

Legal points of interest for developers for 2022

Generally

This section provides a high level overview of selected legal developments relevant to all developers.

National Security and Investment Act



The National Security and Investment Act sets out a new regime which strengthens the Government's powers to intervene in, and screen, transactions (including the acquisition of land or an entity that owns land) that give rise to a national security risk. Parties can, or, in certain circumstances, may have to, notify qualifying acquisitions for clearance. The Secretary of State will also be able to call-in a transaction. Transactions which are subsequently found to pose a national security risk and do not have clearance risk being unwound.

Planning



The Government has said it will be issuing a "final response" to the planning white paper in early 2022 with legislation to follow. The focus is expected to shift to the "levelling-up" viewpoint with support for key themes such as net-zero and certain elements favoured such as street-based neighbourhood planning. A renewed drive on encouraging building on brownfield sites is also expected.

Building Safety Bill



The Building Safety Bill and draft regulations set out new competency requirements which those involved with the design and construction of buildings in England will be expected to comply with. The Bill also overhauls the way in which the building control regime in England is run and regulated. There will be changes to the way building regulation approval is sought and obtained and revised sanctions for non-compliance. The Bill is likely to receive Royal Assent this year – possibly in the autumn – following which various aspects will come into force in stages.

Biodiversity net-gain



The Environment Act has introduced a new general condition to all planning permissions in England, which requires that a biodiversity gain plan must be submitted and approved before development can commence.

A mandatory biodiversity net gain of at least 10% will be required on new developments.

ESG



Environmental, social and governance (ESG) considerations continued to gain traction in the real estate sector in 2021. This trend will doubtless continue in 2022. Environmental considerations continue to be the main focus, particularly in light of COP26 and the publication of the Net Zero Strategy and the Heat and Buildings Strategy by the Government. New RICS valuation guidance, published in November 2021, will also keep the focus on environmental issues.

Construction documents



A new suite of JCT contracts may be published in 2022 and the Court of Appeal will hopefully provide guidance on whether claims for breach of collateral warranties can be adjudicated.

Conservation covenants



The Environment Act introduced the concept of conservation covenants which provide for the conservation of natural environment and heritage assets for the public good. Although voluntary to enter into, once agreed they can bind subsequent owners of the land so have the potential to deliver long-lasting conservation benefits.

Building regulation changes



Government plans to tackle climate change include the Future Buildings Standard and the Future Homes Standard. Changes to Parts F (ventilation) and L (conservation of fuel and power) and the associated Approved Documents will be coming into force on 15 June as an interim step in implementing those plans. New requirements regarding the provision of charging points for electric vehicles (and new Part S) will also come into force on 15 June. The changes will not apply where works are notified to building control before 15 June and work is started before 15 June 2023.

CE markings



Following Brexit a transitional period allowed products placed on the UK market to continue to bear CE marking until and including 31 December 2021. That transitional period has been extended for a further 12 months. After 31 December 2022 goods, materials and products will need to be assessed in accordance with UK standards and bear the new UK markings.

The residential sector

In addition to those set out above the following developments will be of interest to those involved in the residential sector.

Fire Safety Act



The Fire Safety Act requires fire risk assessments for buildings which include two or more dwellings to include external wall and individual entrance doors. In a statement on 10 January 2022 the Government confirmed it will be brought into force "shortly".

Residential Property Developer Tax



A new 4% tax will apply to the largest residential property developers from 1 April 2022 on profits arising from UK residential property development in accounting periods ending on or after 1 April 2022.

On 10 January 2022 the Government announced it is also seeking to make the "largest" residential property developers responsible for the cost of rectifying historical cladding defects on residential buildings between 11 and 18m. That cost is estimated to be in the region of £4bn.

New Homes Quality Board (NHQB)



From January 2022 developers and house builders should be able to register with the New Homes Quality Board and, once familiar with the new regime run by the NHQB (including the New Homes Quality Code of Practice), will be expected to comply with it. The Code of Practice will need to be included into developers' and house builders' customer charters and in the event of disputes developers and house builders will be expected to engage with the New Homes Ombudsman Service.

Building Safety Bill



As well as the changes on the previous page, the Building Safety Bill sets out significant changes to the way in which residential developments 18m+ need to be carried out and the information which has to be provided to the new regulator as a precondition to occupation. The Bill also extends the limitation period for bringing a claim under the Defective Premises Act, expands the Defective Premises Act to cover refurbishment work and enacts the right to bring a civil claim for breach of the Building Act. The Bill is likely to receive Royal Assent this year – possibly in the autumn – following which various aspects will come into force in stages.

Building regulation changes



As well as the changes on the previous page the building regulations will be updated to cover overheating (new Part O) in new build residential. The changes will come into force on 15 June but, again, will not apply where works are notified to building control before 15 June and work is started before 15 June 2023.

EWS1s



Originally intended for use on residential or mixed used buildings 18m+ their use expanded to buildings below 18m following Government guidance from January 2020. That guidance was withdrawn on 10 January 2022 and the Government is pushing ahead with plans to encourage lenders and valuers to limit their use to buildings 18m+ again.

The Ground Rent (Leasehold Reform) Bill



The Ground Rent (Leasehold Reform) Bill 2021-22, currently making its way through Parliament, should come into force in 2022. It will apply to future long residential leases (21 yrs +) which are granted for a premium (regulated leases) and will prohibit landlords from charging tenants of regulated leases any sum in excess of a peppercorn per annum. As currently drafted, regulated leases granted pursuant to an agreement for lease entered into before the Bill comes into force will not be captured. However, leases granted as a result of options or pre-emption rights that were entered into before commencement of the Bill, will be subject to the rent limits imposed by the Bill.

On a related note, and in anticipation of related legislation, the CMA will continue its investigations into developers who have sold leasehold properties with doubling ground rents which have been criticised as onerous and punitive charges for homeowners.

Commonhold and enfranchisement



The Government has outlined details to spur the uptake of commonhold as a form of tenure in the housing market. This is likely to receive further attention in 2022 since the Government has already established a Commonhold Council to "prepare homeowners and the market for the widespread take-up of commonhold."

The Law Commission has proposed changes to enfranchisement rules. 50% rather than 75% of leases within a building would need to be residential to satisfy one of the conditions for collective enfranchisement. Compulsory leaseback of commercial space and flats of non-participatory occupiers is also proposed. The Law Commission's report contains proposals only and the passage of any legislation through parliament could result in changes to those proposals.

Leasehold Reform



Legislation (in draft form at least) is anticipated in 2022 to bring into effect residential leasehold reform announced by the Government in early 2021. This would bring into effect a right for leaseholders of both houses and flats to extend their lease to a new standard 990 years (maximum) with a zero ground rent and the right to agree to a restriction on future development of their property to avoid paying development value. A cap will also be introduced on the ground rent payable when a leaseholder chooses to either extend their lease or become the freeholder. Marriage value will also be dispensed with in calculating value.

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