

In the UK, ground rent leases have traditionally been seen as a good investment, as they represent sustainable returns over the long term. For this reason, portfolios (which bring together large numbers of this sort of lease, often running into many hundreds of properties) have been attractive assets for investors in real estate.

However, an issue that has governed the leasehold landscape in England and Wales for some years causing uncertainty in the market has finally been put to bed with the Leasehold Reform (Ground Rent) Act 2022 (Act). The “fleecehold” scandal that has dominated property headlines centred primarily on ground rents: payments made under a long lease for which the tenant has already paid a premium where the landlord provides nothing in return. However, in recent times, developers have imposed increasingly high, and escalating, ground rents, resulting in homes becoming unsaleable and unmortgageable. The government has stepped in with the Act, securing a fairer deal for tenants. For investors, however, there are likely to be significant implications.

Key points:

- The rent chargeable on most new long residential leases (leases exceeding 21 years) is limited to one peppercorn per year (and no more – even a nominal rent, however modest, falls foul of the Act).
- The restrictions apply to long leases of single dwellings granted for a premium (a premium is any pecuniary consideration).
- No administration fee can be charged for collection of peppercorn rents. Landlords cannot, therefore, make up for the lack of ground rent by charging a large administration fee for collecting a peppercorn.
- The rules will not come into force in relation to retirement homes (homes for occupants aged 55 and above) until 1 April 2023.

What Is a “Long Residential Lease” for the Purposes of the Act?

Leases regulated by the Act are:

- Leases granted for more than 21 years
- Of a single dwelling (being a building or part of a building occupied as a single dwelling)
- Granted for a premium (excluding rent)



Is It in Force?

The Act came into force on 30 June 2022 in relation to most new long residential leases, with retirement homes leases being the immediate exception.

What About Retirement Homes?

Provisions relating to retirement homes will not come into force before 1 April 2023 to allow the sector time to transition to the new requirements.

What Constitutes a Retirement Home Lease?

Any lease that requires the occupant to have reached age 55 and above.

Is the Act Retrospective?

Although the Act is not retrospective, the Competition and Markets Authority (CMA) is running an ongoing investigation into unfair practices in relation to ground rents. Many developers have come under scrutiny, forcing them to vary existing leases to [remove escalating ground rent clauses](#).

Are There Any Exceptions?

The following are excepted from the restrictions:

- Business leases
- Statutory lease extensions of houses and flats
- Community housing leases
- Home finance plan leases



Just the Beginning?

This is likely to be only the first step in a much longer journey towards further changes in leasehold arrangements that disadvantage tenants. The government is anticipated to implement more wide-ranging leasehold reforms to make it easier for tenants to enfranchise, extend their leases or buy themselves out of ground rent obligations.

Implications for Investors?

It must be said that existing ground rent portfolios based on historical charging principles should remain safe investments. Portfolios that include leaseholds providing for escalating or very high ground rents are susceptible to investigation by the CMA, and potentially vulnerable to removal of offending clauses. Investors should also be alive to the implications of predicted future legislation, where they may see a fall in value of anticipated freehold purchases based on enfranchisement. A cautious approach to any arrangement that disadvantages tenants in the ways anticipated by future legislation would be prudent.

Key Takeaways

Avoid any investment proposition that allows for:

- Charging ground rents above a peppercorn in new long residential leases
- Making administration charges for the collection of any ground rent that is restricted to a peppercorn by virtue of the Act

The ongoing scrutiny by the CMA is likely to mean that any provisions that run contrary to the new legislation may well be picked over.

Contact



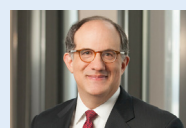
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