

CONSULTATION ON USE OF UPWARD ONLY RENT REVIEW CLAUSES-

A CHANCE TO HAVE YOUR SAY.

The Office of the Deputy Prime Minister has published a Consultation Paper on the options for deterring or outlawing the use of upward only rent review clauses (“UORRs”) . The Consultation is of importance to all those concerned with the letting and occupation of commercial premises, and providing the finance for lettings.

THE DISADVANTAGES

The Paper lists a number of reasons why the government is concerned by UORRs:

- In a falling market, a UORR clause would maintain the rent at existing levels. Existing tenants would be paying more than new entrants to the market and would therefore be at a competitive disadvantage.
- In a falling market, a lease with a UORR would have a negative value and tenants may have to pay a reverse premium to be able to assign.
- Tenants taking leases during a rising market can overlook the potential implications of UORRs in a future downturn.
- The tenant accepts the risk of downward market volatility, while gaining limited corresponding benefit during an upturn.
- Rigid application of UORRs in a falling market can put tenants out of business. This could exacerbate wider economic instability.
- UORRs adversely affect landlord and tenant relationships during market downturns, when they become a source of friction.

THE ADVANTAGES

However, the Consultation does also recognise that there may be advantages to UORRs:

- the initial rent for a lease with a UORR clause ought to be cheaper than the initial rent for a lease with other rent review
- UORRs facilitate sale and leaseback deals, which owner-occupiers can use to help finance their business.
- It is claimed that UORRs sustain capital values and hence investment in property. Occupiers owning freehold property are able to raise more cash against their property.

THE OPTIONS

The Consultation sets out a number of options for reform, and views are sought on the merits of the following options:

- Doing nothing.
- Banning UORRs.
- Banning UORRs subject to a proviso that rent on review may not be lower than the initial rent.
- Giving tenants a right to break if a UORR produced a rent above the market levels.
- Limiting lease length.
- Requiring landlords to give prospective tenants priced alternative options to UORRs.

YOUR VIEWS

The Government is now seeking your views on the following questions:

- why is the use of UORRS still prevalent in a very different business environment from the one in which they were first developed?
- should they take statutory measures to prohibit or deter the use of UORR clauses?
- are there any viable alternatives to statutory intervention?

- how effective would statutory intervention be in addressing outstanding problems of inflexibility and lack of choice in the commercial property leasing market?
- which of the five options for legislation would be preferable? Are there any other options that should be considered?
- what would be the impact of the various options on the market: on rents, and on the development and funding of large-scale projects/ those of marginal economic viability?

We are collating responses on these questions from our clients and contacts. If you would like to express a view on any of the questions above, please email your response to [:cathyj@sghlaw.com](mailto:cathyj@sghlaw.com) by 15th September 2004 and we will collate and forward all replies to the Office of the Deputy Prime Minister. Alternatively, you can email a reply direct to michael.eaton@odpm.gsi.gov.uk [<mailto:%20michael.eaton@odpm.gsi.gov.uk>](mailto:%20michael.eaton@odpm.gsi.gov.uk)

If you wish to read the Consultation Document in full you will find it at : **URL:**
[<http://www.odpm.gov.uk/stellent/groups/odpm_urbanpolicy/documents/page/odpm_urbpol_029012.pdf>](http://www.odpm.gov.uk/stellent/groups/odpm_urbanpolicy/documents/page/odpm_urbpol_029012.pdf)

NB this newsflash summarises a detailed report, and is not intended to be relied upon as a full or definitive statement in relation to all of the issues outlined in the Consultation Paper. If you have any queries regarding the Consultation Paper, or in relation to rent review issues generally, then please contact Carmela Inguanta on 0207 5445643 (carmelai@sghlaw.com), [<mailto:carmelai@sghlaw.com>](mailto:carmelai@sghlaw.com), Derek Williams on 0207 544 5653 (derekw@sghlaw.com [<mailto:derekw@sghlaw.com>](mailto:derekw@sghlaw.com)) or your usual contact at S.G.H.