



RPI rest in peace?

As confirmed by the Chancellor in September^[1], and much to the frustration of the UK Statistical Authority (UKSA), the Retail Prices Index (RPI) will, it seems, remain unscathed until 2025 at the earliest.

The UKSA had recommended that the RPI either be aligned with the Consumer Price Index including Housing costs (CPIH) – which is both widely favoured and considered by economists to be a more accurate measure of inflation – or, as a primary recommendation, that it be abolished altogether and that its publication should cease.

The Chancellor – or perhaps we should emphasise the ‘current’ Chancellor given the uncertain political climate – has instead scheduled a review of the RPI to take place between 2025 and 2030, subject to the outcome of a public consultation.

If the UKSA’s recommendations were to be implemented in some five to six years, and putting the potential impact on Government bonds to one side, they would likely affect many commercial contracts currently in existence. This includes business leases with indexed-linked rent or service charge reviews or caps based on the RPI, also longer-term option agreements and conditional sale agreements, which often include price reviews by reference to the RPI.

Where the lease or contract expires before a change to the RPI, or where all scheduled reviews are triggered or otherwise settled prior to the change, then there is unlikely to be an issue. However, parties engaged in longer-term arrangements may face some uncertainty, not least any party whose income might be sensitive to a reduction in the index applied on a rent or purchase price review.

If the RPI were abolished, you should consider whether your business lease or contract terms provide adequately for a substitute or replacement. A modern lease may, for instance, allow an independent surveyor, on appointment and at his or her discretion, to substitute an alternative index for the RPI in the event of a dispute. However, these provisions are largely untested, not least where replacing the RPI is concerned.

Contractual references to the RPI will also often include reference to “any official index replacing it” or similar. However, if the RPI were simply abolished without a formal replacement, it is unclear as to how helpful this provision would be. Depending on the terms of the lease, an institutional landlord may find itself relying on the surveyor exercising its discretion to substitute an alternative index before a typical upward-only rent review could proceed. By contrast, a land developer could be quietly pleased at the possibility of avoiding an increase in the purchase price under its long-term option agreement or conditional contract, putting aside the potential for additional legal costs in dealing with the interpretation of the contract and any resultant disputes.

If the RPI were to survive but be aligned with the CPIH, even if issues raised by its potential abolition would be

avoided, a commercial impact is still likely. At present, the CPIH index is typically lower than the RPI, differences exceeding 0.5% having been recorded. In a slower economy or recession where indexed rent reviews will tend to take precedence, a landlord would likely rue the demise of the typically higher RPI measure.

The UKSA's view is clear, it does not consider the RPI in its current state to be fit for purpose. The requirement to obtain the Chancellor's consent before a change is due to expire in 2030, following which, the UKSA will seemingly be free to reform the index as it deems fit. A future change to the RPI is therefore becoming ever more likely, although the timing and precise nature of that change and by extension, its effect on existing leases and other land contracts, remains uncertain.

In the meantime, a review of any RPI-affected commercial contracts sooner rather than later would be prudent.

[1]

<https://www.gov.uk/government/publications/a-response-from-sajid-javid-to-sir-david-norgrove-on-uksas-proposed-reform-of-the-retail-prices-index-and-the-governments-response-to-the-house-of>