

Ashworth Kemp LLP: Real Estate know-how

Statutory provisions relevant to lease break, dilapidations and occupation. Summary extracts prepared for internal use (matter NOR/0412). Legal snapshot: 14 October 2026.

These notes summarise and paraphrase the provisions in our own words, with only short quotations. Check the full text before quoting in advice.

1. Landlord and Tenant Act 1927, section 18(1): cap on dilapidations damages

1.1 Damages for breach of a covenant to keep or put premises in repair during the term, or to leave or put them in repair at the end of the term, may not exceed the amount (if any) by which the value of the landlord's reversion is diminished by the breach.

1.2 No damages are recoverable for a failure to leave or put premises in repair at the end of the term if the premises, in whatever state of repair, would shortly after the end of the term be pulled down, or would be structurally altered in a way that would make the repairs valueless.

1.3 Note: the statutory cap applies to repairing covenants. Claims for breach of other covenants (for example reinstatement of alterations or redecoration) are assessed under ordinary contractual principles; the landlord recovers its loss, which in practice is often measured by reference to the effect on the value of the reversion where the landlord does not intend to carry out the work.

2. Landlord and Tenant Act 1954, Part II: business tenancies

2.1 **Section 23(1).** Part II applies to any tenancy where the property comprised in it is or includes premises occupied by the tenant for the purposes of a business carried on by it.

2.2 **Section 24(1).** A tenancy to which Part II applies does not come to an end unless it is terminated in accordance with Part II. The tenant may apply to the court for a new tenancy. Section 24(2) preserves termination by the tenant's notice to quit, by surrender, and by forfeiture.

2.3 **Section 43(3).** Part II does not apply to a tenancy granted for a term certain not exceeding six months, unless it contains a provision for renewal or extension beyond six months, or the tenant (with any predecessor in the same business) has been in occupation for more than twelve months.

2.4 **Section 38A.** The parties to a proposed tenancy for a term of years certain may agree that sections 24 to 28 will not apply. The agreement is void unless the landlord has served on the tenant a warning notice in the prescribed form before the tenant enters into the tenancy (or becomes contractually bound to do so), and the tenant has made the prescribed declaration (a simple declaration if the notice was served at least 14 days before, otherwise a statutory declaration), with a reference to the notice and declaration in or endorsed on the tenancy. Section 38A(2) makes the same procedure applicable to an agreement to surrender a protected tenancy on a future date. It does not apply to an immediate surrender by deed.

2.5 Section 42 treats companies as members of the same group if one is a subsidiary of the other or both are subsidiaries of a third company. A minority shareholding does not create a group relationship.

3. Landlord and Tenant (Covenants) Act 1995

3.1 **Section 3.** The benefit and burden of all landlord and tenant covenants of a tenancy are annexed to and pass with the whole of the premises demised and of the reversion in them. On an assignment of the reversion, the assignee becomes bound by the landlord covenants and entitled to the benefit of the tenant covenants, except covenants which (in whatever terms) are expressed to be personal to any person.

3.2 **Concurrent leases.** A landlord may grant a lease of its reversion that takes effect subject to an existing lease (a concurrent lease). For its duration the concurrent lessee holds the reversion immediately expectant on the existing lease, so it becomes the existing tenant's immediate landlord. It is entitled to the rents and to enforce the tenant covenants, and it is bound by the landlord covenants, under section 3.

3.3 **Section 28(1).** "Covenant" includes term, condition and obligation. A "landlord covenant" or "tenant covenant" includes a covenant contained in a collateral agreement, which means an agreement collateral to the tenancy whether made before or after its creation.

4. Law of Property Act 1925, section 196: service of notices

4.1 Where section 196 applies, a notice is sufficiently served if left at the last known place of abode or business in the United Kingdom of the person to be served, and a notice sent by registered post or recorded delivery is treated as served if it is not returned undelivered, at the time it would be delivered in the ordinary course of post.

4.2 Section 196(5) applies the section to notices required to be served by any instrument affecting property, "unless a contrary intention appears". Parties may therefore exclude or displace it by an express provision in the lease.

5. Apportionment Act 1870

5.1 The Act treats rents and other periodic payments as accruing from day to day and apportionable in respect of time. The Supreme Court in *Marks and Spencer v BNP Paribas* (see the case notes) confirmed that it does not apply to rent payable in advance, which falls due in full on the payment date.

6. Value Added Tax

6.1 Where a landlord has opted to tax a commercial building, rents and other payments by the tenant which are consideration for a supply in relation to the building (including, in HMRC's published view since 2020, payments made to exercise a break clause) are standard-rated at 20 per cent. The landlord must provide a VAT invoice.

7. Bank of England Bank Rate

7.1 Bank Rate has been 3.75 per cent since 6 August 2026. It was 4.00 per cent from 7 May 2026 to 5 August 2026.