Exemption for leases where the annual rent payable under the lease is over £100.

In terms of s1(4)(a) of the draft Bill, leases do not qualify for conversion if:

"the annual rent payable under the lease is over £100".

S2 goes on to provide that for the purposes of this section the rent payable under a lease is the rent:

"as set out in the lease (or as the case may be the assignation of the lease)".

Where you have a lease and the original rent reserved is less than £100 but the lease has been varied so that the rent is now greater than £100, would this qualify for automatic exemption? In our opinion it is not clear whether s1(4)(a) covers the rent as originally reserved or the rent as varied.

The reference to the assignation is in our view particularly unhelpful as it could lead to an interpretation that it is only those two documents (the original lease and the assignation of it) that you would be permitted to look at. The draft provisions do not seem to take into account that a lease can be varied other than in gremio of an assignation.

The wording could be easily clarified to ensure that there is no ambiguity. The addition of words such as "or any agreement varying the terms of the lease" after "the assignation of the lease" would in our view clear up any possible uncertainty.

Exemption of qualifying lease by registration of agreement or order

We are also of the view that sections 64 and 69 could be clarified to put beyond doubt what can be included in "annual rent" for these sections. Although it is clearly intended that variable rent will be included, the Bill does not expressly state this.