

Real estate quarterly update - October to December 2020

Read more about our latest real estate update aimed at in house lawyers (and other professionals) practising in the property / real estate sector.

04 January 2021

Cases

Pullman Foods Ltd v The Welsh Ministers and another [2020] EWHC 2521 (TCC)

A tenant was in breach of a yielding-up covenant by failing to remove asbestos from a site.

[Read our case update](#)

Capitol Park Leeds Plc v Global Radio Services Ltd [2020] EWHC 2750 (Ch)

A tenant who handed back an empty shell of a building had not complied with a condition of its break option to give vacant possession of the property.

[Read our case update](#)

The Alexander Devine Children's Cancer Trust v Housing Solutions Ltd [2020] UKSC 45

The Upper Tribunal was wrong to allow restrictive covenants to be modified where a development was deliberately and cynically carried out in breach of those covenants.

[Read our case update](#)

Sara & Hossein Asset Holding Ltd v Blacks Outdoor Retail Ltd [2020] EWCA Civ 1521

A landlord's service charge certificate was conclusive as to the sums payable by a tenant under a lease.

[Read our case update](#)

Legislation

Restrictions on forfeiture, use of Commercial Rent Arrears Recovery (CRAR) and winding-up companies

The temporary restriction on a landlord forfeiting a business tenancy for non-payment of rent or any other sum due under a lease (in section 82 of the Coronavirus Act 2020) has been extended again until 31 March 2021. The temporary restrictions on serving a statutory demand and presenting a winding-up petition in the Corporate Insolvency and Governance Act 2020 have also been similarly extended.

In addition, the temporary restriction on the use by a landlord of CRAR has also been extended again until 31 March 2021, with the minimum net unpaid rent that must be outstanding before CRAR may take place (under the Taking Control of Goods Regulations 2013) now standing at 366 days (in normal circumstances, this is only 7 days).

The government has indicated that these extensions are the 'final' ones to give landlords and tenants three months to come to an agreement on unpaid rent.

The government has also announced that a review of commercial landlord and tenant legislation will be launched early in the new year and will consider a broad range of issues including Part II of the Landlord & Tenant Act 1954, different models of rent payment and the impact of Coronavirus on the market.

Welsh Land Transaction Tax (LTT)

Some changes to the rates of LTT took effect on 22 December 2020.

The higher residential rates of LTT (payable when a buyer already owns one or more residential property) increased by 1% across all bands.

For non-residential properties, the zero-rate band charged for lease premiums and assignments and freehold property transfers increased from £150,000 to £225,000. The zero-rate band charged on the rent element of non-residential leases also increased from £150,000 to £225,000.

Details of all LTT rates can be viewed from [here](#).

Consultation and guidance

Improving the Energy Performance of Privately Rented Homes in England and Wales

This consultation on improving the energy performance of privately-rented homes was launched by the Department for Business, Energy & Industrial Strategy and runs until 8 January 2021.

Chapter one of the consultation outlines the government's preferred policies. They are as follows:

1. Raise the minimum energy performance standard (in the Minimum Energy Efficiency Standard (MEES) Regulations) to an Energy Performance Certificate (EPC) energy efficiency rating of C for new tenancies by 1 April 2025 and for all tenancies by 1 April 2028 (currently this is E).
2. Increase the maximum amount that landlords of sub-standard homes are required to invest to improve the energy performance of their properties to £10,000 (currently this is £3,500).
3. Introduce a 'fabric first' approach to energy performance improvements. This means that the fabric efficiency of a building is improved before heat and electricity generation.

Chapter two of the consultation considers a more stretching alternative proposal which would require landlords to demonstrate that their property meets a dual target of an EPC energy efficiency rating of C (a cost metric) and an environmental impact rating of C (a carbon metric), with an increased cost cap of £15,000. At present, the environmental impact rating is included on an EPC, but the rating is provided for information only.

Chapter three seeks views on encouraging compliance with the MEES Regulations, strengthening enforcement options and amending the existing exemptions framework (for example, increasing the maximum fine a local authority may impose on a landlord for each property and for each breach of the MEES Regulations from £5,000 to £30,000).

A copy of the consultation can be viewed from [here](#).

Supporting housing delivery and public service infrastructure

This consultation was launched by the Ministry of Housing, Communities & Local Government and runs until 28 January 2021.

Amongst other things, it proposes the introduction of a new permitted development right covering a change of use from the new broad use class E (commercial, business and service use) to use class C3 (residential). This new permitted development right will be subject to a number of limitations and conditions. In particular:

1. Only property which was in use class E on 1 September 2020 would benefit from the right.
2. The right would not apply (amongst other things) to sites of special scientific interest, areas of outstanding natural beauty, National Parks, listed buildings (and land within their curtilage), sites that are or contain scheduled monuments, safety hazard or military explosives storage areas and sites subject to an agricultural tenancy. It would, however, apply in conservation areas.
3. Prior approval of certain issues and impacts would be required (e.g. flooding, transport, contamination, impact of noise from existing commercial premises on the intended residential occupiers, the provision of adequate natural light in all habitable rooms, fire safety and the impact on the intended residential occupiers from the introduction of residential use in an area considered to be important for heavy industry and waste management).

A copy of the consultation can be viewed from [here](#).

How to rent: the checklist for renting in England

The Ministry of Housing, Communities & Local Government published a new version of this guide on 10 December 2020.

Landlords under assured shorthold tenancies (ASTs) cannot serve a notice seeking possession under section 21 of the Housing Act 1988 unless they have provided a copy of the current version of this guide to their tenants. Landlords granting ASTs on or after 10 December 2020 must therefore ensure that they supply this latest version of this guide to their tenants.

A copy of the latest version of this guide can be viewed from [here](#).

Land Registry

Cancellation of applications

At the start of the pandemic, the Land Registry paused the cancellation of applications with outstanding requisitions. However, it has resumed sending letters giving four weeks' notice of cancellation from 16 November 2020. Not all reminder letters will be sent out at the same time (the Land Registry will deal first with older applications).

Encouraging digital identity checking in conveyancing

The Land Registry launched a consultation on this which closed on 11 December 2020.

The Land Registry is looking to implement its own industry standard for identity checking for conveyancers using biometric and cryptographic technology. This will consist of a set of requirements known collectively as the 'Safe Harbour Standard' (SHS). Conveyancers who follow the SHS will be regarded by the Land Registry as having discharged their duty to verify the identity of a party to a registrable transaction. This means that whilst compliance with the SHS will not be compulsory, conveyancers who have complied will have the comfort of knowing that they will not be pursued by the Land Registry if a fraudulent transaction is wrongly registered because identity checks were inadequate.

A copy of the Land Registry's blog introducing this project can be viewed from [here](#). The blog in turn has a link to the Land Registry's draft set of requirements.

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