

The big picture

Emma Gosling sets out the timeline on leasehold reform and the government's latest proposals



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The Office for National Statistics (ONS) recently reported that the number of new houses sold as leasehold has fallen sharply amid political pressure surrounding abuses linked to tenure arrangements. Only 4.2% of all newly built houses sold in 2018 in England and Wales were leasehold, down from 13.3% in 2017.

It can be inferred from these statistics that the real estate sector is becoming increasingly focused upon the ongoing political drive to reform the traditional leasehold system in England and Wales.

The term 'leasehold reform' is most commonly being used to refer to the Law Commission's current proposals to rework the enfranchisement and commonhold legislation. In reality, the proposed changes have been around for much longer and go even deeper into the leasehold system than might first be apparent.

The reform agenda can be traced back to the leasehold mis-selling scandal in 2017 which prompted significant media attention. It emerged that developers in the North West had been selling leasehold homes with onerous ground rents and significant fees attached, which left many homeowners trapped in homes they couldn't sell or afford to live in.

Leasehold reform: a timeline

February 2017

The government's Housing White Paper 'Fixing our broken housing market' is published, highlighting its aim to improve consumer choice and fairness in the leasehold sector.

The Secretary of State for Communities and Local Government states:

... as a government committed to building a fairer society, I don't see how we can look the other way while these practically feudal practices persist.

July 2017

The government publishes a consultation document to seek views on the most pressing areas for reform, namely leasehold houses and ground rents, and seeks views on additional priority areas for future reform.

December 2017

The Department for Communities and Local Government publishes the government's response to the consultation, entitled 'Tackling unfair practices in the leasehold market'.

This includes a range of suggested measures such as introducing legislation to prohibit the sale of new-build leasehold houses; restricting ground rents in newly established leases of houses and flats to a peppercorn (zero financial value); and support for existing leaseholders, such as making buying a freehold or extending a lease easier, faster, fairer and cheaper.

The government also asks the Law Commission to look at leasehold legislation as part of its 13th Programme of Law Reform, which includes consultation on:

- leasehold enfranchisement;
- the right to manage; and
- commonhold, as an alternative form of ownership to residential leasehold.

July 2018

The government publishes a consultation paper entitled 'Overcoming the barriers to longer tenancies in the private rented sector'. The paper notes the following measures are being introduced, namely:

- banning letting fees to tenants and capping tenancy deposits to ensure that tenants

have more money in their pockets;

- insisting that all landlords are members of a redress scheme so that tenants have quick and easy resolution to disputes; and
- ensuring all letting agents are registered and are members of a client money protection scheme to provide assurance to tenants and landlords that their agent is meeting minimum standards.

However, it also notes that:

... the change in size and make up of the private rented sector has led to growing need for longer, more secure tenancies than the minimum six months offered by the assured shorthold tenancy regime.

The government accordingly launches a consultation seeking views on longer tenancies in the private rented sector, which proposed a new, three-year tenancy model.

October 2018

The government publishes a further technical consultation, 'Implementing reforms to the leasehold system in England', asking for views on the detail of the implementation of its proposals, including consideration of circumstances where exemptions may be necessary.

The consultation also outlines measures to improve how leasehold properties are bought and sold, and seeks to promote fairness for freeholders with proposals to ensure that the charges that freeholders may pay towards the maintenance of communal areas are fairer and more transparent.

September 2018 to January 2019

The Law Commission publishes its consultations entitled:

- 'Leasehold home ownership: buying your freehold or extending your lease' – September 2018
- 'Reinvigorating commonhold: the alternative to leasehold ownership' – December 2018
- 'Leasehold home ownership: exercising the right to manage' – January 2019

It further states that it may undertake a project examining the way in which unfair terms law applies to long leases, although no commencement date has yet been set.

March 2019

The Housing Select Committee, appointed by the House of Commons to examine the expenditure, administration and policy of the Ministry of Housing, publishes its report on leasehold reform.

The Select Committee confirms that its mandate was to build on the Law Commission's programme and find out whether the government's proposed reforms went far enough. Ultimately it recommends that the government should 'ensure that commonhold becomes the primary model of ownership of flats in England and Wales, as it is in many other countries'.

It also recommends that the government should immediately take up the Law Commission's 2006 proposals to reform forfeiture, to give leaseholders greater confidence in disputing large bills by reducing the threat of losing a substantial asset to the freeholder.

April 2019

The government publishes its response to the 'Overcoming the Barriers to Longer Tenancies in the Private Rented Sector' consultation and announces that for assured shorthold tenancies it:

... will introduce a generational change to the law that governs private renting. This government will put an end to "no-fault" evictions by repealing Section 21 of the Housing Act 1988.

It identifies it will be important to find a balance between giving tenants greater security while ensuring landlords are able to recover their property if needed:

We do not want to discourage investment in the sector or affect the supply of good quality rental accommodation.

Therefore, to ensure landlords have confidence they will be able to end tenancies where they have legitimate reason to do so, it is stated that:

... we will also strengthen the Section 8 possession process, so property owners are able to regain their home should they wish to sell it or move into it.

These will be in addition to the existing grounds which allow landlords to evict tenants who don't pay the rent or commit anti-social behaviour.

June/July 2019

The government publishes two reports, one with its response to the Select Committee report on leasehold reform, and the other summarising its response to the technical consultation launched in October 2018 on 'Implementing reforms to the leasehold system in England'.

It confirms that it will bring forward reforms to:

- ensure that leasehold is only used for flatted developments in the future, by banning the granting of new leases on houses other than in exceptional circumstances;
- ensure that consumers only pay for the services they receive, and that people's homes are theirs to live in and enjoy, not designed as an income stream for third party investors, by restricting ground rents on newly established leases to a peppercorn (zero financial value);
- ensure that there is a greater choice of tenure for consumers and support for leaseholders who want to buy their freehold or have greater control of the management of their property, by working with the Law Commission to look at ways to reinvigorate commonhold and improve the process for buying a freehold or extending a lease, or exercising the Right to Manage;
- ensure that service charges and other charges are fair, information provided to home owners or prospective buyers is transparent and communicated effectively and property agents are up to scratch, by reviewing charges faced by both leaseholders and freeholders and professionalising and regulating property agents; and
- ensure that there is a clear route to challenge or redress if things go wrong, by clamping down on unjustified legal costs for leaseholders, ensuring all landlord freeholders belong to a redress scheme and giving freeholders on private or mixed-use estates

equivalent rights to leaseholders to challenge communal costs.

In its response to the Select Committee the government also confirms that it will introduce measures to:

- give clearer information to consumers on how to buy and sell leasehold properties;
- work with developers on a standardised 'key features' document so consumers have clear details on the lease before they buy;
- ensure the Law Commission is able to fully consider the application of unfair terms;
- update planning guidance to state there should be clear and transparent agreement between developers and local authorities on public areas and utilities to be adopted; and
- explore legal changes to forfeiture by asking the Law Commission to update their work on forfeiture.

21 July 2019

On 21 July 2019, the government publishes a further consultation: 'A New Deal for Renting: Resetting the balance of rights and responsibilities between landlords and tenants' (see www.legalease.co.uk/new-deal).

This consultation confirms that, at the same time as repealing s21 of the Housing Act 1988, the government proposes to remove the entire assured shorthold tenancy (AST) regime. This means that in future, the default position will be that a tenancy is a periodic assured tenancy unless the landlord and tenant have agreed a fixed term in writing.

A tenant under an assured tenancy may not be evicted unless the landlord can provide grounds (under Sch 2 of the Housing Act 1988) or where a break clause has been agreed between the landlord and the tenant.

With regards to the length of future tenancies, the government is also seeking views on whether there should be a minimum term for fixed-term tenancies and whether the parties' use of break clauses should be restricted.

The government recognises that landlords may have a legitimate reason

for obtaining possession where the tenant is not at fault, if they want to sell the property with vacant possession, or they (or a member of their family) want to move in. It is therefore proposed the grounds under Sch 2 of the 1988 Act are extended to include:

- amending Ground 1 to allow a landlord to gain possession if a family member wishes to use the property as their home and to removing the requirement for a landlord (or their spouse or civil partner) to have lived in the property previously.
- a new mandatory ground to allow a landlord to obtain possession for the purposes of selling the property with vacant possession.

Both these grounds would require a landlord to supply adequate evidence of the relevant intention. The government recognises that the level of proof will be critical to the successful use of these grounds and to ensure that they are not open to abuse. It is stated that it will continue to work with the sector and members of the judiciary to determine what a reasonable requirement would be.

The consultation also seeks views on restructuring Ground 8 (rent arrears) to allow a quicker outcome, to balance the needs of the parties and to make it easier for landlords to seek possession following anti-social behaviour.

It is proposed that any new legislation that comes into force will not be retrospective. The government proposes a six-month transitional period, to allow landlords time to prepare.

The report indicates that the government intends to carry over the protections introduced by the Deregulation Act 2015 and the Tenant Fees Act 2019 into the new regime, as they currently only apply to ASTs. However, it has not detailed how these requirements will coincide with the grounds for possession and whether a landlord who has not complied with one of the statutory requirements will be prevented from obtaining possession even where the tenant is at fault.

The consultation closes on 12 October 2019.

What's next?

Having carried out a comprehensive consultation the government has

identified that leasehold reform is highly complex. The current enfranchisement regime alone is the product of 50 Acts of Parliament totalling over 450 pages of legislation, and as the recent report states:

It is important that we get the detail right. Careful attention is required as these necessary reforms could have implications for many current as well as future homeowners. We also need to ensure that changes made do not have an adverse impact upon the development of much needed new housing supply.

Following the various consultations closing, the next anticipated stage will be the preparation of draft legislation to effect the government's proposed reforms. The Law Commission will also publish its final reports, and assist with the implementation of its recommendations later this year.

A private member's bill, the Ground Rents (Leasehold Properties) Bill, was introduced to Parliament on 25 June 2019 and proposes that property developers should be made liable for the legal costs of leaseholders seeking to vary certain ground rent contracts. However, the bill is at a very early stage, there is no draft as yet and the statement to Parliament is limited. It remains to be seen whether sufficient parliamentary time will be dedicated to the bill – this will depend upon the level of government support.

Landlords in the private rented sector will also be concerned that the proposed abolition of ASTs will essentially amount to a return to the kind of security of tenure which has not been available since before the introduction of the Housing Acts in the 1980s and 90s. Both landlords and tenants alike would be well advised to respond to the ongoing consultation so that their views are heard.

What is clear is that the process of reform will be a long one, and it is unlikely that any of the proposed changes, to ground rents in particular, will be applied retrospectively. In the meantime, the government is encouraging freeholders and developers to sign a 'public pledge for leaseholders' to commit to certain actions to help existing leaseholders with onerous ground rent terms. It remains to be seen whether the market will adopt such measures voluntarily. ■