Cambridge Law Journal, **71(1)**, March 2012, pp. 118–146
doi:10.1017/S0008197312000220

SECTION 30(1)(g) OF THE LANDLORD AND TENANT ACT 1954: THE UNJUST RELEGATION OF RENEWAL RIGHTS

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ABSTRACT. *Part II of the Landlord and Tenant Act 1954 regulates the renewal of business tenancies. Within highly technical confines, it promotes the continuation of the tenant's business and addresses the risk of tenant exploitation. Nevertheless, it is argued that section 30(1)(g) unnecessarily prioritises the occupation needs of the landlord over the tenant's renewal rights and without imposing effective procedural safeguards. Although compensation for loss of renewal rights may be available, the award disregards any loss of established goodwill. This inadequacy of compensation undermines the anti-profiteering ethos of the Act and contravenes Article 1 of the European Convention on Human Rights.*

KEYWORDS: *Landlord and tenant; business lease; renewal; human rights; right to property*

The spectre of the unscrupulous lessor has long haunted the relationship of landlord and tenant. As Englander acknowledged, "In perceptual terms the landlord was an ogre, the hardest of hard-faced men, one who preyed upon and tormented the lives of millions".[1] In the context of commercial leases, the need for statutory intervention was acknowledged officially towards the end of the nineteenth century.[2] Legislative control designed to preserve the tenant's business and livelihood was viewed as an imperative. The primary mischief identified was that some landlords held their tenants to ransom by demanding an exploitative rent as a condition of granting a new lease. This was particularly harsh for those tenants who had built up goodwill and paid for improvements to the premises. It was apparent that neither the operation of market forces nor the invocation of contractual rights offered

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[1] D. Englander, *Landlord and Tenant in Urban Britain 1838–1918* (Oxford 1983), 5.

[2] See the deliberations of the Select Committee on Town Holdings, Reports from the Committees, 1892, vol. 7. These recommendations contained the prototype of the Landlord and Tenant Act 1927.

an effective shield for commercial tenants at the end of their terms. Accordingly, statutory intervention was viewed as the only means through which maverick landlords could be reined in and the standards expected from a reasonable lessor imposed. Unsurprisingly, the major difficulty has always concerned the precise form that this intervention should adopt. Although the initial response was to afford the tenant compensation for the loss of goodwill, the right to a new lease was to become the preferred option. This transition from compensation to security of tenure has not, however, proved unproblematic. This is particularly so in circumstances where the tenant is deprived of the right to a new lease because the landlord can demonstrate the intention to occupy the holding for its own purposes. Although the tenant may still be entitled to claim compensation for loss of those renewal rights, the award has nothing to do with financial realities and disregards entirely any loss of tenant's goodwill. The potential deprivation of renewal rights without adequate compensation contradicts the core purpose of the legislative framework, which is to promote rather than to frustrate the business interests of the tenant. The present scope for the exploitation of the tenant's established goodwill is simply indefensible.

The current regulatory controls are to be found within Part II of the Landlord and Tenant Act 1954. The Part II provisions allow the tenant to remain in occupation at the end of the contractual term and to apply to court for the grant of a new lease at a market rent. Their purpose and policy being, as Lord Wilberforce put it, "to provide security of tenure for those tenants who had established themselves in business in leasehold premises so that they could continue to carry on their business there".[3] Accordingly, the landlord's ability to oppose renewal is heavily curtailed and limited to the grounds set out in section 30(1)(a)–(g). Of these exceptions to renewal, some are fault based whereas others are designed to ensure that the management interests of the landlord are secured. Sited within the latter category lies ground (g), which is a mandatory and compensation ground. Section 30(1)(g) facilitates the recovery of possession in circumstances where 'on the termination of the current tenancy the landlord intends to occupy the holding for the purposes, or partly for the purposes, of a business to be carried on by him therein, or as his residence'. While this style of exception enjoys some heritage in the housing sector,[4] ground (g) sits uneasily within the Part II machinery.

It is with the origins, impact and operation of section 30(1)(g) that this article is concerned. Although the tacit assumption by the law

[3] *O'May v City of London Real Property Co Ltd.* [1983] 2 A.C. 726, 747.

[4] See the Increase of Rent and Mortgage Interest (War Restrictions) Act 1915, the Rent Agriculture Act 1976 (re tied housing), the Rent Act 1977 and the Housing Act 1988. No equivalent provision was included within the Agricultural Holdings Act 1948.

reform agencies is that ground (g) performs a justifiable role, it will be argued that such complacency is to be resisted. The present work will demonstrate that the prioritisation of the occupational needs of the landlord, with the attendant reduction of the tenant's statutory entitlement, is unwarranted, unjust and, moreover, conflicts with the founding ethos of the Part II machinery. By affording to the landlord the opportunity indirectly to buy out the renewal rights of the tenant, section 30(1)(g) produces the irony that, "compensation which was secondary, becomes primary and renewal which was primary becomes secondary, and the choice of which of these shall be first and which shall be second is given to the landlord".[5] This is particularly worrisome in that ground (g) can readily be utilised by a landlord seeking financially to exploit the past success of the tenant's business. Put starkly, there is nothing in ground (g) to prevent a landlord recovering possession, running a business identical to that operated by the tenant and thus benefiting from that tenant's established goodwill. The inequity is underscored in that the award of compensation under section 37 for loss of renewal rights is flat rate[6] and does not reflect the merits of individual claims.[7] As one of the framers of the 1954 Act acknowledged, "This basis is, I admit, rough justice, and one may call it arbitrary."[8] Despite the Law Commission's unlikely conclusion that the existing compensation provisions adequately deal with any unfairness as to goodwill,[9] they are clearly ill suited to ground (g).

The potential deprivation of the tenant's business goodwill without adequate recompense undeniably offends fundamental notions of fairness and human rights.[10] It also defeats the underlying purpose of section 37, which is to test the landlord's opposition and, "facilitate negotiations on the granting of the lease and prevent much dispute and litigation on its expiry".[11] Such goals are unlikely to be attained when it is the prospect of financial advantage that both motivates the

[5] The Hale and Ungoed Thomas minority report appended to the *Final Report of the Leasehold Committee* (1950) Cmd. 7982, p.130 at § 21. The authors added, "to defeat the tenant's right of renewal by payment of compensation is to make the priority of renewal over compensation illusory in principle …" (p.130 at § 21).

[6] It is the product of rateable values and a prescribed multiplier. Double rate compensation is payable to tenants who had been in occupation for 14 years: section 37(3). Curiously, the introduction of a more sophisticated sliding scale, reflecting different periods of occupation, has never been proposed. C/f Northern Ireland where the multiplier increases at four levels: Business Tenancies (Northern Ireland) Order 1996, article 23(2).

[7] In Ireland, however, the Town Tenants (Ireland) Act 1906 and the Eire Landlord and Tenant Act 1931 ensured that the tenant was fully compensated for loss of goodwill, removal costs and other incidental disadvantages.

[8] Per Sir David Maxwell Fyfe, HC Deb. vol. 522 col. 1763 (27 January 1954). He also acknowledged that, "removal is a harder blow for the long established business": HC Deb. vol. 522 col. 1764 (27 January 1954).

[9] *A Periodic Review of the Landlord and Tenant Act 1954 Part II* (1992) Law Com No. 208 at § 3.29.

[10] But see Vos J. in *Humber Oil Terminals Trustee Ltd. v Associated British Ports* [2011] EWHC 2043 (Ch) who asserted at [143], "This exception is not a charter for expropriation".

[11] *Governmental Policy on Leasehold Property in England and Wales* (1953) Cmd. 8713 at § 50.

landlord's opposition and negates a preparedness to negotiate. It is, therefore, a reasonable expectation that ground (g) would embody clear and effective safeguards to deter its misuse. Remarkably, it provides scant protection for the tenant. Section 30(1)(g) does not require the premises to be needed by the landlord[12] or, indeed, reasonably required.[13] There is also no demand for the landlord to serve a pre-tenancy notice forewarning that the premises might be recovered on this ground.[14] The much-vaunted 'five-year rule', geared to prevent speculators buying properties over the heads of sitting tenants with the ambition of invoking ground (g), can, moreover, be easily sidestepped by a well-advised landlord.[15] The tenant's position is hampered further in that section 30(1)(g) is poorly drafted and resistant to ready understanding. This stands in defiance of the overarching policy that, "The respective rights of the parties would be clear, and could if necessary be established … without undue trouble, dubiety or expense …" and should not depend, "on the prior satisfaction of a formula or formulae whose application to the particular case would be a matter for legal argument with results not always consonant with the real deserts of the parties".[16] Fundamental issues remain unresolved as to whether the landlord must intend to occupy the tenant's holding in an unmodified state and how long the landlord must intend to occupy or actually occupy before selling the premises on with vacant possession. No thought whatsoever has been directed to the application of ground (g) when the reversion has been severed. Similarly, there is no official acknowledgement given that the both parties might benefit from the tenant being able to retain part of its extant holding. Most compellingly, the landlord's objective intention to occupy is insufficiently tested. In contrast to section 30(1)(f) where the landlord must positively show the legal and economic wherewithal to translate its redevelopment intentions into reality, under ground (g) the onus tends to rest on the tenant to demonstrate that the landlord's intention is unrealistic.[17]

This article will chart why and how the prioritisation of the landlord's occupation needs became a feature of the Part II provisions and appraise the awkward interaction between section 30(1)(g) and the poorly crafted compensation provisions. The present operation of ground (g) will be analysed in detail and a critical eye cast over the obscure and technical hurdles, and ineffectual tenant safeguards, that

[12] As was necessary under the Increase of Rent and Mortgage Interest (War Restrictions) Act 1915.
[13] Unlike Case 9 of the Rent Act 1977.
[14] Unlike Cases XI and XII of the Rent Agriculture Act 1976 and Ground 1 of the Housing Act 1988.
[15] Seemingly, this can be achieved by the simple ploy of the existing landlord serving a section 25 termination notice prior to selling the reversionary interest.
[16] *Governmental Policy on Leasehold Property in England and Wales* at § 53.
[17] In *Humber Oil Terminals Trustee Ltd. v Associated British Ports* [2011] EWHC 2043 (Ch), for example, the tenant (albeit unsuccessfully) attempted to disprove the landlord's intention by arguing that it would cost the landlord £60 million and take two years to open up in business.

the landlord must successfully navigate in order to utilise this ground of opposition.

I. A History of Unjust Preferment

Reform of the law of business tenancies proved to be a slow and tortuous process.[18] While by 1918 most European countries had enacted provisions designed to protect commercial tenants,[19] it took until the Landlord and Tenant Act 1927 for the first permanent controls to emerge in England and Wales.[20] A further 27 years were to elapse before these protective measures were reformulated in Part II of the Landlord and Tenant Act 1954.[21] On both occasions, the impetus for statutory regulation arose in a post-war period when the appetite for reform was whetted by extreme market distortions, an anti-profiteering ethos, and the need to sustain economic recovery. In such times the promotion of business tenants' rights assumed a much-heightened political significance. As Englander puts it, "In political terms landlords were a liability. Members of Parliament hastened to flee from them as if before a plague".[22]

Although each statutory code was geared in a markedly different fashion, the fundamental tenets common to both were compensation and security of tenure. These safeguards were, moreover, intended to have minimum impact upon the common law rights of the landlord. The commendable ambition was to achieve a working balance between the preservation of the landlord's investment interest in the property, the protection of the tenant's business goodwill and the advancement of the public interest in the growth and modernisation of the commercial sector.[23] Unfortunately, the Landlord and Tenant Act 1927 was an overly cautious response to the problems faced by business tenants and failed to achieve its policy objectives. The 1927 Act extended the rights of business tenants by facilitating compensation for the loss of 'adherent goodwill'.[24] A new

[18] See generally, M. Haley, "The Statutory Regulation of Business Tenancies: Private Property, Public Interest and Political Compromise" (1999) 19 Legal Studies 207.

[19] See the *Leasehold Committee Interim Report, Tenure and Rents of Business Premises* (1949) Cmd. 7706 at §§ 12–24. For example, in Eire a system of compensation for goodwill and improvements had been in place since the Town Tenants (Ireland) Act 1906.

[20] There had, however, been some temporary experimentation in the form of the Increase of Rent and Mortgage Interest (War Restrictions) Act 1915 and the Rent and Mortgage Restrictions Act 1920 (both of which concerned mixed use, shop premises).

[21] A transitional measure, again designed only to protect shopkeepers, was to be found in the Leasehold Property (Temporary Provisions) Act 1951.

[22] D. Englander, *Landlord and Tenant in Urban Britain 1838–1918* (Oxford, 1983), 80.

[23] As Lord Rochdale observed, "A good landlord certainly will not complain of that. The poor landlord has no right to complain and the tenant cannot expect anymore" (HL Deb. vol. 188 col. 135 (29 June 1954)).

[24] Defined restrictively in section 4(1) as goodwill which, 'has become attached to the premises by reason whereof the premises could be let at a higher rent'. Such goodwill was notoriously difficult to prove and evaluate: see *Whiteman Smith Motor Co v Clayton* [1934] 2 K.B. 36 (CA).

lease could be awarded at the discretion of the court and in the delimited circumstances where the compensation otherwise payable was inadequate to reimburse the tenant for the loss of conventional goodwill.[25] The initial emphasis, therefore, was upon safeguarding the financial interests of the tenant rather than ensuring the continuation of that tenant's business.[26] Undeniably, the compensation scheme was poorly devised, overly complex and generally unfit for purpose.[27] Its underpinning philosophy was flawed for, as the Leasehold Committee admitted in 1949, "The business tenant occupies his premises in order to trade or to pursue his profession: he does not wish to be compensated for being prevented to do so".[28] A more sweeping measure was, therefore, necessary and, albeit belatedly, Part II of the Landlord and Tenant Act 1954 brokered a more effective response and radically overhauled the pre-existing provisions. The Part II scheme represents a significant retreat from market forces and, by recognising that financial safeguards do not offer sufficient protection, affords security of tenure as the primary entitlement. Compensation survives, but only as a secondary claim and in much-modified form, divorced from the concept of goodwill and founded upon the loss of renewal rights.[29]

The precursor to ground (g) is to be found in section 5(3)(b) of the Landlord and Tenant Act 1927. Within the 1927 scheme, however, this exception to renewal was of minor importance. Under a regime where even a prima facie entitlement to a new lease could rarely be established, it was seldom invoked. As the 1954 Act is radically dissimilar in ethos and operation to its predecessor, there was no compelling reason why the refashioned machinery should mirror the earlier model. Unsurprisingly, there were to be major differences. For example, the 1927 Act afforded protection only in circumstances where the tenant or predecessor had been in occupation for business purposes for a period of at least five years. Although in 1950 it was proposed in the Final Report of the Leasehold Committee that this qualifying period should be reduced to three years,[30] no such limitation was to find its way into the Part II provisions. Similarly, contracting out had been permissible under section 9 of the 1927 Act in return for 'adequate consideration'. There was to be no ability to contract out of the revised renewal provisions.[31]

[25] Due to the pre-condition of establishing adherent goodwill, renewal was uncommon.
[26] Other provisions dealt with compensation for tenants' improvements and these, somewhat remarkably, continue to be good law: see M. Haley, "Compensation for Tenants' Improvements: A Valediction?" (1991) 11 Legal Studies 119.
[27] See R.E. Megarry [1953] 69 L.Q.R. 305.
[28] The *Leasehold Committee Interim Report, Tenure and Rents of Business Premises* (1949) Cmd. 7706 at § 38.
[29] The aim is to "give the tenant something to help him to re-establish his business elsewhere" (per Sir David Maxwell Fyfe, HC Deb. vol. 522 col. 1764 (27 January 1954).
[30] (1950) Cmd. 7982 at § 177.
[31] The Law of Property Act 1969 eventually introduced this facility.

Most pertinently, the modernised version did not reproduce the same exceptions to renewal. The 1927 Act had allowed the landlord to oppose renewal on the basis that it had offered to sell its interest in the premises to the tenant. In other circumstances, renewal was to be declined when it would be inconsistent with the interests of good estate management. As these grounds were rooted in compensation offering the primary entitlement, neither was to find its way into the Part II renewal machinery.

A similar fate appeared to await the owner occupation ground in that, in 1949, the Interim Report of the Leasehold Committee proposed that it too should be jettisoned.[32] The prioritisation of the occupation needs of the landlord was viewed as a major threat to the efficacy of any future renewal scheme. This concern was not, however, evident within the recommendations of the Final Report, where a differently constituted Leasehold Committee adopted a markedly different stance. In the intervening year, the Leasehold Committee had clearly become much more landlord-friendly. The Committee now felt that a landlord, who genuinely sought to resume occupation at the end of the tenant's lease, should not be prevented from doing so. The imposition of a blanket restriction was thought to be an unjustified invasion of the landlord's proprietary rights and a potential cause of hardship for the small landlord.[33] The Final Report was, moreover, prepared to push the boundaries of the owner occupation ground to extremes by proposing that the landlord should always be allowed to buy out the tenant, irrespective of motive or needs. In return, the tenant would be entitled to compensation amounting to a complete indemnity for the loss and expense incurred.[34] This proposal was not destined to find its way into the 1954 Act. A much-softened alternative was suggested in circumstances when the landlord could genuinely show that it sought possession in order to accommodate its own business or residential needs.[35] In this scenario, the tenant would be entitled to compensation in lieu of renewal. Although the Final Report recommended that this compensation should be based upon the unsatisfactory and unworkable concept of adherent goodwill,[36] a different calculus was to apply when the landlord sought to operate a business similar to that run by the tenant. The Leasehold Committee concluded that, when the purposes for which the landlord intends to use the premises have been made more valuable by the previous business use, compensation should be assessed with reference to that increased value.[37]

[32] (1949) Cmd. 7706 at § 65.
[33] *Final Report of the Leasehold Committee*, at § 165.
[34] Ibid., at § 173.
[35] Ibid., at §§ 167–169.
[36] Ibid., at § 125.
[37] Ibid., at § 210.

In the immediate wake of the Final Report, no permanent reform was implemented. Indeed, there was initial uncertainty as to the best way to proceed with a scheme based upon lease renewal rather than compensation. In 1953, the Government admitted that neither of the schemes put forward by the Leasehold Committee were "wholly satisfactory" and concluded that, "a new approach is required".[38] This new approach maintained the preferment of the landlord's occupation needs. In return, the tenant would be entitled to flat-rate compensation for loss of renewal rights. Although the Government envisaged that, "Under such a scheme the parties would have every incentive to settle by agreement on reasonable terms without going to the Tribunal",[39] it is ironic that ground (g) offers various inducements for the landlord to act unfairly and unreasonably. First, the landlord might seek to renew at a higher than market rent and utilise ground (g) as a bargaining tactic. If the tenant is in a weak bargaining position, that tenant might easily be held to ransom.[40] Hence, the tenant may be faced with the same stark choice as offered at common law. Secondly, it is possible that the landlord is a business rival of the tenant and seeks to invoke ground (g) in order to put its rival out of business. This is a permissible tactic for, as noted by Ward L.J., "If a landlord has a genuine intention to set up his own business, his motive becomes irrelevant".[41] The landlord might easily engineer a substantial financial gain from the exercise. Thirdly, the landlord may seek to occupy in order to open a business similar to that operated by the tenant. For the loss of its business and goodwill, the tenant will receive a compensatory award that ignores real losses and actual gains. The derisory nature of this award was evident in *Gatwick Parking Service Ltd. v Sargent*.[42] There the tenant faced the loss of its successful off-airport parking business in return for compensation assessed at a meagre £13,750. In the absence of any direct protection for goodwill, this produces, "a worse position than that which existed under the Landlord and Tenant Act 1927".[43] Section 30(1)(g) may, therefore, be viewed as compromising the founding policy objectives of regulatory control. While it is a provision that may serve well the landlord's longer-term interests in the property, potentially it threatens the tenant's business goodwill, gives rise to an arbitrary injustice and, by catering for a switch from commercial to

[38] *Governmental Policy on Leasehold Property in England and Wales* at § 42.
[39] Ibid., at § 53.
[40] See *Humber Oil Terminals Trustee Ltd. v Associated British Ports* [2011] EWHC 2043 (Ch).
[41] *Zarvos v Pradhan* [2003] 2 P. & C.R. 9, 135; see also the views of Vos J. in *Humber Oil Terminals Trustee Ltd. v Associated British Ports* [2011] EWHC 2043 (Ch) at [143] who admitted that the tenant could not call foul, "when the predator took over its building and operation and simply changed the name above the door".
[42] (Unreported) 24 January 2000 (CA).
[43] Per Rt. Hon. Mr West M.P., HC Deb. vol. 522, col. 1858 (27 January 1954).

residential use, may undermine economic growth and the wider public interest.

From the tenant's perspective, the existence of goodwill will often be of significant value. It is property that exists independently of the lease and, hence, remains a business asset that may be sold or, indeed, exported to new premises.[44] The existing compensation provisions are premised solely on the loss of renewal rights and designed only to offer relocation assistance to the tenant. The assumption is that the tenant is able, if it chooses, to continue its business from alternative premises. The economic viability of such plans may, however, be under serious threat where the landlord seeks to operate a business similar to that previously run by the tenant. The ability of the landlord to gain directly from the past enterprise of its tenant undeniably flouts the anti-profiteering ethos that underpins the Part II provisions. From a contemporary perspective, it is simply unthinkable that Parliament should facilitate the deprivation of the tenant's property without adequate compensation. Although the term 'expropriation' is, as Vos J. observed, "a pejorative way of putting the point",[45] from the tenant's perspective it might be thought of as an apt descriptor. Significantly, the impact of ground (g) on the tenant's goodwill (and unlike with the defeat of the tenant's contingent right to a new lease) appears to contravene Article 1, Protocol No. 1 of the European Convention on Human Rights.[46] This entitles every person to the peaceful enjoyment of his possessions and provides that no one shall be deprived of their possessions except in the public interest.[47] The term 'possessions' is to be interpreted widely[48] and, most certainly, encompasses the tenant's business goodwill.[49] Article 1, moreover, extends to laws affecting purely private transactions.[50] Unlike opposition under the redevelopment ground (f), there is not a scintilla of public interest underlying section 30(1)(g). Indeed, it upsets the fair balance that should be struck between the protection of property rights and the general interest.[51] Accordingly, the deprivation of goodwill, without any compensatory award reflecting the value of the asset taken, manifestly represents

[44] See *Daleo v Iretti* (1972) 224 E.G. 61.
[45] *Humber Oil Terminals Trustee Ltd. v Associated British Ports* [2011] EWHC 2043 (Ch) at [143].
[46] See *Iatradis v Greece* (2000) 30 E.H.R.R. 97.
[47] See *Bugajny v Poland* [2007] E.C.H.R. 891.
[48] See *Stretch v UK* (2004) 38 E.H.R.R. 196. There an invalid option to purchase was held to be a possession and its non-performance amounted to a frustration of the tenant's legitimate expectations under the lease.
[49] See *Van Marle v Netherlands* (1986) 8 E.H.R.R. 491 which concerned the refusal of a licence to practice as an accountant.
[50] Clearly it has the potential to extend to the parties' rights under the 1954 Act: see *BOH Ltd. v Eastern Power Networks plc* [2011] EWCA Civ 19.
[51] See *Sporrong and Lonnroth v Sweden* (1983) 5 E.H.R.R. 35, where the revocation of an expropriation permit without compensation amounted to an interference with the peaceful enjoyment of property.

a disproportionate and serious interference with the tenant's rights. It imposes an unacceptable and excessive burden on the tenant that simply cannot be legitimised in the absence of an effective compensation package.[52] Although there is clearly a gap in the protection which the legislature intended, it is not possible to interpret ground (g) and section 37 in a manner that can make them compatible with the Convention rights and satisfy section 3 of the Human Rights Act 1998. On any reading of the Part II provisions, it cannot be determined that the tenant is entitled to compensation for loss of goodwill.[53] Hence, the only route open is via section 4 and a declaration by a higher court of incompatibility. This process enables the court to signal that legislative reform should be undertaken. As this must arise in the course of proceedings and is not retrospective, the human rights compatibility of ground (g) might not be tested for some time.

In recognition that section 30(1)(g) offers the potential for tenant exploitation without adequate redress, certain barriers must be surmounted before the landlord's opposition can prevail. The responsibility of the court is to ensure that the recovery of possession by the landlord is justified within the framework of ground (g). Proponents of this exception to renewal rely heavily upon the nature and effectiveness of these protective measures. First, there are limitations placed upon who can successfully invoke ground (g). It is only the 'competent landlord' who is entitled to recover possession for personal use. A further restriction is imposed by section 30(2) and this is commonly called the 'five-year rule'. This prevents reliance upon ground (g) by a landlord who has acquired its interest in the premises within five years of the termination of the contractual tenancy. The design of section 30(2) is to deter a speculator purchasing tenanted property with the ambition of obtaining vacant possession and shortly afterwards re-letting at a higher rent.[54] Secondly, there is a restriction upon the mode of occupation that will suffice for the purposes of this exception to renewal. Controls are imposed as to what must be occupied, why occupation is sought, when it is to commence and for how long it must subsist. Thirdly, the landlord must demonstrate that it has an unequivocal and fully formed intention to occupy and this must be in provable form by the date of the substantive hearing of its opposition.[55] The need to demonstrate an appropriate intention invites the court to

[52] As Carnwath L.J. noted in *Thomas v Bridgend County B.C.* [2011] EWCA Civ 862 at [59], "the presence or absence of compensation … is an important element in deciding whether, in authorising the interference in the general interest, the balance struck by the state is fair".

[53] Although the interpretative power offered by section 3 is wide, the court cannot trespass into the territory of amendment: *Re S* [2002] 2 A.C. 313.

[54] This safeguard had not featured in the 1927 Act.

[55] It does not have to be proved at the date of a summary judgment hearing: *Somerfield Stores Ltd. v Spring (Sutton Coldfield) Ltd.* [2010] EWHC 2084 (Ch).

investigate the bona fide nature and contextual reality of the landlord's assertions. Each safeguard requires further analysis.

II. The 'Competent Landlord'

Section 30(1)(g) speaks of it being 'the landlord' who must seek to occupy the tenant's holding. While the equivalent provision found in the 1927 Act allowed opposition also on the basis that the holding was to be occupied by the landlord's adult son or daughter, this liberality did not make its way into the Part II machinery.[56] The relevant landlord for the purposes of ground (g) is the 'competent landlord' who, in the absence of any subleases, is the freeholder. If sub-tenancies exist, however, the position is more complex and the identity of the competent landlord is apt to change. This is because section 44 provides that the competent landlord will then be the lessor next up the chain from the occupying tenant that has at least 14 months remaining on its intermediate tenancy. This ceiling ensures that the landlord making the key decisions has more than a nominal reversion and will have a sufficient interest and incentive to take proper action in relation to the renewal process. It follows, therefore, that the identity of the competent landlord might alter during the period between the service of the landlord's renewal documentation and the date of the hearing. If this occurs, it is the new competent landlord's proposals that assume relevance. As Lord Denning M.R. admitted in *Marks v British Waterways Board*, "If the subsequent landlord can prove that at the date of the hearing he has the requisite intention, the new lease must be refused".[57] The aspirations of a non-competent landlord are simply irrelevant.[58]

A potential problem may arise when there is a severed reversion (i.e. there remains one tenancy, but the freehold title is divided). Unlike with joint landlords, it is a requirement that all the severed reversioners join in on the service of a section 25 termination notice on the tenant.[59] Hence, a notice served by one reversioner is void.[60] Adopting this approach in relation to section 30(1)(g), it must follow that, when there is a split reversion, the landlords collectively must intend to occupy the entirety of the tenant's holding for a unified business purpose or as a residence for them all. The unlikely prospect of this coincidence ever occurring effectively sterilises the effect of ground (g) when the reversion is severed.

[56] The *Final Report of the Leasehold Committee* did, however, favour this familial extension (at § 167).
[57] [1963] 1 W.L.R. 1008, 1015.
[58] *Piper v Muggleton* [1956] 2 Q.B. 569.
[59] Section 44(1A).
[60] *BOH Ltd. v Eastern Power Networks plc* [2011] EWCA Civ 19.

As indicated above, a change in the identity of the landlord will not usually interfere with the renewal process.[61] As Robert Walker L.J. put it, "one successive landlord is very closely identified with any successor of his".[62] By way of an exception to this general sentiment, section 30(2) imposes what is usually described as the 'five-year rule'.[63] This rule was fashioned directly to tackle a mischief, rife in the post Second World War era, of canny property speculators buying over the freehold heads of sitting tenants, "with the object of forthwith evicting a tenant on the expiration of his tenancy".[64] Unfortunately, the language of section 30(2) is highly technical and obscure and the complex factual settings in which the construction of section 30(2) may arise are apt to cause further difficulty. Such was evident in *VCS Car Park Management Ltd. v Regional Railways North East Ltd.*,[65] which dealt with the reorganisation of the railways under the Railways Act 1993. Robert Walker L.J. had to operate section 30(2) in a context that had arisen from, "a series of schemes and conveyancing manoeuvres of Byzantine complexity".[66]

Section 30(2) excludes from ground (g) those landlords who have acquired the reversion, by purchase[67] or grant,[68] 'after the beginning of five years which ends with the termination of the current tenancy'.[69] This provision only concerns opposition under ground (g) and is not engaged in circumstances when the current landlord is also the grantor of the tenancy.[70] For these purposes, the date of 'purchase' is deemed to be the time that contracts are exchanged.[71] If there is doubt as to whether a purchase has occurred, the court will look at the whole transaction, including any preceding contract.[72] Where the landlord's interest is leasehold, and a contract preceded the acquisition of that interest, the relevant date of creation is the date of the contract. Absent a separate contract, therefore, the general rule is that the relevant date is when the lease is executed.[73] In circumstances where the landlord is a company, and the person who has the controlling interest seeks to occupy, reliance on ground (g) will be barred if the controlling interest

[61] See *XL Fisheries Ltd. v Leeds Corporation* [1955] 2 Q.B. 636.
[62] *Willison v Shaftesbury plc* (unreported) 15 May 1998 (CA).
[63] The restriction was promoted in the *Final Report of the Leasehold Committee* at § 167 to counter concerns as to potential abuse by landlords.
[64] Per Danckwerts L.J. in *Artemiou v Procopiou* [1966] 1 Q.B. 878, 885.
[65] [2000] 1 All E.R. 403.
[66] [2000] 1 All E.R. 403, 410.
[67] The term 'purchased' is to be given its ordinary meaning (that is, buying for money): *Frederick Lawrence Ltd. v Freeman Hardy & Willis Ltd.* [1959] 3 All E.R. 77.
[68] The rule applies even if the landlord has been granted a reversionary lease: *Wimbush (AD) & Sons Ltd. v Franmills Properties Ltd.* [1961] Ch 419.
[69] The termination date for these purposes is the date specified in the landlord's section 25 notice or the tenant's section 26 request for a new lease.
[70] There is simply no mischief to address: see *Northcote Laundry Ltd. v Frederick Donnelly Ltd.* [1968] 2 All E.R. 50.
[71] *Bolton (HL) Engineering Ltd. v Graham (TJ) & Sons Ltd.* [1957] 1 Q.B. 159.
[72] *Frederick Lawrence Ltd. v Freeman Hardy & Willis Ltd.* [1959] 3 All E.R. 77.
[73] *Northcote Laundry Ltd. v Frederick Donnelly Ltd.* [1968] 2 All E.R. 50.

was acquired within the same time frame.[74] The timing element of section 30(2) might also give rise to difficulties where the landlord's interest is subject to a trust and it is a beneficiary who seeks to be treated as the landlord and to rely upon ground (g). In this scenario, the landlord's interest will be regarded as having been created when the trust was declared and not when the beneficiary landlord actually acquired the interest.[75]

A succession of tenancies in favour of the landlord is to be treated, for the purposes of section 30(2), as a single tenancy. In *Artemiou v Procopiou*,[76] the landlord held under a lease that was renewed within the five-year period. It was held that the relevant date was when the landlord's interest was originally created. Danckwerts L.J. explained, "This construction covers equally an interest of a landlord under one long period by one lease or under a series of leases".[77] Similarly, section 30(2) is not activated when the landlord undergoes a change of status during the five-year period. In *VCS Car Park Management Ltd. v Regional Railways North East Ltd.*,[78] the landlord was the freeholder and subsequently became a leaseholder with successive tenancies. This shift of status did not impede the landlord's opposition. As Sir Richard Scott noted, "The mischief at which the Act is aimed is not offended by allowing such a person to object to the grant of a new tenancy under ground (g)".[79]

While the ambition of section 30(2) might be laudable, its effect is unduly curtailed. First, it offers the tenant only retrospective protection against the landlord assigning the reversion shortly before the tenancy lapses. Although ground (g) will be unavailable to a landlord who has already formed the intention to sell by the date of the hearing,[80] the tenant is not protected, "against the risk that the landlord takes possession of the premises for the purposes of his own business but then quickly sells them".[81] In like vein, section 30(2) seemingly does not prevent a landlord, once the section 25 notice is served, from selling the reversion, leaving it open for the new landlord to rely on ground (g).[82] Although this distinctly odd outcome appears to be part of the

[74] Section 30(2A).
[75] *Northcote Laundry Ltd. v Frederick Donnelly Ltd.* [1968] 2 All E.R. 50. This does not apply, however, where it is a trustee landlord who seeks possession: *Morar v Chauhan* [1985] 3 All E.R. 493.
[76] [1965] 3 All E.R. 539.
[77] [1965] 3 All E.R. 539, 545. Salmon L.J. added (at p. 546), "it would be absurd if, for example, a landlord who has held under a lease for, say, fifty years and had obtained an extension by the grant of a new lease within the five years period should be deprived of the benefit of s 30(1)(g)".
[78] [2000] 1 All E.R. 403.
[79] [2000] 1 All E.R. 403, 408; see also *Morar v Chauhan* [1985] 3 All E.R. 493.
[80] As Arden L.J. put in *Patel v Keles* [2010] 1 P. & C.R. 24 at [24], "that would be a way of driving a coach and horses through the protection given by s 30(2)".
[81] Per Arden L.J. in *Patel v Keles* [2010] 1 P. & C.R. 24 at [17].
[82] See *Diploma Laundry Ltd. v Surrey Timber Ltd.* [1955] 2 Q.B. 604.

deliberate design of section 30(2),[83] it jeopardises the efficacy of the five-year rule.

Secondly, it is necessary that, at all times since the purchase or creation of the landlord's interest, the holding has been subject to a tenancy within the Part II provisions. A cessation of business use or occupation at any time within that period will, therefore, render section 30(2) inoperative.[84] This stands in contrast with the general renewal scheme, which tolerates a tenant moving in and out of business occupation during the contractual term or, indeed, its subsequent continuation.[85] It is, therefore, surprising that a different stance is taken in relation to the five-year rule where the emphasis is upon the landlord's acquisition of the reversion. There appears to be no policy justification for this difference of treatment.

Finally, and even if the five-year rule operates as a bar, a landlord might still derive benefit by, albeit unsuccessfully, invoking section 30(1)(g). Provided that the landlord can satisfy the other aspects of ground (g), the court might order a new lease of much shorter duration than would otherwise have been granted. This occurred in *Wig Creations v Colour Film Services* where a three-year lease was granted instead of the 12-year term sought by the tenant.[86] Denning L.J. explained, "The policy of the Act is to give a landlord (who has purchased more than five years ago) an absolute right to get possession for his own business; leaving it to the court to do what is reasonable if he has purchased less than five years. In doing what is reasonable, the five-year period is a factor which is permissible for the judge to take into account".[87] This indirect benefit for a landlord who has failed to defeat the tenant's application undermines the justification for the five-year rule and, ironically, promotes the very mischief at which it is targeted.

III. 'Occupation' in Context

The concept of occupation lies at the heart of Part II of the Landlord and Tenant Act 1954. It offers the tenant entry into the statutory scheme and shapes entitlement in terms of the subject matter of any new lease and, alternatively, the availability and amount of compensation for loss of renewal rights.[88] The term 'occupation' remains

[83] See the *Final Report of the Leasehold Committee* at § 167.
[84] *Northcote Laundry v Frederick Donnelly Ltd.* [1968] 2 All E.R. 50 (six days short of five years' business user).
[85] See *Bell v Alfred Franks & Bartlett & Co Ltd.* [1980] 1 All E.R. 356.
[86] (1969) 20 P. & C.R. 870; see also *Upsons Ltd. v E Robins Ltd.* [1956] 1 Q.B. 131 where the landlord's opposition failed because it had acquired the property two months before the lapse of the section 30(2) disqualification period.
[87] (1969) 20 P. & C.R. 870, 874.
[88] See M. Haley, "Occupation and the Renewal of Business Tenancies: Fact, Fiction and Legal Abstraction" (2007) J.B.L. 759.

undefined in the 1954 Act and it has been for the courts to clothe it with meaning, tailored to the particular context in which the term appears and the factual setting in which the claim to occupation is made.[89] To complicate matters further, the concept is subject to statutory modification (e.g. relating to representative occupation), judicial gloss (e.g. when there are rival candidates to the role of occupier) and an unpredictable degree of cross-fertilisation between several statutory provisions.[90]

The finding of occupation is essentially one of fact, dependent upon the physical use and control of the premises. In difficult cases, the decision will be reached with close regard to the purpose for which the concept of occupation is employed and the consequences that flow from the presence or absence thereof. In the more straightforward scenario, and absent any rival claimant to the status of occupier, the courts are apt to be liberal.[91] Accordingly, a tenant may still be in occupation even though not physically present at the premises[92] and where the premises are seasonally closed[93] or temporarily unusable.[94] Although the key authorities concern occupation by the tenant, there is no policy justification or authority to suggest that a different line of reasoning will be adopted with ground (g).

Section 30(1)(g) does not require the landlord personally to occupy the premises. The landlord can occupy through an agent,[95] a manager,[96] a partnership,[97] a beneficiary under a trust[98] and a company that is a member of a group of companies that includes the landlord company.[99] Nevertheless, ground (g) cannot assist the landlord who seeks possession so that a spouse can operate a business from the holding.[100] Although traditionally ground (g) was not engaged when a company landlord sought possession in order to allow its controlling shareholder to occupy (or, indeed, vice versa), this is now catered for by section 30(1A),(1B). For the purposes of ground (g), these provisions lift the corporate veil and assimilate the company and the person who controls it.

[89] As Lord Nicholls observed in *Graysim Holdings Ltd. v P&O Property Holdings Ltd.* [1996] A.C. 329, 336, "The types of property, and the possible uses of property, vary so widely that there can be no hard and fast rules".
[90] See *Pointon York Group plc v Poulton* (2007) 1 P. & C.R. 6.
[91] See *Wandsworth LBC v Singh* (1991) 62 P& CR 219 where the passive management of a park by the tenant's agents sufficed.
[92] *Bacchiocchi v Academic Agency Ltd.* [1998] 2 All E.R. 241.
[93] *Teasdale v Walker* [1958] 1 W.L.R. 1076.
[94] *Pulleng v Curran* [1982] 44 P. & C.R. 58.
[95] *Skeet v Powell-Sneddon* [1988] 40 E.G. 116.
[96] *Hills (Patents) Ltd. v University College Hospital Board of Governors* [1955] 3 All E.R. 365.
[97] *Re Crowhurst Park* [1974] 1 All E.R. 991.
[98] Section 41(2).
[99] Section 42(3).
[100] *Zafiris v Liu* (2006) 1 P. & C.R. 466 (CA).

Occupation of the 'Holding'

The Part II provisions contain directions as to what is to be occupied for the purposes of ground (g) and require that the landlord must intend to occupy the entirety of the tenant's 'holding'.[101] Occupation of part only does not suffice, regardless of how substantial the part may be.[102] Nevertheless, a landlord can simply express the intention to occupy the entire holding without any requirement that each and every part of it be physically used for the landlord's business purposes.[103] This all or nothing approach, therefore, achieves little and stands in contrast with section 31A(1)(b), which operates in the context of ground (f). This provision applies where the landlord intends to redevelop part only of the holding and limits the landlord's recovery of possession to the part on which the works are to be carried out. If willing, the tenant is entitled to a new lease of the remainder, provided that it is an economically separable part of the original holding. In the context of ground (g), it is not difficult to envisage the utility of an equivalent provision. Its implementation might encourage the landlord to moderate its stated intentions and facilitate the continuation of the tenant's business, albeit from reduced premises. It would also have some attraction for landlords seeking to rely on ground (g) in circumstances where the reversion has been severed. The reform could allow a sufficient intention to occupy part of the holding to be demonstrated by, say, one severed reversioner alone or, on a collective level, allow the severed reversioners to oppose in circumstances where each seeks to occupy their respective parts for different business purposes. While the Law Commission felt that there was, "some attraction in this extension",[104] the issue was shelved without further analysis as a significant change of policy that would need wider consultation.[105] Although the same facility was afforded to the tenant under the Landlord and Tenant Act 1927, there is scant prospect of it being officially revisited within the foreseeable future.

For the purposes of ground (g), the term 'holding' has been the subject of some judicial scrutiny. In *Nursey v P Currie (Dartford) Ltd.*,[106] the landlord invoked ground (g) with the intention of operating a petrol station on the holding. It was, however, first necessary to demolish the existing buildings and rebuild.[107] Before the Court of

[101] Defined in section 23(3) as being the property comprised within the tenancy that is occupied by the tenant for business purposes.
[102] *Shecrum Ltd. v Savill* (unreported) April 1 1996 (CA).
[103] *Method Developments Ltd. v Jones* [1971] 1 All E.R. 1027.
[104] *A Periodic Review of the Landlord and Tenant Act 1954 Part II* at § 3.28.
[105] Ibid.
[106] [1959] 1 All E.R. 497.
[107] The landlord would have fared better by relying on ground (f). As Willmer L.J. admitted in the *Nursey* case at 500, "The only intention proved was an intention to demolish and reconstruct".

Appeal, the landlord's opposition failed. Wynn-Parry J. reasoned that the landlord did not intend to occupy the tenant's holding, but rather sought to occupy an entirely different holding in a redeveloped form. The court refused to take into account the wider undertaking that the landlord had in mind. This approach is, however, highly problematic and has been confined to circumstances where there is to be the demolition and replacement of existing buildings.[108] Hence, if the holding is bare land, ground (g) can be pleaded successfully even though the landlord's intention is to build upon the site once in occupation.[109] In *JW Thornton Ltd. v Blacks Leisure Group*,[110] the appellate court once more attempted to distance itself from the straightjacket of precedent. *Nursey* was distinguished on the basis that the demolition and reconstruction work proposed here was of an insubstantial nature.[111]

The decision in *Nursey v P Currie (Dartford) Ltd.* is eminently challengeable and has not escaped judicial criticism. In *Method Developments Ltd. v Jones*,[112] Salmon L.J. dismissed the decision as wrong and refused to follow it. This rejection has much to commend it. The term 'premises' makes no appearance in the statutory definition of the tenant's holding and, unlike the redevelopment ground (f), does not even feature in the language of section 30(1)(g).[113] It is, therefore, implausible that Parliament would intend the meaning of 'holding' for the purposes of ground (g) to be tempered in this unnecessary fashion.[114] There is, moreover, no policy justification for allowing the landlord to recover the holding only on the understanding that it remains in a substantially unaltered state. Indeed, this would run counter to the promotion of economic growth and hinder the regeneration of commercial property.[115]

The understandable attempts to sidestep the *Nursey* approach have fostered artificial and illogical distinctions, which themselves are incompatible with the underlying philosophy of ground (g). The provision is unconcerned with what type of business the landlord intends to pursue, whether there are any buildings on the holding and, if there are, whether the landlord intends to physically occupy every building in pursuit of that business. It must follow that a proposed change in the appearance or the use of the holding should not impede the landlord's

[108] *Leathwoods Ltd. v Total Oil (GB) Ltd.* (1986) 51 P. & C.R. 20.
[109] *Cam Gears Ltd. v Cunningham* [1981] 2 All E.R. 560.
[110] (1987) 53 P. & C.R. 223.
[111] The landlord intended to demolish two partition walls between the landlord's present premises and those of the tenant and to occupy the holding as enlarged.
[112] [1971] 1 All E.R. 1027.
[113] C/f Landlord and Tenant Act 1927, section 5(3).
[114] See *McKenna v Porter Motors* [1956] A.C. 688 (PC). The court must resist imputing, "a wholly irrational and capricious intention to the legislature" (per Oliver L.J. in *Cam Gears Ltd. v Cunningham* [1981] 2 All E.R. 560, 563).
[115] As Templeman J. explained, "The object of para. (g) of section 30(1) is not to hand the land back to the landlord in a sterilised form …" (*Cam Gears Ltd. v Cunningham* [1981] 2 All E.R. 560, 564).

legal ability to occupy.[116] Due to the lingering uncertainty promoted by the *Nursey* case, if the landlord intends to carry out works of demolition and reconstruction then it should rely upon both grounds (f) and (g).[117]

Temporal Concerns

While the Part II machinery features numerous time limits with which the parties must comply, it is surprisingly vague as to when exactly the landlord must intend to occupy and utterly silent as to how long that occupation must be maintained. Section 30(1)(g) states simply that occupation is to occur 'on the termination of the current tenancy'.[118] This indicates that the landlord must have more than a generalised ambition to occupy in the indeterminate future.[119] Occupation need not, therefore, be immediate, but as emphasised in *Method Developments Ltd. v Jones* it must be intended to occur within a reasonable time following the date of termination.[120] The determination of reasonableness is an issue of fact and the court must adopt a sensible and business like attitude as to the latest time by which occupation must commence.[121] By way of illustration, in *London Hilton Jewellers v Hilton International Hotels Ltd.*,[122] it was admitted that a delay of a month or so would not be held unreasonable. Further guidance might be distilled from section 31(2), which deals specifically with the timing of landlord's works of redevelopment for the purposes of ground (f). This states that the redevelopment works must be intended to begin within 12 months of the end of the tenancy and, if not, the landlord is unable to rely on ground (f). It is, at the least, arguable that a similar cut-off point should apply also to the taking up of occupation for the purposes of ground (g). There is no discernible policy justification for maintaining this distinction between the two grounds of opposition.

There is no reference in section 30(1)(g) as to the duration of the landlord's intended occupation.[123] The general rule that has emerged is that the landlord must intend to occupy for more a temporary period.[124] Understandably, the landlord cannot rely upon ground (g) when

[116] See *McKenna v Porter Motors* (1956) A.C. 688.
[117] See *Fisher v Taylor's Furnishing Stores Ltd.* [1956] 2 All E.R. 78.
[118] This will take into account any continuation under section 64(1) until 'final disposal' of proceedings occurs: *Coffee Machine Co v Guardian Assurance Co* [1959] 1 All E.R. 458.
[119] *Inclusive Technology v Williamson* [2010] 1 P. & C.R. 2.
[120] [1971] 1 All E.R. 1027; see also *Chez Gerard Ltd. v Greene Ltd.* [1983] 2 E.G.L.R. 79.
[121] See *Humber Oil Terminals Trustee Ltd. v Associated British Ports* [2011] EWHC 2043 (Ch) where the High Court emphasised that it is the taking up of occupation that is the key and not necessarily when the business will begin to operate.
[122] [1990] 1 E.G.L.R. 112.
[123] C/f Business Tenancies (Northern Ireland) Order 1996, article 12(1)(g) which requires occupation for 'a reasonable period'.
[124] *Willis v Association of Universities of the British Commonwealth* [1964] 2 All E.R. 39. As Arden L.J. accepted in *Patel v Keles* [2010] 1 P. & C.R. 24 at [36], "his intended occupation must not be

the occupation is merely to redecorate or refurbish.[125] By way of an exception to the general rule, an intended occupation of a number of months may suffice, but only when there is intended to be no outright sale of the premises to a cash purchaser.[126] Such was demonstrated in *Willis v Association of Universities of the British Commonwealth*, where Lord Denning M.R. took the view that a short period of occupation before, for example, a father passing the business over to his son would suffice.[127] Salmon L.J. considered the position of a landlord, who had not long to live, seeking possession under ground (g). He concluded that, in such circumstances, the landlord could still succeed in its opposition.[128] Salmon L.J. discussed the further scenario of when, following a restructuring exercise, a landlord company was to be dissolved. If dissolution occurred before the hearing, the new landlord would stand in the shoes of the old. In relation to a dissolution planned to occur after the hearing, he felt that the landlord could still rely on ground (g) as, "the law does not make the rights of the parties depend on the fortuitous circumstance whether the transfer is executed sooner than later".[129] This line of reasoning is also on all fours with the five-year rule that, as considered above, bites only on the occurrence of a purchase or grant of the reversion.

The timing aspect of section 30(1)(g) was revisited in *Patel v Keles* where the traditional distinction between a sale and other types of disposition was reaffirmed.[130] There the landlord sought to take occupation of the tenant's shop premises with a view to operating a similar business. Although the landlord was prepared to offer a vague undertaking that he would operate the business for a period of at least two years,[131] the evidence indicated that he would retire in four years time. It was highly likely that, after the two-year period, a sale of the premises would occur. Arden L.J. had to decide whether the realistic prospect of this later sale barred the landlord from successfully relying upon ground (g). Drawing an analogy with the five-year rule, she concluded that the prospective transfer would, if made before the hearing, have fallen foul of section 30(2). The court

fleeting or illusory … Parliament could hardly have intended that the landlord should be able to prevent the renewal of business tenancy if that were not so".

[125] *Jones v Jenkins* (1985) 277 E.G. 644.

[126] *Patel v Keles* [2010] 1 P. & C.R. 24. As Arden L.J. acknowledged at [36], "What is short-term must depend on the facts of the particular case".

[127] [1964] 2 All E.R. 39, 43. Conversely, if the landlord intended to sell to his son there would be no scope for ground (g) to operate.

[128] [1964] 2 All E.R. 39, 48.

[129] [1964] 2 All E.R. 39, 48.

[130] As Arden L.J explained [2010] 1 P. & C.R. 24 at [23], "The landlord did not have to show that his occupation would be for any particular period (indeed that would be to write words into the statute) unless he intended to sell the premises".

[131] The undertaking by Mr Keles did not, however, impose upon him any positive obligation to occupy.

should not, therefore, allow a landlord to circumvent the five-year rule merely by the postponement of the intended sale until after the hearing.[132] The likelihood of sale is relevant when determining whether the landlord can establish a genuine intention to occupy.[133] In these circumstances, the court concluded that Mr Keles had not made out his ground of opposition.

A possible half-way house had been envisaged in 1950 by the Leasehold Committee when it suggested that, unless the change of plan was due to unforeseeable factors outside the landlord's control, additional compensation should be awarded to the tenant if the landlord never occupies or occupies for less than a prescribed minimum period.[134] With scant discussion, this eminently sensible proposal was rejected by the Law Commission who felt that it was not justifiable to distinguish between the tenant of a landlord who carried out its intention and the tenant of one who did not.[135] This reticence is as surprising as it is counter-intuitive. The existence of ground (g) is founded upon the landlord's actual occupation of the premises and this assumption operates as the sole justification for the shift from renewal to compensation. It might be argued, moreover, that the more unpalatable distinction is, as currently drawn, between the landlord who reaches the decision to sell prior to obtaining possession[136] and the landlord who reaches the identical decision the day after taking possession.[137]

Purpose of Occupation

Section 30(1)(g) requires that the occupation of the holding be, 'for the purposes, or partly for the purposes, of a business to be carried on by him therein, or as his residence'.[138] The grammatical structure of ground (g), therefore, suggests that a partial use of the holding for residential purposes alone will prove insufficient.[139] As the residential aspect of ground (g) is seldom invoked, this issue of interpretation has yet to be resolved. It is, however, clear that a mixed use is permissible.[140] The landlord could, for example, recover possession of a shop with a flat

[132] In *Lennox v Bell* (1957) 169 E.G. 753, when illness entailed that the landlord would not be able to carry on the proposed business, the real intention was to sell with vacant possession.
[133] As Arden L.J. explained in *Patel v Keles* at [36], "This is a multifactorial question to be decided on all the relevant evidence".
[134] *Final Report of the Leasehold Committee* at § 169.
[135] *Report on the Landlord and Tenant Act 1954 Part II* at § 39.
[136] The landlord's opposition would fail even though sale was a somewhat distant prospect: see *Patel v Keles* [2010] 1 P. & C.R. 24.
[137] Absent misrepresentation and/or concealment of a material fact by the landlord there is nothing that the tenant can do in this scenario.
[138] These terms are, as Lord Coleridge L.J. observed in *Lewis v Graham* (1888) 20 Q.B.D. 780, 781, "elastic words, of which an exhaustive definition cannot be given, but they must be construed in every case in accordance with the object and intent of the Act in which they occur".
[139] See *Shecrum Ltd. v Savill* (unreported) April 1 1996 (CA).
[140] *Cox v Binfield* [1989] 1 E.G.L.R. 97.

above and occupy for both purposes or partly for the purposes of a business. As regards a company, it must follow that the residential use is by an agent or employee. It is of no defence to the tenant to argue that the landlord has other residences that can be occupied.[141] The court should, instead, focus upon whether the holding is to be a permanent place of abode (i.e. a complete home) for the landlord.[142] In *Shecrum Ltd. v Savill*,[143] the premises comprised two separate flats that the tenant occupied for business purposes. The landlord wanted to recover possession in order to live in one flat and use the other as a study, guestroom and storage space. This enabled the court to conclude that the landlord intended to occupy the entire holding. It will not be sufficient that the landlord intends to use the property casually and rarely[144] or to sublet on taking possession.[145] The needs of the landlord will, however, focus usually upon the recovery of possession for prospective business use. This tendency has served to obscure more fundamental issues as to why and whether the residential needs of the lessor should outweigh the commercial interests of the tenant. There is no modern justification underlying this preference, which is seemingly a remnant of the small shopkeeper activism that dominated the political landscape until 1954.

The term 'business' is, as Lord Diplock observed, "an etymological chameleon …".[146] It is defined by section 23(2) as including a trade, profession or employment and any activity carried on by a body of persons, whether corporate[147] or unincorporated.[148] This broad based understanding of 'business' captures, as Lindley L.J. put it, "almost anything which is an occupation, as distinguished from a pleasure – anything which is an occupation or a duty which requires attention is a business".[149] The actual making of a profit for, say, shareholders and members is, moreover, not essential.[150] In *Hawkesbrook Leisure Ltd. v Reece-Jones Partnership*, a not for profit company limited by guarantee, which operated a number of sports grounds and social clubs, was held to fall within section 23(1).[151] Conversely, financial gain is not itself conclusive that it is a business that is

[141] See *Beck v Scholz* [1953] 1 Q.B. 570.
[142] *Langford Property Co Ltd. v Athanassoglou* [1948] 2 All E.R. 722.
[143] (Unreported) April 1 1996 (CA).
[144] *Hampstead Way Investments Ltd. v Lewis-Weare* [1985] 1 All E.R. 564.
[145] *Haskins v Lewis* [1931] 2 K.B. 1.
[146] *Town Investments Ltd. v Department of the Environment* [1978] A.C. 359, 383; see J. Morgan, "Business, Profit and the 1954 Act" [2005] J.B.L. 235.
[147] For example, private companies, local authorities and statutory undertakers.
[148] For example, trade unions and friendly societies.
[149] *Rolls v Miller* (1884) 27 Ch.D. 71, 88.
[150] *Re the Estate of the Incorporated Council of Law Reporting for England v Wales* (1888) 22 Q.B.D. 279. In Northern Ireland, this is expressly acknowledged in Business Tenancies (Northern Ireland) Order 1996, article 2(2).
[151] [2003] EWHC 3333 (Ch). Any trading surplus was used towards maintaining, improving and enlarging its sporting facilities.

operated.[152] There does, however, have to be some commercial element involved.[153] As Widgery L.J. put it in *Abernethie v AM & J Kleiman Ltd.*, "what a man does in his spare time in his home is most unlikely to qualify for the description of 'business' unless it has some direct commercial involvement in it …".[154]

The word 'trade' is of narrower scope than 'business'. As demonstrated in *Wetherall v Bird*,[155] this term connotes the activity of buying and selling, usually with a profit making ambition.[156] The understanding of a 'profession' is less precise,[157] but clearly embraces lawyers, doctors, accountants, architects, clergy and the like. In less clear-cut claims, the court must adopt a commonsense stance. In *Abernethie v AM &J Kleiman Ltd.*, the court rejected the notion that the operation of the voluntary Sunday school could be classified as a profession. As Harman L.J. noted, "It is not carried on professionally: it is carried amateurishly, just the opposite to 'professionally'".[158] Within the Part II machinery, the term 'employment' is sufficiently flexible to cover most business occupations and is reflective of the fact that profits can be generated in many ways.[159] It has been held to include the operation of a teaching hospital[160] and the occupation of a lecturer.[161] In the *Abernethie* case, however, the running of the Sunday school was not regarded as an employment. It must, as Harman L.J. observed, "mean something much more regular than that. It means, I should have thought, either employing somebody else or being employed by someone else".[162]

It is to be recalled that section 23(2) extends the meaning of business to include 'any activity', but this liberality only relates to bodies and corporations.[163] In *Secretary of State for Transport v Jenkins*,[164] a loose and informal farming collective was regarded as 'a body of persons' for these purposes. It did not matter that there was no membership list, no constitution and no membership fee charged. As Millett L.J. explained, "The expression must connote some involvement or participation in a common activity other than the mere joint ownership

[152] In *Lewis v Weldcrest* [1978] 1 W.L.R. 1107, the taking in of a small number of paying lodgers was not regarded as a business.
[153] *Secretary for State for Transport v Jenkins* (unreported) 30 October 1997 (CA). There a co-operative farm operated in the spirit of public benevolence was not classified as a business.
[154] [1970] 1 Q.B. 10, 20.
[155] (1834) 2 Ad. & El. 161.
[156] A profit motive is not, however, essential: see *Ireland v Taylor* [1949] 1 K.B. 300 where a guesthouse operated on a non-profit basis was held to constitute a trade.
[157] See *IRC v Maxse* [1919] 1 K.B. 647, 657 where Scrutton L.J. provided the working definition of, "an occupation requiring either purely intellectual skill or manual skill controlled … by the intellectual skill of the operator …".
[158] [1970] 1 Q.B. 10, 17.
[159] See *Partridge v Mallandine* (1886) 18 LCD 276.
[160] *Hills (Patents) Ltd. v University College Hospital Board of Governors* [1956] 1 Q.B. 90.
[161] *Lecture League Ltd. v LCC* (1913) 108 L.T. 924.
[162] [1970] 1 Q.B. 10, 17.
[163] Government departments are expressly included: section 56(3).
[164] (Unreported) 30 October 30 1997 (CA).

of the property".[165] The activity alluded to in section 23(2) has been held to include, for example, the running of a members' tennis club,[166] the provision of a public park,[167] the operation of a hospital,[168] the running of a restaurant,[169] and the intermittent use of a garage for storage purposes.[170] Not all use will, therefore, suffice. In *Hillil Property & Investment Co v Naraine Pharmacy*, Megaw L.J. acknowledged that, although different from a trade, profession or employment, "an activity for this purpose … must be something which is correlative to the conceptions involved in those words".[171] Accordingly, in *Abernethie v AM & J Kleiman Ltd*. the court doubted whether the running the Sunday school for one hour a week could be described as an activity for the purposes of section 23(2). Put simply, there was no business element to that use.

The authorities relating to the landlord's business use for the purposes of section 30(1)(g) understandably tread a similar path. The landlord has been able to recover possession so as to operate a community centre managed in conjunction with a local church,[172] to use the holding for storage purposes ancillary to the landlord's business[173] and to utilise the holding for car parking purposes for visitors and staff to the landlord's adjacent premises.[174] Nevertheless, it is not always entirely safe to rely on authorities concerning the operation of section 23(1). While the definition of what amounts to a business purpose is identical, a major difference is that the tenant's occupation must be of 'premises'. There is, however, no reference to premises in ground (g). This distinction might assume significance in, say, the scenario where the person claiming occupation is in the business of letting property. Under section 23(1), the lessee would neither be in occupation nor operating a business from the premises once those premises have been sublet.[175] Nevertheless, if the landlord seeks occupation in order to rent out premises on part of the holding and, say, provides management and other services from another part of the holding, the landlord could still fall within ground (g).[176] It is to be recalled that there is no requirement that every part of the holding has to be used for the purposes of the

[165] (Unreported) 30 October 30 1997 (CA). Joint tenants are not necessarily to be viewed as a body of persons.
[166] *Addiscombe Garden Estates Ltd. v Crabbe* [1958] 1 Q.B. 513.
[167] *Wandsworth LBC v Singh* (1991) 62 P. & C.R. 219.
[168] *Hills (Patents) Ltd. v University College Hospital Board of Governors* [1956] 1 Q.B. 90.
[169] *Ye Olde Cheshire Cheese Ltd. v Daily Telegraph* [1988] 3 All E.R. 217.
[170] *Bell v Alfred Franks & Bartlett & Co* [1980] 1 All E.R. 356.
[171] (1979) 39 P. & C.R. 67, 73. There the casual dumping of waste building materials was not regarded as the carrying on of an activity for the purposes of section 23(2).
[172] *Parkes v Westminster Roman Catholic Diocese Trustee* (1978) 36 P. & C.R. 22.
[173] *Page v Sole* (unreported) 24 January 1991 (CA).
[174] *Hunt v Decca Navigator* (1972) 222 E.G. 605.
[175] *Graysim Holdings Ltd. v P&O Property Holdings Ltd*. [1995] 4 All E.R. 831. This decision exploded the myth that the tenant and the sub-tenant could be in co-existent occupation.
[176] Merely re-letting the flats would not amount to business use of the holding: *Jones v Jenkins* (1985) 277 E.G. 644.

landlord's business. Unlike with section 23(1), there is no policy reason to prevent the landlord being in occupation of the entire holding and the tenant being in occupation of an individual unit within the premises. The option to oppose renewal solely on the basis of the landlord's residential requirements also indicates that there should be some further dilution of the meaning of 'business' for the purposes of ground (g). Unfortunately, the effects of this intermixture still remain unclear.

As previously emphasised, there is generally nothing to prevent ground (g) being relied upon by a landlord who intends to run a similar business to that previously operated by the tenant.[177] It matters not that there are alternative premises available to accommodate the landlord's business[178] or that the business is to be managed by a third party.[179] Following the decision of the county court in *Daleo v Iretti*,[180] however, it is arguable that the landlord will be disqualified from doing so if, on the grant of the lease, the existing goodwill of the business had been expressly assigned by the landlord to the tenant. In *Daleo*, the landlord carried on a café business from premises in Camden. She granted a lease of the premises and assigned absolutely the goodwill to the tenants in return for a substantial financial sum. She later opposed renewal on the basis of section 30(1)(g) and sought to resume her former business activity. Judge Leslie concluded that, as the assignment of goodwill was not limited to the duration of the lease, the landlord's plans amounted to the derogation from the grant of goodwill. The landlord was, thereby, unable to rely on ground (g).[181]

IV. The Landlord's 'Intention'

No attempt is made within Part II of the Landlord and Tenant Act 1954 to define the concept of 'intention'. As it enjoys a pivotal role within the operation of both grounds (f) and (g), much judicial attention has been devoted to the issue of what constitutes a sufficient intention for these purposes and the manner in which that intention is to be proved. Nevertheless, it remains, "a simple English word of well-understood meaning … to be answered by the ordinary standards of common sense"[182] and should, "be given its ordinary and natural meaning".[183] The court must evaluate the landlord's intentions from

[177] *Wates Estate Agency Services Ltd. v Bartleys Ltd.* [1989] 47 E.G. 151.
[178] The Northern Ireland Law Commission Consultation Paper, *Business Tenancies* N.I.L.C. 5 (2010) at § 10.2 has, however, questioned whether the landlord should be entitled to possession in this scenario.
[179] *Humber Oil Terminals Trustee Ltd. v Associated British Ports* [2011] EWHC 2043 (Ch).
[180] (1972) 224 E.G. 61.
[181] If the landlord had intended to operate a different business from the premises, there would have been no obstacle in her way.
[182] Per Lord Evershed M.R. in *Betty's Cafes Ltd. v Phillips Furnishing Stores Ltd.* [1957] Ch 67, 99.
[183] Per Vos J. in *Humber Oil Terminals Trustee Ltd. v Associated British Ports* [2011] EWHC 2043 (Ch) at [99].

both a subjective and an objective perspective.[184] In the context of ground (g), this requires the landlord to prove that the commitment to occupy for business or residential purposes is bona fide and that there is a realistic prospect of bringing about that occupation for the specified purposes. A subjective desire is insufficient unless there is also evidence of the objective ability to occupy.[185] The landlord's proposals must have, as Lord Asquith explained in *Cunliffe v Goodman*, "moved out of the zone of contemplation – out of the sphere of the tentative, the provisional and the exploratory – into the valley of decision".[186]

The modern analysis of the court's approach to assessing the landlord's intention is to be found in *Zarvos v Pradhan*.[187] This case concerned a tenant who ran a modest eating establishment on the demised premises. The landlord wanted possession with the ambition of opening an upscale eatery and wine bar on the tenant's holding. At first instance, the landlord's opposition failed. There was some question raised as to the landlord's bona fides and, due to his reluctance to produce evidence as to his financial affairs, it was concluded that there was no reasonable prospect of his professed intentions becoming reality. On appeal, Ward L.J. rejected any need for a sequential approach, accepting that, "Ultimately there is a single question for the judge to decide … does the landlord on the termination of the current tenancy intend to occupy the holding for the purposes of a business to be carried on by him therein?"[188] Ward L.J. emphasised that, absent a genuine intention to operate the business, "The landlord falls at the first fence. One need not investigate the reality or the fantasy of his business plan".[189] If, however, there is a lack of reasonable prospects the landlord's bona fides need not be considered. Ward L.J. viewed the objective strand as existing, "precisely to cater for the case where the landlord does genuinely believe in what he says he intends to do".[190]

As to the subjective intention to occupy, it is possible that the court might accept the uncorroborated sworn testimony of the landlord.[191] Nevertheless, the court is chary that the landlord might assert an intention at the hearing, but have a change of heart once in possession.[192] In such circumstances, and if the opposition succeeded due to a misrepresentation or concealment of a material fact by the landlord, the

[184] *Gregson v Cyril Lord Ltd.* [1963] 1 W.L.R. 41.
[185] *Zarvos v Pradhan* [2003] 2 P. & C.R. 9. As Ward L.J. observed (at 129), "Pie in the sky will not be enough …." C/f the 1927 Act, which had solely been concerned with the landlord's bona fides.
[186] [1950] 2 K.B. 237, 254.
[187] [2003] 2 P. & C.R. 9.
[188] [2003] 2 P. & C.R. 9, 129.
[189] [2003] 2 P. & C.R. 9, 129.
[190] [2003] 2 P. & C.R. 9, 134.
[191] *Mirza v Nicola* (1990) 30 E.G. 92.
[192] In *Humber Oil Terminals Trustee Ltd. v Associated British Ports* [2011] EWHC 2043 (Ch) at [130] Vos J. accepted that, "The fact that unexpected offers and events may in the future occur does not … make ABP's decision uncertain or unconditional".

tenant can claim additional compensation under section 37A.[193] This is, however, a diluted safeguard in that an award under section 37A is not punitive, carries no criminal sanctions and is reduced by any compensation payable for loss of renewal rights. Understandably, the court is reluctant to rely on a simple undertaking from the landlord to occupy.[194] Nevertheless, it is common for an undertaking to support the landlord's claim because, if clear and definite, it will usually serve to advance the landlord's case.[195] This is particularly so if it is given by a company with a sound reputation.[196] The landlord's subjective intention may also be evidenced by, for example, the minutes of a board or partnership meeting, an affidavit of a director or the obtaining of quotations for equipment to be used on regaining possession.[197] The court will consider any outward sign that the landlord's expressed intentions are authentic.[198] In *Skeet v Powell-Sneddon*,[199] the evidence of the landlord that she wanted to operate a hotel business with her husband and to give employment to her daughter (who had studied hotel management) proved convincing. This was so even though no partnership agreement had been entered and no application had been made for a liquor licence. Similarly, in *Pelosi v Bourne*,[200] the landlord sought to expand his successful business into the tenant's existing premises. The facts that the landlord's present accommodation was cramped and that the business was financially strong persuaded the court that the intention to occupy was settled. It was not necessary that the landlord should detail the proposed layout of the extended premises.

The fixity of the landlord's intentions may, however, be challenged in circumstances where alternative accommodation is available for the landlord's occupation. If the landlord seeks to preserve both options until the conclusion of the hearing, this may have a deleterious effect on the landlord's opposition.[201] Similarly, while the landlord's business proposals can be modified during the intervening period between the service of the renewal documentation and the hearing,[202] it appears that the opposition will be damaged if alternative modes of intended

[193] See *Inclusive Technology v Williamson* [2010] 1 P. & C.R. 2. The Law Commission rightly rejected the notion that the former tenant's right to a new lease should somehow later be rekindled (*Report on the Landlord and Tenant Act 1954 Part II* (1969) Law Com No. 17 at § 38).

[194] See *Chez Gerard Ltd. v Greene Ltd*. (1983) 268 E.G. 575. This argument is based upon the inability at law to enforce an undertaking to occupy.

[195] See *London Hilton Jewellers Ltd. v Hilton International Hotels Ltd.* (1990) 20 E.G. 69. C/f the temporary and imprecise undertaking offered in *Patel v Keles* (2010) 1 P. & C.R. 24.

[196] *John Miller (Shipping) Ltd. v Port of London Authority* [1959] 2 All E.R. 713.

[197] *Europark (Midlands) Ltd. v Town Centre Securities* (1985) 274 E.G. 289.

[198] *Poppetts (Caterers) Ltd. v Maidenhead BC* [1970] 3 All E.R. 289.

[199] (1988) 40 E.G. 116.

[200] (1957) 169 E.G. 656.

[201] *Espresso Coffee Machine Co Ltd. v Guardian Assurance Co Ltd.* [1959] 1 All E.R. 458. The landlord cannot always, as Lord Evershed put it (at 460), "have his bun and his penny".

[202] In *Dolgellau Golf Club v Hett* (1998) 34 E.G. 87, the landlord's initial plan was to operate an 18-hole golf course, but eventually recovered possession so as to operate a 9-hole course.

business are proposed.[203] As Ward L.J. noted in *Zarvos v Pradhan*, the landlord could not be said to have a firm and settled intention when, although he wanted to operate a new upscale dining restaurant, he asserted that he would, "make do with the old taverna".[204]

In addition to testing the landlord's subjective intentions, the court must also be persuaded that the landlord has the ability to progress those genuine intentions if allowed to recover possession. While in principle the same forensic exercise is adopted across both ground (f) and ground (g), as regards redevelopment the landlord's task is, understandably, more difficult. It is not normally appropriate to test the reasonable practicality of the landlord's proposals under ground (g) by reference to detailed financial plans or planning permission. As Laws L.J. emphasised in *Gatwick Parking Service Ltd. v Sargent*, the hurdle to be surmounted by the landlord, "is by no means a high one … He has to show that there is a real, not merely a fanciful, chance".[205] Financial considerations may, however, assume importance when the premises need extensive refitting before they can be used for the landlord's purposes.[206] A detailed examination of the financial viability of the landlord's proposals might then be appropriate and emerge as a key factor in determining whether the intention is realistic.[207] Ground (g) is, moreover, concerned only with the reality of the landlord's intention of establishing the proposed business. The probability of its eventual success is not a relevant factor. Accordingly, in *Cox v Binfied*, the landlord's opposition succeeded even though the business plans were ill-thought out and likely to fail.[208] Similarly, in *Dolgellau Golf Club v Hett*,[209] the landlord's opposition prevailed even though its plans were incomplete and the business venture likely to flounder in the longer term. As Auld L.J. acknowledged, "The Court is not there to police a landlord's entitlement to recover possession of his own property by examining the financial wisdom of his genuinely held plans for it".[210]

The landlord may, however, experience difficulties where occupation is sought for purposes that are prohibited under a head lease. This was demonstrated in *Wates Estate Agency Services Ltd. v Bartleys Ltd*.[211] where such a prohibition disentitled the intermediate landlord from relying on ground (g). In order to succeed, the

[203] C/f ground (f) where it is permissible for the landlord to advance alternative schemes of redevelopment: *Yoga for Health Foundation v Guest & Utilini* [2002] EWHC 2658 (Ch).
[204] [2003] 2 P. & C.R. 9, 131.
[205] (Unreported) 24 January 2000 (CA) at [61].
[206] See *Zarvos v Pradhan* [2003] 2 P. & C.R. 9.
[207] *Adams v Glibbery (JR) & Sons Ltd*. (unreported) 22 January 1991 (CA).
[208] [1989] 1 E.G.L.R. 97. As O'Connor L.J. explained (at 101), "Objectively, the judge must be able to say that this intention is one which is being capable of being carried out in the reasonable future in the circumstances which will prevail when possession is achieved by the landlord".
[209] (1998) 34 E.G. 87.
[210] (1998) 34 E.G. 87, 90; see J. Morgan, "Establishing an Intention to Occupy" (1999) J.B.L. 269.
[211] (1989) 47 E.G. 51.

competent landlord should secure the relaxation of the user covenant before the hearing date. The issue of planning permission may also become relevant when the landlord's intentions involve a proposed change of use. While there is no obligation on the landlord to obtain any permissions or consents prior to the hearing,[212] the landlord should be in a position to demonstrate a reasonable prospect that they will be obtained.[213] From this perspective the issue addressed is whether a reasonable man would expect permission to be granted.[214] If there is no reasonable prospect of obtaining such permission, say when the landlord had previously been refused permission because a proposed construction would entail a loss of recreational facilities,[215] then the landlord's opposition must fail.[216] As the underlying policy of section 30(1)(g) is that the landlord must prove its opposition, and due to the commercially catastrophic consequences that may follow for the tenant, few could argue that the landlord should not in all cases secure necessary planning permission for a proposed change of use.

V. Conclusion

Although the workings of the Part II machinery have been the subject of periodic review, the reforms that have followed have been piecemeal and remarkably modest. Indeed, some 60 years have now elapsed since the last comprehensive and systematic review of the statutory regulation of business tenancies. Attention has, therefore, focused primarily upon functional detail rather than any re-evaluation of underlying principle. This failure to embrace wider issues serves only to perpetuate ill-considered provisions, outmoded notions and dated policy responses. Indeed, the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 offers the latest illustration of this tendency. Although it marked the culmination of 20 years deliberation by the Law Reform Agencies, the changes promoted amounted to little more than a fine-tuning exercise. Such substantive reforms that have occurred, moreover, tend to favour the landlord. Such pro-landlord developments include the right to apply for an interim rent during the continuation tenancy, the ability to contract out of the renewal provisions and the right of the lessor to commence Part II proceedings. It is significant that there has been no comparable improvement of the tenant's lot as to the calculation of compensation and no attempt

[212] *Dolgellau Golf Club v Hett* (1998) 34 E.G. 87.
[213] *Gatwick Parking Service Ltd. v Sargent* (unreported) 24 January 2000 (CA).
[214] *Westminster City Council v British Waterways Board* [1985] 1 A.C. 676.
[215] *Coppen v Bruce-Smith* (1998) 77 P. & C.R. 239.
[216] In *Westminster City Council v British Waterways Board* [1985] 1 A.C. 676, the landlord's opposition under ground (g) failed because the local authority tenant would never consent to the change of use from a street cleaning depot to a marina.

whatsoever to restrict the right of the landlord to override the renewal claims of its tenant.

The continued existence of section 30(1)(g) compromises the integrity of the Part II machinery. It disturbs the balance otherwise maintained between the management interests of the landlord, the survival of the tenant's business and the wider public interest. In conjunction with the existing compensation provisions, ground (g) also facilitates the deprivation of goodwill without financial recompense and, thereby, constitutes a violation of the tenant's human rights. The reform of section 30(1)(g) is long overdue. No one could argue cogently that it be allowed to continue in its present and infelicitously drafted form. Some might suggest that the problems associated with ground (g) could be overcome by increasing the evidential burden on landlords, imposing further safeguards for tenants and re-tooling the compensation machinery to cater for the loss of goodwill. This line of reasoning is, of course, rooted in the belief that ground (g) enjoys some contemporary legitimacy. Others, including the present author, would argue for its repeal. Section 30(1)(g) was imported from a very different regulatory regime under which financial compensation was the primary right and geared to actual gains and losses. Such reality-based issues are, of course, overlooked within the 1954 compensation provisions. Ground (g) was valued as an escape route for landlords from the renewal machinery, which was thought to be necessary at a time when it was not possible directly to contract out of the renewal scheme. This historical imperative necessarily disappeared with the advent of contracting out, which has rendered the renewal scheme optional at the behest of the parties.[217] As the degree of abrogation of the landlord's rights is now a matter for private bargain, and if the parties elect for the statutory regulation of their relationship, the traditional protection of common law rights is both unwarranted and unnecessary. Section 30(1)(g) bestows no discernible public benefit and, by blatantly offending notions of justice and fairness, sponsors the very mischief at which the legislation was directed. In this much-changed legal landscape, there is surely no rational policy justification for the continued existence of this ground of opposition. It is regrettable that political lethargy and the hackneyed rhetoric of the law reform agencies obscure the need for substantive reform and continue to hinder the development of an alternative strategy for the future regulation of business tenancies.

[217] See the Department for Communities and Local Government Report, *Landlord and Tenant Act 1954: Review of Impact of Procedural Reforms* (2006) at § 10.