



Opting out of the **Landlord and Tenant Act 1954.**

Dave Mountford discusses what the Act means, how important it is, and how to make sure it's really happened.

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The Forum of British Pubs is a membership organisation that provides help and support to Britain's pubs and gives them a voice at local and national government level, **where it matters most.**

Our membership is made up of tenanted, free trade and managed pub operators as well as hotels, bars and restaurants.

Introduction

A few years back I became involved in a quite notorious case that involved EI Group and a tenant who had alleged to have opted out of the *Landlord and Tenant Act 1954*.

The case became quite involved due to the activities of the various interested parties but, what it did do is shed a light on the importance of what "opting out" means and why following the correct process is so important.

Since then, I have seen again and again, how often tenants are completely unaware that they have signed up to an agreement, and yet didn't realise that they had also, somehow, "opted out" of the right to renew their agreement.



The term itself is quite misleading in that you don't actually "opt-out" of the Act itself – in reality you "opt-out" of one bit – a quite important bit to be honest – the bit that means you can automatically seek the right to renew your agreement again, which is Sections 24 – 28 of the 1954 legislation.

The process of opting out was considered long and tedious but in 2003, the *Regulatory Reform Act 2001* was passed, which made the process simpler and faster, and crucially, supposedly difficult for the tenant to misunderstand.

The Process for Opting out after 2003

The landlord, in our case the Pub Owning Business, must notify the tenant that the agreement (tenancy or lease) is offered without "security of tenure".

This is done by issuing a simple notice, written in plain English, explaining to the tenant the loss of rights and recommending that the tenant gets legal advice. In effect, you should be given a notice of intent and you should sign to say that you have accepted it and understood it.

The tenant has to make a formal response notifying that they have been made aware of the option to 'opt-out' and the implications of it.

The lease agreement is then signed and, in the agreement, there is a clear reference to the lack of "security of tenure".

The critical thing here is that the notice must be served 14 days before the agreement starts. Once this has been served, a simple declaration is signed by the tenant, that they have received the notice and accept the consequences of opting out. It is, to all intents and purposes, a "cooling off period".

If for any reason this 14-day notice period is missed, then a further stage has to be undertaken and this part is very important and also very memorable.

The Statutory Declaration

If, for whatever reason, the two parties can't or don't want to wait the required 14 days, then the tenants can sign what is called a "statutory declaration". This is in a similar form as the simple declaration, but in this case, it must be witnessed by an independent solicitor.

A tenant has to put his or her hand on a bible and swear that they understand that they are taking on an agreement, without Security of Tenure - it's very 14th Century but it's also very memorable.

Furthermore, if there are any guarantor(s) to the lease, the notice and declaration process needs to be replicated for them as well as the tenant.

One of the most important points to note is that both the notice and the declaration must be exchanged BEFORE the tenants have become legally bound to enter into the agreement.

So – to summarise, a simple declaration must be signed, and this must be acknowledged by the tenant, 14 days before entering into the agreement. If this is not possible, then a further stage must be completed, which involves a legal process.

The question then must be asked, how is it that so many tenants take on legal agreements with Pub Companies, without realising they have no right to automatically renew?

Well, perhaps it's because, since the inception of the Pubs Code, the option to renew an agreement is an automatic trigger to choose to go Market Rent Only (MRO) and one thing we all know is the ability to go MRO, whilst not the silver bullet we all expected, is certainly an opportunity to be better off than remaining tied.

So, if you are coming to the end of your agreement, check both your paperwork and your memory and if in doubt – give us a call. For more information and to discuss with our team, please call 01565 626056 or email info@forumofbritishpubs.com.

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