

## **Minutes for CLLS Land Law Committee meeting on 12 July 2023 by Teams and in person**

**Attendees:** Colin Oakley and colleagues from the Law Commission, Jackie Newstead (Chair), Warren Gordon (Secretary), Jeremy Brooks, Jayne Elkins, Alison Hardy, Laurie Heller, Matt Hooton, Brigid North, Julian Pollock, Jeremy Shields, Sangita Unadkat, Ian Waring and Patrick Williams.

**1 Apologies:** Kevin Hart (from the CLLS), David Hawkins (Vice Chair), Jamie Chapman, Caroline DeLaney, Martin Elliott, Adrian Footer, Vikki Hills, Stephen Josephides, Paul Kenny, Daniel McKimm, John Nevin and Franc Pena.

### **2 Approval of draft Minutes for May 2023 Committee meeting**

The draft Minutes for the May 2023 Committee meeting were approved and are on the CLLS's website [Land-Law-Committee-Minutes-May-2023.pdf \(citysolicitors.org.uk\)](https://www.citysolicitors.org.uk/land-law-committee-minutes-may-2023.pdf)

### **3 Discussion with Colin Oakley from the Law Commission in relation to the Law Commission's review and possible reform of Part 2 of the Landlord and Tenant Act 1954**

The Committee was delighted to welcome Colin Oakley and 2 colleagues from the Law Commission to discuss its review and possible reform of Part 2 of the Landlord and Tenant Act 1954 (1954 Act).

#### *About the review*

Colin explained some of the context to the Law Commission's review of Part 2 of the 1954 Act.

The review was limited to matters relating to Part 2 and would not extend to other matters such as the Landlord and Tenant (Covenants) Act 1995 or dilapidations.

Over the years there have been periodic reviews of the 1954 Act and this is another instance. An important context for this review is supporting the high street.

The terms of the review are wide-ranging, taking into account matters such as net-zero and levelling up. They encompass "big-ticket questions", such as contracting out vs contracting in and sector specific reform, as well as issues around procedure and substance such as the grounds of opposition.

#### *Contracting out of Part 2*

A key aspect of the discussion related to the Committee's concerns with the contracting out process – while it was recognised that there is an important tenant protection aspect to contracting out, the current process is very administrative and full of traps for the parties.

The Committee highlighted that the contracting out process was introduced at a time when the letting market was very different – generally lease terms were longer with tenants investing more in the premises for a longer stay and as a result there was a greater need for the tenant to be warned clearly at the outset that it wouldn't be able to stay when the contractual term ended (if that was the case). Today most leases are for a shorter term and are contracted out and there are more "offer back" provisions. The general expectation is for a shorter stay and many tenants may look at the lease and not even realise that potentially they could have stayed beyond the end of the contractual term if the lease had been protected.

The focus of the Committee's comments was the need to streamline the contracting out process i.e. no warning notice or declarations nor court approval. Instead, just let the parties agree the position and reflect that in the lease. One suggestion was that the

tenant has no rights under Part 2 unless the parties agree otherwise and the lease is contracted in. Query whether that suggestion would need to involve a warning for the landlord about the rights that it would be giving to the tenant? Charities Act style wording could be included in the lease to confirm no Part 2 rights are given to the tenant.

Why as a matter of policy does a contracted-out lease have to be for a term of years certain i.e. why can't a periodic tenancy be contracted out?  
Also make it clear that contracting out is not required for guarantors.

There is a lack of logic of having to contract out the agreement for surrender of a protected lease, but not the surrender itself. The so-called "Allnatt stalemate" should also be addressed.

#### *Other aspects of Part 2*

The Committee raised concerns about the requirements for the landlord to prove the development ground (f) (as a ground of opposition) and the problems of the timing of when it has to be proved.

Is rateable value the right basis for compensation for the tenant if there is a successful opposition to a lease renewal on particular grounds?

Concerns were raised about problems caused by split reversions in serving notices/implementing processes under Part 2.

The registration gap (with the delays in legal title being granted until land registration is completed) causes problems with the Part 2 notices and procedure where the legal owner is the relevant party.

Greater clarification should be given as to when section 28 (Renewal of tenancies by agreement) applies.

Also consideration should be given to the interplay between the 1954 Act and the Minimum Energy Efficiency Standards.

As a general point the Committee considered that in some respects the 1954 Act does not promote landlords and tenants working together, nor does it necessarily promote the high street.

The Law Commission's aim is to publish a consultation paper towards the end of 2023. The Committee thanked the Law Commission for joining the meeting and looks forward to working with the Law Commission on developing its proposals for reform of the 1954 Act.

#### **4 Economic Crime Bill**

A change to the Economic Crime and Corporate Transparency Bill was passed by the House of Lords at Report Stage [Economic Crime and Corporate Transparency Bill - Parliamentary Bills - UK Parliament](#)

This relates to the Companies House register for overseas entities that own certain property registered at the Land Registry. The Companies House register, set up by the Economic Crime (Transparency and Enforcement) Act 2022, contains information about the entity and its beneficial owners and the Act forms part of the UK Government's strategy to combat economic crime and to crack down on overseas criminals using UK property to launder money. The Act impacts on real estate transactions and their registration and it affects the United Kingdom.

Once registered at Companies House, the entity receives an overseas ID which must be provided to the Land Registry to enable registration of transactions. Currently, the

Companies House information must be updated annually and failure to do so will invalidate the ID.

The change that was passed in the Lords seeks to increase the regularity of the updating and the amendment is set out below. There are 2 aspects – first, the requirement to deliver to The Registrar of Companies details of any change to the information that has been previously provided, as soon as reasonably possible and in any event within 14 days of becoming aware of any change. And second, the requirement to deliver to The Registrar such information or a statement that there has been no change to the information currently held on the register, no more than 14 days prior to the acquisition or disposal of the relevant property.

The increased frequency of the updating requirement and especially the updating linked to completion of each property transaction (which could include multiple leases within a short timeframe say at a shopping centre) is causing considerable concern. How would the 14 days requirements take account of the one month notification requirement in relation to beneficial owners and also of the verification requirements?

The Government opposed the change in the Lords and the Law Society and members of this Committee have been discussing the issue with the Department for Business, Energy and Industrial Strategy.

Both of the new requirements would be onerous for businesses to comply with and more particularly could delay and potentially jeopardise property transactions involving overseas entities.

A number of members of the Law Society's Company Law Committee and other lawyers including members of this Committee produced some case studies highlighting some of the difficulties that may arise for the property industry if the changes become law. The case studies were sent to the Department for Business, Energy and Industrial Strategy.

Another important change to the legislation was introduced by the Government late on. This is intended to plug a perceived gap in the overseas entities registration regime. While currently, details have to be provided of the registrable beneficial owners of the overseas entity, no details have to be given under this regime of the beneficiaries of the relevant property where the property is held by nominee(s) on trust for beneficiaries. While HMRC's Trust Registration Service may capture such a situation, the information held on HMRC's register is not publicly available and it seems that it is important to the legislators that parties transacting with an overseas entity can access up to date information not only about the registrable beneficial owners of the entity, but also about any beneficiaries of the relevant property in a nominee situation.

The proposed change to effect this (also set out below) is that if the overseas entity holds relevant land as a nominee for a person (X) or an entity of which X is a beneficial owner, then X will be treated as a beneficial owner of the overseas entity. This attempts to look through any nominee arrangements. This only applies to land in relation to which the overseas entity became registered at the Land Registry pursuant to an application made on or after 1 January 1999 (for England and Wales).

There are potentially serious concerns with this especially for professional trust companies or nominees that hold many different registered titles for different beneficiaries. Do all of those beneficiaries need to be mentioned when registering the entity or updating the registration on the overseas entities register?

Also combining the extra administration for details of the beneficiaries with the increased regularity of updating may make it very difficult to comply with the legislation within the proposed tight timeframe.

The next stage is the consideration of Lords' amendments on 4 September 2023. The Committee will be kept updated and this will be discussed again at the September Committee meeting.

### **Amendment relating to increased regularity of updating**

"Updating the register of overseas entities

(1) The Economic Crime (Transparency and Enforcement) Act 2022 is amended as follows.

(2) In section 7, after subsection (8) insert—

"(8A) A registered overseas entity must, as soon as reasonably possible and in any event within 14 days of becoming aware of any change, deliver to the registrar details of any change to the information that has been previously provided to the registrar in accordance with section 4 or, if information has been previously delivered to the registrar under this section, any change to the latest information provided under this section, including the date such change occurred.

(8B) A registered overseas entity must deliver to the registrar the information required in accordance with subsection (8A), or deliver to the registrar a statement that there has been no change to the information currently held on the register, no more than 14 days prior to the acquisition or disposal of any qualifying estate in the United Kingdom.

(8C) For the purposes of this section, "qualifying estate" has the meaning given by paragraph 1 of Schedule 4A to the Land Registration Act 2002."

(3) In section 8, at the end of subsection (3) omit "(1)".

### **Amendment for nominees**

"Persons treated as beneficial owners where entity holds land as nominee  
6A

A person ("X") is to be treated as a beneficial owner of an overseas entity ("Y") if one or more of the following conditions are met.

*Y holds land in England or Wales as nominee for X*

Condition [1] is that Y—

(a) is registered in the register of title kept under the Land Registration Act 2002 as the proprietor of a qualifying estate within the meaning of Schedule 4A to that Act,

(b) became so registered in pursuance of an application made on or after 1 January 1999, and

(c) holds the qualifying estate as nominee for—

(i) X, or

(ii) an entity of which X is a beneficial owner by virtue of paragraph 6."

## **5 AOB**

At September's Committee meeting, Jackie Newstead will report back on discussions on modernisation of the CLLS Committees.

**6 Length of meeting** – 1 hour 30 minutes.

**7 Dates for remaining 2023 meetings, at 12.30pm and hybrid in person/virtual** - 20 September and 22 November

**Warren Gordon**  
**Secretary, CLLS Land Law Committee**