

Response ID ANON-7E9M-6U7H-C

Submitted to Law Commission consultation on commercial leasehold: overcoming barriers to transactions
Submitted on 2026-09-16 09:58:25

About you

i What is your name?

Name:
The Property Litigation Association

ii What is the name of your organisation?

Enter the name of your organisation:
On behalf of an organisation

iii Are you responding to this consultation in a personal capacity, or on behalf of an organisation?

On behalf of an organisation

If other, please state:

iv What is your email address?

Email address:
Paul.tonkin@hlc.com

v Are you:

a professional (legal, property or other professional)

Other:

vi If you are a landlord or a tenant who occupies premises as part of a business, how many employees does your business have?

Not Answered

vii If you are a landlord or a tenant who occupies premises as part of a business, where in England and Wales are your business tenancies primarily located? (Select all that apply.)

viii If you are a landlord or a tenant who occupies premises as part of a business, what type of business is carried out from your premises? (Select all that apply.)

Other:

ix If there is anything else you wish to tell us about you or your organisation, please do so here.

Anything else you wish to tell us:

The Property Litigation Association (PLA) is a members' organisation established in 1995 for legal professionals specialising in all aspects of commercial, residential and agricultural property litigation. The PLA is the representative body of contentious and advisory property lawyers.

x Anonymity and confidentiality

Name published/disclosed (not anonymous)

Consultation response published/disclosed (not confidential)

Please explain which parts of your responses you want to be confidential and why:

N/A

Introduction (Chapter 1)

Consultation Question 1 (see paragraph 1.22).

Question asking about financial and other impacts:

Reforms to the 1987 and 1995 Act will have a positive financial impact on commercial landlords, tenants and their advisers, because the greater certainty over intra-group assignments and service of rights of first refusal notices in respect of commercial units will save management time and legal costs and mean commercial transactions can proceed without unnecessary delay.

Any changes to the commercial leasehold market are likely to be positive, due to ease of assignment within group structures giving greater flexibility, and make it more straightforward to grant commercial leases in mixed-use premises.

These changes should not adversely impact residential landlords, tenants and their advisors, nor on the residential leasehold market. Residential tenants are incredibly unlikely to purchase commercial units following receipt of a first refusal notice, so this amendment is unlikely to affect them.

Residential tenants would retain a right of first refusal over residential units, in addition to the protection they enjoy under the Leasehold Reform Act 1967 and the Landlord Reform, Housing and Urban Development Act 1993, as well as the right to manage under the Commonhold and Leasehold Reform Act 2002.

Residential tenants will be unaffected by changes to intra-group assignments under the 1995 Act, which is generally only relevant to commercial tenants.

Consultation Question 2 (see paragraph 1.25).

Please tell us about the equality impact of the changes considered in this Consultation Paper:

We do not believe or have any evidence or data to suggest the changes considered result in advantages/disadvantages to certain groups or individuals.

Consultation Question 3 (see paragraph 1.32).

Please tell us about considerations or experienced specific to Wales:

We do not consider the position in Wales is different to the position in England – the same considerations apply to both.

Consultation Question 4 (see paragraph 1.41).

Issues in most need of being addressed by law reform from perspective of commercial leasehold law:

Yes – reforms to the 1987 Act and the 1995 Act are necessary and important. The PLA has been lobbying for these changes for many years. They are relatively simple to implement and would make an immediate positive impact.

The Landlord and Tenant Act 1987 (Chapter 2)

Consultation Question 5 (see paragraph 2.121).

Yes

View on provisional proposal to right of first refusal:

The PLA agrees with the proposal to exclude the grant of a lease of premises used/intended to be used for “non-residential purposes”, while carving out common areas that may be needed by residential flats (including the examples given in the consultation paper of lobbies, bin stores etc), along with provisions about shared premises.

It is logical to define the exemption by reference to use/occupation for non-residential purposes, which echoes section 1(3)(a) of the 1987 Act, which, in setting out the 50% rule, states that the Act does not apply if more than 50% of the internal floor area of the premises is “occupied or intended to be occupied otherwise than for residential purposes”. The new wording therefore builds on an existing distinction between residential/non-residential rather than introducing a new definition.

It may be logical to amend section 1(3)(a) to also refer to “non-residential purposes” rather than “otherwise than for residential purposes” for consistency with the new wording in the provisional proposal.

Using “residential purposes” again to carve out disposals of commercial leases therefore makes sense within the context of the Act and is broadly consistent with the approach used in LRHUDA 1993 and the Commonhold and Leasehold Reform Act 2002 (which distinguish between residential and non-residential elements when determining the availability of statutory rights) albeit that “residential purposes” is not defined in these pieces of legislation.

The PLA is inclined to agree that allowing this to be context dependent, rather than subject to a statutory definition, is likely to be more workable than an exhaustive list. In purpose-built mixed-use schemes (which PLA members raised as an area requiring reform in relation to the 14th reform programme) it will generally be apparent that particular units are intended to be occupied/used for non-residential purposes by looking at the configuration, fit out, size, and planning status of the unit. The PLA is not aware of existing difficulties with identifying non-residential premises under section 1(3)(a) of the 1987 Act. Whilst there will inevitably be some cases of ambiguity, the position should be clear in the overwhelming majority of cases.

The Landlord and Tenant Act 1954 provides an alternative definition of a “business tenancy”, and that concept was used in the upwards-only rent review ban in the English Devolution and Community Empowerment Act 2026 (which applies to tenancies to which the 1954 Act applies, or has the potential to apply).

However, the 1954 Act focuses on whether the current tenant occupies the premises for the purposes of a business carried on by it, rather than the character of the premises themselves or the purpose for which they are intended to be occupied. It would therefore not provide a suitable test within the 1987 Act, particularly where the premises are vacant or the landlord is granting a new lease.

The PLA considers that limiting this exemption to the grant of new leases is sufficient to address our members' concerns, and facilitates commercial transactions by allowing landlords to grant leases of commercial units without serving rights of first refusal notices].

PLA members have also expressed concern about the criminal sanction for non-compliance at section 10A of the 1987 Act, and whether this remains appropriate, but this is outside the scope of this consultation.

The 1995 Act - problems caused by the interaction of the release of tenants and guarantors from covenants, authorised guarantee agreements and the anti-avoidance provision (Chapter 4)

Consultation Question 6 (see paragraph 4.142).

Yes

View on proposal regarding assignments and guarantees between members of the same group of companies:

Yes – these paragraphs deal with the key changes requested by PLA members, which were:

- Allowing guarantors to guarantee the assignee's obligations;
- Repeat guarantees
- Allowing assignment to the guarantor;
- Allowing intra-group restructurings; and
- Confirmation that the assignor's guarantor can provide a sub-guarantee.

Consultation Question 7 (see paragraph 4.143).

Yes

View on application of proposal to assignment itself and any agreement to enter into the assignment:

Yes – the PLA agrees that the exception should apply to agreements to enter into assignments and the assignment itself.

However, if the exception applied when the agreement was entered into, we query whether it is an unnecessarily complication require that it still apply when the assignment is completed. This would raise questions over the enforceability of agreements where there has been a change of status in the intervening time and could put parties in breach of agreement over matters which may no longer be within their control (e.g. a parent company transfers shares such that a subsidiary ceases to be a group company).

Consultation Question 8 (see paragraphs 4.152 and 4.153).

Yes

View on definition of group of companies:

The PLA agrees with this proposal, which is in line with the proposal the PLA put forward after consulting its members on the 14th programme of reform to define:

- group companies by reference to section 42 of the Landlord and Tenant Act 1954;
- “controlling interest” in line with section 46(2) of the Landlord and Tenant Act 1954; and
- “subsidiary” by reference to section 1159 of the Companies Act 2006 (as it is under the 1954 Act).

We consider this definition is more appropriate than the definitions used within the Building Safety Act 2022, which are broader for obvious policy reasons, but would add unnecessary uncertainty to changes to the 1995 Act.

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reasons, but would add unnecessary uncertainty to changes to the 1995 Act.

Consultation Question 9 (see paragraph 4.193).

Yes

View on proposal regarding repeat guarantees and assignments within partnerships:

The PLA agrees that the 1995 Act should facilitate assignments within partnerships and agrees that the Law Commission's provisional proposal achieves this.

Consultation Question 10 (see paragraph 4.194).

View of impact of proposal on tenants:

We do not consider these changes risk tenants/guarantors who are not advised being put in a materially worse position than under the existing law.

Greater clarity over the assignment position for partnerships is welcome and improves tenants' and guarantors' provisions.

These proposals still operate to release an outgoing tenant and guarantor and allow the guarantor to provide another guarantee to the "assignee" partnership so preserve the aims of the 1995 Act while providing needed clarity and flexibility.

Consultation Question 11 (see paragraph 4.201).

Where there is an adverse impact, views on types of business relationships:

PLA members' concerns were primarily around restriction of intra-group assignments and group structuring, however, these changes seem unlikely to adversely affect other business relationships.

Where there is an adverse impact, views on prevalence of business relationships:

N/A

Where there is an adverse impact, the nature of that impact:

N/A

Consultation Question 12 (see paragraph 4.210).

Yes

View on proposal allowing assignments to guarantors:

Yes. The PLA agrees that a tenant should be allowed to assign to a guarantor, and also agrees that this should be at the guarantor's own election and the landlord should not be able to require the guarantor to do so. The PLA therefore agrees that this provision should not extend to an advance agreement to complete the assignment.

The 1995 Act - other issues (Chapter 5)

Consultation Question 13 (see paragraphs 5.13 to 5.16).

View on whether these issues cause difficulties:

The PLA agrees that issues with concurrent leases, covenants with management companies and agreements for leases fall outside the terms of reference.

The issues raised with the registration gap raise issues in various contexts beyond the 1995 Act and also affect residential property. While the PLA would like to see issues arising from the registration gap addressed, this is a wider project which goes beyond the 1954 Act and the 1995 Act, so should be dealt with wholesale rather than in relation to individual pieces of legislation, as should issues around service outside England and Wales.

View on issues not considered that cause difficulty:

N/A

View on extent to which issues identified cause specific difficulties for commercial leasehold:

N/A

View on extent to which issues identified cause specific difficulties for residential leasehold:

N/A