occupied premises with different lease expiry dates.

237. An example given by members of the type of project where the Act provides inadequate support are major regeneration projects where land is being assembled and vacant possession is needed before the project can proceed. For instance, if the site covers a shopping centre, there will be a large number of leases that end at different times. However, it will be very difficult to oppose the lease renewal in court because this will require proof that the developer is ready to begin the process. This however, is very difficult to do on a large site before the developer has certainty that they will be able to obtain vacant possession across the site. Where leases have security of tenure under the Act, it is much more difficult to achieve vacant possession than where leases are outside the Act.

238. This then requires developers to factor multiple years into project timelines for major proposals before they might expect to gain vacant possession. This in turn creates significant complexity and uncertainty for the project, during which time the underlying economics could render the proposed project unviable. We have heard that the difficulty of assembling vacant possession through the Act leads some developers to use Compulsory Purchase Order (CPO) powers to ensure that vacant possession can be achieved within timescales that enable the project to be

delivered. This though adds cost to the process and will only be suitable for specific schemes.

239. The central issue that developers face on complex regeneration projects in relation to the Act is securing vacant possession by being able to prove intention to develop. The experience of members is that the case of S Franses Limited v Cavendish Hotel (London) Limited has made it more difficult to achieve vacant possession for major redevelopments.

240. The fact that major regeneration projects have continued to be undertaken since the Act came into force should not be taken as evidence that the difficulties associated with obtaining vacant possession do not affect development. Developers instead factor the expected time, cost and uncertainty associated with obtaining vacant possession into their investment appraisals. As set out in our recent *Boosting Development Viability* report, delays and uncertainty increase investment risk and can affect the viability of development. These can result in changing plans to reduce costs or the scale of the project, the level of risk they are willing to accept on a project and ultimately whether they wish to undertake a project in the first place or progress it when it has been proposed.

241. We therefore consider that how the intention test should apply to genuine large-scale redevelopment schemes should be considered for reform. We do not suggest that tenants should lose the ability to challenge whether the statutory grounds for opposition have genuinely been made out. There would be merit for instance in considering how related claims forming part of the same large-scale redevelopment could be dealt with on a more coordinated basis. For example, where a landlord has established a firm and settled intention to undertake a defined wider redevelopment, the procedural framework should enable related Ground F claims to be case-managed together and avoid unnecessary duplication of substantially the same evidence.

242. This would improve certainty and reduce cost without altering the substantive requirement that the landlord demonstrate the necessary intention to redevelop and that possession is genuinely required to undertake the works.

Consultation Question 62. We invite the views of consultees (together with evidence wherever possible) as to:

(1) the extent to which the co-existence of the MEES Regime and the statutory security of tenure regime under the 1954 Act creates problems in practice; and

(2) whether there are measures that could address these issues without fundamentally affecting the balance between the rights and obligations of landlords and tenants established under each of those regimes.

243. We have already noted in question 18 that the current approach ignores a landlord's wish to exceed mere regulatory compliance or rely on exemptions where there are wider environmental or commercial reasons for improving the energy performance of the building. As we stated there, increasingly, owners and investors appreciate there is a wider risk that the market will discount assets that do not meet expected environmental standards. The availability of an exemption will thereby not be viewed as an adequate solution from the point of view of the sector.

244. At the same time, it is important that the interaction between the two regimes does not effectively remove the ability to rely on an exemption where there are legitimate reasons for doing so. For example, the energy performance of premises may be adversely affected by tenant equipment or fit-out, and requiring the property owner to undertake works could involve replacing tenant-specific equipment at considerable cost and disruption.

245. There is an unhelpful lack of clarity and an inconsistency between the EPC Regulations and the MEES Regulations which results in uncertainty on whether MEES applies on lease renewals, whether under the Landlord and Tenant Act 1954 or otherwise. It is explained in Thomson Reuters Practical Law service under MEES: Minimum Energy Efficiency Standards for Commercial Property. The government issued a consultation on EPC reform in December 2024 which included the following statements:

a) Currently in both the private and social rental sectors when an EPC expires, a new EPC is only required when a property is re-let and not when the same tenant renews or extends their lease;
b) Requiring a new EPC for rented buildings when the existing one expires would therefore ensure most new lease renewals are captured within the scope of the PRS Regulations.
c) We are proposing to introduce for private rental properties a new trigger point where an EPC is required for when the current one expires.

246. The government responded to this consultation in March 2026 in which it stated:

a) At paragraph 64 "We intend to maintain the current ten-year validity period for reformed EPCs, whilst existing EPCs will retain their ten-year validity"; and

b) At paragraph 65 " In light of policy announcements on PRS MEES, we are working to refine the position on requiring a new EPC when an existing one expires for all private rented buildings, to ensure the policy has its intended effect. We will ensure the revised Energy Performance of Buildings and PRS MEES regulations interact effectively to place the right requirements on landlords without incurring undue burdens. MHCLG and DESNZ will engage landlord groups to help shape our plans which we will finalise in the final government response to this consultation."

247. If there was reform which required an EPC to be in place at all times when property is let this should resolve this inconsistency.

248. We also note the lack of clarity referred to by the Law Commission relating to the operation of MEES exemptions in the 1954 Act lease renewal context. In our view the inconsistency and lack of clarity do not arise from the operation of the Act but rather from the drafting of the MEES and EPC Regulations and from related guidance and the consultations and it is best addressed in clarification on or reform of the MEES and EPC regimes.

Consultation Question 63. Consultees are invited to tell us if there are other reforms to the 1954 Act that we should consider. Consultees are asked to explain the issue; provide a description, and any evidence, of the impact of the problem; and provide any suggestions as to how the law should be reformed.

249. We have not identified any significant additional areas for reform beyond those addressed in our responses to the questions in this Consultation Paper.

Consultation Question 64. We invite consultees to tell us about any particular considerations or experiences in Wales, which consultees think are relevant to potential reform to the 1954 Act.

250. We have not received evidence from members of particular considerations or experiences in Wales which would require a different approach to reform of the Act.

Consultation Question 65 Specifically considering protected tenancies that exist at the time that our recommended reforms are implemented, we invite the views of consultees as to what transitional arrangements would be required in respect of the options and provisional proposals for reform set out in this Consultation Paper.

251. We consider that transitional arrangements should seek to minimise uncertainty and avoid changing the legal consequences of steps which landlords and tenants have already taken in reliance on the existing legislation.

252. In general, where a statutory process has already commenced before reforms come into force, we would favour allowing that process to continue under the existing regime. Clear transitional provisions will be particularly important where notices have already been served or proceedings commenced.

Consultation Question 66. We invite the views of consultees, together with evidence where possible, as to what financial and other impacts our provisional proposals to amend the 1954 Act will have on:

(1) landlords, tenants and their advisers; and/or

(2) the commercial leasehold market.

253. Overall, we consider that reforms which simplify the operation of the Act and reduce unnecessary procedural requirements should reduce costs for landlords and tenants and improve the efficiency of the commercial leasehold market.

254. As discussed throughout our response, existing processes can generate significant legal and professional costs and delay to transactions. Reforms which provide greater certainty, simplify contracting out and other administrative processes, and enable disputes to be resolved more efficiently therefore have the potential to produce meaningful savings for both landlords and tenants.

Consultation Question 67. We invite consultees to tell us if they believe, or have evidence or data to suggest, that changes to the 1954 Act that are being considered in this Consultation Paper could result in advantages or disadvantages to certain groups or to individuals based on certain characteristics (with particular attention to age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation).

255. We are not aware of any changes to the Act being considered that might result in advantages or disadvantages to certain groups or to individuals based on protected characteristics.

End of response