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THE LEASEHOLD AND FREEHOLD REFORM ACT 2024

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ABOUT RICHARD SNAPE

Richard has been the Head of Legal Training at Davitt Jones Bould (DJB) since 2002. He speaks at numerous courses for law societies all over the country, various public courses, in-house seminars within solicitors' firms and has also talked extensively to local authorities and central government bodies. His areas of specialism include both commercial and residential property, in particular in relation to local government law, conveyancing issues, development land, commercial property and incumbrances in relation to land.

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THE LEASEHOLD AND FREEHOLD REFORM ACT 2024

The Bill was introduced to the House of Commons on November 27th 2023. Although the original press release stated that the Bill would ban new leasehold houses and also make amendments as to ground rents that did not feature in the original Bill. The Act received the Royal Assent on the evening of May 24th 2024 having spent 11 minutes in the House of Lords. The original bill was 64 clauses and 8 schedules long. The final version is 124 sections and 13 schedules.

Leasehold Houses

Various amendments were introduced by the Government at Report Stage on February 27th 2024. This includes a section banning the grant of a new lease or agreement to grant a new lease of a long residential leasehold house other than a permitted lease. There will also be a ban on the assignment or agreement to assign the whole or a part of the lease if at the time of grant of the lease it was not residential but is at the time of assignment. The section goes on to say that this will not affect validity of any lease that is granted or assigned or any contractual rights. However, although their lease may be registered at HMLR there will be a restriction that there will be no registrable dispositions apart from a legal charge. There will be a penalty for granting or assigning such a lease. Enforcement will be by local authority trading standards. The fine will be between £500 and £30,000 per breach. The Leaseholder will be able to purchase the freehold and intermedary leases free of charge.

Certain leases will be permitted leases some of which will require a certificate from the tribunal and any marketing will need to make clear that it is a permitted lease with a copy of the certificate. At least seven days prior to exchange (or completion if there is no exchange) the purchaser must be given a copy and details and provide a notice of receipt. Any application for registration must also provide details and a statement that it is a permitted lease. Permitted leases requiring a certificate are:

- Leases granted out of a superior Leasehold estate as long as the superior lease was granted before December 22nd 2017 or afterwards in pursuance of a contract
- Community housing leases
- Retirement home leases where the Leaseholder must be 55 plus
- Certain National Trust leases.

Certain leases will be able to be self-certified these are:

- Leases entered into pursuant to agreement of the lease pre commencement of the legislation.
- Home Finance Plans e.g. equity release and Islamic Finance
- Lease extensions either under the Leasehold Reform Act 1967 or voluntarily. Lease renewals will not have to provide a warning notice seven days before exchange or completion.
- Certain agricultural leases
- Shared ownership leases

A house is defined as a separate set of premises on one or more floors which forms the whole or part of a building and is constructed or adapted for use as a dwelling. It will not be a house if the whole or a part lies above or below some other part of the building. There must also be a residential lease. The lease must be for more than 21 years including a series of connected leases or an option to renew and disregarding any notice or forfeiture.

Ground Rents

There was consultation on the future of ground rents in existing leases which ended on January 17th 2024. The Government stated that they would introduce changes to the Bill at Committee Stage but this has not happened. The possibilities are:

- No rent to be charged other than a peppercorn.
- The rent will be the same as the initial rent under the lease. Many landlords and developers have gone through deeds of variation to introduce this anyway.
- The ground rent will be capped at a maximum. The proposal was £250 per annum.
- The ground rent will be set as the rent in existence when the legislation comes into force.
- The ground rent will be capped at a maximum. The suggestion was 0.1% of the value.

Since June 30th 2022, under the Leasehold Reform (Ground Rent) Act 2022, the only permitted ground rent in a new lease of a dwelling of more than 21 years duration is a peppercorn rent. There are exceptions such as shared ownership leases, community housing and Islamic mortgages. The provisions came into force for retirement homes on April 1st 2023.

Note: On March 24th 2024 Micheal Gove announced that they would not go ahead with a complete retrospective ban on ground rents.

The preferred option would be a cap of £250 per annum. These provisions did not make it into the Act.

Building Safety Act 2022

On February 27th 2024 amendments to the Building Safety act 2022 were introduced. These would constitute preventive and precautionary safety measures preventing or reducing the likelihood of fire or collapse, reducing its severity, and preventing or reducing harm to people in or around the building. A Labour amendment whereby the concept of a qualifying leaseholder would be abolished and all long leaseholders of dwellings would be entitled to the service charge caps would not be accepted, nor was an amendment whereby Freehold residents management companies would have the benefit of the protections.

Remediation orders under S.123 and Remediation Contribution Orders S.124 may be made by the tribunal and in the future these will include the cost of relevant steps. Remediation Contribution Orders will also be able to be made the cost of expert reports, temporary accommodation, imminent threat to life and other circumstances the tribunal considers reasonable.

S.125 of the act whereby if there is an insolvent landlord, an associated company or partnership might be liable will be repealed. An Insolvency Practitioner will be an accountable person in a higher-risk building they must also give information to the local authority and fire authority within 14 days.

These provisions are due to come into force on July 24th 2024.

Forfeiture

A Labour amendment banning forfeiture for long leasehold flats was not adopted but the suggestion was that the Government would include provisions in the House of Lords. These provisions are not in the final Act.

Enfranchisement and Lease Extensions

(a) The two year time period before a leasehold extension or purchase or right to enfranchise would be abolished.

(b) There would be repeated rights to enfranchise or extend the lease, but the tribunal would have rights to curtail this if exercised trivially. This would mean that leaseholders might make a further claim immediately and not have to wait one year if the application has been withdrawn or has been deemed to be withdrawn.

(c) The ability of the Landlord to oppose enfranchisement or a lease extension if there is less that 5 years left on the lease and the Landlord intends to demolish or reconstruct or carry out substantial works on the premises which cannot be done without obtaining possession would be abolished unless a tribunal provides a community housing certificate.

(d) The non-residential element before enfranchisement or the Right to Manage can occur would be increased from more than 25% of the floor area, excluding common parts to more than 50%.

(e) There would be a right for the leaseholders to require the Freeholder to take a lease back of any lease not let to a participating tenant thus reducing the cost of enfranchisement or lease extension.

(f) The duration of a lease extension would be increased from 50 years for a house, or 90 years for a flat to 990 years for both.

(g) The cost of enfranchisement of lease extension would be varied. The premium would be market value with a deferment rate which would be set by regulations and varied at least at 10 year intervals. Market value would be set as the amount the relevant freeholder could be expected to realise on the open market if sold by a willing seller at the valuation date. There is also an assumption that any other leases will be merged with the freehold for valuation purposes. The effect of this would be that the presence of intermediate leases would have no effect on the premium. There is also an assumption that the claimant is not seeking and will never seek to acquire a freehold or a notional lease. The effect of this would be that Landlord's share of marriage value (currently payable when there is 80 years or less left on the lease) would not be payable nor would hope value based on possible marriage value in the future. This provision will almost certainly be subject to judicial review. Compensation will also be payable for buying out a ground rent. Schedule 2 contains complex valuation

principles on how to determine this which are probably best left for a valuer. The valuation caps ground rent treatment at 0.1% of freehold value. Unfortunately, the deferral and capitalisation rates have not been decided and without these then advise cannot be given on when enfranchisement or lease extension should occur. It is quite possible that some leaseholders will lose out under the new regime.

(h) The Landlord will not be able to charge their reasonable non-litigation costs to the leaseholder unless there is a very short term left on the lease. This provision will almost certainly be subject to judicial review. There is an ability for the Landlord to charge reasonable costs to the extent that they exceed the price or a figure which will be set by regulations.

(i) Any disputes will be decided by the first-tier tribunal and not by the county court.

Other Rights of Long-Leaseholders

Leaseholders with 150 years or more remaining may buy out the ground rent without having to extend the term. This will be subject to a cap of 0.1% of freehold value, thus ignoring excessive escalating ground rents.

Accounts and Annual reports must be given by written statement within 6 months of the end of the accounting period. Also annual statements of service charge must be given and the landlord required to provide further information on request. The tenants may be charged for this via service charge.

Insurance costs will exclude insurance payments made to arrange or manage insurance.

Sales Information Request

Both leaseholders of dwellings and freeholders in managed estates may request from the Landlord or estate manager information in a specific form if they contemplate selling and the information is for the purpose of the contemplated sale. The detail will be left to regulation. If the information is not in the landlord or manager's possession they must ask the person who has the information. The information must be provided by the end of a specified period or there must be a negative response confirmation there may be a charge but regulation will limit the amount of charge or prohibit charging in specified circumstances unless specific requirements are met. An application may be made to the tribunal to make information available and damages of up to £5000 may be awarded Landlord may include a Right to Management company.

Administration charges

Currently, leaseholders of flats can question the reasonableness of administration charges in tribunal. Leaseholders of houses and freeholders who are subject to these cannot do so. This will change in the future. An administration charge is stated to be an amount payable directly or indirectly by the owner of a dwelling for or in connection with:

- The grant of approval in connection with a relevant obligation
- Application for such approvals

- For or in connection with the sale or transfer to which a relevant obligation relates
- For or in connection with the sale or transfer of land or the creation of an interest in or right over land
- Failure by the owner to make a payment by a due date.

The manager must also produce an administration charge schedule the details of which will be subject to regulations. Failure to comply would result in a fine of up to £1000.

Estate Management Charges

Currently, under Ss.18-30 Landlord and Tenant Act 1985 Leaseholders in flats and houses can question the reasonableness of service charges in tribunal. S.18 (1) defines service charge as including charges for services, repairs, maintenance, improvements, insurance, or the Landlords cost of management and the whole or part of which varies or may vary according to the relevant costs.

In the future owners of freehold houses within estate management schemes will have the same rights and also fixed service charges will come within the provision.

Estate Management Charges involve -

- the provision of services
- Carrying out of maintenance repairs or improvements
- Effecting insurance
- Making payments for the benefit of one or more dwellings

The charge must be payable under a relevant obligation. This includes –

- A rentcharge and estate rentcharge
- An obligation under a lease
- Any other obligation which runs with the land comprised in the dwelling or a building of which a dwelling forms a part
- An obligation which otherwise binds the owner for the time being of the land which comprises the dwelling
- Any other obligation to which an owner of the dwelling is subject and to which any immediate successor will become subject if an arrangement is made with an estate manager. This would include deeds of covenant and restrictions.

Estate Management Charges must be reasonable incurred and of a reasonable standard as currently with service charges. There will also be consultation requirements as currently with leaseholds, but the regulations will deal with the detail. Any charge must be demanded within 18 months of the amount becoming due as is currently the case unless a notification of the demand is given before the

18 month period. Unlike currently, in S.20C of the LTA 1985 where the tribunal can order that the cost of proceedings cannot be added to service charge, the presumption will be reversed and the cost of proceedings will not be able to be added unless the tribunal decides otherwise.

Rentcharges

S.1 of the Rentcharges Act 1977 defines a rentcharge as follows:

Meaning of "rentcharge".

For the purposes of this Act "rentcharge" means any annual or other periodic sum charged on or issuing out of land, except—

a) rent reserved by a lease or tenancy, or

b) any sum payable by way of interest.

In some parts of the country freehold properties are subject to fixed sum rentcharges, a sum of money is paid per annum to the rent owner. In such rentcharges cannot be created since July 22nd 1977 when the Rentcharges Act of that year came into force. Existing fixed sum rentcharges will come to an end on July 22nd 2037 or within 60 years of first becoming payable whichever is the latter. However, estate rentcharges which may include a fixed nominal amount which otherwise are variable and reasonably reflect maintenance, repairs or insurance costs can be created.

Note the **Leasehold and Freehold Reform Act 2024** intends to make residential rentcharges and estate charges subject to a reasonableness test and application to the tribunal**.**

The Problem

S.2 Rentcharges Act 1997 provides the situations where the rent charges may still be creates. This includes estate rentcharges which are defined as such:

(1) Subject to this section, no rentcharge may be created whether at law or in equity after the coming into force of this section.

(2) Any instrument made after the coming into force of this section shall, to the extent that it purports to create a rentcharge the creation of which is prohibited by this section, be void.

(3) This section does not prohibit the creation of a rentcharge—

(a) in the case of which paragraph 3 of Schedule 1 to the Trusts of Land and Appointment of Trustees Act 1996 (trust in case of family charge) applies to the land on which the rent is charged;

(b) in the case of which paragraph (a) above would have effect but for the fact that the land on which the rent is charged is settled land or subject to a trust of land;

(c) which is an estate rentcharge;

(d) under any Act of Parliament providing for the creation of rentcharges in connection with the execution of works on land (whether by way of improvements, repairs or otherwise) or the commutation of any obligation to do any such work; or

(e) by, or in accordance with the requirements of, any order of a court.

(4) For the purposes of this section "estate rentcharge" means (subject to subsection (5) below) a rentcharge created for the purpose—

(a) of making covenants to be performed by the owner of the land affected by the rentcharge enforceable by the rent owner against the owner for the time being of the land; or

(b) of meeting, or contributing towards, the cost of the performance by the rent owner of covenants for the provision of services, the carrying out of maintenance or repairs, the effecting of insurance or the making of any payment by him for the benefit of the land affected by the rentcharge or for the benefit of that and other land.

(5) A rentcharge of more than a nominal amount shall not be treated as an estate rentcharge for the purposes of this section unless it represents a payment for the performance by the rent owner of any such covenant as is mentioned in subsection (4)(b) above which is reasonable in relation to that covenant.

The **Leasehold and Freehold Reform Act** intends to add to S.2(4)(a) to include improvements as well as repairs maintenance and insurance.

Roberts v Lawton [2016] UKUT 396 (TCC) S.121 (4) of the Law of Property Act 1925 allows the holder of a rentcharge to appoint trustees who will be tenants under a 99 year lease if a rentcharge is not paid within 40 days of being due. This will be the case whether the charge is formally demanded or not. Here the arrears amounted to between £6 and £15. This was held to be a lease which can be registered at HMLR. The lease will continue even if the arrears are paid. In the present case, the holder of the rentcharge used this fact to hold home owners to a ransom in order for them to pay administration charges. S.121 (4) will apply equally to estate rentcharges. The provision can be excluded but only in the document that creates the rentcharge.

Note also S.121 (3) allows possession of the land by the rent owner under similar circumstances.

Note there is provision in the **Leasehold and Freehold Reform Act 2024** whereby S.121 will not apply to fixed sum rentcharges but will still apply to estate rentcharges.

As above in the future the tribunal will be able to question the reasonableness of work carried on under an estate rentcharge. In relation to S.121 then the legislation defines a regulated rentcharge as being one which cannot be created under **S.2 Rentcharges Act 1977.** This relates to fixed sum rentcharges only. No claim may be made by the rent owner unless they have first made a demand in prescribed form and then waited 30 days. The form will have to have:

- the name of the rent owner and an address in the UK
- The amount of arrears

- How it has been calculated
- How to pay
- A copy of the instrument creating the rentcharge
- Proof of title of the rent owner. This will be deemed to be so if their title is registered at HMLR.

The changes to rentcharges will come into force on July 24th 2024.

Other Changes

There will be a new redress scheme for leaseholders and freeholders on private and mixed-tenure estates. Property management agents are already required to join a redress scheme. The scheme for leaseholders and freeholders is envisaged to be self-funding through charging a membership fee and there will be financial penalties for not joining a scheme. Leaseholders may apply to the tribunal to appoint a manager if the landlord fails to do so.

Also added at Committee Stage was the right for freeholders on estates to apply to tribunal to appoint a substitute manager. The Freeholder of the managed estate may give the estate manager a notice of complaint as a preliminary to the appointment of an estate manager. The current manager will given six months to remedy the complaint. A final warning notice must also be given to the estate manager. Grounds include:

- Breaches of an obligation
- Unreasonable management or administration charges
- Failure to comply with any code of practice
- Failure to belong to a redress scheme
- The tribunal considers it just in the circumstances.

There will also be measures to ensure relevant property lease information is provided to leaseholders and freeholders in a timely manner.

All Labour amendments at Committee Stage were voted out. This included an abolition of forfeiture for long leasehold dwellings and also a freehold right to manage.

Commonhold

Commonhold was introduced by the **Commonhold and Leasehold Reform Act 2002** and came into force on September 27th 2004. Currently there are 159 commonhold units in England and Wales.

Commonhold has been much in the news of late as it has been proposed as a way of solving problems with leaseholds. It is fundamentally a freehold title where there will be a Commonhold Association and the various freeholders will become members and agree to be bound by positive and restrictive covenants. This is fundamentally a residents management company and a management structure will always be required.

There is nothing in the Bill which amends Commonhold. In particular residential leases of seven or less years cannot currently be created under commonhold. It does seem however that the commonhold unit holder will have the benefit of the changes to service charges and administration charges. There is currently no right to forfeit under commonhold which gives rise to concerns that the commonhold association may become insolvent if debts are not paid.

THE RENTERS (REFORM) BILL 2023-24

This was introduced into parliament in May 2023. It intended to abolish assured short hold tenacies and to make all assured tenancies periodic with a rent period not exceeding one month. The legislation fell with the announcement of General Election.

In particular, clause 28 was meant to solve the problem of leases with a rent of more than £250 per annum (or £1000 in London) creating an assured tenancy. This would apply to leases created from January 15th 1989 onwards. If there is an assured tenancy then relief from forfeiture is not available but there is mandatory ground 8, defined rent arrears of two months at the date a notice seeking possession is served and at the date of a court hearing. The court would have no discretion but to award possession and any mortgage company would lose its security. This results in mortgage companies requiring a deed of variation and mortgagee protection clauses. Clause 28 intended retrospectively to place a duration limit of 7 years on assured tenancies. This would have solved the problem but is not now going to happen. In Wales since December 1st 2022, the **Renting Homes (Wales) Act 2016** states that occupation contracts cannot be for more than 21 years and the problem has been solved.

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