Boodle Hatfield.

Boodle Hatfield Property Insights

December 2024

In this Update we look at the recent Government update on leasehold reform, the new provisions for the auction of empty high street premises, the Terrorism (Protection of Premises) Bill, the Renters' Rights Bill, key issues relating to building safety and the SDLT increases for residential property outlined in the Autumn budget.

Enfranchisement & Leasehold reform

Over the course of the last few years, we have published several bulletins on the subject of the Government's intended reform of leasehold legislation (and, in particular, in relation to enfranchisement) and the (slow) progress made in that initiative.

The latest development in the process came on 21 November, when the Government issued a ministerial statement. Once again the Government confirmed its commitment to press ahead and implement the provisions contained in the Leasehold and Freehold Reform Act 2024 ("the 2024 Act") "as quickly as possible" and to take further steps to introduce commonhold as an alternative form of tenure to the current leasehold tenure, and yet, once again (possibly more than ever), the effect is that uncertainty prevails, and interested parties, and those representing them, are left in a state of limbo.

What we do know is that in January 2025, the Government will bring into force the part of the 2024 Act which abolishes the requirement that a tenant making an enfranchisement claim must have owned its property for at least two years. There is also a firmer commitment from the Government when it comes to changes to Right to Manage claims, with it stating that in Spring 2025, it will bring into force the provisions enabling greater access to such claims, and the voting rights and costs associated with them.

Beyond these measures, there is little by way of any concrete timetable and (in a statement that is likely to prompt hearts on all sides to sink, in light of the number of consultations to date) the Government has said it will be undertaking consultations on several of the provisions in the 2024 Act. The subject matter of those consultations is to include provisions relating to legal costs payable, service charge issues such as buildings insurance costs being included in service charge demands, and, in advance of secondary legislation, on rates applicable to the valuation of enfranchisement claims.

What is particularly telling is that the statement not only refers to the need for consultation and secondary legislation (suggesting that the legislation is, therefore, some distance from coming into force), but it mentions "serious flaws" which the Government has identified within the 2024 Act which require rectification by way of primary legislation. The statement does not make clear what aspects are flawed, save that these include "the valuation process".

The statement then turns to the question of commonhold, with a repeated commitment from the Government to seek to introduce it as a system to (eventually) replace leasehold, but this time with the announcement of its intention to introduce a White Paper in early 2025, and a new draft Leasehold and Commonhold Reform Bill later in the year. The stated aim is to deliver commonhold as the default tenure in place of leasehold by the end of this Parliament, through working with all interested parties in the industry, again with the promise of a further consultation process.

Finally, there is a nod towards the aforementioned Bill also tackling other issues in the leasehold system, such as the forfeiture of leases, the section 20 notice procedure required when undertaking major works, and to the Government seeking to introduce the regulation of managing agents.

We continue to receive very clear signals from the Government that it will be moving forward with reform in this area, but it remains uncertain when that will come to fruition, save that this latest statement suggests that the delay might be counted in years, rather than months.

Simon Kerrigan, Property Partner

High Street Rental Auctions

"We are giving local councils the tools to take back control. High Street Rental Auctions will put local communities first, re-energising town centres and driving local opportunities and growth." **Local Growth Minister Alex Norris.**

New powers will be introduced from 2 December 2024 giving local authorities the power to auction the lease of vacant high street and town centre commercial premises without the need to first obtain the consent of the owner and / or any mortgagee. The relevant provisions are set out in Part 10 of the Levelling Up and Regeneration Act 2023 and the Local Authorities (Rental Auctions) (England) and Town and Country Planning (General Permitted Development) (Amendment) Regulations 2024 ("the Regulations").

The provisions will apply to commercial premises located in town centre areas deemed to be important to the local economy and considered suitable for high street use so as to benefit the local economy, society or environment and designated as such by the local authority in a "designation proposal".

- A local authority may serve an initial notice on the landlord of empty premises (and those with an interest in the property such as a mortgagee and superior landlord) if the premises are in a designated street or area, are vacant and have been vacant for the previous year up to the notice date or have been vacant for 366 days in the previous two years. The initial notice may be followed by a final letting notice after which, if no counter notice is lodged by the landlord, the local authority may arrange for a rental auction of the premises. The landlord cannot let the premises during these notice periods without the consent of the local authority.
- The detailed steps for the auction process are set out in the Regulations. As a preliminary step, the local authority must carry out a survey of the vacant premises and prepare a schedule of any works required to meet the minimum standard for occupation and use. Any such works must be completed by the landlord before the grant of any lease pursuant to the auction process.
- The local authority is responsible for obtaining the relevant conveyancing searches and the preparation of the rental agreement and lease. The lease will be based on standard form documents set out in the Regulations and may propose a term of between 1 and 5 years with provision for a rent deposit and excluding statutory renewal rights. The landlord may make representations as to the form of the lease and must co-operate including providing replies to standard pre-contract enquiries and other title information.
- At the end of the marketing period the landlord will be required to select the successful bid (bidders will be able to specify their own rental offer as part of their bid). If the landlord does not make a selection, the decision will fall to the local authority who may elect not to accept any bid, or if accepting a bid, must accept the bid with the highest rent (unless it is not practicable to contract with the bidder for some reason).
- The landlord must enter into the lease with the successful bidder tenant on the agreed terms. The local authority may grant the lease if the landlord fails to do so, and the consent of any mortgagee and / or superior landlord (if required) will be deemed to have been given.

Whilst the Regulations undoubtedly give local authorities considerable new powers, landlords should perhaps not be unduly alarmed. In order for the powers to be exercised, the local authority must proactively designate the relevant high street or area and serve the requisite notices which require evidence that the strict vacancy criteria have been satisfied. It therefore remains to be seen if local authorities will, in fact, have the appetite and resources to opt to implement these provisions.

David Rawlence, Property Partner

Renters' Rights Bill

The Renters' Reform Bill introduced by the previous government did not make the statute book before the pre-election dissolution of Parliament. The new government introduced a new Renters' Rights Bill in September which, whilst broadly setting out similar provisions for change, has the potential to impact significantly on the residential property sector and unlike the leasehold reforms mentioned above, the Renters' Rights Bill is currently making swift progress through the legislative process and likely to come into force Summer 2025.

Notably, and unlike the previous Bill, the reforms will not be delayed to allow the court system time to expand its capacity to deal with the likely increase in possession claims and there will be no transitionary period allowing existing residential tenancies to run their course under the current regime.

- **Periodic tenancies:** Once fully in force, all assured shorthold tenancies, including those already in place, will become periodic tenancies allowing tenants the ability to stay in occupation until such time as they decide to end the tenancy on the tenant giving their landlord at least two months' notice.
- **Abolition of s21 notices:** The abolition of the current "no fault" s21 regime allowing landlords to bring a tenancy to an end on two months' notice after the expiry of the initial six months of the tenancy will mean landlords will instead have to satisfy one of the statutory mandatory or discretionary reasons for possession and, where disputed, s8 court proceedings will be required to regain possession.
- **Grounds for possession:** The existing s8 mandatory and discretionary criteria will be revised to include (among other revisions) a new mandatory ground allowing possession on 4 months' notice where the landlord intends to sell the property or allow the property to be occupied by a close family member, but the period of arrears required to trigger the mandatory ground for possession will rise from 2 months arrears to 3 months.
- **Rent increases:** Landlords will be able to increase rents just once each year to the market rent by serving a section 13 notice. Contractually agreed rent review clauses, including those in existing tenancy agreements, will be of no effect.
- **Registration:** All landlords of assured and regulated tenancies will be required to register themselves and their properties on a new private rented sector database.
- **Pets**: Landlords will be required to act reasonably when considering whether to consent to a request for a tenant to have a pet in their home.

The advantage of the proposed single date for implementation is that it will avoid the disruption and confusion that would perhaps have been inevitable if a two-tier strategy had been implemented as envisaged by the original Bill. However, the disadvantage for landlords is that tenancy agreements in place today, on terms agreed by all parties, including the soon to be prohibited stepped rents, rent review, fixed terms and / or options to break will, if still in place at the implementation date, migrate to the new regime without the previously agreed contractual terms.

The net effect of these changes will mean that, once in force, it will be considerably harder for landlords to end a periodic tenancy unless the landlord intends to sell the property or there is a significant and consistent default on the part of the tenant and possession proceedings will inevitably take longer as a result of having to engage with the s8 court procedure with an anticipated increase in such proceedings potentially causing additional delay.

For more information see:

- What might the Renters' Rights Bill mean for landlords of existing Assured Shorthold Tenancies?
- What does the new Renters' Rights Bill mean for residential landlords?

Colin Young, Property Litigation Partner

Martyn's Law

The Terrorism (Protection of Premises) Bill (also known as "Martyn's Law" in tribute to Martyn Hett who was killed alongside 21 others in the 2017 Manchester Arena attack) was included in the King's Speech in July as part of the new Government's programme of legislation and has now completed the committee stage.

The Bill is intended to better protect the public from terrorism and requires those responsible for "qualifying premises" or a "qualifying event" at publicly accessible venues, such as shops, nightclubs and visitor attractions, to take necessary but proportionate steps to reduce the

threat to the public from a terrorist attack. This comprises a tiered approach, linked to the size of the venue, how many people are in attendance and the event taking place.

- A **standard tier** will apply where the premises and events have a capacity of more than 100 and less than 800 people. These businesses will be asked to undertake activities to put in place procedures to reduce harm to the public in the event of an attack. These could be as simple as training staff to lock doors, close shutters and identify a safe route to cover.
- An **enhanced tier** will apply to premises and events with a capacity of more than 800 individuals, given the devastating impact an attack could have in these spaces. These locations will need to put in place measures such as CCTV or hiring security staff.

The provisions outlined above are intended to promote best practice and will require additional consideration and checks on the part of the responsible person and may impact on existing commercial relationships such as the covenants and service charge provisions in a commercial lease. The information available to date suggests that businesses will be given time and support to understand and implement their new obligations and for the new regulator to be established. This will include dedicated guidance so that those affected will have the required information on what to do and how best to do it.

Kate Symons, Real Estate Senior Associate

Building Safety

Alterations to an existing high-rise building

While there is widespread awareness of the requirement for Building Safety Regulator sign-off before the construction of new high-rise building, property professionals and lay clients alike may be unaware that alterations made to existing HRBs (such as refurbishment works to an existing flat in an HRB) also require BSR approval.

A HRB is a building with more than two residential units that has at least 7 storeys or is at least 18 meters high. Applicants must approach the BSR for approval before making alterations to a HRB and starting work without this approval is a criminal offence. Applicants must demonstrate that the proposed alterations will comply with all relevant building regulations and that they will be adequately managed during construction. As at 30 June 2024, the BSR had agreed 271 extensions of time and refused a staggering 260 applications on the basis of administrative and substantive shortcomings.

The message here is clear: the need for BSR approval should be borne in mind from the outset of a refurbishment project, as failure to provide adequate detail could result in significant delays. Applications to the BSR, even for minor works, require careful consideration and onboarding legal expertise in the early stages of your project is key to ensuring compliance with this complex but important regime. Where refurbishment projects involve multiple parties, it is critical that they collaborate fully with each other to produce a comprehensive application.

Identifying storeys in a higher-risk building

The Government is reviewing its guidance on the classification of storeys in a HRB under the Building Safety Act 2022 following a decision of the First-tier Tribunal (Smoke House & Curing House) where a roof garden was deemed to be a storey (applying the HRB Regulations) despite it being an open rooftop and not fully enclosed (and therefore falling outside of what constitutes a storey as set out in Government guidance). Decisions of this nature will of course be of particular significance where the inclusion, or otherwise, of a roof terrace or similar area may be the deciding factor when determining whether the building is a HRB.

Glossary and Building Safety Hub

With the increasing complexity of legislation and changes surrounding the Building Safety Act, our team of experts has set out a series of resources, including two glossaries to the key terms used when navigating the regulations, obligations and impacts of building safety in high-rise residential buildings. We also share regular legal developments surrounding building safety and offer insights on the emerging issues that could impact property owners which can be accessed below.

- Building Safety
- What does it mean? A guide to key terms in the Building Safety Act
- A leaseholder guide to key terms in the Building Safety Act

Sarah Rock, Construction Partner

Stamp Duty Land Tax

The Autumn 2024 budget was the first to be delivered by the new Chancellor, Rachel Reeves. Whilst the SDLT rates to be applied on the purchase of commercial property remain unchanged, the Budget included a significant increase to the rate of SDLT payable by individuals buying an "additional dwelling" and companies or other "non-natural persons" buying residential property.

- The additional dwelling SDLT surcharge payable by individuals on the purchase of an additional dwelling has unexpectedly increased from 3% to 5% and is payable in addition to the standard stepped rates of SDLT. Where the current 2% non-resident surcharge is also applicable, a top rate of 19% will be payable on the proportion of the transfer value over £1,500,000 (see table below).
- The flat rate of SDLT payable by a company or other "non-natural person" on the purchase of a high value dwelling has increased from 15% to 17%. Where the 2% non-resident surcharge is also payable, a flat top rate of 19% will be payable on the whole of the transfer value.
- Lower down the scale, the temporary increase in the nil rate band for residential transactions introduced in 2023 will disappear from 1 April 2025, reviving the 2% rate of SDLT on the band from £125,000 to £250,000 (applying an additional 2% to each of the current rates stated below).

Perhaps surprisingly, the manifesto commitment to increase the non-resident surcharge from 2% to 3% was not included in the Budget but may well be implemented at a later date.

The changes outlined above affect residential property transactions only. Rates of SDLT on non-residential property and mixed-use property are unchanged, with a top rate of 5% on consideration over £250,000. As a result, the gulf between SDLT charged on residential land compared to non-residential land becomes ever wider.

SDLT Rates from 31 October 2024 – transfer to individuals

Property transfer value	UK Resident	Non UK Resident	UK Resident (additional dwelling)	Non UK Resident (additional dwelling)
Up to £250,000	0% *(2% post April 2025)*	2% *(4% post April 2025)*	5% *(7% post April 2025)*	7% *(9% post April 2025)*
The next £675,000 *(the portion from £250,001 to £925,000)*	5%	7%	10%	12%
The next £575,000 *(the portion from £925,001 to £1,500,000)*	10%	12%	15%	17%
The remaining amount *(the portion over £1,500,000)*	12%	14%	17%	19%

For more information about the tax changes in the 2024 autumn budget affecting owners of UK land, see https://www.boodlehatfield.com/articles/business-and-property-taxation/

Saskia Arthur, Residential Property Partner

Boodle Hatfield
Property Insights

This document is intended to provide a first point of reference for current developments in aspects of the law. It should not be relied on as a substitute for professional advice. If advice on a particular circumstance is required please contact your Boodle Hatfield lawyer.

Andrew Wilmot-Smith
Partner and Head of Property
+44 (0)20 7079 8138
awilmotsmith@boodlehatfield.com

Boodle Hatfield LLP

240 Blackfriars Road, London, SE1 8NW, DX 53 Chancery Lane
+44 (0)20 7629 7411 | bh@boodlehatfield.com | www.boodlehatfield.com

© Boodle Hatfield LLP 2024. Boodle Hatfield is not authorised under the Financial Services and Markets Act 2000 but we are able in certain circumstances to offer a limited range of investment services under the supervision of and regulation by the Solicitors Regulation Authority. We can provide these investment services if they are an incidental part of the professional services we have been engaged to provide.