

LEASEHOLD REFORM GATHERS PACE

Abolition of escalating ground rents amongst other things.....

The Government has recently published its response to the consultation (October 2018) on "**Implementing reforms to the leasehold system**" which looked at how a number of measures to tackle unfair practices in the leasehold market should work in practice. The consultation received over 1,200 replies, demonstrating the strength of interest in the issue.

The response follows soon after the CMA investigation into the leasehold housing market and potential breaches of consumer protection law. The CMA investigation focusses on potential mis-selling and potential unfair lease terms. See [CMA investigation into the leasehold housing market article](#).

The Government has said that it will bring forward draft legislation "*as soon as Parliamentary time allows*". In the current political climate, it remains to be seen how soon this will be. It is hard to see how any legislation could be in force before 2020 at the earliest

Summary

The key areas of reform:

- ▶ implementing the ban on the unjustified use of new leases for houses
- ▶ implementing the reduction of future ground rents to zero
- ▶ implementing measures to ensure that the charges that freeholders pay towards the maintenance of communal areas are fairer and more transparent
- ▶ implementing measures to improve how leasehold properties are sold

The Government has also decided to give freeholders on private and mixed-use estates the right to challenge the reasonableness of estate rent charges and the right to apply to the First-Tier Tribunal to appoint a new property manager.

The proposed reforms in more detail

The main points to note on the proposed residential leasehold reforms include:

A ban on the selling of new build leasehold houses

- ▶ All new-build houses are to be sold on a freehold basis only, with specific exemptions for exceptional circumstances.
- ▶ The ban will apply to residential long leases (over 21 years) for new build houses or existing freehold houses. "Houses" will be defined for the purpose of the ban as single dwellings, and self-contained buildings or parts of buildings (structurally detached or vertically divided).
- ▶ It will not be permissible to apply to register a non-compliant residential long lease on a house with HM Land Registry. If a lease is found to be contrary to the ban, the consumer will be entitled to zero cost enfranchisement as a means of redress.
- ▶ There will be a right of first refusal which will protect leaseholders in exempted properties as well as existing leasehold house owners by notifying them of a landlord's intention to sell their freehold and give them first refusal to buy it.
- ▶ There will be exemptions for shared ownership properties and community-led development as well as inalienable National Trust land and excepted sites on Crown land. Exemptions will also be provided for retirement properties as well as financial lease products such as home reversion plans (equity release) and home purchase plans (lifetime leases and Islamic/Sharia compliant finance) where there is a non-assignable lease.
- ▶ There will be no transitional period following legislation. Owners of leasehold land at the date of the December 2017 announcement will continue to be able to develop leasehold houses unaffected by the ban – but this retrospective application will not extend to those who did not own the land as of that date (including those with options on the land).

Ground rents in new leases to be a peppercorn (zero financial value)

- ▶ The Government will legislate to restrict ground rents to a peppercorn (zero financial value) in future residential leases. Future ground rents must have zero financial value (£0) rather than be capped at £10 per annum (as previously proposed in the consultation).
- ▶ Exemptions will be provided for retirement properties and community-led developments and for financial lease products such as home reversion plans (equity release) and home purchase plans (lifetime leases and Islamic/Sharia compliant finance) where there is a non-assignable lease. An exemption will not be provided for shared ownership properties.

- ▶ Mixed-use leases will be excluded from the legislation and ground rent can continue to be charged where a single lease covers both commercial and residential property. For replacement leases, the reduction of future ground rents will only apply to the newly extended part of the lease.
- ▶ There will be no transitional period after the legislation has come into force. The Government believes that by the time the legislation comes into force, its proposals will have been in the public domain long enough for the sector to prepare for the changes.
- ▶ Other than any exempted properties, new leases with ground rents above a peppercorn (zero financial value) will be unenforceable in law. Leaseholders will be given the right to apply to the First-Tier Tribunal to seek a refund for any incorrectly paid ground rent and any associated costs, with no time limitations. The courts will be given the power to impose a civil fine on freeholders who have set ground rents contrary to the legislation.

Measures to ensure that charges that freeholders pay towards the maintenance of communal areas are fairer and more transparent

- ▶ Freeholders on private and mixed tenure estates will be given equivalent rights to leaseholders to challenge the reasonableness of estate rent charges, as well as a right to apply to the First-Tier Tribunal to appoint a new manager to manage the provision of services covered by estate rent charges.
- ▶ The Government will consider introducing a Right to Manage for residential freeholders as part of creating greater parity between leaseholders and residential freeholders.

Implementing measures to improve how leasehold properties are sold

The Government intends to make it a statutory requirement for a new time limit of no more than 5 working days and subject to a maximum fee of £200 (plus VAT) for the provision of leasehold information to a prospective buyer in the form of a leasehold property enquiry (LPE1) pack. Despite this cap, the Government expects freeholders and managing agents to charge a fee which reflects the reasonable cost of providing this information below the cap.

Working Group

The Government has set up a working group of housing experts to look at raising standards across the entire property agent sector. This includes advising on the regulation and introduction of mandatory qualifications for all property agents to ensure that tenants, homebuyers and sellers can be confident they are getting a professional service and being charged fairly. The working group will also consider under what circumstances leaseholder and freeholder fees and charges are justified, and if they should be capped or banned. This includes the use of restrictive covenants, leasehold restrictions, administration charges and other charges placed on properties.

Onerous Leases

The Government has stated it is putting pressure on developers who sold onerous leases, including those that double more frequently than every 20 years, to provide support for current leaseholders. The Government announced a [Public pledge for leaseholders](#) which contains a commitment by freeholders to identify any existing leases within their portfolio which contain ground rents that double more frequently than every 20 years and to contact the relevant leaseholders and offer to vary their leases. Again this should be seen in light of the CMA investigation.

Other news on residential leasehold reform

Government announcement

Following hot on the heels of the Government's response summary outlined above, the Government announced on 27 June 2019, a number of further reforms in the residential leasehold sector "*in an effort to combat unfair leasehold practices and to prevent future homeowners from being trapped in exploitative arrangements*".

The announced reforms reiterate the Government's commitments outlined in the response summary above and include also:

- ▶ the renegotiation of Help to Buy contracts to explicitly rule out the selling of new leasehold houses, other than in exceptional circumstances;
- ▶ in short term lettings, new provisions for tenancy deposit "passporting" where a tenant moves home and its deposit is passported to the new tenancy. This announcement is subject to a call for evidence at the web address [here](#).
- ▶ planning bureaucracy cut, allowing councils to approve planning applications quickly through measures to remove bureaucracy from the system

- ▶ consulting on the creation of a New Homes Ombudsman to improve the rights of buyers of new build homes. The Government's intention is to make membership of a redress scheme compulsory for developers of new houses and to require house builders who participate in the Help to Buy scheme to belong to a New Homes Ombudsman scheme. The Government also wants to cut across sectors by extending mandatory membership of the redress scheme to all private landlords, freeholders of leasehold properties and residential park homes site operators. [A consultation has been launched](#) which runs until 22 August 2019.

Comment

It remains to be seen how long the legislative process will take. The reforms do not directly resolve the issue of the many thousands of existing leasehold properties, which contain escalating ground rents and other onerous clauses. However, there is a clear message of expectation from the Government when legislation is implemented, it will be of immediate effect. Forewarned is forearmed. The Government has made it clear that it will continue its work on wider issues of reform including proposed reforms to leasehold enfranchisement.

addleshawgoddard.com

Aberdeen, Doha, Dubai, Edinburgh, Glasgow, Hamburg, Hong Kong,
Leeds, London, Manchester, Muscat, Singapore and Tokyo*

*a formal alliance with Hashidate Law Office

© 2019 Addleshaw Goddard LLP. All rights reserved. Extracts may be copied with prior permission and provided their source is acknowledged. This document is for general information only. It is not legal advice and should not be acted or relied on as being so, accordingly Addleshaw Goddard disclaims any responsibility. It does not create a solicitor-client relationship between Addleshaw Goddard and any other person. Legal advice should be taken before applying any information in this document to any facts and circumstances. Addleshaw Goddard is an international legal practice carried on by Addleshaw Goddard LLP (a limited liability partnership registered in England & Wales and authorised and regulated by the Solicitors Regulation Authority and the Law Society of Scotland) and its affiliated undertakings. Addleshaw Goddard operates in the Dubai International Financial Centre through Addleshaw Goddard (Middle East) LLP (registered with and regulated by the DFSA), in the Qatar Financial Centre through Addleshaw Goddard (GCC) LLP (licensed by the QFCA), in Oman through Addleshaw Goddard (Middle East) LLP in association with Nasser Al Habsi & Saif Al Mamari Law Firm (licensed by the Oman Ministry of Justice), in Hamburg through Addleshaw Goddard (Germany) LLP (a limited liability partnership registered in England & Wales) and in Hong Kong through Addleshaw Goddard (Hong Kong) LLP, a Hong Kong limited liability partnership pursuant to the Legal Practitioners Ordinance and regulated by the Law Society of Hong Kong. In Tokyo, legal services are offered through Addleshaw Goddard's formal alliance with Hashidate Law Office. A list of members/principals for each firm will be provided upon request. The term partner refers to any individual who is a member of any Addleshaw Goddard entity or association or an employee or consultant with equivalent standing and qualifications. If you prefer not to receive promotional material from us, please email us at unsubscribe@addleshawgoddard.com. For further information, including about how we process your personal data, please consult our website www.addleshawgoddard.com or www.aglaw.com.