

**Bills Committee on Landlord and Tenant (Consolidation)
(Amendment) Bill 2003**

**List of follow-up actions arising from the discussion at the meeting on
20 November 2003**

Item (1)

To provide the Administration's response to concerns raised by the Hong Kong Bar Association on the proposed relaxation of security of tenure for domestic tenancies.

Administration's reply

The Administration held a meeting with the Hong Kong Bar Association (Association) on 2 April to discuss the latter's views on the proposed relaxation of security of tenure. The Administration's responses to the key concerns raised by the Association are as follows-

Association's concern:

- (a) there is no evidence to suggest that protection of tenants has impeded the free operation of the private market and discouraged investors from renting out their properties

Administration's response:

The current security of tenure protection has restricted landlords from repossessing their properties upon expiry of the tenancy. This statutory protection has tilted the balance of interests between landlords and tenants in favour of the latter. It is a form of market intervention.

In our public consultation exercise, some respondents indicated that they were unwilling to let out their properties for fear of difficulties in repossessing their premises. Some also remarked that some banks are reluctant to grant loans to prospective buyers who plan to purchase properties for letting out. There, therefore, are reasons to believe that the security of tenure provisions would have discouraged some people from investing in residential properties.

Association's concern:

- (b) it is not necessarily excessive to give well-behaved tenants longer stay in their homes if they wish and if the landlord has no need of the property for his own use or for redevelopment

Administration's response:

Tenancy is a contractual matter privy to the landlord and tenant, both of whom should be free to negotiate the terms of the tenancy having regard to their own needs and circumstances. Government should not intervene by restricting the rights of the landlord to recover his premises upon expiry of tenancy.

Association's concern:

- (c) the social cost of absolving developers from paying statutory compensation is not addressed

Administration's response:

As individual tenancies in a development normally expire on different dates, a landlord planning to redevelop his property is likely to consider making his own compensation offers to individual tenants having regard to his redevelopment programme and prevailing market conditions. It should be left to the landlord to decide on his compensation offers upon the removal of a statutory basis for compensating tenants.

Association's concern:

- (d) all existing tenants should be given the right to one further renewal

Administration's response:

It is difficult to devise and administer such a provision as the terms of tenancies vary. This proposal would unnecessarily prolong the time required to fulfil the legislative intent of restoring the free operation of the private rental market.

Item 2

To provide information on tenancies of leased premises of different ratable values (RV), particularly those of lower RV which comprise major dwellings of low-income households.

Administration's reply

The number of rented tenements by RV is as follows-

RV	Number
All rented tenements	240,000
RV below 15,000 per month	200,000
RV below \$8,000 per month	161,000
RV below \$6,000 per month	128,000
RV below \$4,000 per month	66,000
RV below \$2,000 per month	5,000

2. A breakdown of the staying period of the rented tenements is as follows-

RV of the tenements	Staying period		
	staying period ≤ 2 yrs	2 yrs < staying period ≤ 4 yrs	staying period > 4 yrs
All	73%	16%	11%
Below \$15,000/month	74%	16%	10%
Below \$8,000/month	74%	15%	11%
Below \$6,000/month	74%	15%	11%
Below \$4,000/month	75%	14%	11%
Below \$2,000/month	70%	12%	18%

The above figures indicate that the staying period in most cases, regardless of the RV of the tenements, is less than 2 years.

Item 3

To provide details of the respondents of the telephone survey, including their status (landlord/tenant) and monthly household income.

Administration's reply

Breakdowns of the responses by the status of the respondents (landlords/tenants) and by monthly household income are at Annex A.

Item 4

To advise the assumptions, including the forecast in flat supply (with figures), which the Administration has made in reaching the conclusion that the proposed relaxation of security of tenure is timely and has no significant implications on tenants, particularly those low-income households.

Administration's reply

Security of tenure was introduced in 1981 at a time when there was a serious shortfall of domestic accommodation leading to significant rental increases upon renewal of tenancies. It sought to protect tenants from eviction by unscrupulous landlords and imposed a right for renewal of tenancies at prevailing market rent. While it has helped protect the interest of tenants when their bargaining powers were weak at the time, it also impedes the free operation of the private rental market and discourages investors from renting out their properties.

2. The Administration considers that such protection is no longer justified, having regard to the prevailing market conditions that there is ample supply of flats and that rentals have dropped drastically. These considerations are further elaborated below-

(a) Ample supply of flats

The total private housing stock has been increasing steadily over the years and was in excess of 1 million units as of the end of 2002. Amongst these units, some 74,000 were vacant. There should be no shortage of rental units in the market.

Based on the number of projects under construction, it is estimated that the supply of new flats will remain in excess of 20,000 units each year in 2004 and 2005. While it is expected to decrease to about 10,000 units in 2006 and further to about 4,000 units in 2007, we do not envisage a shortage in flat supply as the private developers will by then adjust their production level in response to market demand.

(b) Falling rentals for private housing

Rentals have been falling in recent years. According to the information collated by the Rating and Valuation Department (RVD), the average rentals in 2002 and in September 2003 have dropped by about 40% and 49% respectively compared with the peak in October 1997. The bargaining power of tenants has improved significantly. Some tenants have even negotiated successfully for reduction of rent in the middle of their leases.

3. To assess the impact of the proposed removal of security of tenure on the lower income group, RVD conducted a sample survey on the tenants living in flats with shared households in the second quarter of 2003. Two major findings indicated that the lifting of the restrictions might not adversely affect tenants in the lower income group. First, the vacancy rate of flats with shared households is 23.6%, which suggests that the supply of such units is not inadequate. Second, of the 480 shared households who responded to the survey, it was found that 72% stayed in the same premises for less than 2 years, and around 86% stayed for less than 4 years. It appeared that most of the tenants did not avail themselves of security of tenure protection.

4. Removal of security of tenure restrictions should encourage landlords of premises of low and high RV alike to rent out their properties. This, in turn, will help increase the supply of rental units for the lower income group.

5. Having regard to the above factors and the majority of the feedbacks received during the consultation exercise, the Administration considers it the opportune time for removing the security of tenure restrictions in one-go.

Item (7)

To seriously consider making it a standing arrangement so that past beneficiaries of subsidized home ownership schemes (SHOS) who could not afford private accommodation can be allowed to apply for public rental housing (PRH).

Administration's reply

Past beneficiaries of SHOS are not allowed to apply for PRH again even after sale of their flats. This is necessary in order to safeguard the rational allocation of public housing resources. However, the Housing Authority (HA) has been exercising discretion to allocate PRH units to those who are in genuine hardship and have to dispose of their flats acquired under SHOS.

2. In early 2003, in response to the suggestion of the LegCo Panel on Housing, the HA endorsed a set of revised criteria for considering such applications, as follows-

- (a) bankruptcy;
- (b) financial hardship resulting in the need for Comprehensive Social Security Assistance;
- (c) adverse changes to family circumstances such as divorce, death of bread-winner, etc;
- (d) a significant drop in household income resulting in difficulties in financing the home purchases; and
- (e) households beset with medical and social problems but not to the extent to qualify for compassionate rehousing.

3. The HA considers the above measures adequate to allow the households beset with hardship, financial or otherwise, which prevents them from continued home ownership, to have access to PRH, while at the same time safeguarding the rational allocation of public housing resources.

Item 8

To provide an implementation time-table showing the time frames and sequence of events after all the proposals in the Bill come into full operation.

Administration's reply

————— A time chart illustrating the sequence of events leading to and after the passage of the Bill is at Annex B. For illustration purpose, it is assumed that the Bill will be passed on 1 April 2004 and take effect on 1 June 2004 (the appointed date). Further elaborations are set out below.

Before the appointed date

2. In considering the actions to be taken before the appointed date, a landlord and a tenant should take into account the following-

- (a) clause 5(1) and 7(1) of the Bill provide that if a Part IV or Part V notice is served before the appointed date, then the tenancy concerned will still be subject to Part IV and V procedures even after the appointed date;
- (b) Part IV notice should be served by a landlord who wants to terminate the tenancy no more than 4 months but no less than 3 months before the date of termination of the tenancy, and by a tenant who wants to request a new tenancy no more than 4 months but no less than 3 months before the date of the new tenancy; and
- (c) Part V notice should be served by the landlord not less than 6 months, or by the tenant not less than 1 month, before the end of the tenancy.

3. Flowing from (b) above, following the passage of the Bill (say on 1 April), for a tenant whose tenancy will terminate before or within 4 months after the appointed date of 1 June, i.e. 30 September, if he wants to secure a new tenancy, it will be in his interest to serve a Part IV notice so that his tenancy will be subject to the prevailing Part IV procedures because of the savings provision in (a) above. On the other hand, if a landlord wants to repossess his premises following the expiry of the tenancy, it will be in his interest not to serve any Part IV notice before the appointed date. Otherwise, the tenant can invoke the existing security of tenure protection procedures under Part IV. The landlord can simply wait for the Bill to take effect on the appointed date and follow the

termination arrangement therefrom as set out in the ensuing paragraphs.

After the appointed date

4. Clause 5(2)(a) and 7(2)(a) of the Bill provide that if no Part IV or Part V notice has been served on a tenancy which exists before the appointed date, after the appointed date (1 June 2004), the tenancy will be terminated according to the terms of the tenancy or as agreed between the two parties. But in case there is neither a termination clause in the tenancy nor mutual agreement, then the tenancy will be terminated according to the common law. For fixed-term tenancy, it will be terminated upon expiry, i.e. by effluxion of time, and the landlord does not need to serve a notice to quit, unless this is required by the tenancy. For periodic tenancy (e.g. week-to-week or month-to-month), the landlord must serve a notice to quit. The length of the notice period is set in accordance with the length of the tenancy period but can be varied by mutual agreement. In any case, it should not exceed 6 months.

5. For tenancy which is statutorily continued by Part IV or V procedures (e.g. a fixed-term tenancy which has ended before the appointed date but neither the landlord nor tenant has taken any termination action), according to Clause 5(2)(b) and 7(2)(b) of the Bill, it may be terminated as agreed between the parties. In case there is no such agreement, then the tenancy may be terminated as a month-to-month tenancy, i.e. a notice to quit has to be served by either party in accordance with the common law.

Housing, Planning and Lands Bureau
December 2003

Telephone Survey Conducted on 26-30 March 2003

Breakdown of results by types of respondents and their monthly household income

Table 1: Breakdown by types of respondents

Whether security of tenure should be relaxed

	Tenant	Property Owner	Others	Total
Should relax	458 (53%)	797 (69%)	17 (50%)	1272 (62%)
Should not relax	192 (22%)	145 (13%)	6 (18%)	343 (17%)
Don't know /didn't answer	207 (24%)	207 (18%)	11 (32%)	425 (21%)
Total	857 (100%)	1149 (100%)	34 (100%)	2040 (100%)

Table 2: Breakdown by monthly household income of property owner respondents

Whether security of tenure should be relaxed

Property Owner	Monthly household income							Total
	\$5,000 or below	\$5,001 - \$10,000	\$10,001 - \$15,000	\$15,001 - \$25,000	\$25,001 - \$40,000	\$40,001 or above	Unknown	
Should relax	46 (59%)	40 (70%)	100 (71%)	152 (68%)	159 (76%)	158 (78%)	142 (59%)	797 (69%)
Should not relax	9 (12%)	8 (14%)	15 (11%)	32 (14%)	24 (12%)	20 (10%)	37 (15%)	145 (13%)
Don't know/didn't answer	23 (29%)	9 (16%)	26 (18%)	38 (17%)	25 (12%)	24 (12%)	62 (26%)	207 (18%)
Total	78 (100%)	57 (100%)	141 (100%)	222 (100%)	208 (100%)	202 (100%)	241 (100%)	1149 (100%)

Table 3: Breakdown by monthly household income of tenant respondents

Whether security of tenure should be relaxed

Tenant	Monthly household income							Total
	\$5,000 or below	\$5,001 - \$10,000	\$10,001 - \$15,000	\$15,001 - \$25,000	\$25,001 - \$40,000	\$40,001 or above	Unknown	
Should relax	45 (39%)	81 (53%)	79 (56%)	87 (57%)	44 (59%)	37 (70%)	85 (50%)	458 (53%)
Should not relax	25 (22%)	33 (22%)	32 (23%)	39 (26%)	18 (24%)	12 (23%)	33 (19%)	192 (22%)
Don't know/didn't answer	45 (39%)	38 (25%)	29 (21%)	26 (17%)	12 (16%)	4 (8%)	53 (31%)	207 (24%)
Total	115 (100%)	152 (100%)	140 (100%)	152 (100%)	74 (100%)	53 (100%)	171 (100%)	857 (100%)

Table 3a: Breakdown by monthly household income of private housing tenant respondents

Whether security of tenure should be relaxed

Private Housing Tenant	Monthly household income							Total
	\$5,000 or below	\$5,001 - \$10,000	\$10,001 - \$15,000	\$15,001 - \$25,000	\$25,001 - \$40,000	\$40,001 or above	Unknown	
Should relax	6 (25%)	12 (44%)	10 (40%)	19 (56%)	19 (59%)	24 (63%)	24 (52%)	114 (50%)
Should not relax	6 (25%)	8 (30%)	8 (32%)	11 (32%)	7 (22%)	12 (32%)	13 (28%)	65 (29%)
Don't know/didn't answer	12 (50%)	7 (26%)	7 (28%)	4 (12%)	6 (19%)	2 (5%)	9 (20%)	47 (21%)
Total	24 (100%)	27 (100%)	25 (100%)	34 (100%)	32 (100%)	38 (100%)	46 (100%)	226 (100%)

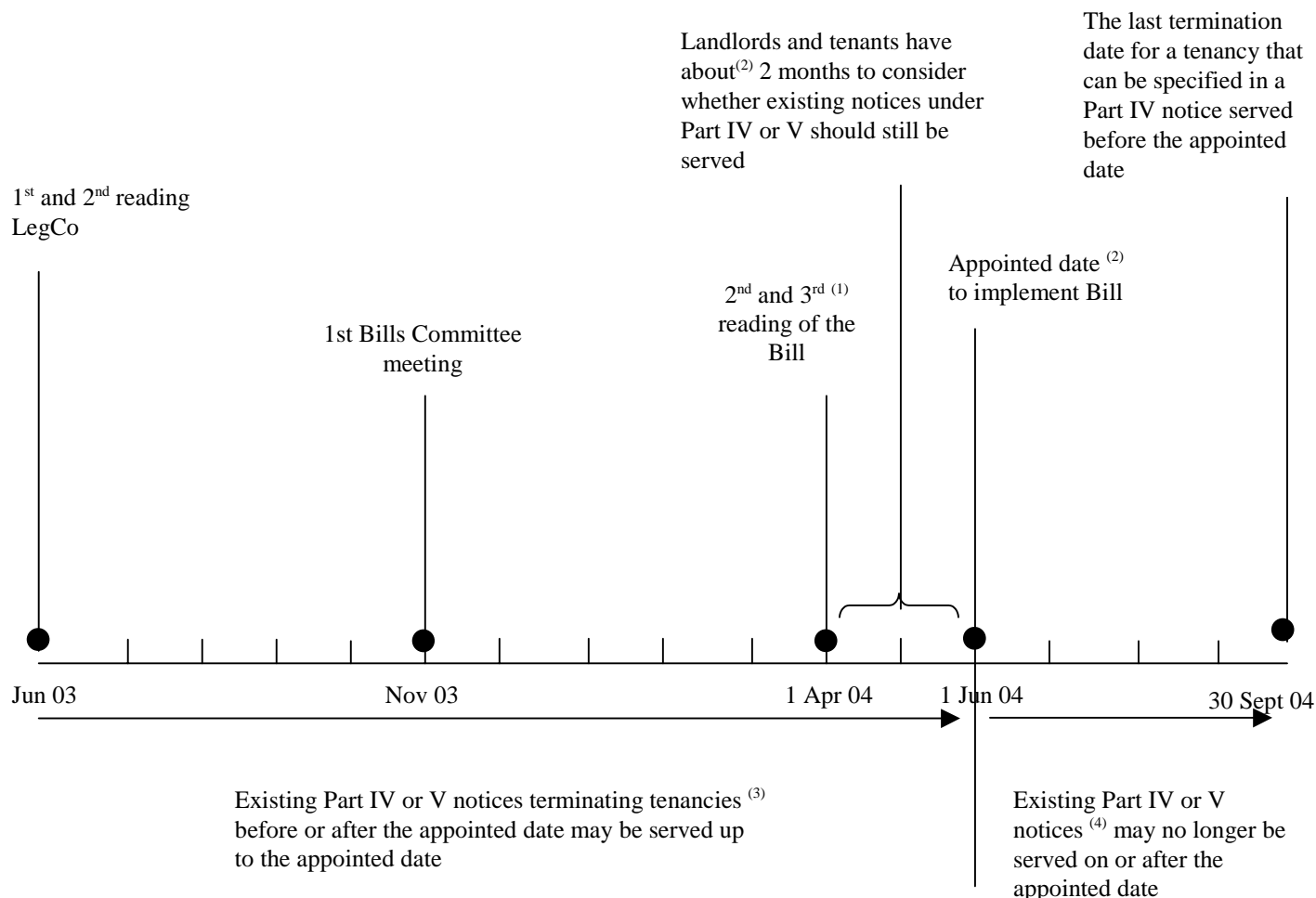
Table 3b: Breakdown by monthly household income of public housing tenant respondents

Whether security of tenure should be relaxed

Public Housing Tenant	Monthly household income							Total
	\$5,000 or below	\$5,001 - \$10,000	\$10,001 - \$15,000	\$15,001 - \$25,000	\$25,001 - \$40,000	\$40,001 or above	Unknown	
Should relax	39 (43%)	69 (55%)	69 (60%)	68 (58%)	25 (60%)	13 (87%)	61 (49%)	344 (55%)
Should not relax	19 (21%)	25 (20%)	24 (21%)	28 (24%)	11 (26%)	0 (0%)	20 (16%)	127 (20%)
Don't know/didn't answer	33 (36%)	31 (25%)	22 (19%)	22 (19%)	6 (14%)	2 (13%)	44 (35%)	160 (25%)
Total	91 (100%)	125 (100%)	115 (100%)	118 (100%)	42 (100%)	15 (100%)	125 (100%)	631 (100%)

Figures may not add up to total due to rounding.

Implementation Time Chart
Landlord and Tenant (Consolidation) (Amendment) Bill 2003



Notes :

- (1) Assuming smooth progress in the 8 Bills Committee meetings, enactment of Bill initially estimated in Apr 2004.
- (2) Appointed date proposed to be set at Jun 2004 for early implementation of the Bill after enactment. Publicity will be given to inform the community of concerned legislative changes.

Following the passage of the Bill, landlords and tenants will have about 2 months to consider whether a notice under Part IV or V should be served for their existing tenancies.
- (3) Where valid notices under Part IV or V have been served before the appointed date, Clause 5(1) or 7(1) of the Bill provides for existing mechanisms to apply for one last time for the affected tenancies.
- (4) For tenancies where valid notices under Part IV or V have not been served before the appointed date, Clause 5(2) or 7(2) of the Bill provides for private agreement or common law to henceforth apply.