

Property quarterly update - October to December 2018

The latest property quarterly update aimed at in house lawyers (and other professionals) practising in the property / real estate sector.

08 January 2019

Cases

S Franes Ltd v The Cavendish Hotel (London) Ltd [2018] UKSC 62

A landlord who would only carry out works if its tenant did not leave voluntarily could not rely on ground (f) of section 30(1) of the Landlord and Tenant Act 1954 to defeat the tenant's application for a new lease.

[Read our case update](#)

Regency Villas Title Ltd and others v Diamond Resorts (Europe) Ltd and others [2018] UKSC 57

Rights to use sporting and recreational facilities are capable of taking effect as an easement.

[Read our case update](#)

Duval v 11-13 Randolph Crescent Ltd [2018] EWCA Civ 2298

A landlord breached an obligation to enforce lease covenants by licensing a flat tenant to carry out alterations despite an absolute prohibition.

[Read our case update](#)

Reiner and another v Triplark Ltd [2018] EWCA Civ 2151

A tenant breached a covenant against parting with possession by transferring a lease without consent even though the transfer was not registered at the Land Registry.

[Read our case update](#)

Cantt Pak Ltd v Pak Southern China Property Investment Ltd [2018] EWHC 2564 (Ch)

A seller had been ready, willing and able to complete when it served a notice to complete on its buyer, even though the property was not yet vacant.

[Read our case update](#)

The Alexander Devine Children's Cancer Trust v Millgate Developments Ltd and another [2018] EWCA Civ 2679

The Court of Appeal refused to modify restrictive covenants where a development was knowingly carried out in breach of the covenants.

[Read our case update](#)

Legislation, consultation and guidance

Implementing reforms to the leasehold system in England

This consultation was launched by the Ministry of Housing, Communities & Local Government and follows on from the government's announcement in December 2017 that it will tackle unfair practices in the leasehold market by prohibiting new residential long leases from being granted on houses and restricting ground rents to a nominal amount. This new consultation sets out how the government intends to make the changes and how it should implement the reforms.

The consultation seeks views on four main areas as follows:

1. Implementing the ban on the use of leasehold in new build houses

Once the ban is in force, the government proposes that it will apply both to the grant of leases out of freehold land and to the grant of leases out of leasehold land acquired on or after 22 December 2017 (the day after the government first announced its proposals). It will also apply to assignments of leasehold land, if a house has been developed on the land after the ban comes into force.

Three main exemptions to the ban are envisaged - shared ownership properties, community-led housing and inalienable National Trust sites and Crown land.

The government proposes that the Land Registry should check for any breach of the ban on an application for first registration of a long lease of a house (and on an application for first registration of a long lease with a ground rent in excess of the cap – see below) and, if there is a breach, a buyer should be entitled to have the freehold transferred with minimum cost and disruption.

2. Implementing the reduction of future ground rents to a nominal financial value

The government proposes capping ground rents at £10 per annum and that any lease provision that permits a ground rent in excess of the cap will be void. In addition, a lease must specify when the annual rent is payable and not less than 28 days' notice must be given when the rent is demanded (and no notice can demand rent payable in a previous year).

Various exemptions to the cap are proposed – in particular, shared ownership properties, community-led housing and retirement properties (where a buyer will have a choice of paying a higher price with the rent cap or a lower price with no cap).

The intention is for the cap to start three months after the relevant legislation comes into force.

3. Implementing measures to ensure that service charges that freeholders must pay are fairer and more transparent

The government proposes a regime for freeholders which provides that maintenance charges must be reasonably incurred and that services must be provided to a reasonable standard. In addition, freeholders should be able to challenge the reasonableness of service charges in the First-tier Tribunal.

4. Implementing measures to improve how leasehold properties are sold

The government intends to set fixed timescales and maximum fees for managing agents and freeholders to provide leasehold information.

The consultation ran until 26 November 2018.

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

Amendments to the Electronic Communications Code (the Code)

This consultation was launched by the Department for Digital, Culture, Media & Sport and is aimed at making it easier for electronic communications operators to install or upgrade equipment for the benefit of tenants.

Currently, an operator needs to obtain a formal agreement from a tenant's landlord to enter a property and install equipment. However, operators have reported that many landlords are not responding to requests for access. Operators can obtain rights of entry by applying to the Lands Chamber of the Upper Tribunal, but they are reluctant to do this because of the time it can take and because they want to maintain good relationships with landlords. The government proposes to amend the Code to oblige landlords to facilitate the deployment of digital infrastructure on their properties where a tenant has made a request for service and an operator has notified the relevant landlord. If a landlord fails to comply with this obligation, operators would be allowed to apply to magistrates' courts to gain entry to install or upgrade equipment. The consultation ran until 21 December

2018. A copy of the consultation can be viewed from [here](#)

Response to consultation to amend the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (the MEES Regulations) in relation to domestic properties

The Department for Business, Energy and Industrial Strategy has responded to its initial consultation which ran from December 2017 to March 2018. This consultation proposed to remove the 'no cost to the landlord principle' and replace it with a capped landlord's financial contribution.

The government has confirmed that the MEES Regulations in relation to domestic properties will be amended as soon as possible as follows:

1. The 'no cost to the landlord principle' will be replaced with a capped landlord's financial contribution of £3,500 inclusive of VAT (the initial consultation proposed £2,500).
2. Any investments made by landlords in energy efficiency since October 2017 will count within the cap.
3. Any available third-party funding (e.g. Green Deal finance and local authority grant funding) will count within the cap.
4. A new 'high cost' exemption from MEES will be brought in where a substandard property cannot be improved to an E rating for £3,500 or less (this will require the submission of three installer quotes to register the exemption).
5. Any existing 'no cost to the landlord' exemptions registered since October 2017 will end on 1 April 2020 (when MEES will apply to all existing leases of domestic properties).
6. The current exemption which applies where a tenant refuses to consent to a Green Deal finance plan will be removed.

A copy of the government's response to the consultation can be viewed from [here](#).

Reinvigorating commonhold: the alternative to leasehold ownership

Having been previously asked by the government to propose reforms to reinvigorate commonhold as a workable alternative to leasehold, the Law Commission has published a consultation paper on the subject.

The paper includes proposals which would (amongst many other things):

- enable commonhold to be used for mixed residential and commercial developments;
- allow shared ownership leases and other forms of affordable housing to be included within a commonhold development;
- make it easier for existing leaseholders to convert to commonhold; and
- replace service charges set by a landlord with commonhold contributions which must be approved by a majority of the payees.

The consultation runs until 10 March 2019.

A copy of the consultation paper (running to a mere 461 pages) can be downloaded from [here](#) (where a summary can also be downloaded).

Land Registry

Improved guidance on variations in names

This guidance includes a variations in names flowchart where the names of individuals (not companies) on deeds lodged for registration (or on those deeds and on the register) do not match. It helps you decide if further action is required and, if so, the evidence that you need to lodge to account for any variations. The guidance also covers how to apply to update the name of the registered proprietor (including the authorisation needed if you do not act for the registered proprietor).

A copy of the guidance can be viewed from [here](#) (where the variations in names flowchart can be downloaded).

Miscellaneous

International Financial Reporting Standard 16

This comes in on 1 January 2019 and significantly changes lease accounting for tenants. For the first time, all operating lease liabilities (except for those leases with a term of less than 12 months) will have to be shown on a tenant's balance sheet.

Going forwards, this could significantly change standard practice in the market. Possible changes include shorter lease terms, increased use of index-lined rent reviews (which provide greater certainty than traditional open market reviews), increased use of turnover rents (which are not included as rental liabilities on balance sheets under the new rules), longer rent-free periods and discounted rental periods (instead of capital contributions from the landlords) and increased use of licences and serviced office accommodation.

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