The Law Commission

(LAW COM. No. 178)

LANDLORD AND TENANT LAW
COMPENSATION FOR TENANTS' IMPROVEMENTS

Laid before Parliament by the Lord High Chancellor pursuant to section 3(2) of the Law Commissions Act 1965

Ordered by The House of Commons *to be printed 19 April 1989*

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HER MAJESTY'S STATIONERY OFFICE

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The Law Commission was set up by section 1 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law.

The Commissioners are—

The Honourable Mr. Justice Beldam, *Chairman*

Mr. Trevor M. Aldridge

Mr. Richard Buxton, Q.C.

Professor Brenda Hoggett, Q.C.

The Secretary of the Law Commission is Mr. Michael Collon and its offices are at Conquest House, 37–38 John Street, Theobalds Road, London, WC1N 2BQ.

COMPENSATION FOR TENANTS' IMPROVEMENTS

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COMPENSATION FOR TENANTS' IMPROVEMENTS

Summary

In this Report the Law Commission recommends that the statutory scheme (in Part I of the Landlord and Tenant Act 1927) for compensating tenants of business premises who have made improvements should, subject to certain transitional provisions, be abolished. It also recommends the retention of provisions under which such tenants can obtain authority to do improvement work.

THE LAW COMMISSION

Item VIII of the First Programme

Landlord and Tenant Law

COMPENSATION FOR TENANTS' IMPROVEMENTS

To the Right Honourable the Lord Mackay of Clashfern, Lord High Chancellor of Great Britain

PART I

INTRODUCTION

Scope of this Report

1.1 In this Report we consider whether, and to what extent, tenants who improve the property let to them should have a statutory right to be compensated by their landlords. We also discuss consequential questions relating to the statutory provisions authorising tenants to carry out improvement work.[1]

1.2 Landlords and tenants can validly agree terms relating to improvements, and leases often contain provisions about them; what we are concerned with is statutory intervention into this freedom of contract. At common law, and in the absence of any contrary agreement between the parties, tenants are free to improve the property let to them in any way they wish.[2] In practice, lease terms frequently curtail that freedom. If a tenant does make an improvement, the benefit of it may last beyond the end of the lease term, so that the property handed back to the landlord has been increased in value. All the same, that does not, at common law, entitle the tenant to any compensation from his landlord.

1.3 At present, there are two sets of statutory provisions which give some tenants the right to claim compensation. They are for the benefit of tenants of business premises[3] and tenants of agricultural holdings.[4] Our main concern in this Report is whether business and residential[5] tenants should have a right to compensation for improvements which they make. It is not concerned with the compensation provisions for agricultural tenants.

Background

1.4 Our Working Paper[6] was published in May 1987. In it, we examined the criticisms of the statutory compensation scheme for business tenants and considered the options for reform. We provisionally concluded that business tenants should retain their compensation rights but the statutory scheme should be simplified and improved; and that there should be no similar rights for residential tenants to claim compensation from their landlords. We are grateful for the helpful replies we received. The names of those who responded are listed in Appendix B to this Report.

1.5 In preparing the Working Paper, we were assisted with valuation advice from Mr. V. W. Taylor, LL.M., F.R.I.C.S.; Sir Wilfred Bourne, K.C.B., Q.C., helped us in analysing the responses to the Working Paper. We are most grateful to both of them.

Structure of this Report

1.6 Part II of this Report summarises the present law. Our recommendations for reform of the statutory rules relating to compensation and authorisation for carrying out improvements are set out and explained in Parts III and IV respectively; and those recommendations are summarised in Part V. A Bill to give effect to the relevant recommendations, together with explanatory notes, appears in Appendix A.

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[1] The provisions of the Landlord and Tenant Act 1927 relating to authority to make improvements are set out in Appendix C to this Report.

[2] Unless the work would constitute waste.

[3] Landlord and Tenant Act 1927, Part I.

[4] Agricultural Holdings Act 1986, ss. 64–69. The Act regulates the basic obligations of the parties, gives security of tenure, lays down a rent-fixing procedure, and provides for compensation on a number of other grounds besides improvements to property.

[5] There is at present no statutory compensation scheme for residential tenants who improve their property.

[6] Landlord and Tenant: Compensation for Tenants' Improvements, Working Paper No. 102.

PART II

THE PRESENT LAW

Introduction

2.1 Part I of the Landlord and Tenant Act 1927[1] has two purposes: first, to enable business tenants to claim compensation for improvements which they make; and, secondly, to enable them to obtain the court's authority for carrying out improvements which would otherwise be unlawful. This authorisation procedure can be used independently of any claim for compensation. There are other provisions which authorise the making of improvements by tenants. We deal with these in section B after considering the compensation provisions.

A. COMPENSATION FOR IMPROVEMENTS

Scope of the legislation

2.2 Under Part I of the 1927 Act, the tenant of property used wholly or partly[2] for a trade, business,[3] or profession[4] qualifies to claim compensation from his landlord[5] for an improvement which adds to the letting value of the property, if he complies with the statutory procedure for making a claim.[6] This does not apply to mining leases, lettings of agricultural holdings or written lettings to a tenant as holder of, and during the currency of, any office, appointment or employment.[7]

2.3 With certain exceptions, any improvement,[8] including the demolition and reconstruction of a building,[9] may qualify for compensation. Excepted improvements are: fixtures which the tenant is entitled to remove;[10] work done before 25 March 1928; work begun before 1 October 1954 and done pursuant to a statutory obligation; and work done pursuant to a contractual obligation for valuable consideration.[11] It would appear that the statutory rules are confined to physical improvements.[12]

2.4 A tenant may not only claim compensation for an improvement which he made, but also for one made by a predecessor in title.[13] This includes anyone through whom he has derived title,[14] and can include a former sub-tenant.[15] It is probable, though not certain, that a tenant cannot claim compensation for an improvement made during the term of an earlier lease.[16]

Compensation Procedure

2.5 There are three stages in the procedure to qualify for statutory compensation. A tenant may have to:

(a) serve notice of the intention to make the improvement;

(b) require the landlord to certify that it was duly executed;

(c) claim compensation within strict time limits.

(a) Preliminary Procedure

2.6 The tenant must first serve on the landlord written notice of his intention to make the improvement, with a specification and plan. The landlord then has three months within which

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[1] As modified by the Landlord and Tenant Act 1954, Part III.

[2] If property is only partly used for trade or business, the statutory provisions only apply to improvements to the extent that they relate to the trade or business: s. 17(4).

[3] This excludes carrying on the business of sub-letting residential flats: s. 17(3)(b).

[4] Section 17(3) proviso.

[5] The compensation provisions bind the Crown *qua* landlord s. 24(1).

[6] Section 1(1).

[7] Section 17(1), (2).

[8] This term is not expressly defined.

[9] *National Electric Theatres Ltd.* v. *Hudgell* [1939] Ch. 553

[10] Section 1(1).

[11] Section 2. A contract with a sub-tenant, or with a stranger, is sufficient to take the improvement outside the compensation provisions: *Owen Owen Estate Ltd.* v. *Livett* [1956] Ch. 1.

[12] Working Paper, paras. 2.12–2.13.

[13] Section 1(1).

[14] Section 25.

[15] *Pelosi* v. *Newcastle Arms Brewery (Nottingham) Ltd.* (1982) 43 P. & C.R. 18.

[16] Working Paper, paras. 2.18–2.20.

to object, and if he does the tenant may bring the matter before the court. The court may certify that the improvement is a proper one if it is satisfied on three points: first, that the proposed improvement is calculated to add to the letting value of the property at the end of the tenancy; second, that it is reasonable and suitable to the character of the property; and, third, that it will not diminish the value of other property of the landlord or a superior landlord.[17] The court has no power to approve an improvement where the landlord has offered to do the work himself, in return for a reasonable increase in rent unless it is later shown that he has failed to carry out the work.[18]

2.7 If the landlord does not object to a tenant's proposed improvement within the prescribed period, or the court has certified that it is a proper one, the tenant is authorised to do the work. This applies notwithstanding "anything in the lease of the premises to the contrary".[19] Accordingly, although the authorisation is part of the procedure for obtaining compensation, it also stands independently as a way for a tenant to overcome both a general prohibition imposed by his landlord against improving the property and an objection to a particular proposal.[20]

2.8 Once the tenant has done the improvement work,[21] he may require the landlord to certify that it has been duly completed. If the landlord does not give a certificate, the tenant may apply to the court for one.[22] This certificate is not essential for claiming compensation, but is useful for proving later both that the work was done and when it was completed.

(b) Claim Procedure

2.9 The preliminary procedure, outlined above, serves to establish that a tenant's improvement may qualify for compensation, but does not guarantee that anything will eventually be paid. That will depend on following the claim procedure when the lease ends, and demonstrating at that time by valuation that a sum is payable. The preliminary procedure is however essential, because without it no later claim can be effective.

2.10 To claim compensation the tenant must serve written notice on his landlord. There are strict[23] time limits for serving notice, which vary depending on the way in which the lease comes to an end.[24] The compensation is payable when the tenant quits the property.[25]

Amount of Compensation

2.11 The amount of compensation which a tenant may claim for an improvement is the residual value of it from which the landlord benefits. This is calculated by applying two ceilings,[26] neither of which the compensation may exceed:

(a) the net addition[27] to the value of the property as a whole resulting directly from the improvement; and

(b) the reasonable cost of doing the work at the end of the tenancy, less any cost of putting the works into a reasonable state of repair except to the extent that the latter cost is covered by the tenant's repairing obligations.[28]

In determining the net addition to the value of the property, the effect on it of any intended change of use of the property, or proposed demolition or structural alteration, must be taken into account.[29] As a result, the landlord can effectively defeat any claim for compensation by

[17] Section 3(1). The court may make such modifications to the plan and specification as it thinks fit, or impose such conditions as it thinks reasonable.

[18] *Ibid.*, proviso.

[19] Section 3(4).

[20] The only restrictions not overridden are those created for naval, military, air force and civil aviation purposes, or for securing public rights over the foreshore or the sea bed: s. 3(4) proviso.

[21] The work must be done in accordance with the plan and specification (as modified by the court or by agreement with the landlord) within the time agreed with the landlord or fixed by the court, and must comply with any other conditions imposed by the court.

[22] Section 3(6).

[23] *Donegal Tweed Co. Ltd.* v. *Stephenson* (1929) 98 L.J. (K.B.) 657.

[24] Landlord and Tenant Act 1954, s. 47.

[25] Landlord and Tenant Act 1927, s. 1(1).

[26] The amount of compensation is, in effect, the lesser of these two ceilings.

[27] i.e., the benefit less any detriment: *National Electric Theatres Ltd.* v. *Hudgell* [1939] Ch. 553, 561.

[28] Section 1(1).

[29] Section 1(2).

a decision to make changes after the tenant quits,[30] even though, had the previous use continued, the improvement would have had a continuing value. The amount of compensation is also to be reduced to take account of any benefit received from the landlord in consideration expressly or impliedly of the improvement,[31] but the scope of this provision is uncertain.[32]

Contracting Out

2.12 These statutory provisions apply notwithstanding any contract to the contrary, unless it was made before 9 February 1927.[33] Originally, contracts which were made for adequate consideration were to be effective to exclude the Act,[34] but that does not apply to any contract made after 9 December 1953.[35]

2.13 Nevertheless, it would seem that a carefully drawn lease can ensure that no compensation is payable. Since compensation is not payable for an improvement which the tenant is contractually obliged to carry out,[36] the landlord can probably avoid liability by taking a covenant obliging the tenant to carry out any proposed improvement to which the landlord agrees. It is also common for a landlord to be entitled to require that his tenant reinstate the premises at the end of the lease, so that they revert to their unimproved state. This negatives the benefit of any improvement.[37]

B. AUTHORITY TO MAKE IMPROVEMENTS

Statutory Provisions

2.14 There are three sets of statutory provisions which are relevant to authorising improvements by tenants.

Landlord and Tenant Act 1927, s. 3(4)

2.15 Section 3(4) of the 1927 Act, although enacted as part of the compensation scheme,[38] enables a business tenant[39] — whether or not he intends actually to claim compensation at the end of his tenancy — to seek the court's authority to carry out improvements which are prohibited by the terms of the tenancy.[40] The section applies to all covenants affecting the making of improvements which fall within its ambit.[41] If there is an absolute prohibition in the lease, use of this procedure is the only method available to the tenant of getting authority, in the absence of actual consent from the landlord.

Landlord and Tenant Act 1927, s. 19(2)

2.16 This provision applies to all tenancies, other than tenancies of agricultural holdings,[42] mining tenancies,[43] and tenancies subject to the special provisions of the Housing Act 1980 and the Housing Act 1985.[44] It adds a proviso to any lease covenant which prohibits improvements being undertaken without the landlord's consent.[45] The proviso is that the consent shall not be unreasonably withheld.[46] The statute expressly qualifies that proviso in three ways. First, it does not preclude the right to charge a reasonable sum for the consent, to cover damage to, or diminution in the value of, either the premises let or neighbouring

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[30] No compensation will be awarded if, e.g., the landlord intends immediately to demolish the improvement. If compensation is reduced, or not awarded at all, the court may authorise the tenant to make a further application if the intention is not implemented within a period fixed by the court: s. 1(3).

[31] Section 2(3).

[32] Working Paper, para. 2.33.

[33] Section 9.

[34] *Ibid.*, proviso.

[35] Landlord and Tenant Act 1954, s. 49.

[36] Landlord and Tenant Act 1927, s. 2; see para. 2.3 above.

[37] The landlord is only required to pay compensation for the benefit he actually receives from the improvement.

[38] See paras. 2.6–2.7 above.

[39] See para. 2.2 above.

[40] The court's certificate that the improvement is a proper one makes it lawful for him to proceed, notwithstanding any prohibition contained in the lease.

[41] One of the requirements is that "the improvement is of such a nature as to be calculated to add to the letting value of the holding at the termination of the tenancy": s. 3(1)(a).

[42] Section 19(4).

[43] *Ibid.*

[44] See para. 2.18 below.

[45] More specifically, the subsection applies to "any covenant condition or agreement against the making of improvements without licence or consent".

[46] The onus is on the tenant to show that the landlord's refusal was unreasonable.

property of the landlord. Second, a charge for legal or other expenses incurred in connection with the consent is allowed. Third, where the improvement does not add to the letting value of the premises, the landlord may require, if it is reasonable to do so, an undertaking to reinstate them.

2.17 Section 19(2) of the 1927 Act overlaps section 3(4) of the same Act to some extent, but there are two important differences between their scope. First, section 19(2) has no impact on absolute covenants against improvements;[47] and secondly it is not restricted to the making of improvements which add to the letting value of the property.[48]

Housing Act 1980, ss. 81–82, and Housing Act 1985, ss. 97–98

2.18 Lettings of many residential properties are now subject to different statutory provisions. Most protected and statutory tenancies under the Rent Act 1977[49] and secure tenancies under the Housing Act 1985 are no longer subject to section 19(2) of the Landlord and Tenant Act 1927. These tenancies are now subject to a term that the tenant will not make any improvement[50] without the landlord's written consent. The landlord is not entitled unreasonably to withhold consent,[51] and if he does it is treated as having been given.[52] The effect of these provisions is to bar absolute covenants against improvements in the cases to which they apply.

[47] An absolute covenant is one by which the tenant undertakes not to do the thing in question at all; and see para. 2.7 above.

[48] *Lambert* v. *F.W. Woolworth & Co. Ltd. (No. 2)* [1938] Ch. 883 (C.A.); and see n. 41 above.

[49] Those excluded, and therefore still covered by s. 19(2), are those to which the mandatory grounds for possession in Cases 11–18 and 20 in Schedule 15 to the Rent Act 1977 apply provided that the landlord has complied with the prescribed notice procedure for each Case; and those where a landlord's notice has been served on the tenant stating that the tenancy is a protected shorthold tenancy.

[50] This is widely defined to mean "any improvement in, or addition to, a dwelling house" and to include matters such as the erection of television aerials and the carrying out of external decoration.

[51] A landlord who withholds consent has the burden of proving that he has done so reasonably. In deciding this, the court is required to have regard to a number of specific factors.

[52] Housing Act 1980, ss. 81–82; Housing Act 1985, ss. 97–98 (secure tenancies). The Housing Act 1988 does not affect these provisions and does not extend them to assured tenancies.

PART III

COMPENSATION FOR IMPROVEMENTS: RECOMMENDATIONS

A. COMPENSATION FOR BUSINESS TENANTS

Introduction

3.1 The primary issue, which we addressed in our Working Paper and to which we now turn, is whether the existing statutory compensation scheme for business tenants should continue, either in its present form or as amended.

3.2 Before discussing this, we must draw a distinction between the two effects which Part I of the Landlord and Tenant Act 1927 has. On the one hand, there is the primary purpose of the legislation, to give tenants the chance of compensation. On the other, it gives authority to tenants to make improvements which they would not otherwise be entitled to do. We have already pointed out that the authorisation procedure can be used independently of any compensation claim,[1] and a number of those who responded to the Working Paper recognised this and expressed different views about each. In this Part we are considering only compensation; authorisation is discussed in Part IV.

Use of Compensation Procedure

3.3 In the Working Paper,[2] we said that "Our preliminary investigations and our general experience indicate that the [compensation] procedure is not often used". Many of those who responded agreed.

3.4 The Royal Institution of Chartered Surveyors reported that none of the expert members of their Working Party "was aware of more than a small number of cases where the compensation provisions set out in the Landlord and Tenant Act 1927 have been relied upon". A large firm of surveyors said that "in our experience it is, in practice, little used by tenants". Another surveyor said that in 37 years' practice in estate management his experience was confined to two cases. The Law Society commented that, "it appears that the procedure is not often used". This was supported by an individual solicitor of long experience, and another who acts for a major landed estate who said, "the possibility of a claim for compensation is one that arises in many cases, although in recent years only one formal claim has been made ... and was not ultimately pursued". A retail company, which has more than 700 shops and about 200 tenants, told us that they had not made or received any claim for compensation for improvements during the last five years. A body with a substantial commercial property portfolio had "never been concerned with a claim by a tenant for compensation for improvements under the provisions of the Landlord and Tenant Act 1927. This suggests that the provisions of the 1927 Act are used so infrequently as to make them obsolete for all practical purposes".

Reasons for Disuse

3.5 It is difficult to be sure why the compensation provisions are not now often used. It is most likely that the present situation is the cumulative result of a number of causes. Certainly, various reasons were cited to us. In summary, these were: the impact of Part II of the Landlord and Tenant Act 1954; the complexity of the 1927 Act procedure and the impracticability of retaining the necessary records; the procedure's unsuitability in the case of particular types of property; the prevalence of contractual arrangements to exclude compensation; the short life-span of some improvements; and ignorance of the statutory requirements.

(i) Landlord and Tenant Act 1954

3.6 We pointed out in the Working Paper[3] that the position of business tenants has been radically altered since 1927 by the introduction of the security of tenure provisions of the Landlord and Tenant Act 1954. It is now no longer the case that a tenant who has made an improvement will necessarily lose the benefit of it at the end of the lease term; indeed, it is more likely that he will be entitled to retain possession under a new lease.[4] The Council of

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[1] Paras. 2.7 and 2.15 above.
[2] Para. 3.6.
[3] Paras. 1.11 and 3.7.
[4] The only grounds upon which a tenant's application for a new lease can be resisted are contained in the Landlord and Tenant Act 1954, s. 30(1).

Her Majesty's Circuit Judges suggested that because a tenant who complies with his obligations can normally continue to enjoy the benefit of the improvement, the 1927 Act had outlived its usefulness. This point wa supported by the respondents to a questionnaire[5] sent out by the Centre for Studies in Property Valuation and Management at the City University to 139 property companies, firms of surveyors and commercial institutions with property interests. One firm of chartered surveyors pointed out to us additionally that the 1954 Act renewal provisions require the rent under the new lease to exclude the effect of any tenant's improvement.

3.7 We suggested that one of the purposes of the 1927 Act was to "remedy some of the recognised disadvantages of the leasehold system in relation to business property",[6] One of these was the fact that a tenant could be faced with the choice of either not improving the property let to him, or of having to allow the landlord to avail himself of the residual value of the improvement once the lease ended, without receiving any compensation. As a result of the 1954 Act, this is now rarely the case; the tenant has a realistic chance of renewing the lease and receiving full value for his expenditure on improvements.

(ii) Compensation claim procedure

3.8 There are eight separate steps[7] in the statutory procedure to claim compensation, some carried out before the work is done or immediately afterwards, and the rest when the lease is about to come to an end or has ended. In our Working Paper, we described this machinery as "inherently wasteful and cumbersome", a description which still strikes us as appropriate.

3.9 The complexity may not of itself be a deterrent to its use, although the Royal Institution of Chartered Surveyors believes it is, but the division of the procedure into two parts may be. The preliminary procedure does not of itself guarantee the tenant the right to compensation; all it does is to lay a foundation for a successful claim later, if, at that later stage, a claim is justified. The success of a claim when the lease ends is far from certain, and this may deter the tenant from undertaking the preliminary steps. A claim may be defeated because the improvement has no residual value or because the landlord decides to build or to change the property's use.[8] Accordingly, there may be insufficient incentive to undertake the preliminaries. However, even if, when the lease ends, there is a valuable improvement from which the landlord is going to benefit, a tenant who did not carry out the preliminary procedure, or who has not retained the records to establish that he did, cannot ensure that he receives compensation.

3.10 One writer on this area of the law commented to us: "The procedures required by the Act, by virtue of their complexity and adversarial nature are unlikely to be used except in cases of very major improvements". The need to retain records for a long time, to establish at the end of a lease that the preliminary steps had been taken, led to the Association of Corporate Real Estates Executives to say that, "over the long periods involved, the maintenance of detailed records of improvements carried out tends to be somewhat impracticable".

(iii) Retail Properties

3.11 In the responses we received to our Working Paper, there was some suggestion that the compensation scheme was not in practice suitable for retail properties. The property manager of a concern with a large number of shops suggested that "the existing machinery was too slow and cumbersome to be used in the retailing environment in which we operate". However, the British Retailers' Association were in favour of the statutory compensation scheme continuing.

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[5] This questionnaire covered the issues relating to business tenancies raised in our Working Paper, and in particular whether the statutory compensation scheme should be retained (with or without amendment) or abolished.

[6] Working Paper, para. 1.9.

[7] These are: (i) notice of intention *must* be served; (ii) the tenant *must* then wait for 3 months before starting work in case there is an objection; (iii) *if* the landlord objects, the tenant *must* apply to the court for a certificate under s. 3; (iv) if a certificate has been refused on the ground of the landlord's offer to execute the improvement and he has failed to do so, the tenant *must* apply again; (v) after completing the improvement, the tenant *may* apply to the landlord for a certificate of due execution; (vi) if no certificate is given within one month, the tenant *may* apply to the court for a certificate; (vii) within the time specified before or after the end of the tenancy (depending on the manner of termination) the tenant *must* lodge his application for compensation with the landlord; and (viii) unless the claim is met by agreement, the tenant must apply to the court within 3 months.

[8] Landlord and Tenant Act 1927, s. 1.

(iv) Exclusion by contract

3.12 Contractual arrangements designed to exclude the payment of compensation—imposing an obligation on the tenant either to do the work in the first place or to reinstate the premises at the end of the lease—seem to be widespread. The agent of a substantial estate called them "normal" and a surveyor of considerable experience said, "it has been my invariable practice to require reinstatement unless not so required by the landlord. This has, I believe, always been accepted by the tenants". The prevalence of these arrangements was also mentioned by others who wrote to us, and is probably a major reason for the paucity of compensation claims.

(v) Short life-span of improvements

3.13 Another reason put forward on consultation for the neglect of the compensation scheme was the relatively short life-span of some improvements. A number of commentators agreed with the point made in our Working Paper[9] that many tenants usually invest on the basis that the improvements will easily pay for themselves within the term of the tenancy. The Building Societies Association said that "in the majority of cases, tenants are satisfied to take a view regarding their investment in the property which they occupy, bearing in mind the remainder of the term. If the tenant feels that costs cannot be recovered, then he will agree with his landlord for a contribution to be received, or for the term to be extended". The Association of Corporate Real Estate Executives pointed out that "tenants will have regard to the period remaining . . . of the lease, will make their decision whether or not to carry out improvements in that light and if they proceed, will probably write off the expenditure over that period".

(iv) Ignorance

3.14 Finally, amongst the reasons for the neglect of the current scheme, is ignorance of it. Not surprisingly, as comments on our Working Paper came almost entirely from large property owners and professional advisers in the property field, they contained little evidence on this point. However, one solicitor said, "where tenants are able to carry out alterations without the landlord's consent, they will do so without any legal advice and will not appreciate the need to put in hand any preliminary procedures. Even where the landlord's consent is needed, this may well often be dealt with on an informal basis without legal advice".

Conclusion

3.15 Conflicting views were expressed to us on the fundamental question whether there should continue to be a statutory scheme to compensate business tenants who had made improvements. Our own provisional conclusion did not reveal much enthusiasm for the scheme. Having commented that, "if there were none now, and it were suggested that one be introduced, we think it unlikely that we would support the suggestion", we provisionally recommended that the scheme should continue subject to reconsideration of its details.[10]

3.16 Among the views expressed to us which favoured ending the scheme, the City University summed up this aspect of its survey by saying, "many respondents saw little need for express statutory provisions on compensation for improvements as the tenant is now entitled to enjoy the benefit of his improvements for some time". The Council of Her Majesty's Circuit Judges suggested that the compensation scheme had "outlived its usefulness" and should be repealed. The Church Commissioners said that "the current existence of a scheme which is generally admitted to be all but obsolete does not . . . justify its retention". The Association of Corporate Real Estate Executives concluded that the compensation provisions "seem to be of little practical benefit". The Royal Institution of Chartered Surveyors, although suggesting that the scheme be allowed to fall into disuse, also said that "a strong case could be made out for repealing the compensation provisions".

3.17 On the other hand, a number of those who responded to the Working Paper favoured retaining the statutory compensation scheme. The Law Society suggested that, although the procedure was not often used, it still exists in the background as a bargaining factor, and is of consequence in rent reviews. They concluded: "on balance it is thought that more harm would be done by abolishing the scheme than by retaining it with modifications".

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[9] Para. 1.11.

[10] Working Paper, para. 3.13.

3.18 We have reconsidered the matter in the light of the reponses to our consultation. They make a number of points clear. Whatever the position before the introduction of the 1927 Act, there is no longer any feeling that the fact that premises revert to the landlord at the end of a lease is an injustice where the tenant has improved them, and requires to be remedied by statutory intervention. This is no doubt the result of the renewal rights given to tenants of business premises by Part II the Landlord and Tenant Act 1954, which mean that in many cases the premises do not now revert to the landlord at the end of the contractual term.

3.19 The point is not, however, one to be considered only on the level of abstract justice. The plain fact is that this statutory procedure is very little used. There is evidence of a considerable volume of voluntary opting out, which demonstrates that many landlords and tenants are content to do without it. Over and above that, whatever the reasons for disuse—even ignorance of the scheme's existence—we have received no suggestion that there are cases of hardship which would have been avoided had this, or some other, compensation scheme been used. Fruther, there is, so far as we are aware, no evidence that lack of use of the compensation scheme is inhibiting the proper use, improvement and modernisation of buildings.

3.20 We have given particular attention to two points made in favour of retaining the compensation scheme: the influence of that scheme on private bargains and its effect on rent reviews. We have little, if any, evidence of express bargains for the payment of compensation for improvements, and indeed this is not a normal term in commercial leases. We cannot therefore agree that this provides a reason against abolition of the compensation scheme. On the other hand, we understand that many landlords are induced to consent to their tenants making improvements because of the existence of the statutory rights relating to authorisation. We conclude that it is these terms of the 1927 Act which influence negotiations, and we accept that this provides a good reason for retaining them. Our recommendations on that aspect of the legislation appear below.[11] By contrast, we accept that in determining an appropriate new rent, under a rent review clause, the effect of any improvement carried out by the tenant may well depend on which party will benefit from any residual value at the end of the term. This effect is unlikely to be significant unless the lease will come to an end, with the possibility of compensation being paid, within a comparatively short period. In framing our recommendations, we have sought to avoid any variation of compensation rights in cases where the reversion would be sufficiently close to have a material effect on rent.

3.21 To abolish the existing compensation scheme would not prevent the parties to a lease agreeing compensation terms; all that would go would be the standard statutory scheme, now largely defunct. Abolition would bring with it a number of benefits, although because the compensation scheme is so rarely used they would not be large. In those cases in which the preliminary procedure is still used, but where no compensation results, that wasted effort would be eliminated. Action taken by landlords and tenants in agreeing contractual provisions aimed exclusively at avoiding compensation would be unnecessary. The statute book would be simplified by deleting a complex procedure, of little practical use.

3.22 We consider that any intervention into the contractual arrangements entered into by landlords and tenants requires justification. Clearly, before business tenants were given a statutory right to renew their leases in the majority of cases, there was a potential for injustice to tenants who had paid for improvements but could not enjoy them fully. That may have worked against the public interest in deterring appropriate improvements of the general stock of buildings. We can understand that that was seen as good reason to vary the effect of terms which parties had agreed. However, changes in the law have removed that justification and no other ground for interfering with the parties' bargains has been advanced.

3.23 For these reasons, we have been persuaded that the arguments in favour of abolishing the statutory compensation right outweigh those in favour of retaining it, with or without modification. Accordingly, we recommend that the compensation scheme be abolished.

Transition

3.24 Abolishing the 1927 Act compensation scheme clearly deprives tenants of statutory, as distinct from contractual, compensation for improvement work undertaken in the future. However, fairness dictates that the position of work already done be considered. For this

[11] Para. 4.6 below.

work, there will be some cases in which it is possible to say that no compensation will be payable, because the tenant has not complied with the preliminary procedure.[12] In other cases, unless a claim has already been submitted, there will merely be a potential claim which may never result in anything being payable. No payment can be made until the tenant quits,[13] which may be a long time in the future. Only then will it be possible to judge whether the improvement still has a residual value, and even if it does, the landlord's plans for the property may obviate any compensation claim.[14]

3.25 When the compensation scheme is discontinued, there could well be some cases in which the tenant has already undertaken improvement work in reliance on his right to statutory compensation. Although they will probably be few, it would be unjust and expropriatory summarily to deprive those tenants of the compensation which they were expecting. Nevertheless, to preserve established potential compensation claims without a time limit has substantial disadvantages. Whenever dealing with a business property let before the repeal, prudent property owners would still have to enquire whether there could be a claim for compensation. As some types of lease are customarily granted for lengthy terms, the period of uncertainty would be long. Indeed, it would never be psosible to be sure that all potential claims had been made or had lapsed, so the legislation could never finally be regarded as obsolete. It is undesirable that near moribund statutory provisions should be preserved indefinitely.

3.26 In our view, this is a case for compromise. It is fair to preserve potential compensation claims, for which the notice was served before the reform legislation took effect, for a reasonable time. However, because the value of most improvements falls as time passes, thus reducing the amount—and indeed likelihood—of any possible compensation, and because the leases in question will progressively come to an end, so that the number of outstanding potential claims falls, the time can fairly be limited. That would give eventual certainty by finally abandoning the scheme, while reducing to an absolute minimum the number of people liable to lose the chance of compensation.

3.27 With this in mind, we consulted those who responded to our Working Paper and who appeared to have an interest in this aspect of the matter. We asked whether all potential claims could, after a period, be finally cancelled without substantial injustice, and if so what period was appropriate. The majority of those who replied either accepted the period of 20 years which we tentatively suggested, or favoured 25 years because that would necessarily extend beyond the terms of both 21-year leases and 25-year leases existing when the legislation was implemented.

3.28 We think that this is a case in which all reasonable latitude should be given, and that, accordingly, no claim be possible after 25 years have elapsed. Further, to make it easier to remember this significant future date on which all claims will finally be cancelled, we suggest that a memorable date (e.g., 1 January) following the end of the 25 years be chosen, rather than a precise 25-year period. Accordingly, we recommend that it should remain possible for business tenants to make compensation claims for improvement work in respect of which the necessary preliminary procedure has been followed before abolition legislation comes into force, but only until a stated, memorable date following the end of 25 years from the commencement date of the legislation.

Commencement

3.29 In the course of our supplementary consultation, it was suggested to us that provision should be made to ensure that implementation of the legislation was not likely to prejudice any tenant who was at the time either preparing to do improvement work or was in the course of carrying out the preliminary procedure. We accept that to deprive those tenants of the chance of compensation would be an unjust consequence of the reform, and consider that six months' warning of the introduction of the new provisions should be sufficient. We therefore recommend that the commencement date for the new legislation should be six months after the date on which it is enacted.

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[12] Landlord and Tenant Act 1927, ss. 1(1) and 3.
[13] *Ibid.*, s. 1(1).
[14] *Ibid.*, s. 1(2).

B. COMPENSATION FOR RESIDENTIAL TENANTS

Provisional proposal

3.30 In the Working Paper we canvassed the question whether there should be a statutory compensation scheme for residential tenants who improve the property let to them. This was recommended by the Jenkins Committee in 1950,[15] but we provisionally concluded that no such scheme should be introduced.[16]

3.31 The principal arguments advanced in favour of an extension of compensation to residential tenants were the lack of any distinction in principle between their claims and those of business tenants, and the greater unpredictability of the period for which a home improvement may be enjoyed if the tenant holds, as is more likely in residential cases, under a periodic tenancy. Against that, we saw practical drawbacks in the distortion in the allocation of public funds available for housing, in imposing compensation obligations on landlords who temporarily let their homes and in giving those rights to short-term tenants.

3.32 The possibility of compensation for residential tenants was opposed by a clear majority of those who responded to our Working Paper. It was, however, favoured by, amongst others, the Incorporated Society of Valuers and Auctioneers as a matter of principle, and the Federation of Private Residents Associations agreed.

3.33 Against any extension to residential tenants, the Building Societies Association argued that an undesirable result would be that tenants would "impose on a landlord the timing and nature of the improvements of his property, irrespective of his means and his priorities". The Law Society knew of no demand for an extension of statutory compensation, but pointed out that where tenants had the right to buy their landlords' interests,[17] there are already appropriate provisions to ensure that improvements they have paid for are dealt with fairly. A number of commentators suggested that it would be difficult to assess the value of many "improvements" and referred to the difficulty and importance of defining that term.

3.34 Our acceptance of the view that there should no longer be statutory improvements compensation for business tenants reinforces our provisional conclusion that it would not be appropriate to introduce a scheme for residential tenants. The argument of principle suggests that both classes of tenant should be treated in the same way, and this now becomes possible by having no statutory scheme for either. Although a minority of those who responded to the Working Paper favoured compensation for residential tenants, they did not advance any new arguments in favour of that innovation. Nor was there any evidence of injustice resulting from the absence of such a scheme.

Conclusion

3.35 We therefore see no reason to change our provisional view and recommend that there should not be a statutory compensation scheme for residential tenants who improve their premises.

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[15] Final Report of the Leasehold Committee (1950) Cmd. 7982.
[16] Working Paper, para. 3.5.
[17] Leasehold Reform Act 1967, s. 9(1A)(d); Housing Act 1985, s. 127(1)(b).

PART IV

AUTHORITY TO MAKE IMPROVEMENTS: RECOMMENDATIONS

Provisional Proposal

4.1 The modernisation of business property is probably more effectively encouraged by statutory intervention which deters landlords from unreasonably preventing their tenants making improvements than by the statutory compensation scheme. The importance and usefulness of the authorisation procedure in section 3(4) of the Landlord and Tenant Act 1927[1] was not doubted by us in our Working Paper, nor questioned by those who responded. In our earlier Report[2] we stated, commenting on responses to the Working Paper which preceded it: "It is significant, however,that a majority of those who commented on this point thought that, even if Part I [of the 1927 Act] were to be repealed, section 3 ought to be retained because it served a useful purpose in its own right". Although, like the rest of the compensation legislation it is not frequently relied upon in court, we understand that tenants often use it in negotiations with their landlords.

4.2 In the Working Paper,[3] we suggested that the authorisation procedure should be revised, and, as a simplification measure, be based on an expanded version of the provision currently in section 19(2) of the Landlord and Tenant Act 1927. It was not our intention that the substance either of the tenant's rights or the safeguards for landlords should be altered. We provisionally proposed that the authority effectively given by the proviso implied into leases by section 19(2) should be further qualified by adding that a landlord who withheld consent should be treated as doing so reasonably if he undertook an obligation to the tenant to carry out the improvement, albeit in return for an appropriate rent increase. The court would have the power to determine the amount of that increase if it could not be agreed.[4] This would reflect the landlord's present power to do improvement work instead of becoming liable to pay compensation.

4.3 Although this approach was generally supported by those who responded to the Working Paper, we now consider that it would not be a convenient way to achieve our objective of leaving the substance of the law unaltered.[5] On closer analysis, it is apparent that there are a number of relatively minor ways in which sections 3(4) and 19(2) of the 1927 Act differ in scope.[6] We are not aware that the existence of these two separate provisions has caused any difficulty, nor do we know of any cause for adjustments to their scope so that they can be consolidated.

Authorisation Procedure

4.4 To leave the section 3(4) procedure unaltered would allow business tenants to seek the court's authority to carry out improvements fulfilling specified conditions, even though the lease gave them no right to do the work. For this purpose, an improvement would have to be:

(a) of such a nature as to be calculated to add to the property's letting value when the tenancy ends;

(b) reasonable and suitable to the character of the property;

(c) such as not to diminish the value of other property belonging to the landlord or to a superior landlord.[7]

The first condition is framed in a way which is appropriate to the compensation provisions of which it currently forms part. However, to redraw that condition in any way which would widen the scope of the procedure would consequentially restrict the effectiveness of absolute covenants[8] against improvements in leases. In our earlier Report[9] we considered how far

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[1] Para. 2.15 above.

[2] Report on Covenants Restricting Dispositions, Alterations and Change of User (1985) Law Com. No. 141, para. 9.4.

[3] Paras. 7.4–7.5.

[4] Working Paper, para. 5.24.

[5] Subject to one change: see para. 4.9 below.

[6] e.g., the scope of "improvement" differs in each case (see para. 2.17 above); the authority given under s. 3(4) can relate to the tenant's proposals as modified by the court (n. 17 to para. 2.6 above), but there is no such modification power under s. 19(2); the exclusion of improvements contravening restrictions for military, naval etc., purposes (n. 20 to para. 2.7 above) does not apply to s. 19(2); improvements which the landlord has offered to do are covered by s. 19(2) but are outside the scope of s. 3(4): see para. 2.6 above.

[7] Section 3(1); see para. 2.6 above.

[8] See n. 19 below.

[9] Report on Covenants Restricting Dispositions, Alterations and Change of User (1985) Law Com. No. 141, para. 4.62.

absolute covenants were justified and should continue to be allowed, and concluded that, so far as business tenancies were concerned, no further inroads should be made into the effectiveness of those covenants. We have not reconsidered this question.

4.5 For the purpose of obtaining the court's authorisation under section 3(4), the procedure[10] open to a tenant whose landlord does not agree to the proposed improvement is, and would remain, as follows:

(a) The tenant serves on the landlord notice of intention to make the improvement. This is accompanied by a specification and plan showing the proposed improvement and the part of the existing premises which is to be affected.

(b) The landlord has three months within which to serve notice of objection, in which case the tenant may apply to the court.

(c) The court ensures that interested superior landlords have been served with notice and given an opportunity to be heard.

(d) The court may then certify a proposed improvement, with or without modifications to the specification or plan, as proper and may impose conditions.

The tenant may lawfully do the work if the landlord does not serve notice of objection under (b) above or if the court certifies the improvement as a proper one.[11]

Conclusion

4.6 We recommend that the authorisation effect of section 3(4) of the Landlord and Tenant Act 1927 be retained.

Business tenancies

4.7 The category of business lettings to which section 3(4) of the Landlord and Tenant Act 1927 applies differs in a number of relatively minor ways from the category included within the more familiar Part II of the Landlord and Tenant Act 1954.

4.8 There is no definition of a trade, business or profession for the purposes of the 1927 Act. On the other hand, the 1954 Act contains, in section 23(2), a wide definition of "business". It includes, in addition to the trades and professions within the 1927 Act, an employment, and "any activity"[12] carried on by a body of persons. Tenancies of on-licensed premises,[13] tenancies at will,[14] and short tenancies[15] are excluded from the 1954 Act but not from the 1927 Act. Further, tenancies of premises used for the business of residential sub-letting are excluded from the 1927 Act[16] but not from the 1954 Act, and the latter,[17] unlike the former, expressly provides for the case where the tenant's business user is in breach of a lease covenant.

4.9 In the Working Paper[18] we provisionally suggested that the 1954 Act definition should apply to any revised compensation scheme, with the addition of on-licensed premises and short tenancies for which there are no renewal rights although they are covered by the present compensation arrangements. On the whole, that suggestion received support. Had we been

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[10] Section 3; see paras. 2.6–2.7 above.

[11] Section 3(4); para. 2.7 above. After completing the improvement, the tenant may apply to the landlord for a certificate of due execution; if no certificate is given within one month, the tenant may apply to the court for a certificate: s. 3(6).

[12] Although this term covers "something which is not strictly a trade, a profession or an employment, nevertheless to be an 'activity' for this purpose it must be something which is correlative to the conceptions involved in those words." *Hillil Property & Investment Co. Ltd.* v. *Naraine Pharmacy Ltd.* (1980) 39 P. & C.R. 67. It has extended to the conduct of a members' tennis club: *Addiscombe Garden Estates Ltd.* v. *Crabbe* [1958] 1 Q.B. 513; a national health service hospital: *Hills (Patents) Ltd.* v. *University College Hospital Board of Governors* [1956] 1 Q.B. 90; and a church community centre: *Parkes* v. *Westminster Roman Catholic Diocese Trustee* (1978) 36 P. & C.R. 22.

[13] 1954 Act, s. 43(1)(d).

[14] Such tenancies, whether arising by implication of law or created expressly, do not fall within the ambit of the 1954 Act: *Wheeler v. Mercer* [1957] A.C. 416; *Hagee (London) Ltd.* v. *A.B. Erikson & Larson* [1976] Q.B. 209.

[15] Section 43(3) excludes from the 1954 Act tenancies granted for a period of six months or less. This exclusion does not apply if the tenancy includes a right to renew or extend beyond a six month term. Further, it does not apply if the tenant, or a predecessor in the business has been in occupation for a period which exceeds 12 months. It is also possible to exclude the Act by agreement authorised by the court: s. 38(4).

[16] Section 17(3)(b).

[17] Section 23(4). A business carried on in breach of a prohibition in the tenancy against business use, applying to the whole of the premises, does not attract the right to renew unless either the tenant's immediate landlord or predecessor in title consented to the breach or the immediate landlord (but not a predecessor in title) acquiesced in it. the Law Commission has published a working paper proposing reforms: *Part II of the Landlord and Tenant Act 1954*, (1988) W.P. No.111.

[18] Paras. 7.7–7.8.

recommending that compensation continue to be available for tenants' improvements, the new definition would have applied equally to the authorisation procedure. We suggest that it should still do so, even in the absence of a compensation scheme. The greater the number of different definitions of categories of tenancy, the more complex and confusing this branch of the law becomes. Although any change in the definition necessarily varies the rights of some landlords and some tenants, the number affected is likely to be few because the changes are minimal. In our view, the chance of simplification which the clarification offers outweighs any disadvantages. We accordingly recommend that the authorisation procedure in section 3 of the Landlord and Tenant Act 1927 should apply to the tenancies to which Part II of the Landlord and Tenant Act 1954 applies but not excluding, as the 1954 Act does, certain on-licensed premises and short tenancies.

Absolute Covenants

4.10 One fundamental difference between section 3(4) and section 19(2) of the Landlord and Tenant Act 1927 is that the first applies to all covenants including absolute covenants,[19] and the second only applies to a covenant "against the making of improvements *without licence or consent*".[20] Some landlords represented to us that because of the special nature of their premises, it would be reasonable for them to be able, contrary to the current position, to impose an absolute prohibition on the tenant undertaking any work to the premises. However, it is not our intention that our proposals for reform should alter the present balance between landlords and tenants, under which authority to do improvements[21] despite an absolute covenant prohibiting the work can only be given in a limited class of cases. Absolute covenants against improvements to business premises are already subject to the major modifying effect of section 3(4) of the Landlord and Tenant Act 1927.[22] Implementation of our proposals will not materially change the position.

Agricultural and mining leases

4.11 In our earlier Report[23] we recommended that the scope of section 19(2) should be extended to cover agricultural and mining leases; and that this recommendation should apply to future lettings — that is, all tenancies granted on or after the date on which the implementing legislation comes into force, except those granted in pursuance of a binding obligation entered into (or arising under an option entered into) before that date. We pointed out that it would continue to be possible in the case of such leases to include absolute covenants against improvements, and we propose no change to that position. The effect of the change would therefore merely be that if the landlord chose to provide that an improvement could be made with his consent, he would not be entitled unreasonably to withhold that consent. Notwithstanding the special nature of these leases, this still seems to us to be appropriate, because the ability to require absolute covenants continues to protect landlords. This is an appropriate and convenient occasion on which to implement that suggestion, and we recommend that the opportunity be taken.

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[19] By an absolute covenant against making improvements we mean a covenant by a tenant not to make improvements *simpliciter*, i.e., a covenant which is not qualified by any exception for cases in which the landlord has given consent.

[20] Emphasis added.

[21] For this purpose, "the question whether an alteration is an improvement must be regarded from the point of view of the tenant": *Lambert* v. *F.W. Woolworth & Co. Ltd. (No. 2)* [1938] Ch. 883, 901 *per* Slesser L.J..

[22] Para. 2.15 above.

[23] Report on Covenants Restricting Dispositions, Alterations and User (1985) Law Com. No. 141, paras. 6.12, 6.13 and 6.22.

PART V

SUMMARY OF RECOMMENDATIONS

5.1 We summarise here the conclusions and recommendations for reform set out in the earlier Parts of this Report. Where appropriate, we identify the clauses in the draft Landlord and Tenant (Tenants' Improvements) Bill (contained in Appendix A) to give effect to the recommendations.

5.2 Our recommendations in relation to compensation for improvements are:

(1) The statutory scheme (in Part I of the Landlord and Tenant Act 1927) for compensating tenants of business properties for improvements which they have made should be abolished.

[Paragraph 3.23; clause 1]

(2) It should remain possible for business tenants to make compensation claims for improvement work in respect of which the necessary preliminary procedure has been followed before the abolition legislation comes into force, but only until a stated, memorable date following the end of 25 years from the commencement date of the legislation.

[Paragraph 3.28; clause 1]

(3) The abolition legislation should come into force six months after it is passed.

[Paragraph 3.29; clause 4]

(4) There should not be a statutory compensation scheme for residential tenants who improve their premises.

[Paragraph 3.35]

5.3 Our recommendations in relation to authority to make improvements are:

(1) The effect of section 3(4) of the Landlord and Tenant Act 1927, in providing a procedure under which a tenant can obtain authority to make improvements, notwithstanding any terms in the lease, should be retained.

[Paragraph 4.6]

(2) The authorisation procedure in section 3 of the Landlord and Tenant Act 1927 should apply to the business tenancies to which Part II of the Landlord and Tenant Act 1954 applies, but not excluding, as the 1954 Act does, certain on-licensed premises and short tenancies.

[Paragraph 4.9; clause 2]

(3) The scope of section 19(2) of the Landlord and Tenant Act 1927 should be extended to cover agricultural and mining leases. This recommendation should only apply to future lettings — that is lettings granted on or after the date on which the implementing legislation comes into force, unless granted in pursuance of a binding obligation entered into (or arising under an option entered into) before that date.

[Paragraph 4.11; clause 3]

(Signed) ROY BELDAM, *Chairman*
TREVOR M. ALDRIDGE
RICHARD BUXTON
BRENDA HOGGETT

MICHAEL COLLON, *Secretary*
14 March 1989

APPENDIX A

Landlord and Tenant (Tenants' Improvements) Bill

ARRANGEMENT OF CLAUSES

Clause

DRAFT

OF A

B I L L

TO

End the right to compensation under the Landlord and Tenant Act 1927; to provide for the authorisation under section 3 of that Act of tenants' improvements to any property held under a tenancy to which Part II of the Landlord and Tenant Act 1954 applies or would apply but for section 43(1)(d) of (3) of that Act; and to extend section 19 of the Landlord and Tenant Act 1927 to mining leases and leases of agricultural holdings. A.D. 1989

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Limitation on claims for compensation. 1927 c.36.

1. No claim for compensation under Part I of the Landlord and Tenant Act 1927 shall be effective unless—

(a) notice under section 3(1) of that Act is served before the date on which this section comes into force; and

(b) the claim is made before 1st January 2105.

Authorisation o improvements

2. For the purposes of service of a notice under section 3(1) of the Landlord and Tenant Act 1927 on or after the date on which this section comes into force and of proceedings under that Act consequent on such service, section 17 of that Act shall have effect as if the following definition of a holding to which Part I applies were substituted for the definition in subsections (1) to (3)—

"(1) References in this Part of this Act to holdings to which this Part of this Act applies are references to property subject to a tenancy to which Part II of the Landlord and Tenant Act 1954 applies or would apply but for section 43(1)(d) or (3) of that Act.".

Clause 1

1. This clause implements recommendations (1) and (2) at paragraph 5.2 of the Report. In effect, it abolishes the compensation scheme under Part I of the Landlord and Tenant Act 1927, subject to transitional arrangements for claims based on notices under section 3(1) of the Act and given before this Bill comes into force. It will remain possible to make such claims for a transitional period.

2. To qualify under Part I of the 1927 Act for compensation for an improvement he has carried out, a tenant of business premises: (a) must have served on the landlord notice of his intention to make the proposed improvement (section 3(1)); and (b) must, within the time specified before or after the end of the tenancy, serve a further notice on the landlord claiming compensation: see paragraphs 2.5 - 2.10 of the Report. Clause 1 imposes two additional requirements. First, the notice of intention to do the work (under section 3(1) of the 1927 Act) must have been served before clause 1 came into force (see clause 4). Secondly, the compensation claim must be made before the date specified in paragraph (b), i.e. 1 January 2015. Accordingly, landlords will only be liable to pay compensation for improvements in respect of which these two conditions are satisfied.

3. The reasons for selecting 1 January 2015 as the final date for making compensation claims are set out at paragraphs 3.26–3.28 of this Report.

Clause 2

1. This clause gives effect to recommendation (2) at paragraph 5.3 of the Report.

2. Once the Bill comes into force (see clause 4), a tenant of business premises will not be able to serve notice under section 3(1) with a view to establishing the basis of a claim for compensation. The only purpose of that notice will be to enable the tenant to obtain authority to make an improvement which would otherwise be forbidden by the terms of the lease. Clause 2 amends the definition of the holdings to which Part 1 of the 1927 Act will then apply. As a result, the authorisation provisions in section 3 of the 1927 Act will apply to the business tenancies to which Part II of the Landlord and Tenant Act 1954 applies, as defined in section 23 of that Act, as well as those excluded from the 1954 Act by section 43(1)(d) (certain on-licenced premises) and section 43(3) (certain short tenancies). The adoption of the wide definition of "business" contained in section 23(2) of the 1954 Act will mean, e.g. that residential subletting and non-commercial activities by bodies of persons will no longer be excluded from the authorisation provisions of section 3 of the 1927 Act.

Application of provisions as to covenants against improvement to mining leases and leases of agricultural holdings. 1927 c.36.

3.—(1) Subsection (4) of section 19 of the Landlord and Tenant Act 1927 (which excludes the whole section from applying to lease of agricultural and parts of it from applying to mining leases) shall be amended in relation to leases to which this section applies—

(a) by the insertion of the words "Subsections (1) and (3) of" at the beginning; and

(b) by the omission of the words "subsection (2)".

(2) This section applies to any lease granted on or after the date on which this section comes into force, other than—

(a) a lease granted in pursuance of a contract entered into before that date; and

(b) a lease granted in pursuance of an opinion created before that date.

Commencement

4. Sections 1 to 3 above shall come into force at the end of the period of six months beginning with the date on which this Act is passed.

Citation and extent.

5. (1) This Act may be cited as the Landlord and Tenant (Tenants' Improvements) Act 1989.

(2) This Act extends to England and Wales only.

Clause 3

1. This clause implements recommendation (3) at paragraph 5.3 of the Report.

Subsection (1)

2. Section 19(4) of the Landlord and Tenant Act 1927 excludes agricultural and mining leases from section 19(of that Act (which implies into lease covenants against making improvements without consent a proviso that that consent is not to be unreasonably withheld). Subsection (1) of this clause has the effect of extending section 19(2) to agricultural and mining leases.

Clause 4

This clause gives effect to recommendation (3) at paragraph 5.2 of the Report.

Application to the Crown

The terms of this Bill are to bind the Crown. However, no express provision to this effect is included because the Bill merely amends the 1927 Act, which binds the Crown *qua* landlord (section 24(1)).

APPENDIX B

Individuals and organisations who commented on Working Paper No. 102

Association of Corporate Real Estate Executives
Association of County Councils
Association of County Court and District Registrars
Association of Metropolitan Authorities
Mr. M.H. Boyd-Carpenter, the Solicitor to the Duchy of Cornwall
Brewers' Society
British Property Federation
British Railways Board
British Retailers Association
Building Societies Association
Capital & Counties Plc
Church Commissioners
City University, Centre for Studies in Property Valuation and Management
C. & J. Clark Retail Properties Ltd.
Council of Her Majesty's Circuit Judges
Federation of Private Residents' Associations
Holborn Law Society
Incorporated Society of Valuers and Auctioneers
Institute of Legal Executives
Jones Lang Wootton, Surveyors
The Law Society
Legal & General Assurance Society Ltd.
Mr. G.L. Leigh, Solicitor
National Licenced Victuallers' Association
Royal Institution of Chartered Surveyors
Mr. H.S. Quiney, F.R.I.C.S.
Mr. R.J. Stanley, F.R.I.C.S.
Tenant Farmers' Association
Mr. D.A. Tibbitt, F.R.I.C.S.
Mr S. Tromans, Solicitor

APPENDIX C

Landlord and Tenant Act 1927 — provisions relating to authority to make improvements

Part I

Landlord's right to object

3.—(1) Where a tenant of a holding to which this Part of this Act applies proposes to make an improvement on his holding, he shall serve on his landlord notice of his intention to make such improvement, together with a specification and plan showing the proposed improvement and the part of the existing premises affected thereby, and if the landlord, within three months after the service of the notice, serves on the tenant notice of objection, the tenant may, in the prescribed manner, apply to the tribunal, and the tribunal may, after ascertaining that notice of such intention has been served upon any superior landlords interested and after giving such persons an opportunity of being heard, if satisfied that the improvement —

(a) is of such a nature as to be calculated to add to the letting value of the holding at the termination of the tenancy; and

(b) is reasonable and suitable to the character thereof; and

(c) will not diminish the value of any other property belonging to the same landlord, or to any superior landlord from whom the immediate landlord of the tenant directly or indirectly holds;

and after making such modifications (if any) in the specification or plan as the tribunal thinks fit, or imposing such other conditions as the tribunal may think reasonable, certify in the prescribed manner that the improvement is a proper improvement:

Provided that, if the landlord proves that he has offered to execute the improvement himself in consideration of a reasonable increase of rent, or of such increase of rent as the tribunal may determine, the tribunal shall not give a certificate under this section unless it is subsequently shown to the satisfaction of the tribunal that the landlord has failed to carry out his undertaking.

(2) In considering whether the improvement is reasonable and suitable to the character of the holding, the tribunal shall have regard to any evidence brought before it by the landlord or any superior landlord (but not any other person) that the improvement is calculated to injure the amenity or convenience of the neighbourhood.

(3) The tenant shall, at the request of any superior landlord or at the request of the tribunal, supply such copies of the plans and specifications of the proposed improvement as may be required.

(4) Where no such notice of objection as aforesaid to a proposed improvement has been served within the time allowed by this section, or where the tribunal has certified an improvement to be a proper improvement, it shall be lawful for the tenant as against the immediate and any superior landlord to execute the improvement according to the plan and specification served on the landlord, or according to such plan and specification as modified by the tribunal or by agreement between the tenant and the landlord or landlords affected, anything in any lease of the premises to the contrary notwithstanding:

Provided that nothing in this subsection shall authorise a tenant to execute an improvement in contravention of any restriction created or imposed —

(a) for naval, military or air force purposes;

(b) for civil aviation purposes under the powers of the Civil Aviation Act 1982;

(c) for securing any rights of the public over the foreshore or bed of the sea.

.....

(6) Where a tenant has executed an improvement of which he has served notice in accordance with this section and with respect to which either no notice of objection has been served by the landlord or a certificate that it is a proper improvement has been obtained from the tribunal, the tenant may require the landlord to furnish to him a certificate that the improvement has been duly executed; and if the landlord refuses or fails within one month after the service of the requisition to do so, the tenant may apply to the tribunal who, if satisfied that the improvement has been duly executed, shall give a certificate to that effect.

Where the landlord furnishes such a certificate, the tenant shall be liable to pay any reasonable expenses incurred for the purpose by the landlord, and if any question arises as to the reasonableness of such expenses, it shall be determined by the tribunal.

Holdings to which Part I applies

17.—(1) The holdings to which this Part of this Act applies are any premises held under a lease, other than a mining lease, made whether before or after the commencement of this Act, and used wholly or partly for carrying on thereat any trade or business, and not being agricultural holdings within the meaning of the Agricultural Holdings Act 1986.

(2) This Part of this Act shall not apply to any holding let to a tenant as the holder of any office, appointment or employment, from the landlord, and continuing so long as the tenant holds such office, appointment or employment, but in the case of a tenancy created after the commencement of this Act, only if the contract is in writing and expresses the purpose for which the tenancy is created.

(3) For the purposes of this section, premises shall not be deemed to be premises used for carrying on thereat a trade or business —

(a) by reason of their being used for the purpose of carrying on thereat any profession;

(b) by reason that the tenant thereof carries on the business of subletting the premises as residential flats, whether or not the provision of meals or any other service for the occupants of the flats is undertaken by the tenant;

Provided that, so far as this Part of this Act relates to improvements, premises regularly used for carrying on a profession shall be deemed to be premises used for carrying on a trade or business.

(4) In the case of premises used partly for purposes of a trade or business and partly for other purposes, this Part of this Act shall apply to improvements only if and so far as they are improvements in relation to the trade or business.

Part II

Provisions as to covenants not to assign, etc. without licence or consent

.....

19.—(2) In all leases whether made before or after the commencement of this Act containing a covenant condition or agreement against the making of improvements without licence or consent, such covenant condition or agreement shall be deemed, notwithstanding any express provision to the contrary, to be subject to a proviso that such licence or consent is not to be unreasonably withheld; but this proviso does not preclude the right to require as a condition of such licence or consent the payment of a reasonable sum in respect of any damage to or diminution in the value of the premises or any neighbouring premises belonging to the landlord, and of any legal or other expenses properly incurred in connection with such licence or consent nor, in the case of an improvement which does not add to the letting value of the holding, does it preclude the right to require as a condition of such licence or consent, where such a requirement would be reasonable, an undertaking on the part of the tenant to reinstate the premises in the condition in which they were before the improvement was executed.

.....

(4) This section shall not apply to leases of agricultural holdings within the meaning of the Agricultural Holdings Act 1986, and paragraph (b) of subsection (1), subsection (2) and subsection (3) of this section shall not apply to mining leases.

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