



# LEGAL UPDATES

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# Leasehold Reform: What has happened so far and what's on the horizon

Mark Foxcroft, partner, Devonshire's



# **Leasehold Reform: What has happened so far and what is on horizon**

**Mark Foxcroft**

**Partner, Devonshires Solicitors**

## Leasehold Reform: Why is it needed?

- Leasehold reform has been on Govt agenda since 2017 White Paper '*Fixing our broken housing market*' which included a commitment to "improve consumer choice and fairness in leasehold"
- Identified issues with the leasehold model including:
  - Ground rent 'scandal' and unfair lease terms
  - Difficulties with RTM and enfranchisement
  - Lack of transparency in service charges
  - Use of leasehold for new build houses

## Law Commission

- Leasehold reform was included in the Law Commission's 13th Programme of Law Reform
- Produced a number of papers/reports in 2020:
  - *Leasehold home ownership: buying your freehold or extending your lease*
  - *Leasehold home ownership: Exercising the right to manage*
  - *Reinvigorating commonhold: the alternative to leasehold*

## Summary Report on the Future of Home Ownership

- Law Commission Report pulling together findings of their three 2020 reports:

*“There is a growing political consensus that leasehold is not a satisfactory way of owning residential property. Many people have a fundamental objection to leasehold being used as a mechanism for delivering home ownership.”*

*“Too often leaseholders, particularly in new-build properties, have been treated by developers, freeholders and managing agents, not as homeowners or customers, but as a source of steady profit. The balance of power in existing leases, legislation and public policy is too heavily weighted against leaseholders, and this must change”*

## Summary Report on the Future of Home Ownership (2)

1. Legal, practical and financial obstacles for leaseholders seeking to exercise their statutory rights to manage/enfranchise
2. High and escalating onerous ground rents
3. Houses being sold on a leasehold basis, for no apparent reason other than for developers to extract a profit from owning the freehold
4. The absence of any compulsory regulation of managing agents
5. Excessive service charges, legal fees, or permission fees levied by landlords
6. The legal entitlement of landlords to “forfeit” (that is, terminate) a lease if the leaseholder breaches a term of the lease.

## Building Safety

- Building safety overtaken leasehold reform in Govt's agenda
- Building Safety Act 2022 received Royal Assent 28 April 2022
- Contains far-reaching provisions effecting recovery of service charges
- Outside scope of this session but be aware of!



## Government approach

- In Jan 2021, then SOC for HCLG announced *“most significant set of reforms to how we hold property for at least 40 years and the beginning of even more fundamental change to English property law”*
- Stated leasehold reform would be tackled through two pieces of legislation in the current Parliament
- So.....where are we now?

## Government approach

- The Government is pursuing leasehold reform in the following ways:
  - Introduction of new model form of shared ownership lease;
  - Reduction of ground rent to a peppercorn for new residential long leases;
  - Extending the rights to manage (RTM) and enfranchise;
  - Changes to the lease extension process; and
  - Promoting commonhold as an alternative to leasehold.

## What has happened so far?

- Introduction of new model shared ownership leases for houses and flats
- Enactment of Leasehold Reform (Ground Rent) Act 2022
- Consultation on extending RTM and right to enfranchisement

## What may be to come?

- Changes to lease extensions
- The 're-birth' of Commonhold as an alternative to Leasehold
- Regulation of property agents

## New Model Form of Shared Ownership Lease

- To be used for all new s/o homes funded under the Affordable Homes Programme 2021-2026
- Will also apply to homes funded via section 106 contributions. There will be a transition period to ensure developments already progressing through the planning process are not adversely affected
- One form of lease for flats and another for houses

## New Model Form of Shared Ownership Lease (2)

- Right of first refusal period reduced from 8 to 4 weeks
- Minimum initial equity shared reduced from 25% to 10%
- Minimum **standard** staircasing equity share reduced from 10% to 5% (1% for 15 years for props purchased via Right to Shared Ownership)
- Minimum lease term is 990 years

## New Model Form of Shared Ownership Lease (3)

- **Initial Repair Period** – LL responsible for all external structural repairs for flats and houses for 10 years from date of the lease or if shorter until final staircasing
- **Internal non-structural repairs allowance** – up to £500 p.a. financial contribution from RP for first 10 years
- Reserve/sinking funds cannot be used for any external/structural works within Initial Repair Period

## Removal of Ground Rent

- Why was action deemed necessary?
- Ground rent scandal where it came to light that many developers were including doubling ground rent provisions in their leases
- Meant that ground rents would grow exponentially and become extremely unaffordable making sale difficult/impossible
- Led to increased scrutiny on the charging of ground rents in general. No service provided for the ground rent. Only serves to provide income stream for freeholder



## Removal of Ground Rent (2)

- Leasehold Reform (Ground Rent) Act enacted as of 8 February 2022
- Ground rents in **new** residential long leases will be set as a 'peppercorn rent'. A peppercorn rent is a token or nominal rent.
- Very few exceptions
- For shared ownership leases – rent can still be charged on the Housing Association's share. The rent on the tenant's share will need to be reduced to a peppercorn.

## Removal of Ground Rent (3)

- Landlord will be in breach if requests payment of a prohibited rent and/or receives a prohibited rent and/or fails to refund it to the tenant within 28 days beginning on the day after receipt.
- Breach of the prohibition on prohibited rent can lead to enforcement action by the tenant, Trading Standards and/or the Council.
- Breach could result in fine of up to £30,000 and/or a repayment order or a recovery order.

## Removal of Ground Rent (4)

- Govt announced on 22 April 2022 that the Act would come into force on **22 June 2022**
- From that date onwards, no new residential leaseholders will be able to be charged a ground rent.
- However, what about existing leases with problematic ground rent provisions?
- CMA investigation found unfair practices and has entered into agreements with various developers that requires them to reduce ground rents to level when lease was entered into

## Extending the RTM and right to enfranchise

- **Right to Manage** - Process which gives leaseholders statutory right to take over management of their property from the landlord by setting up a special RTM company
- **Collective enfranchisement** - Right for the owners of flats in a building, and sometimes part of a building, to join together and buy the freehold
- Consultation took place between 11 Jan and 22 Feb 2022 about extending/improving statutory rights

## Extending the RTM and right to enfranchise (2)

- Currently, awaiting response to consultation which finished in February
- However, proposals include:
  - Increasing the non-residential floor space limit to 50%
  - Allowing LH to require that LL take leases for non-participating units following enfranchisement
  - Changes to voting rights in RTM companies

## Lease Extensions

- Leaseholders currently have statutory right to extend their lease by 90 years with zero ground rent for payment of a premium
- January 2021 Govt proposed changes to lease extension:
  - Increasing the statutory extension from 90 years to 990 years;
  - Abolishing marriage value;
  - A new statutory calculation to determine the value of the premium payable with a view to reducing it.
  - Provide online calculator to simplify premium assessment

## Promoting Commonhold – what is it?

- Freehold ownership, but the homeowners collectively own their building;
- The homeowners have shared control and responsibility;
- Unlike leasehold, there is no limit on how long you can own the property for.
- Been around since 2002 (CLRA 2002) but little take up

## Commonhold as an alternative to Leasehold

- Law Commission recommended promoting commonhold as an alternative form of home ownership to leasehold
- Commonhold Council was set up in 2021 - panel of leasehold groups and industry experts, advising the government on preparing the housing market for more widespread use of commonhold.
- Govt 'still considering' Law Commission recommendations



## Impact of Commonhold

- Fundamental change in the way blocks are managed;
- Potential loss of control by social landlord of parts of their stock;
- Impact on future management and ability to develop blocks in the future.

## Timeframes for future reform?

- During the Leasehold Reform (Ground Rent) Bill's Committee Stage in the House of Lords 9 June 2021 Lord Greenhalgh said the aim was to bring forward a Bill on wide leasehold reform in third session of this Parliament
- So potentially within next year?

Questions?

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# The Building Safety Bill and housing management - where are we now?

Lee Russell, partner, Devonshires



## The Building Safety Bill and Housing Management - where are we now?

Tuesday 10 May 2022

**Lee Russell, Partner**  
Devonshires Solicitors LLP

Chartered Institute of Housing – Housing Brighton 2022



## What will we be looking at?

- Building Safety Bill – Building Safety Act: Time Line and Next Steps
- Housing Management Considerations
- Cladding, Fire Safety Defects and Service Charges
- Defective Premises Act – More Claims?
- What is on the horizon?

## Building Safety Bill 2020 – Building Safety Act 2022

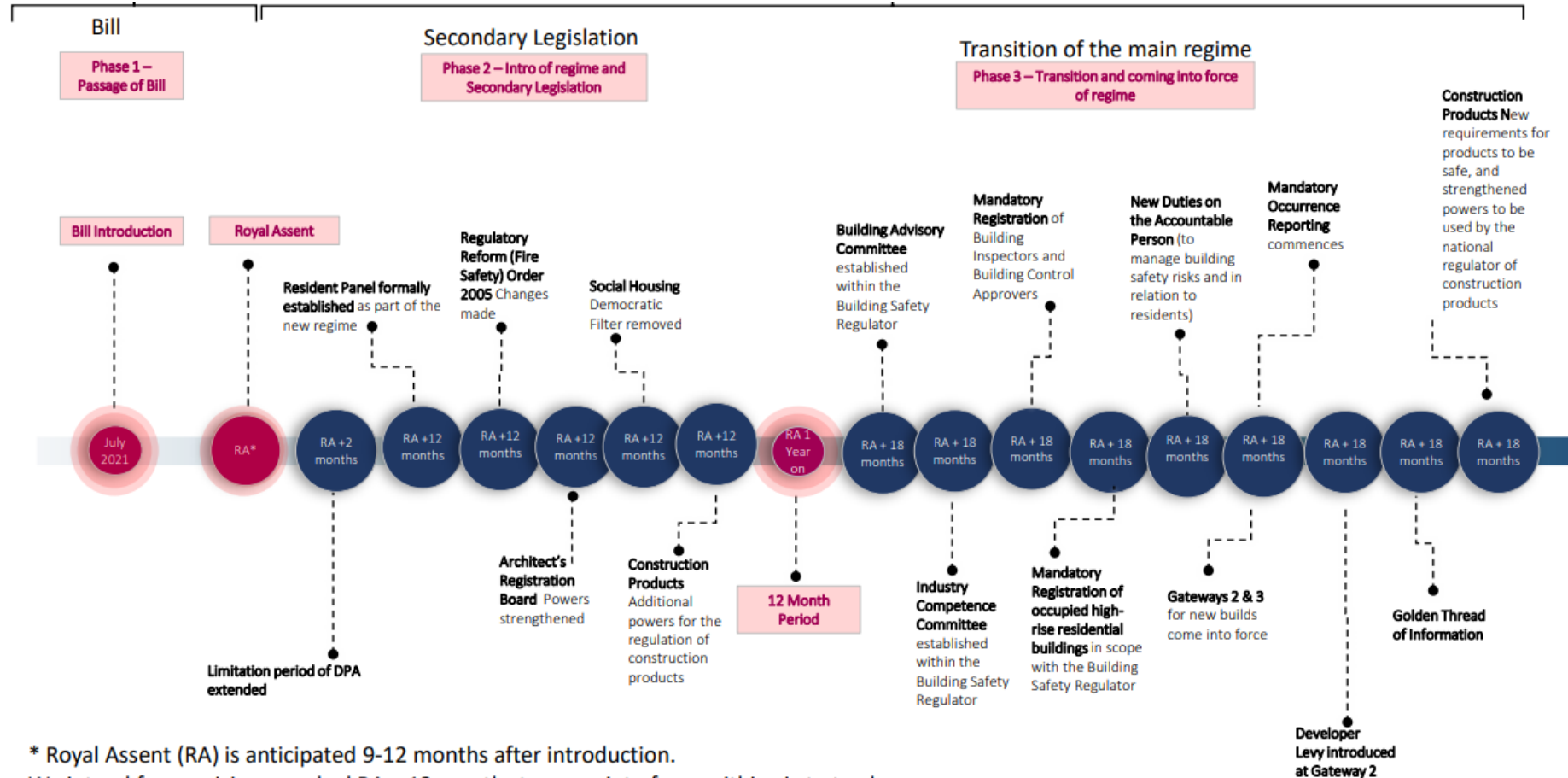
- How did we get here?
  - Grenfell Tower Tragedy – 14 June 2017
  - Hackitt Independent Review – 17 May 2018
- Draft Building Safety Bill – 20 July 2020
- Building Safety Bill – 5 July 2021
- Building Safety Act 2022 – 28 April 2022

## Building Safety Act 2022 – Next Steps

- Final Version?
- Transition plan:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/999356/Timeline\\_for\\_Transition\\_Plan.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/999356/Timeline_for_Transition_Plan.pdf)





\* Royal Assent (RA) is anticipated 9-12 months after introduction.  
 We intend for provisions marked RA + 12 months to come into force within six to twelve months of Royal Assent.  
 We intend for provisions marked RA + 18 months to come into force within twelve to eighteen months of Royal Assent.

## Building Safety Bill & Transition

## Housing Management Considerations

- Resident Engagement Strategies;
- Residents' Duties; and
- Access Obligations.

## Resident Engagement Strategies

The provisions relating to resident engagement appear at section 90 of the Act and provide as follows:

- The principal accountable person ('PAP') for an occupied higher-risk building must prepare a resident engagement strategy ('RES');
- The primary function of the RES is to promote participation of residents in making building safety decisions;
- A building safety decision is a decision by an Accountable Person ('AP') about the management of the building and which is in connection with the duties of an AP under the Act.

## Resident Engagement Strategies

The RES must include information about:

- The information which will be provided to residents about decisions relating to the management of the building;
- When residents can be expect to be consulted about those decisions;
- Arrangements for consultation and obtaining views from residents;
- Means for measuring and keeping under review appropriateness of methods used by the AP.

Once produced, a copy of the RES must be given to each resident aged 16 or over (where the AP is aware of the resident and has taken all reasonable steps to be aware of the residents in the building), each owner of a residential unit and any other prescribed person.

## Resident Engagement Strategies

- The Secretary of State may make regulations about the content of a RES and the way in which an RES is to be given to residents.
- Sections 91 - 93 do not directly relate to the RES but might be usefully and properly included in an effective RES. They provide for:
  - The right of residents to request prescribed information from an AP;
  - The PAP must establish a complaints system to deal with complaints relating to building safety risks or compliance of any AP with their duties.
- The SoS can issue Regulations in connection with the establishment and operation of complaints systems which may take into account:
  - How to make a complaint;
  - Timescales for dealing with complaints;
  - When a complaint must be referred to the Building Safety Regulator.

## Residents' Duties

- Section 94 - residents (or owners) of higher-risk buildings over the age of 16 must:
  - not act in a way that creates a significant risk of a building safety risk materialising;
  - not interfere with a relevant safety item. A 'relevant safety item' means anything in the common parts of a building that is intended to improve the safety of anyone in the building; and;
  - Comply with a request from an appropriate AP to provide information reasonably required for the 'Appropriate Accountable Person' to perform their duties to carry out an assessment of building safety risks and take steps to reduce those risks.

## Access

- Section 96 – access to premises
- Upon an application by an AP, the County Court may make an order:
  - Requiring the resident or owner of a premises to allow the AP, or a person authorised by them, enter the premises at a reasonable time on a specified date or within a specified period; and
  - May, if it appears to the court necessary, permit the taking of measurements, photographs, recordings or samples.

## Cladding, Fire Safety Defects and Service Charges

- Wholesale changes to the draft legislation and removal of the 'Building Safety Charge';
- Cladding – no leaseholder (with a qualifying lease) living in a building more than 11 metres tall (or 5 storeys or more) will have to pay anything for remediating unsafe cladding;
- A lease is a “qualifying lease” if:
  - (a) it is a long lease (21 years plus) of a single dwelling in a relevant building,
  - (b) the tenant under the lease is liable to pay a service charge,
  - (c) the lease was granted before 14 February 2022, and
  - (d) at the beginning of 14 February 2022 (“the qualifying time”):
    - (i) the dwelling was a relevant tenant’s only or principal home;
    - (ii) a relevant tenant did not own any other dwelling in the United Kingdom, or;
    - (iii) a relevant tenant owned no more than two dwellings in the United Kingdom apart from their interest under the lease.



## Cladding, Fire Safety Defects and Service Charges

- Fire Safety Defects – a ‘relevant defect’ in relation to a building, means a defect that:
  - arises as a result of anything done (or not done), or anything used (or not used), in connection with relevant works (includes anything done (or not done) in the provision of professional services in connection with such works), and
  - causes a building safety risk.
- “Relevant works” means:
  - works relating to the construction or conversion of the building, if the construction or conversion was completed in the relevant period;
  - works undertaken or commissioned by or on behalf of a relevant landlord or management company, if the works were completed in the relevant period;
  - works undertaken after the end of the relevant period to remedy a relevant defect

## Cladding, Fire Safety Defects and Service Charges

- “The relevant period” means the period of 30 years ending with the time this section comes into force.
- “Building Safety Risk”, in relation to a building, means a risk to the safety of people in or about the building arising from:
  - the spread of fire, or
  - the collapse of the building or any part of it;
- “Conversion” means the conversion of the building for use (wholly or partly) for residential purposes.

## Cladding, Fire Safety Defects and Service Charges

- No leaseholder (with a qualifying lease) living in a building more than 11 metres tall (or 5 storeys or more) will have to pay a service charge if the relevant landlord is responsible for the relevant defect or associated with the person responsible for the relevant defect.
- A person is “responsible for” a relevant defect if:
  - in the case of an initial defect, the person was, or was in a joint venture with, the developer or undertook or commissioned works relating to the defect;
  - in any other case, the person undertook or commissioned works relating to the defect.

“developer” means a person who undertook or commissioned the construction or conversion of the building (or part of the building) with a view to granting or disposing of interests in the building or parts of it.

Note definition of ‘associated’ – wide application.

## Cladding, Fire Safety Defects and Service Charges

- Property value caps?
- No service charge if the landlord meets the contribution condition. The contribution condition is where the landlord group's net worth was more than  $N \times £2,000,000$ . Net worth to be determined by regulations made by the SoS. **Note exceptions: RPs, LA or other prescribed persons.**
- Otherwise service charges can not be more than £15,000 in Greater London or £10,000 elsewhere to remediate non-cladding defects i.e. fire safety defects. Spread over 10 years. No service charges in relation to legal or other professional services relating to the liability (or potential liability). Includes service charges paid in the last 5 years.
- A higher limit of up to £50,000 for properties worth between £1 million and £2 million. A higher limit of £100,000 for properties worth more than £2 million. Shared Ownership Leases – value of qualifying lease only if less than 100%.

## Defective Premises Act 1972

- Extended scope and limitation periods for claims under the Defective Premises Act 1972 and the Building Act 1984, Section 38. From 6 years to 30 years (mid 1992) for retrospective claims and 15 years for prospective claims, including refurbishments. Expected by late June 2022.
- Will not impact on any claim already settled or finally determined.
- More claims?
- When does limitation start?

## What is on the horizon?

- Transition Plan. From April 2023 higher risk buildings in scope should be registered with the Building Safety Regulator. The new safety management requirements should apply from October 2023.
- Secondary Legislation Phase
- Increase in Claims?
- Building Safety Fund, Developer Levy, PAS 9980
- Political Climate – further protection for leaseholders?

Questions?

Lee Russell - [lee.russell@devonshires.co.uk](mailto:lee.russell@devonshires.co.uk)



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**LONDON**

30 Finsbury Circus  
London  
EC2M 7DT

**LEEDS**

Park House, Park Square  
West  
Leeds  
LS1 2PW

**COLCHESTER**

The Octagon, Middleborough  
Colchester  
CO1 1TG

[www.devonshires.com](http://www.devonshires.com) | [info@devonshires.co.uk](mailto:info@devonshires.co.uk) |  | 

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