

# Leasehold reform in England: what's new?

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It has been more than 18 months since the government outlined its intention to implement a ban on the sale of leasehold houses and to introduce a cap on ground rents in residential long leases. Now, after a series of consultations, the government has issued its latest response (Response) to stakeholder feedback setting out in more detail how it intends to implement these changes.

## Ban on the unjustified use of new leases for houses

Subject to very limited exemptions, the government wants to ban the creation of any new long residential leases (that is, leases in excess of 21 years) over houses in England. We have known about this since December 2017 (see our previous alerts for more detail). However, the Response sets out additional details and some changes to the original proposals:

- The government has abandoned plans to prevent the registration at the Land Registry of any lease granted in contravention of the ban. Ultimately this would hurt the buyer, the very party the government wants to protect, by having "the effect of making the asset the consumer has paid for, and may be living in, into something that does not legally exist". This is because any lease granted for a term of more than seven years must be registered at the Land Registry if the buyer is to gain legal title to the same. Instead the government now proposes that on any application to register a new lease the applicant will have to declare that the lease is compliant with the legislation.
- Where a lease has been granted in contravention of the ban it was previously envisaged that the buyer would have the right to buy the freehold but there were very few details as to how this would work. The Response clarifies that in these circumstances the buyer would be entitled to zero cost enfranchisement (i.e. right to buy the freehold) at any time after the point of sale (so not time limited). Where the seller (landlord) does not itself own the freehold, it may be required to "compensate a third party" which we understand to mean that the affected buyer could exercise its right to enfranchise not only against the seller but also, where the seller does not itself own the freehold, against any third party that owns the freehold.
- The Response sets out a clear intention to include within the legislation scope for civil penalties to be levied against parties that breach the ban.
- The government is now intent on creating a right of first refusal for owners of leasehold houses. This would ensure that on any attempted sale of the freehold such owners would have the first right to buy the reversion to their properties. This right would apply to both new and also existing leaseholders.
- While the government has indicated for some time that there should be exemptions for shared ownership properties, community-led housing, National Trust land and excepted sites on Crown land, it has now formed a view

that there should also be exemptions for retirement properties and also certain lease-based financial products (e.g. Sharia-compliant finance).

- Crucially the government has re-confirmed that there should be no transitional period for the ban following commencement of legislation. As such, subject to exemptions, the ban on the grant of long leases of houses will apply to:
- any land held as freehold regardless of when that freehold was acquired; and
- any leasehold land acquired from 22 December 2017 onwards.

There will be no exemption for any "option agreements" to acquire a leasehold interest entered into before 22 December 2017 where such agreements completed after that date. We anticipate that "option agreements" will include conditional agreements for sale that did not complete before that date.

- The proposed definition of a "house" for the purpose of the ban still remains relatively vague. What we do know from the Response is that this is likely to be structured around the idea of a single self-contained dwelling within a building. The government is, however, of the view that the definition should not include properties that are above or below (horizontally divided) another property or associated structure such as a car park.

## Cap on ground rents

- The Response confirms that the government will legislate to restrict ground rents in future residential long leases of properties in England to a peppercorn (zero financial value). Previously the government had suggested an annual cap of £10. This change was driven by the number of respondents who believed the cap should be reduced to a peppercorn and the concern, noted in the Response, that even a small financial value could be capitalised, leaving the door open for leaseholders to be exploited.
- The government will proceed with their earlier proposal not to have a transitional period. The ban will therefore take effect as soon as the legislation commences.
- There is no suggestion in the Response that there are any current proposals for the cap on ground rents to apply retrospectively to existing leases. This will be a relief as earlier this year the Housing, Communities and Local Government Committee issued its report on leasehold reform suggesting that "it would be legally possible for the government to introduce legislation to [retrospectively] remove onerous ground rents in existing leases". However, the Response notes that the government is putting pressure on developers who have sold onerous leases, including those with exponentially increasing ground rents. A government-backed pledge committing freeholders, developers, conveyancers and managing agents to help leaseholders who are stuck in unfair deals, launched in March 2019, already has more than 60 public signatories.
- There will be limited exceptions to the cap on ground rents. In addition to the exemptions for retirement properties (provided event fees are not used) and community-led developments previously proposed, the government will also exempt:
- leases granted through home reversion (equity release) plans which allow consumers to release capital by selling their property to a provider who then grants a lifetime lease back to the consumer; and
- Islamic financing arrangements such as Ijara leases.
- The Response clarifies that where a new lease reserves a financial sum as a ground rent, the right to collect that

sum will be unenforceable in law. The other provisions in the lease will remain enforceable.

- As well as making any ground rents with a monetary value unenforceable (subject to the exemptions), leaseholders will be given the right to apply for any incorrectly paid ground rent and associated costs. The government also believes that further sanction is necessary, "because unscrupulous freeholders may be willing to evade the legislation by charging ground rents if they know that the only penalty is the repayment of rents already collected plus associated costs". The courts will therefore be given the power to impose a civil fine of up to £5,000 per property on freeholders who charge ground rents in contravention of the legislation, with a potential for higher penalties for repeat offenders.

## Other proposals

While the ban on the sale of leasehold houses and the cap on ground rents are probably the most eye-catching proposals, there are others in the Response:

- The government intends to legislate to give freehold residential owners equivalent rights to leaseholders to challenge the reasonableness of estate rent charges and to appoint a new manager to manage the provision of services covered by estate rent charges.
- The Response also outlines various measures to improve how leasehold properties are sold, including a deadline and maximum fee for providing leasehold information.

## Response to Select Committee Report

Shortly after issuing its Response, the government also responded to the Housing, Communities and Local Government Select Committee Report on leasehold reform which was issued earlier this year. Many of the proposals set out in the Response align with the recommendations from the Select Committee (for example, the cap on ground rents being set at a peppercorn). Perhaps the most interesting divergence is that the government has not, as noted above, acted on the Select Committee's suggestion that the cap on ground rents could be made to apply to existing leases. However, the government has not ruled that out as a possibility.

## Summary

These proposals for leasehold reform combined with the government's efforts to reinvigorate commonhold (see our previous alerts) are potentially one of the biggest disrupters to our housing market for a generation. The additional detail provided by the Response is welcome, however, the timing for implementation remains uncertain. The government has re-confirmed that it will "bring forward legislation as soon as Parliamentary time allows to enact these measures". Given the current political turmoil it is not exactly clear when that will be, although well-advised stakeholders will already be taking stock, re-evaluating future developments and planning around the changes.

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