

Leasehold
Freehold

KEY CHANGES – LEASEHOLD AND FREEHOLD REFORM ACT 2024

The Leasehold and Freehold Reform Act 2024 ("**Act**") aims to improve fairness for leaseholders. These changes are significant, varied and affect a range of stakeholders. The main provisions are highlighted in this article.

INTRODUCTION

On 24 May 2024, the Act received Royal Assent after being forced through during Parliament's 'wash-up' period. It aims to improve fairness by addressing issues such as disproportionate costs and a lack of transparency associated with leaseholds. It also includes important amendments to the Building Safety Act 2022 ("**BSA**"), some of which will come into force on 24 July 2024*. With a new Labour government, further reform may be on the horizon.

For our clients and various stakeholders your rights and obligations are changing. For example, the repeal of the 'corporate contribution shield' (see Point 3 overleaf) may increase scrutiny into the financial position of the landlord company's group. Separately, due to the widespread nature of the changes, developers, property managers and insolvency practitioners should also aim to be acutely aware of the amendments.

If you have any queries, please do not hesitate to reach out to a member of the Clifford Chance Real Estate Litigation team or your usual Clifford Chance contact.

AMENDMENTS TO THE BSA

The BSA was passed following the Grenfell Tower tragedy and represents a landmark step for improving building safety in England (our full briefing can be found [here](#)). However, following criticism of the BSA, the Act will make certain changes, in particular, to Part 5. These are summarised below:

1. Expanded Powers of the First Tier Tribunal ("FTT")

The First Tier Tribunal ("FTT") will have the authority not only to order landlords to remedy relevant defects but also to take "*relevant steps*" to prevent or mitigate the risks associated with fire or collapse of the building and to prevent or reduce harm to individuals. This broadens the scope of the FTT's powers and could result in landlords, including property developers, being required to undertake additional preventative measures. This may increase their costs and responsibilities.

2. Clarification of Remediation Contribution Orders ("RCO")

Key issues

- Significant reform under the Act affecting leaseholders and freeholders across England and Wales.
- The Act will amend the BSA.
- The Act will also make key changes to the leasehold regime which affects, amongst other things, collective enfranchisement, lease extensions, the right to manage and related costs.

The FTT has the authority to issue a RCO, which mandates a designated individual to contribute towards the expenses of remedying a relevant defect in the building. The amendments will introduce a non-exhaustive list of costs that can be included in an RCO to encompass actions taken to address a relevant defect. Additionally, the Secretary of State has been granted the authority to determine any additional costs that may be subject to a RCO.

3. Repeal of Corporate Contribution Shield*

Under the BSA, in instances where a landlord company is subject to winding up proceedings, an insolvency practitioner may apply to the Court for an order requiring an associated body or partnership to contribute to the landlord company's assets. This would be to cover payments necessary for addressing the costs of rectifying relevant defects. However, this provision is set to be repealed, removing the automatic obligation for associated entities to contribute to such costs in the event of the landlord company's insolvency.

4. New Obligations of Insolvency Practitioners*

The Act introduces a provision aimed at enhancing awareness when a responsible entity for a building considered high-risk or "*relevant*" becomes insolvent. Within 14 days of their appointment, the insolvency practitioner must pass the "*required information*" to the local authority and fire and rescue authority for the relevant area. In cases where the insolvency concerns an entity accountable for a high-risk building, this information must also be shared with the Building Safety Regulator.

5. Recoverable Service Charges*

The BSA specifies that service charges under a qualifying lease for legal or other professional services arising from a relevant defect are not payable. However, the Act amends this such that management companies can recover these costs in so far as they relate to an application or potential application for a RCO. Although, this cost is only recoverable where the qualifying lease permits this and has no retrospective effect.

GENERAL REFORM UNDER THE ACT

The extent of leasehold ownership in the UK is vast. At the end of 2023, the Department for Levelling Up, Housing and Communities estimated there are around 4.98 million leasehold properties in England which equates to 1/5th of the English housing stock. Notwithstanding this, there are many problems associated with leaseholds. These include, but are not limited to, high services charges, a general lack of transparency and disproportionate costs to extend the lease or buy the freehold.

As a result, the Act makes a range of other important amendments to implement commitments in the [2017 housing white paper](#) to "*improve consumer choice and fairness in leasehold*". All stakeholders (including landlords, tenants, managers, developers and surveyors) ought to be aware of the key changes which are summarised below:

- The Act will abolish the two-year ownership requirement for flat leaseholders wishing to extend their lease. This will also enable leaseholders of a house to extend their lease or purchase their freehold immediately upon acquiring the lease.
- Leaseholders will no longer have to wait 12-months before bringing a new collective enfranchisement or lease extension claim where their previous claim fails.
- Leaseholders cannot collectively enfranchise if more than 25% of the floor space in their building (excluding the common parts) is used for non-residential purposes. This threshold will be increased to 50%, therefore broadening the scope of those who can enfranchise.
- The Right to Manage allows leaseholders to take over the management of the building without buying the freehold. The 'non-residential' threshold here will also be increased from 25% to 50%.
- Statutory lease extensions for both houses and flats will be for a term of 990 years, in addition to the unexpired term of the previous lease at a peppercorn ground rent (as opposed to 90 years for a flat and 50 years for a house). Any extension will be in consideration for a premium set by a new valuation scheme (which will also apply to collective enfranchisement). Importantly, marriage value will be removed, this being the hypothetical profit a leaseholder makes once their lease is extended (i.e., the value of the lease before and after the lease extension).
- Leaseholders are currently required to pay certain non-litigation costs (such as valuation fees) incurred by the landlord when responding to an enfranchisement or extension claim. This has been heavily criticised and may lead to leaseholders accepting terms they may otherwise reject. In the Act, a new costs regime will be established whereby each party bears their own costs.
- Service charges are a highly contentious issue. There are general complaints about these being excessive and lacking transparency. To rectify this, the Act would require a landlord to provide information relating to service charges in a prescribed form. A leaseholder would also have a new right to request such information from the landlord or the relevant third-party. This will help leaseholders scrutinise and better challenge costs if they are considered unreasonable.
- Insurance costs are also passed onto to leaseholders and since the Grenfell Tower tragedy, there has been a significant increase in premiums for multi-occupancy buildings. The Act will prevent certain insurance costs from being passed on and create a new right to claim damages through the Tribunal where unpermitted costs have been charged.

If you would like to discuss the implications of the Act or broader real estate law issues, please contact one of the Real Estate Litigation Team or your usual Clifford Chance contact.

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