

## **The Leasehold Reform (Ground Rent) Act 2022**

The Leasehold Reform (Ground Rent) Act will come into force on 30<sup>th</sup> June 2022.

The Act will apply to all residential properties and the only exemption from commencement will be retirement properties where the government have confirmed that the Act's provisions will come into force 1<sup>st</sup> April 2023.

The Act will apply to leasehold properties in England and Wales. It will restrict ground rent owed on new leases to a 'peppercorn' rent – i.e. nil/ zero.

This note summarises some of the Act's key provisions.

### **There will be no ground rent for brand new leases (e.g. new builds)**

Once in force the Act will effectively ban ground rent for **all** brand-new leases – So any lease of a newly built flat or house will have to be at a zero rent.

The Act also contains deeming provisions such that even if a new lease is drafted with a ground rent during what is called the 'prohibited period' (essentially, the extended term of any new lease) that the rent will be deemed to be zero, even if the lease says otherwise.

### **So, when can a lease have a ground rent? Only on renewal by agreement – and then only during the old lease term**

Section 6 of the Act permits a new lease that is granted by way of renewal or extension on a voluntary basis to keep a ground rent but then only during the old lease term and at the old rent.

This will have a big impact on those freeholders who like to keep a ground rent on any voluntary extension of a new lease. All that will be permitted now is to keep the old ground rent (whatever this was) until the date on which the old lease term would have expired after that the rent must revert to zero.

There are also provisions in place that mean that any attempt to collect a sum equivalent to the ground rent by the 'back door' will not work. For instance it will not be permissible to charge an administration fee to collect a peppercorn ground rent.

### **What does this mean in practice?**

To give an example: if a lease has a term of 99 years from 1980 and expires 2079, then if a deal is done to extend that lease by another 100 years so that it runs out in 2179, then the new lease can keep the old ground rent (whatever that was) until 2079, but after that any new rent must be zero.

In addition, the old rent cannot be increased and must remain exactly as it was under the old lease.

### **What about other extensions?**

Any extension under statute will be at a zero rent in any event, as this is what the 1993 Act prescribes and the Act makes plain that this type of extension is a 'permitted extension.'

There are exemptions for 'rent to buy' type arrangements – (these are where a long lease is granted to the property owner and the rent is used to pay off the acquisition cost over time). 'Shared ownership' leases are also exempt. Under shared ownership leases the rent tenant's ownership proportion of any rent under a long lease must be at a zero rent but that the landlord / housing provider may charge whatever rent they would normally charge in respect of the remaining 'rental' element.

### **What if a landlord doesn't comply?**

The act is specific that the Local Authority Weights and Measures department has responsibility for enforcement and that fines can be imposed. The minimum fine is £500 and the maximum £30,000.

In addition, if a ground rent is collected when it shouldn't be once the act is in force, then the rent must be repaid to the leaseholder with interest. An example would be if a new lease is erroneously granted with a rent provision in the extended lease term – or, at a rent that exceeds the old rent.

### **What does all this mean?**

The writing really is on the wall for ground rent and after 30<sup>th</sup> June 2022.

### **Commentary**

The Act is a big step forward towards the government's proposed agenda for change in this area.

Ending ground rent for newly built leasehold flats has come about because of the ills of the so-called 'leasehold scandal,' where doubling of ground rents on newly created leases led to an iniquitous situation for homeowners who had been sold leasehold houses. The resulting pressure and lobbying accelerated the pace of change in this area.

The 2002 Act does not deal with the banning of the use leasehold on an 'unnecessary' basis as a tenure for houses, as was originally promised by the then housing minister Sajid Javid. That question together with the prospect of wider reform is still 'in discussion' and we can expect to hear more from government on this in due course.

This is of course all part of a wider programme to make leasehold unattractive for new properties and eventually, perhaps to pave the way for the use of commonhold for new properties.

Although the new law will abolish ground rents on new build leases and during any extended lease term, it does not affect existing leaseholders.

Leaseholders who face high ground rents and want to get rid of them will still need to follow the statutory leasehold enfranchisement process.

We look forward to seeing what the further detail of the government's plans are going to be on the topic of broader leasehold reform, a much more detailed and bigger project. This is still very much in consultation with DLUHC.

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