

## **The Leasehold and Freehold Bill**

### **What do the proposals mean for leaseholders?**

The proposal for a Leasehold and Freehold Bill in the King's Speech on 7 November 2023 demonstrates an ongoing and determined commitment by the government to reform in the residential leasehold sector - and for leaseholders, there are immediate questions and considerations.

Whilst the provisions outlined in relation to the proposed Bill fall short of making it mandatory for all new flats to become freehold, there is clear evidence of a determined resolve to make real and lasting change in this area.

The fact that there is no promise of a ban on new leasehold flats will upset many who have been campaigning for this to be the case. This is because commonhold, the viable alternative to leasehold which has been on the statute books since 2002, is not yet 'fit for purpose.' A lot more work needs to be done to the current version of commonhold and the government recognises this.

The plans that have been outlined so far suggest a number of changes that will be of significant interest to leaseholders looking to extend their leases or buy their freeholds, assuming of course that these proposals are in fact carried forward into law.

### **What are the proposed changes?**

The proposed changes announced have all been the subject of previous commentary or commitments given by the government since its Consultation in 2017 ('Tackling Unfair Practices in the Leasehold Market'). This process culminated in the Law Commission's extensive review of the law relating to the areas of Enfranchisement, Commonhold and the Right to Manage with the publication of its reports and recommendations in July 2020.

A summary of the 'headline news' relating to each of the proposed reforms as announced on 7<sup>th</sup> November 2023, and what these might mean for leaseholders, appears below:

#### **Increasing the standard statutory lease extension term from 90 years to 990 years**

This change will ensure that once extended, a lease will never need extending again under the statute.

Even if no other reforms are introduced to the valuation mechanism, the additional cost of making the lease this much longer will not be significant as the 'expensive' part of a lease extension relates to the part that is nearest the end of the lease term and the cost of extending beyond that diminishes in a non-linear, decreasing way.

This is a common-sense change and one that will avoid the need for statutory claims to be repeated where the original lease is short.

If and when enacted, this will lead to a greater number of 'virtual freehold' leases in the marketplace where the lease term is effectively infinite and the economic stake of the freeholder in the property is effectively reduced to zero.

### **Removing the requirement for leaseholders to have owned their property for at least two years prior to extending**

This change will be welcomed by all those engaged in the buying and selling process. Here, assignments of the claim will presumably still be possible, but the buyer will then have the option to wait two years prior to extending, if they so wish, provided that the lease terms are acceptable for mortgage purposes as at the date of the purchase.

This additional flexibility will benefit leaseholders having purchased a property, as they will not have to put up with a diminishing lease length for two years before being able to make a claim.

Bearing in mind the delays at the Land Registry and given that the leaseholder currently needs to have been the *registered* owner for two years to qualify, this will be a significant benefit.

However, this will not help anyone who needs to have a lease extended so that the extension is in place 'as of completion.' For instance, if the lease does not meet lender requirements because of its length (commonly terms of 75 years and under are not acceptable, although lending practice varies), then the buyer will need to make other arrangements such as a direct deal with the freeholder (if this is possible), or to buy the property as a cash buyer and then seek to mortgage it once a lease extension has been put in place, whether under statute or otherwise.

### **Increasing the 25% non-residential limit for mixed use buildings to qualify for enfranchisement**

There is a proposal to increase the qualification threshold so that buildings that are in mixed use will qualify provided they are not more than 50% non-residential. Similar reforms are proposed in relation to the Right To Manage.

This will enable a larger number of buildings which currently do not fall within the enfranchisement legislation to exercise the right of collective enfranchisement.

### **Banning the creation of new leasehold houses**

This honours a commitment made by way of a previous ministerial pledge made by Sajid Javid when he was Housing Minister back in 2017. No detail of the exact proposal exists at the moment, but it might be anticipated that this will only affect new builds.

The move is in response to the so-called "leasehold scandal" whereby leasehold houses were sold with escalating ground rents and other onerous clauses. Since the banning of ground rent for new leases by the Leasehold Reform (Ground Rent) Act 2022, the issue of escalating rents has been dealt with for new leases, but the proposals will ban the creation of new leasehold houses, save in 'exceptional circumstances.'

There are other separate proposals in relation to service charges and transparency which may also help all leaseholders.

### **Bringing estate management charges into the service charge legislation**

Good news for freehold owners on mixed estates is a commitment to bring 'estate management charges' under the remit of the service charge legislation. Currently, when estate management charges apply to freehold houses these do not fall under the service charge legislation and cannot be challenged on grounds of reasonableness in the tribunal.

This is a long-standing anomaly and will be a welcome change for those leaseholders affected in this way.

### **Valuation reforms – Making it cheaper and easier to enfranchise or extend your lease**

These are the proposed reforms most of interest to anyone looking to enfranchise or extend their lease – the proposals to amend the valuation system that will affect what a leaseholder will have to pay to do this.

The short notes that accompany the King's Speech are very light on detail on this, but the one key ministerial commitment which does appear is the promise to 'make it cheaper and easier' for those looking to collectively enfranchise, or to extend their lease. This phrase echoes the exact words used in the terms of reference given to the Law Commission and we now have some more detail on what may be proposed in relation to this.

### **Capping ground rent**

There is a commitment to initiate consultation on capping the level of ground rent that can be charged under a long residential lease. This consultation was launched on 9th November 2023 and is open until 21st December 2023.

The 'leaks' to the press suggest that a draft Bill might be circulated at the same time as this consultation, but at the time of writing there is no sign of this.

The consultation sets out a range of options such as reducing all current ground rents to zero, freezing them at current levels or setting a numerical threshold. The other option discussed is to cap them at a fraction of the value of the property.

It is impossible to predict which of these might be opted for by the government to take to parliament but one thing that we can perhaps predict is that there could be fairly extensive scope for debate in parliament around these measures.

If asked to predict which of these might be the most likely, we could suggest that the cap to a fraction of market value might be a likely outcome, on the basis that this would have an inherent sense of proportionality to it although it might not be the easiest to administer in practice.

There also might be the possibility of a challenge on Human Rights grounds if any change is too 'extreme' – however, this is very much just speculation at this stage.

### **What would the effect of capping ground rent be?**

If the intention is to limit the level of ground rent that can be charged, this will benefit leaseholders on two fronts.

Firstly, the leaseholder will have a lower medium to long term expenditure on ground rent in the lifetime of the lease, and those with excessive or doubling ground rents will have automatic relief from these.

Secondly, if such a cap is introduced and this also follows through into the valuation mechanism, then it will reduce the amount to be paid on enfranchisement as the ground rent must be 'bought out' when buying the freehold or extending the lease.

### **A potentially bigger change - Removing marriage value from the calculation**

Currently, where a lease has less than 80 years to run, the leaseholder must pay an additional piece of compensation called 'marriage value.'

Reading between the lines in the notes that accompany the King's Speech, it is clear the government has made a commitment to the removal of marriage value from the lease extension and enfranchisement calculation. However, what is not clear is *how* this will be done or indeed *when*. Whilst there is a suggestion that such an amendment can perhaps be inferred, it is not clear whether this would be part of the same Bill.

Those expecting a change in this direction will be aware of the work done by the Law Commission on this and in particular, their work in 2020 including their output paper on options to reform. The choices around valuation reform are political and will need to be debated by parliament.

There is also the possibility of a Human Rights Act challenge which could happen if any changes are deemed to be disproportionate.

At this stage we do not yet have any information as to whether there will be a challenge of this sort as the proposals themselves are not laid out in such a way as to be able to be fully understood or appreciated, and we are yet to see whether any of the major freeholders would wish to bring a challenge on this basis. If such reforms are too "extreme" this is a possibility as was noted in the Law Commission's own work on the subject, where relevant expert advice was sought from Human Rights Counsel.

### **What does all this mean in practice?**

All of the above is potentially good news for leaseholders as they will find it easier to exercise their rights in the future once this legislation is enacted, assuming of course that it is.

The key question at this stage is *when* any such reforms might be introduced and also, *what* the detail of the proposals, including the proposed valuation reforms, will be.

Trying to guess this would depend upon *how* any draft Bill seeks to address these changes. For instance, if all of the valuation reforms are to be included at this stage, is there a possibility of the Bill being "bogged down" and/or the government becoming embroiled in litigation whilst some or all of their decisions or proposals are subject to legal review?

For this reason, and whilst it is impossible to guess, it seems more likely that the more straightforward changes outlined above – such as increasing the standard lease extension, moving the two-year requirement, and changing the threshold for the enfranchisement qualification - are likely to be delivered sooner rather than later.

Dependent on the outcome of the Consultation which will close at the end of December, we may then have more news on how ground rents might be restricted.

At the moment, there is very little clarity at all in relation to marriage value and apart from a reassurance from Rachel Maclean, Minister of State for Housing and Planning, that the government is committed to banning marriage value, we have very little indication at all as to when or how these changes might seek to be enacted.

To comment further, we need to see a draft Bill.

#### **How soon could all this become law?**

The first thing to say is that just because a Bill has been proposed, it does not necessarily mean that it will be enacted in these exact terms.

However, assuming that a draft Bill is produced and put before parliament during this session of parliament, it is possible that an initial piece of legislation could make it towards the statute books within a year to eighteen months.

As mentioned above, the prospect of wider reform - including valuation reform - is potentially something that may take a lot longer.

As ever, therefore specific advice will be required in each individual's case as to whether to proceed and what the right thing to do may be.

The one point of certainty is that if a property is currently unmortgageable, or unsaleable because of lease length or other issues, then the only course of action that will remedy this is to take action under the existing legislation.

As ever, we remain ready to advise and to provide up to date commentary as soon as further information is available.

**Bishop & Sewell LLP**  
**12th November 2023**

*To discuss any aspect of the above, please do not hesitate to contact us by emailing [leasehold@bishopandsewell.co.uk](mailto:leasehold@bishopandsewell.co.uk)*

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