COUNTRY COMPARATIVE GUIDES 2023

The Legal 500 Country Comparative Guides

United Kingdom
REAL ESTATE

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This country-specific Q&A provides an overview of real estate laws and regulations applicable in United Kingdom.

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UNITED KINGDOM
REAL ESTATE

1. Overview

The United Kingdom of Great Britain and Northern Ireland (commonly described as the "**UK**") comprises the kingdoms of England, Wales, Scotland and Northern Ireland. England and Wales share the same real estate law and registrations system. Scotland and Northern Ireland have their own real estate law and registrations systems. There are also differences between residential and commercial land law in each jurisdiction. Our answers to the questions in this Guide are limited to the English and Welsh system and focus on commercial properties. However, it should be noted that there are increasing differences between English and Welsh real estate law especially relating to tax and residential properties.

English and Welsh real estate law is a patchwork of:

- practical legislation governing, for example, the registration of real estate at the English and Welsh Land Registry;
- legislation aimed at addressing perceived market abuses and other political or social issues of the day;
- medieval concepts of tenure; and
- complex and often very old case law (i.e. court decisions).

Despite attempts to modernise and consolidate the law, English and Welsh real estate law remains full of seemingly anachronistic rules and many traps for the unwary.

In the last 20 years there has been a governmental drive to ensure that ownership of most of the land and other estate interests (e.g. leases and mortgages) in the UK are registered on a publicly available governmental register. More than 88% of land in England and Wales is now registered at the English and Welsh Land Registry with a target of 100% registration by 2030.

2. What is the main legislation relating to real estate ownership?

Interests in land: Law of Property Act 1925: This act governs the nature of land interests that can be created, deals with third party interests in land and how third party rights, in some cases, can be overridden.

Land Registration: Land Registration Act 2002 and Land Registration Rules 2003: This act and accompanying regulations set out the main legislation for registration of land interests in England and Wales at HM Land Registry.

Land Trusts: Trusts of Land and Appointment of Trustees Act 1996: This act governs the creation of trusts of land and sets out the statutory powers of trustees. These powers can be supplemented by a trust deed. The act also gives the Court power to order the sale of a trust property in certain circumstances.

Commercial leases:

- Landlord and Tenant Act 1927 and Leasehold Property (Repairs) Act 1938: These statutes deal with the right of tenants to carry out improvements to leasehold property and control landlords' rights to enforce tenants' repairing covenants.
- Landlord and Tenant Act 1954: This act gives commercial tenants the right to a new lease at the end of the term of their current lease subject to certain conditions.
- Landlord and Tenant Act 1927, Landlord and Tenant Act 1988 and Landlord and Tenant (Covenants) Act 1995: These acts regulate on what terms tenants (and their guarantors) are released on assignment of their lease. Similarly, they regulate on what terms landlords are released when they sell their interests. The 1927 act also imposes a duty on landlords to act reasonably, in certain circumstances, when considering a tenant's application for consent to assign, underlet or charge its lease.

3. Have any significant new laws which materially impact real estate investors and lenders come into force since December 2022 or are there any major anticipated new laws which are expected to materially impact them in the near future?

Significant New Laws

Register of Overseas Entities

- The Economic Crime (Transparency and Enforcement) Act 2022 introduced requirements that overseas entities (being any entities incorporated outside England, Northern Ireland, Scotland and Wales) acquiring or owning UK land to register with the UK central company registry ("**Companies House**") and disclose their "registrable beneficial owners" on a public register, the Register of Overseas Entities ("**ROE**"). The legislation came into force in two phases with entities holding UK land prior to the initial deadline (but which, in relation to land in England and Wales was acquired since 1 January 1999) brought within the regime on 1 February 2023 as part of the second phase. All overseas entities on the ROE must update their information annually. See Q16 for more details of this new registration and disclosure requirement.

Companies House reform

The Economic Crime and Corporate Transparency Act 2023 was passed in August 2023 and aims to tackle economic crime and improve transparency over corporate entities and limited partnerships. It is to be implemented in stages with the majority of provisions not expected to be implemented until early 2024 due to the need for secondary legislation and updates to Companies House processes. Key provisions include:

- Identity verification requirements for new and existing company directors, persons with significant control ("**PSCs**") and other persons filing documents at Companies House;
- Limits on the use of corporate directors;
- Increased registration and transparency requirements for new and existing limited partnerships; and
- Changes in how to determine the registrable beneficial owner for the purposes of the ROE regime for overseas entities holding property as nominees and trustee beneficial owners.

Building Safety Act 2022

The Building Safety Act 2022 was passed on 28 April 2022. It places an increased focus on building safety and contains a wide range of changes to law covering building safety during design, construction and occupation, the creation of a new regulatory framework for higher-risk buildings of at least 18 m (or 7 storeys) high containing residential units and some related types of building ("**HRBs**"). It also introduces provisions designed to protect leaseholders in buildings at least 11m high or having at least 5 storeys (subject to certain exceptions) from paying exorbitant remediation costs in respect of existing cladding and building safety defects and powers to introduce a new building safety levy (see Q17 for details).

The scope of the new regime is extensive. Some of the detailed implementing regulations and guidance remain to be provided. The new regime not anticipated to be in full force until the end of 2023.

Design and construction phase duties under the HRB regime: HRBs are subject to significant new safety duties during the design and construction phases of a building project and these duties are placed on the client, designers and contractors (dutyholders). These duties apply as from 1 October 2023 with some transitional provisions applying to some projects which are part way through the building control process as at that date.

Occupational phase duties under the HRB regime: Significant new duties are placed on the accountable person, broadly speaking the owner or tenant of the HRB with responsibility for repair of the common parts and structure (there might be more than one accountable person and, if so, one of them is designated principal accountable person). The key duties of the accountable person / principal accountable person include among other duties, registering the building, maintaining and sharing key building safety information, assessing and mitigating safety risks and applying for building safety certification. These duties will apply to all new HRBs which are subject to the design and construction phase duties mentioned above. For existing buildings, duties to register buildings and submit key building information came into force as from 1 October 2023, but other duties will not be brought into effect until a later unspecified date. While accountable persons can delegate tasks, e.g. to agents / building managers, they remain primarily responsible for compliance with building safety duties.

Breaches of key provisions will amount to criminal offences, with the potential for unlimited fines and up to two years imprisonment.

Levelling Up and Regeneration Act (LURA)

The LURA was passed in October 2023 and makes significant reforms in a number of real estate-related areas to implement the Government's 'Levelling up' agenda and increase the rate of residential development. Secondary legislation is expected to give more detail on the proposals, however, key measures in the act include the following:

- High Street Rental Auctions: New powers for local authorities to designate areas with a majority of shops, restaurants, bars, cafes, pubs, community spaces, offices, etc. as 'high streets' or 'town centres' and to hold an auction to find a tenant and grant a lease on behalf of the landlord for a term of 1-5 years where premises in the designated area remain vacant for more than 1 year within the immediately preceding 2 years;
- Land Ownership and Control Data: New powers enabling the collection and publication of information on ownership (including beneficial ownership), contractual control over land (including details of any underlying transaction) or other information required in the interests of national security;
- Planning: New powers to give greater flexibility to amend planning permissions, to allow residents to vote on some developments on residential streets, to extend limitation periods for all planning-related enforcement from 4 to 10 years in England;
- Infrastructure Levy: Powers to establish a new national infrastructure levy to replace community infrastructure levy in England which will be charged upon value of property when sold. Developer contributions under section 106 will be generally abolished except for larger sites (details are to be confirmed in implementing regulations);
- Environment: Replacement of the current environmental impact assessment and strategic environmental assessment processes with a new system of 'Environmental Outcome Reports' which would judge proposals against Government-prescribed outcomes (details are to be confirmed in implementing regulations); and
- Compulsory Purchase processes and compensation: New powers for compulsory purchase orders to be implemented beyond the current three-year period, and changes to the way 'hope value' compensation is calculated in certain cases.

Biodiversity Net Gain

The Environment Act 2021, passed in November 2021, contains powers to implement a Biodiversity Net Gain ("**BNG**") framework in England. Broadly speaking, the BNG framework will require each planning permission for development resulting from a planning application submitted after a date to be specified in January 2024 (delayed from 9 November 2023) to contain a planning condition requiring approval of a biodiversity gain plan before commencement of development. Developments will need to achieve at least a 10% increase in biodiversity above the site's pre-development biodiversity value. Biodiversity value will be measured in biodiversity units using a metric being developed by Natural England.

A developer will need to follow the hierarchy shown below to achieve BNG and acquire sufficient biodiversity units for its development, and its approach will be set out in the biodiversity gain plan:

- Avoid or reduce the development's biodiversity impacts (e.g. through site selection, design and layout)
- Restore and enhance on-site biodiversity
- Create or enhance off-site habitats / purchase associated biodiversity units
- Buy statutory biodiversity credits from the Government

Biodiversity enhancements (whether on-site or off-site) will need to be secured by a planning obligation or a new-style private "conservation covenant" over the land, and maintained for at least 30 years. The Government has published a template biodiversity gain plan for major development along with developer guidance, but further detailed implementation plans are awaited.

Major Anticipated New Laws

The following section highlights some of the major anticipated new laws based on Government policy announcements and draft legislation.

*Reform of Minimum Energy Efficiency Standards ("**MEES**") and proposed new mandatory Energy Performance-based ratings for offices*

The Government is currently consulting on plans to strengthen the Minimum Energy Efficiency Standard ("**MEES**") to Energy Performance Certificate ("**EPC**") 'C' rating in 2027 and 'B' rating in 2030, with significant changes to the compliance framework and potential obligations on both landlords and tenants. Landlords would need to comply with the standard on the basis of a new 'compliance window' approach which would require an EPC to be presented 2 years before each deadline, and the prohibition on letting under-performing

buildings would then apply to leases (whether new or existing) as from the 2027 or 2030 deadlines as appropriate. In October 2023, the Government suggested that the 2027/2030 dates might be delayed.

The Government is also currently consulting on plans to introduce mandatory in-use energy performance-based ratings for buildings. Initially the Government intended to introduce these ratings for large offices (over 1000Sq m) beginning in 2022/2023. Relevant buildings would not have to comply with MEES requirements but would have to agree with an administrator appropriate energy performance improvement works to bring the property up to equivalent of EPC 'B' rating by 2030 in line with the reformed MEES deadline. In October 2023, the Government paused work on rollout of these ratings.

For a description of the current system of EPCs and MEES, see Q21.

Renters (Reform) Bill

In May 2023, the UK Government published a draft Renters (Reform) Bill which, if enacted, would impact the residential private rented sector. Key features of the draft legislation include:

- Abolition of 'no-fault' evictions with all tenancies becoming periodic and terminable on specified statutory grounds (e.g. persistent arrears and redevelopment);
- Abolition of rent review clauses and the introduction of a new statutory review mechanic based on open market rent;
- Introduction of compulsory landlord registration with an ombudsman scheme and a new property portal.

The bill is currently on hold until a series of improvements are made to the court system to allow it to cope with any increased demand from landlords seeking to reclaim possession of properties.

Leasehold and Freehold Reform Bill

The UK Government announced a new Leasehold and Freehold Reform Bill aimed at improving the rights of individuals owning long leases of residential property. Whilst there is little detail at this stage, we are told that the Bill is to include:

- A ban on the sale of houses by way of leasehold interest save in exceptional circumstances;
- Amendments to make it easier and cheaper for tenants with long residential leases to purchase the freehold interest in their property or to extend the term of their leases; and
- Improvements to the rights of freehold owners on private and mixed tenure estates in respect of estate charges and leaseholders' consumer rights.

Investment Zones

The UK Government has announced proposals for an investment zone programme in specified locations across the UK, based on the freeport scheme. The investment zones are to target five priority sectors including digital and tech, creative industries and life sciences. The proposal is for all investment zones to be agreed by April 2024 and for funding to commence in the 2024-2025 tax year. The proposal was for each investment zone to receive funding of £80m over five years structured through fiscal incentives (for example, SDLT relief) and direct spending. In the 2023 Autumn Statement, the UK Government extended the duration of investment zones from five years to ten years.

4. How is ownership of real estate proved?

As mentioned above, there are three different land registration systems in UK, the English and Welsh system, the Scottish system and the Northern Irish system. Our answers to the questions in this Guide are limited to land situated in England and Wales.

Land in England and Wales is a mix of registered land (which is registered on a publicly available government register) and unregistered land. The vast majority of land is now registered. Most of the unregistered land is owned by historic estates or governmental bodies. Unregistered land must be registered at HM Land Registry in certain circumstances such as if it is sold or charged. It is therefore uncommon to come across unregistered land in commercial transactions. For this reason we have limited our answers to the questions in this Guide to registered land.

Proof of legal title to registered land is by reference to the register, however, the register does not specify beneficial ownership (see Q15 below). The register is an electronic register, which lists, in particular, the registered owner/s, all registered encumbrances (e.g. mortgages and leases) and rights and includes a plan showing the extent of the registered land. Each registered interest (see Q6 below) is given a unique title number. An official copy of the register for each title number can be obtained online for a small administrative fee. In broad terms, the register is definitive although in some circumstances it can be subject to "rectification" to deal with matters such as errors and fraud.

Compensation is potentially payable by HM Land Registry in the cases where there are errors in the register.

5. Are there any restrictions on who can own real estate?

No, save in the case of minors and incapacitated persons. In the case of registered land, where the land is owned by multiple people or entities, HM Land Registry will only register a maximum of four people or entities as the registered owners. Those registered owners will hold the legal title in the land on trust for all of the beneficial owners. The Register of Overseas Entities requires overseas entities acquiring certain interests in UK land to register on the Register of Overseas Entities held by the UK Company Registry to become the legal owner of that interest (see Q16 for more details).

6. What types of proprietary interests in real estate can be created?

There are three main proprietary interests:

- *Freehold*: where the owner owns the property in perpetuity. A freehold most commonly includes the land, the soil below and airspace above the surface of the land and any building on that land, but parties are free to agree other arrangements (for example a freehold could include only land and airspace within certain defined limits, or could just be of airspace or just of land),
- *Commonhold*: where a building is split into a number of units. The common parts of the building are owned in perpetuity by a commonhold association. The owner owns a unit in perpetuity (rather like a freehold interest) and is a member of the association. Though commonhold interests were introduced in 2004 and were intended for use with apartment blocks, few such interests have been created. Most apartments are instead owned through leasehold interests (see below). In 2020, the Law Commission of England and Wales recommended changes to the commonhold regime with a view to encouraging its wider adoption for apartment blocks. The Government indicated in January 2021 an intention to implement the recommendations and consulted on some of the details for the recommended changes in 2022 but amendments to commonhold were not included in the announcement of the Leasehold and Freehold Reform Bill in 2023.
- *Leasehold*: where the owner (tenant) is granted a lease of an agreed area for a fixed term. There is no minimum or maximum term and the lease can include renewal rights. Leases granted for more than seven years must be registered at HM Land Registry. Subject to the terms of the lease, the tenant of a leasehold interest can, in turn, grant a further lease of all or part of the land/building (for a period less than the term of their lease). This means that chains of subsidiary leasehold interests can be created.

7. Is ownership of real estate and the buildings on it separate?

Generally, no. Buildings (due to the degree and object of their annexation to the land) are treated as part of the land and transfer with it. It is possible to divide real estate interests horizontally (for example, to carve out a specified block of airspace and the buildings structures within it, or the subsoil beneath a specified depth from a transfer of a freehold or the grant of a lease). However, it is unusual (and frequently problematic) to separate ownership of the land and the buildings at the freehold level and where it is necessary to do so, this is typically achieved by creating separate leasehold interests out of the freehold interest.

8. What are common ownership structures for ownership of commercial real estate?

Commercial real estate can be held directly by individuals or through entities, although it is more common for high value commercial assets to be held through specifically created structures, which can be formed outside of England and Wales.

Common ownership structures include:

- limited liability companies;
- offshore property unit trusts; and
- limited partnerships.

Limited liability companies: Limited liability companies, formed specifically for the purpose of holding the real estate in question, have historically been a common holding structure and may be based offshore. Corporate vehicles offer limited liability, which allows investors to ringfence assets and liabilities. They can also be tax efficient, for example selling the shares in a corporate vehicle means that a purchaser should not have to pay stamp duty land tax on the transfer of the property. However, the tax efficiency of corporate holding

structures has been impacted by changes in April 2019 to the UK's rules on the taxation of non-residents' capital gains on UK real estate, which now usually fall within the UK corporation tax net. These rules apply to gains both on direct asset disposals and on certain indirect disposals of interests in entities that are UK-property rich. This can lead to effective double taxation on indirect disposals since the seller will be taxed on its gain at the share level, but may also suffer a price reduction on account of latent capital gains sitting within the vehicle being sold. This has given rise to increased interest in offshore property unit trusts which can be treated as direct-tax transparent (see below) or investing through English corporate structures. Companies within a qualifying group may benefit from an exemption election from tax on capital gains: the rules here are complex.

Offshore property unit trusts: Under these structures, the property is held by trustees (usually two to allow a purchaser to have the comfort of "overreaching" the trust on a sale see Q15) on behalf of investors who hold units in the unit trust. Property unit trusts are commonly formed in Jersey (JPUTs) or Guernsey (GPUTs).

Offshore property unit trusts can have a number of key tax advantages – if the trust document is drafted correctly, and the trust is managed properly, the transfer of units in a property unit trust should not give rise to stamp duty land tax and typically does not give rise to UK stamp duty either. Property unit trusts that were properly created and managed used to be treated as tax transparent for income purposes but tax opaque for capital gains by the UK tax authorities. However, since April 2019, under the UK's approach to taxing capital gains of non-resident investors, a property unit trust defaults to being tax opaque for capital gains purposes, but may in certain circumstances elect to be treated as fully tax transparent for capital gains (i.e. as though it were a partnership), which can make them attractive to tax-exempt investors in particular. The entity must be UK-property rich, transparent for UK income purposes and notify HMRC within the applicable window in order for this transparency election to be available. Property unit trusts are an increasingly popular and tax efficient way of holding UK real estate, albeit the inability of property unit trusts to be a member of an SDLT group means they can cause difficulties if intra-group restructurings are necessary.

Limited partnerships: Limited partnerships are a common holding structure for English and Welsh property, with English, Jersey and Guernsey limited partnerships commonly used. The exact nature of the limited partnerships varies with some having legal personality whilst others (including English limited partnerships) do not. Limited partnerships are typically transparent for most tax purposes (including income and capital regimes) and are therefore a popular structure for tax-exempt investors (although the transparent nature means that transferring interests in a partnership that holds property is normally subject to stamp duty land tax). Limited partnerships are a flexible structure, without many of the rules and restrictions that apply to corporate vehicles.

9. What is the usual legal due diligence process that is undertaken when acquiring commercial real estate?

For asset sales of commercial, registered real estate, the buyer's lawyer will typically:

- review the title documents (i.e. a copy of the Land Register for the property, any land agreements noted on the title and, if the property is leasehold, the lease and other ancillary letting documents);
- where the property is subject to leases, review those leasehold interests (though the extent of this review will depend heavily on the nature of the property and why the buyer is buying the property);
- raise enquiries of the seller using both standard industry forms (known as the Commercial Property Standard Enquires or "**CPSEs**"), which ask about disputes, boundaries etc., and through bespoke enquiries arising from the buyer's lawyer's wider due diligence; and
- raise searches of public bodies, utility providers etc. to ascertain issues arising from the location of the property (e.g. to check that the building has all necessary planning consents).

The buyer's lawyer's due diligence process can take several weeks (particularly as the results of some of the key searches can take a number of weeks to be provided) and is expensive as sellers do not generally give buyers warranties regarding their title, the state of the property or on compliance of laws. In certain cases (such as where the seller is selling complex or numerous properties via a competitive bid process), the seller may decide to instruct its lawyers to prepare a due diligence pack including searches in order to speed up the sale process or to avoid numerous bidders having to carry out the same due diligence.

Where a property is sold by way of a transfer of the entity or structure through which it is held, the process is

typically the same but with additional due diligence in respect of the relevant entity or structure. In transactions of this type, a seller may seek to cap its liability at £1 for breach of warranties (save in the case of fraud) and ask the buyer to obtain warranty and indemnity insurance, who bears the cost of such policy being a matter of commercial negotiation.

Where the purchase of a property is financed by external debt, the lender will usually require a standard industry form of report from a law firm, which is known as the City of London Law Society Certificate of Title ("**CLLS Certificate**"). The CLLS Certificate comprises numerous statements about the property's title, the nature of any occupational leases, statutory compliance and disputes. If a statement is untrue, the firm producing the CLLS Certificate will make an appropriate disclosure. In order to produce a CLLS Certificate, the law firm will have had to carry out the legal due diligence steps mentioned above. In bid scenarios and/or where the title is very complex, the seller's law firm will often produce the CLLS Certificate. In most other cases, the CLLS Certificate is produced by the buyer's law firm.

10. What legal issues (if any) cannot be covered by usual legal due diligence?

There are some land interests that bind a buyer even though the interest is not registered at HM Land Registry. These are known as "overriding interests". Details of these rights are set out in the land registration legislation. Some of these interests may be apparent from inspection e.g. squatters' rights. As lawyers do not generally inspect properties, the buyer will need to satisfy itself on this issue. For overriding interests that are not apparent from inspection, the CPSEs (see Q9 above) will ask about these interests.

In addition, buyers' lawyers do not cover building control, health and safety or environment issues as part of the legal due diligence. Specialist surveyor and experts can be employed to deal with these issues.

11. What is the usual process for transfer of commercial real estate?

Transaction Steps	Seller	Buyer	Comments
Heads of terms ("HoT")	• Prepare and negotiate HoT • Produce sales pack comprising title documents and property information (e.g. if property let, leases, tenant arrears and service charge details) • For leasehold property where landlord's consent required, consider approaching landlord for consent in principle to transfer	• Negotiate HoT • For leasehold property where landlord's consent required, collate relevant information about buyer and any guarantor, such as accounts and references and provide to seller	• HoT not binding save for agreed exclusivity and confidentiality provisions • Sale packs are usually hosted on virtual datarooms • For leasehold property landlord must respond in principle to consent request within reasonable time (usually 4 weeks) assuming all required information on buyer provided. Documenting consent thereafter will take at least 6-8 weeks
Preparation of sale agreement ("Agreement")	• Prepare draft Agreement • Prepare draft property transfer deed • Prepare any ancillary documents (e.g. if property let, assignment of rent arrears and rent deposits and, if property new or recent building, assignment of construction documentation) • Negotiate Agreement • For leasehold property where landlord's consent required, submit application for consent and negotiate form of consent. Where confidentiality is a concern this stage may be delayed till after signing of the Agreement.	• Carry out legal due diligence (see Q9) • Buyer will arrange a valuation and structural survey • Negotiate Agreement and ancillary documents • For leasehold property where landlord's consent required, negotiate form of consent. If consent not obtained before signing, closing of sale will be conditional on obtaining landlord's consent	• No prescribed form of Agreement but industry standard terms • Land Registry prescribed form of transfer deed • For leasehold property where landlord's consent required, the terms of the consent are regulated by a mixture of the provisions of the lease and various statutory provisions. A landlord will typically require its costs to be paid and very often will require the seller to guarantee the buyer's performance of its leasehold obligations under an authorised guarantee agreement ("**AGA**")
Signing to closing	• Satisfy any seller's conditions to closing • Agree redemption statement and arrangements with current lender for discharge of mortgage on closing including execution of Land Registry discharge form • Agree apportionment schedule • Execute transfer deed and ancillary documents • For leasehold property, finalise and execute landlord's consent to transfer and any ancillary documents (e.g. AGA)	• Pay deposit to seller's lawyer • Arrange funding including third party debt • Satisfy any buyer's conditions to closing (e.g. ensuring that releases for all seller's mortgages are produced on closing) • Agree apportionment schedule • Execute transfer deed and ancillary documents • For leasehold property, finalise and execute landlord's consent to transfer and any other ancillary consent documents (e.g. parent company guarantee for buyer)	• A deposit of up to 10% of the purchase price is typically paid on signing which will be forfeited if the buyer fails to complete sale (unless failure was due to the seller) • Apportionment schedule deals with rental income, arrears and service charge • Transfer deed to be executed in accordance with Land Registry requirements (the Land Registry will now accept esignatures on transfer deeds provided their requirements met e.g. use of an esigning platform and two factor authentication). Legal opinion required if buyer is a non- UK entity. Notarisation not required • All parties including seller's lender must be represented by a conveyancer (type of English & Welsh qualified lawyer) or must provide other evidence of identity
Closing	• Use price to pay off existing debt • Hand over transfer deed, ancillary documents and Land Registry discharge form • Arrange completion phone call/meeting with lawyers for buyer, seller's lender and buyer's lender for dating of documents and release of funds • For leasehold property, pay landlord's costs for consent • Transfer tenants' rent deposits to buyer	• Pay balance of price plus/less apportionments to seller's lawyers • Satisfy buyer's lender's loan conditions precedent • Attend closing phone call/meeting • Complete buyer's mortgage documentation	• Loan condition precedents will require preparation in advance of Land Registry application forms and an undertaking from the buyer's lawyers to make the applications and pay any SDLT/LTT (see Q17) • Loan condition precedents will also require a Land Registry priority search with at least 20 working days' priority from closing
Post-closing	• Pay seller's lender mortgage redemption monies if not sent at closing • Send rent authority letter to tenants with new payment instructions • Hand over originals documents relating to the property (e.g. leases) to the buyer.	• Pay SDLT/LTT and file SDLT/LTT return • Apply to Land Registry to register release of seller's mortgage, the property transfer and the new mortgage • Serve all notices of assignment, including on the landlord where the property is leasehold • If property leasehold and mortgaged, serve notice of charge on landlord • Set up bank account for tenants' rent deposits	• SDLT must be paid within 14 days of closing (for LTT this is 30 days) • Land Registry will not accept application without proof SDLT/LTT return has been submitted • Land Registry application must be made within the priority search period to maintain priority of transfer • Maximum Land Registry registration fee is £1,105 • Registration typically takes 3 - 9 months

12. Is it common for real estate transfers to be effected by way of share transfer as well as asset transfer?

Yes. As noted in Q8, real estate is commonly held through specially formed entities or structures and there may be a tax advantage to transferring the interests in those entities or structures rather than the underlying real estate (for example, a transfer of units in a JPUT will typically not be subject to stamp duty or transfer tax, compared to the stamp duty land tax that would be payable on a direct asset sale – see Q17 below for more details).

13. On the sale of freehold interests in land does the benefit of any occupational leases and income automatically transfer?

Yes – no formalities are required beyond the registration of the sale itself (see Q11 above for more details).

14. What common rights, interests and burdens can be created or attach over real estate and how are these protected?

A wide variety of rights, interests and burdens can be created or attached to real estate, but given the historical nature of real estate law in England and Wales, there are a large number of complex rules that govern them, which can create somewhat arbitrary distinctions around exactly when certain rights, interests or burdens will attach and "run" with the land. Some of the key interests are:

- *Easements*: for example, rights of way over a property;
- *Restrictive covenants*: for example, an agreement not to build more than one house on a plot of land;
- *Legal mortgages*; and
- *Options to purchase*.

All of the above rights and interests must be registered at the Land Register in order to be protected. However, as mentioned at Q10 above, there is a further class of interests called overriding interests which do not require registration. Legislation has sought to gradually reduce the list of overriding interests but they still include certain important interests such as short leases (i.e. of less than seven years), certain interests of people in actual occupation of the property and certain easements.

As an example of some of the complexities that can arise, positive covenants (e.g. to pay a sum of money towards the repair of a shared access way) do not attach to the land (although positive covenants between a landlord and tenant do attach to the land). However, there are various devices used to ensure that future owners are liable to perform these types of covenants, for example, the owner of the shared access may register a restriction at HM Land Registry on the adjoining property prohibiting the sale of the property unless the new owner agrees to comply with the positive covenants.

15. Are split legal and beneficial ownership of real estate (i.e. trust structures) recognised

Yes, English and Welsh law recognises the splitting of legal and beneficial ownership; however, it is not possible to register the beneficial ownership of land at HM Land Registry as the register only records the legal ownership of the legal estate.

A person dealing with registered proprietors can generally assume they have unlimited power to dispose of the property, unless there is a restriction or other entry in the register limiting their powers.

Where HM Land Registry is notified that a property is subject to a trust, it will register a trustee restriction which prohibits disposals of the property without the consent of at least two trustees (unless the trustee is trust corporation) or pursuant to a court order. A trustee restriction is automatically entered on the register when two or more owners are registered (as this will necessarily mean that a trust exists).

A buyer does not need to investigate the terms and nature of the trust (e.g. that the trustees have power to sell the property) provided the buyer pays the purchase price to at least two trustees or a trust corporation. In such a case, the beneficial owners' interests are said to have been "overreached". Where there is only one trustee, who is not a trust corporation, buyers will generally insist that a second trustee is appointed in order to benefit from the overreaching rule.

16. Is public disclosure of the ultimate beneficial owners of real estate required?

Currently, only overseas entities which are the legal owners of real estate are required to publicly disclose the ultimate beneficial owners of real estate pursuant to the ROE (as defined in Q3 above). There are also general requirements to disclose the beneficial owners of UK corporate vehicles and certain trusts as set out below:

- *Register of Overseas Entities*: Overseas entities (being any entities incorporated outside England, Northern Ireland, Scotland and Wales) which hold (in England and Wales this applies to any land acquired since 1 January 1999) or acquire UK land are required to register with the UK central company registry ("**Companies House**") and disclose their "registrable beneficial owners" on the publicly accessible ROE. Overseas entities owning a 'qualifying estate' (being freehold interests and leases with a term of more than

seven years) must be registered on the ROE. Overseas entities acquiring a qualifying estate must be registered on the ROE to become the legal owner of the qualifying estate. All overseas entities on the ROE must file an update statement annually with Companies House to confirm that the information on the register is correct or to provide updates.

The test for registrable beneficial owners is aligned with the PSC regime (see below) and captures persons directly or indirectly holding or controlling 25% of the interests or voting rights or otherwise having significant influence or control. As with the PSC regime, this can be satisfied by identifying an entity with control which itself has equivalent disclosure obligations allowing the chain of control to be traced up the ownership chain. The Economic Crime and Corporate Transparency Act 2023, although not yet in force, is to amend how to determine the registrable beneficial owner of overseas entities holding property as nominees or in the case of trustee beneficial owners.

The information about the overseas entity and its registrable beneficial owners on the ROE must be verified by a person or firm which is regulated for money laundering purposes in the UK (e.g. corporate service providers, accountants, law firms etc.) and must be updated annually.

Various contraventions of the new rules (such as failure to register or update the register annually, providing false or misleading information, failing to take reasonable steps to identify beneficial owners) are a criminal offence which can lead to imprisonment and unlimited or daily penalties (depending on the nature of the contravention) plus there may also be administrative financial penalties. In addition, overseas entities failing to register or up-date the register will be prevented from transferring, leasing or charging their property by a restriction on the title to the property (unless they fall within one of the limited exemptions e.g. the transaction is pursuant to a contract which pre-dates the new rules or a lender exercising a power of sale).

A breach of the restriction on dispositions does not affect the validity of the disposition itself but, under existing land law, a failure to register a disposition will prevent legal title from passing such that it only takes effect in equity. Making a disposition in breach of the restriction will also be a criminal offence. As noted above, overseas entities acquiring qualifying interests now are unable to register such acquisitions at HM Land Registry and become the legal owner unless they are registered on the ROE.

- *PSC Regime*: Statutory obligations under the "Persons with Significant Control Regime" to register the persons directly or indirectly holding or controlling 25% of the interests or voting rights or otherwise having significant influence or control over, a UK corporate entity at Companies House. This can be satisfied by identifying an entity with control which itself has equivalent disclosure obligations allowing the chain of control to be traced up the ownership chain. The information at Companies House is publicly available.
- *Beneficial ownership of trusts*: Certain trusts are required to register with the Trust Registration Service and provide details about the trust including details of the beneficial owners in a central register. Whilst not specific to real estate, as noted in Q8, real estate is commonly held through specially formed entities or structures and some of these commonly used structures, e.g. limited partnerships which do not have legal personality (so cannot hold the legal title to land in their own right) and off-shore unit trusts, use trusts to acquire real estate.

These property holding trusts may need to comply with trust registration requirements and disclose the beneficial owners depending on the jurisdiction of the trustees, when the trust was created and when it acquired an interest in UK land. Prior to 6 October 2020, only trusts which had a UK tax consequence are registrable, which in practice, for real estate, means off shore unit trusts will be the most commonly caught. Since 6 October 2020, the provisions apply to any express trust which has all UK resident trustees (or at least one UK resident trustee and a UK resident settlor) and any express trusts with non-UK resident trustees which acquire land in the UK on or after 6 October 2020. The registration deadline for existing trusts was 1 September 2022 and, going forwards, new trusts have 90 days to register. It is an offence to (i) fail to register a trust or (ii) update the register where details change, in each case within 90 days.

Beneficial owners includes the direct beneficiaries of the trust and any individual who has control over the trust (e.g. those having the ability to end the trust or change the trustees). The details of these beneficiaries in this register will be available to law enforcement agencies and members of the public who can demonstrate a legitimate interest. However, although a trust which has no UK trustees and which purchases real estate in the UK must register details of beneficial owners in the central register, these details are not publicly available.

17. What are the main taxes associated with commercial real estate ownership and transfer of commercial real estate?

Ownership: business rates, which are payable to the local authority. The rates are calculated by multiplying the property's "rateable value" by a multiplier set by central government. The rateable value is currently the property's open market rental value on 1 April 2021, based on an estimate by the Valuation Office Agency. The next estimate will take place in April 2026 and is expected to be based on open market values as at 1 April 2024. The standard multiplier for 2023/2024 is 51.2. Where a property is let, the tenant will be liable to pay the business rates. Business rates can be significant sums if a property is situated in an expensive area e.g. central London.

Direct taxes: corporation tax, or income tax, or capital gains tax may apply to income, profits and gains arising from the ownership of commercial real estate. Which tax treatment applies will vary depending on whether the real estate is owned by an individual, or by a non-natural person/entity, and the nature of that entity.

The current corporation tax rate is 25%, which rate applies to UK corporates and to non-resident corporates making direct disposals of UK real estate and certain indirect disposals of interests in entities that are UK-property rich.

Taxes on asset transactions are:

Stamp Duty Land Tax (SDLT): this is payable by purchasers of commercial real estate interests in England and is calculated on the basis of a slice rate system by reference to the amount of "chargeable consideration" (normally the stated purchase price plus any VAT, but also includes any other money or money's worth) given for the real estate. The rates for non-residential property are 2% on £150,000 – £250,000 and 5% on £250,000and above. There is an equivalent tax, "Land Transaction Tax" (LTT), charged on purchases of real estate interests in Wales, with the rates for non-residential property being 1% on amounts over £225,000 up to £250,000, 5% on amounts over £250,000 up to £1 million and 6% above £1 million.

On the grant of a lease, SDLT is also payable on the net present value of the rents (plus VAT if any) payable during the term of the lease on a slice system at the rates (for non-commercial property) of 1% on £150,001 up to £5,000,000 and 2% on £5,000,000 and above. This is in addition to SDLT on any lease premium paid. For LTT current applicable rates on rental net present value (for non-commercial property) are 1% on £225,001 up to £2,000,000 and 2% on £2,000,000 and above.

SDLT/LTT is also applicable to residential real estate transactions but at different rates.

Value Added Tax (VAT): at 20%. The seller normally must make an election to charge VAT (which would enable it to recover VAT it incurs in relation to the real estate). However, sale of commercial real estate may, depending on the facts, be exempt from VAT or be treated as a VAT-free transfer of a going concern (i.e. a business that is operating and making a profit).

Residential Property Developers Tax (RPDT): The RPDT is payable by corporate developers building residential property with relevant profits in excess of a group-wide annual allowance threshold of £25 million, with the tax at 4% applying to relevant profits above that threshold. It does not apply to purpose built student accommodation and some build to rent developers.

Building Safety Levy (BSL): In addition, the UK Government is working to bring in a separate levy on developers who seek regulatory permission to build new residential developments with two or more residential units regardless of the height of the building. The power to introduce the BSL is contained in the Building Safety Act 2022 which provides that it will be payable prior to commencement of construction works. At the time of writing, the design of the scheme including how the BSL will be calculated has yet to be confirmed but the stated aim is to raise £3bn to fund remediation works on "orphan" buildings over 11m, where no developer is available to take responsibility. BSL is not expected to come into effect before 2024.

As mentioned above at Q8, UK commercial real estate is often owned by offshore entities. We have not summarised any non-UK taxes which may be payable in offshore jurisdictions.

18. What are common terms of commercial leases and are there regulatory controls on the terms of leases?

The common terms of commercial occupational leases are set out below. This summary is focused on occupational leases, rather than 'long leases' which are granted for an upfront sum and have substantially different terms.

Normal market practice in England and Wales is for occupational leases to be granted on a 'full repairing and insuring' ("**FRI**") basis under which the costs of insuring and repairing the premises are passed down to the tenant (ignoring void costs etc.), although there are

certain areas (such as damage by risks which are uninsurable) where this principle does not always hold true.

- Duration
- Rent
- Rent review
- User
- Repair
- Service charge and insurance
- Assignment
- Underletting
- Renewal rights

For each of the above terms we have summarised below the key features and what, if any, regulatory controls apply.

Duration: leases must be granted for a fixed period (i.e. they cannot be indefinite). There is no legal maximum or minimum duration. In the market, retail leases are often between 5-15 years. The duration of offices and industrial leases can be up to 25 years or more, particularly if the lease is of a whole building, although the typical duration ebbs and flows in accordance with market sentiment – currently there is a trend for shorter leases giving tenants more flexibility. Tenant break rights are common in longer leases (see below).

Rent: there are no regulatory controls as to the amount of rent. Rent is usually payable in advance often every quarter; however, monthly rents are becoming common for retail leases. On the grant of a new lease, landlords will generally give tenants rent free periods (or capital sums in lieu of such periods) to cover fit out works and, in poor market conditions, as an incentive to take the lease.

Rent review: there are no regulatory controls as to when or how the rent may be increased and parties are free to determine the type and frequency of the review. There are four main types of review (see below), although they are sometimes used in combination for certain situations (e.g. the rent might comprise a base rent which increases on a stepped or index linked basis, with a turnover rent also payable). As a general principle, it is very rare for a landlord to agree a rent review mechanism which could ever result in the rent being decreased. Reviews are therefore predominantly "upwards only".

Types of rent review:

- *open market*, where the rent is reviewed by reference to the rents payable in comparable properties. If the parties cannot agree what the open market rent is, it is typically determined by reference to an independent expert. Open market reviews are every 3 or 5 years depending on the duration of the lease;
- *stepped*, when the rent is increased at agreed intervals by agreed amounts;
- *index linked*, where the rent increases in accordance with an agreed index (such as the consumer prices index) at an agreed frequency (often every year) often with a minimum and maximum increase specified; and
- *turnover*, where the rent is an agreed percentage of the tenant's turnover subject to agreed minimum and maximum rents. These types of review are common in retail leases.

User: there are regulatory controls on how property may be used. Leases will usually restrict a tenant's ability to change the use of the premises.

Repair: there are few regulatory controls regarding either party's obligations. Parties are therefore free to agree who is responsible for each type of repair. As mentioned above, the practice of FRI leases means landlords will try to ensure that the tenants are liable for all repairs, which may include those arising from inherent defects in the building. There are regulatory controls in respect of the landlord's remedies where a tenant has failed to repair; the landlord may not enter the premises to carry out repairs unless it has an express right to do so (and consequently it is normal to see such a right in a lease). The amount a landlord may recover from the tenant may also not exceed the amount by which the landlord's interest in the property has been diminished due to the disrepair unless the express right provides otherwise (again, this is therefore typically expressly addressed).

Service charge and insurance: there are no regulatory controls in the commercial context (compared to the residential context where this is heavily regulated). Where the lease is of part of a building the landlord will repair, maintain and insure the structure of the building in addition to arranging the lighting, heating etc. of the common shared areas (e.g. reception, stairwells) and providing shared security, reception, etc. services for the building. The tenant will be required to pay their share of the costs incurred by the landlord in providing these services. Where the let premises are on an estate, the landlord will also charge the tenant for similar costs the landlord incurs in respect of the estate roads, service areas and shared amenities. Leases of part on an estate therefore frequently contain more than one service charge, one for the building and one for the estate. Parties are free to agree what items and services are to be covered by the service charge. The practice of FRI

leases means landlords will, however, try to recover all their costs in relation to such matters and services from their tenants (including insurance costs). Each tenant's share of the charge is usually calculated on a pro-rata floor area basis. Tenants will seek to resist the landlord's ability to charge the tenant for the initial construction or the later improvement of premises.

Assignment: this is an area of greater regulation. Landlords will generally only allow tenants to assign the whole of the let premises (and even then only with the landlord's consent, such consent not to be unreasonably withheld or delayed). If the landlord wishes to impose a condition for giving its consent (e.g. the new tenant must meet a profit test), legislation provides that the condition must be set out in the lease. If the condition is not set out in the lease, the landlord may only impose such a condition if it is reasonable to do so. A common express condition is that the tenant enters into an authorised guarantee agreement ("**AGA**").

Under the AGA, the outgoing tenant guarantees the new tenant's obligations. The AGA ceases if the new tenant assigns the lease. Guarantors of the outgoing tenant will also be required to guarantee the outgoing tenant's obligations under the AGA. The form of the AGA is prescribed by legislation.

Underletting: there are few regulatory controls and the parties are free to negotiate terms. However, landlords will often insist that tenants may not underlet if their leases are for less than 5 years. Where the lease permits underletting, it will typically set out the conditions on which the underletting must take place, for example, that the underlease must be on the same terms, at market rent and not give the undertenant any right to a new lease.

Termination rights: leases expire at the end of the term unless the tenant has a statutory right (see below) and/or a contractual right to a new lease. Leases also usually provide that landlords can terminate ('forfeit') the lease if the tenant breaches its obligations. Technically no court process is required but is often followed as criminal liability can result if the landlord's self-help process is followed incorrectly. The tenant may apply to the court for relief from forfeiture in order to stop the lease terminating. The court will usually give the tenant relief from forfeiture on condition that the breach is remedied unless the breach cannot be rectified (e.g. the tenant is insolvent) or there have been breaches in the past.

Parties commonly agree contractual termination rights, known as break rights. If the break right is conditional, for example, on providing vacant possession, these conditions can be interpreted strictly. Landlord break rights are less common.

Renewal rights: subject to certain regulatory conditions, tenants have statutory rights to a new lease at the market rent for a maximum term of 15 years unless this right has been excluded by agreement. A key condition is that the tenant has complied with its obligations. Landlords can ask the court not to grant the new lease on certain grounds e.g. the landlord wishes to redevelop the property. If the landlord is successful in opposing the tenant's request, the landlord will have to pay the tenant compensation. Not surprisingly, most landlords often try to exclude this statutory right, but this is a factor for the overall commercial arrangement (with tenants potentially willing to pay a higher rent for a lease with the benefit of statutory renewal rights). Tenants often also have a contractual right to a new lease. Due to a growing requirement for flexibility by tenants, lease terms have become shorter (from 20-25 years to 10-15 years) in order to minimise the tax payable at day one and to avoid tenants being committed to space for long periods of time. As a result, tenants often require contractual renewal rights.

19. How are use, planning and zoning restrictions on real estate regulated?

In England and Wales, the use and development of land are regulated primarily by the town and country planning legislation, which establishes a system of "development control" and "development planning" for these purposes.

Development Planning framework: National authorities, each local planning authority ("**LPA**") and in some cases, neighbourhood bodies, create a hierarchical framework of plans which go together to create the development plan for the relevant area. Development plans contain policies as to how land should be used and the types of development that should be permitted or prohibited. At a local level, plans often allocate specific areas or individual sites for suitable uses or types of development. These plans are periodically reviewed and updated.

Development Control framework: Planning permission is required to carry out the 'development' of land (meaning the carrying out of building or engineering works on the land or the making of a material change in the use of land). Any person can make an application for planning permission, although in practice, the owner's consent is often required. In most cases a planning application is made to the LPA. Larger projects will often require an environmental impact assessment to be submitted with the application. The LPA (usually the local council, or

unitary authority of the area) should determine the application in accordance with the development plan unless there are justifiable reasons to refuse it. Applicants have rights to make an administrative appeal against refusal of planning applications; there are also rights for third parties to challenge, in the courts, the grant of permission on limited legal grounds.

Often an applicant will need to enter into a 'Section 106 Agreement' with the LPA in order to obtain planning permission. A section 106 agreement requires the applicant to carry out works or pay money, or establishes controls on the use of the land, in order to overcome planning objections to the development proposal. Development of the site may also be subject to a development tax called community infrastructure levy, which is charged at local level to pay for infrastructure necessitated by development in the area.

It is possible to carry out some development without express planning permission, for example, in England:

- some changes of use: e.g. between industrial and storage uses, or between, shop, office or restaurant uses (so-called 'high street' uses);
- the carrying out of various works: e.g. alterations to existing premises, demolition, or development by bodies carrying out public functions (statutory undertakers);
- some combined works and changes of use: for example, demolition of certain office, residential or light industrial buildings and their replacement by blocks of residential flats.

Heritage and Environmental Controls: There are a number of other controls that protect the historic built environment or the natural environment, for example:

- *Listed Buildings*: A building which is of special architectural or historic interest can be "listed" by the Government, meaning that any development affecting its special characteristics is subject to obtaining listed building consent.
- *Conservation Areas*: A wider area which is of special architectural or historic interest can be designated as a conservation area – an LPA will need to take this designation into account when determining any planning application within the area.
- *Sites of Special Scientific Interest ("**SSSI**")*: A site of interest for its wildlife or geology can be designated as a SSSI. Consent from governmental body, Natural England, may be required to carry out any development on the site.

Major infrastructure projects: There is a separate system of consenting for nationally significant infrastructure projects. The Secretary of State grants consent for a project under this regime by making a 'Development Consent Order'.

Devolution of Powers to Wales: At the detailed level, planning rules for England and Wales are beginning to diverge due to devolution of powers to the Welsh Government. Processes and requirements for planning applications and other aspects of development planning and control may therefore be different depending on whether a development is proposed in England or Wales.

See Q3 on proposed reforms.

20. Who can be liable for environmental contamination on real estate?

Liability for environmental contamination on real estate in England and Wales can arise under a number of key statutes and under the common law (case law). Liability will normally attach to the polluter. However in certain circumstances the owner or occupier of land which has been contaminated can also be held liable.

Statutory liability

Contaminated land regime: The Environmental Protection Act 1990 ("**EPA**") establishes a 'polluter pays' principle for clean-up of contaminated land and pollution of waters. If the state of the land (or waters in on or under the land) is such that there is actual significant harm, or a significant risk of significant harm, to the environment, the regulator must designate the land as 'contaminated land'. It must also serve a remediation notice on the responsible person to clean up the contaminated land / waters. The regulator will be the local authority or, in certain circumstances the Environment Agency (for sites in England) or Natural Resources Wales (for sites in Wales).

Statutory Guidance on the EPA allocates clean-up liabilities among different 'appropriate persons'. The primary liability to clean up is imposed on the person who caused or knowingly permitted the land to be contaminated (the "polluter"). If that person cannot be found, then the owner or occupier for the time being may be liable.

Even if the owner or occupier of land was not responsible for contaminants initially being present (and is therefore not at that stage regarded as a polluter), it can become liable as a polluter at a later stage as a result of its action or inaction. It is possible that an owner or occupier could be held to have knowingly permitted land

to be contaminated where it knew, or should have known, that the land is contaminated, and then fails to clean up the land when it has sufficient control to do so.

Under the Statutory Guidance, liability can be passed between parties to exclude a polluter (e.g. a seller of real estate) in certain circumstances, such as where the land is sold to a buyer with full information as to the contaminated state of the land.

The application of the EPA contaminated land framework has in practice been exceptionally complex and resource intensive for local authorities. A combination of this, and the progressive removal of funding to local authorities to implement the regime, has meant that few remediation notices have been served since the regime came into force. In practice, most contaminated land has been remediated as a result of requirements imposed through planning permissions to redevelop land.

Water Pollution Works: This also imposes liability on persons who cause or knowingly permit pollution of controlled waters (e.g. groundwater or rivers) to carry out clean-up works.

Environmental Damage Regulations ("**EDR**"): The operator of certain, mainly industrial, activities is required to prevent environmental damage from those activities. Environmental damage includes the contamination of land. Where damage does occur, the operator has a duty to remedy the damage and potentially provide compensation for it. There is also an obligation to notify the regulatory authorities where there is an imminent threat of environmental damage. Under the EDRs, the operator is the person who operates or controls the activity. Generally, this will be the person holding the permit to carry out the activity. There are separate sets of EDR covering England and Wales.

Common law: The most likely causes of action are in nuisance and negligence, for example, for contamination that has escaped onto neighbouring land. Responsibility arises from the possession, control and use of the land where the contamination originated, and liable parties can include a combination of owners, occupiers and polluters, such as landlords, tenants, contractors and operators.

21. Are buildings legally required to have their energy performance assessed and in what (if any) situations do minimum energy performance levels need to be met?

Energy Performance Certificates

With some limited exceptions, an Energy Performance Certificate ("**EPC**") must be prepared upon construction, sale or leasing of a building, and also when undertaking certain modifications affecting energy-consuming services. The obligations also apply when a part of a building is sold or let (e.g. a floor in a multi-let office building). The obligation to obtain the EPC is placed upon the person carrying out the work, the seller or landlord (as appropriate). The EPC will rate the building's energy performance from A to G and will also provide recommendations for improving the building's energy performance. There is no requirement to carry out the recommendations although see below in relation to the Minimum Energy Efficiency Standard. EPCs are uploaded to a publicly available register and are generally valid for 10 years.

Failure to obtain an EPC could result in a civil penalty of up to £5,000 and additional penalties could apply in case of failure to produce an EPC when required to.

See Q3 on proposed reforms.

Minimum Energy Efficiency Standard

Essentially, where a building falls short of the Minimum Energy Efficiency Standard (MEES) and the landlord wishes to let all, or part, of a building, the landlord must carry out works to improve the building's energy performance level up to the MEES or pay a penalty in the form of a civil fine under the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (the "**Penalty Provisions**").

The MEES is currently set at EPC 'E' rating. Generally, all types of building are included, with some exceptions including for "low energy demand" industrial buildings, buildings to be demolished, and certain protected buildings. The Penalty Provisions only apply to leases with a term of over 6 months and under 99 years in respect of which there is a valid EPC in place. MEES now applies to existing leases as well as to the grant of a new lease.

Various exemptions from the Penalty Provisions apply including in circumstances where:

- The necessary improvement works would not pay for themselves in bill savings within 7 years;
- Consent to the works cannot be obtained from a tenant or other third party; or
- The works would result in a reduction in value of the property's capital or rental value of over 5%.

Exemptions must be registered and generally last for 5 years.

Applicable penalties for failure to meet the MEES when required are significant. They apply per letting (i.e. to each letting in a multi-let building) and can reach a maximum of £150,000 per letting, and can potentially be imposed on more than one occasion.

The above considers the position for commercial property. The rules for EPCs and the MEES apply with some variations for domestic property. See Q3 on proposed reforms.

Other requirements

In addition, various energy efficiency requirements and specifications apply upon construction or substantial modification or change of use of a building, under the building regulations and associated detailed technical documents. These requirements apply to the building as a whole and to particular building fabric or service elements, such as windows and insultation.

22. Is expropriation of real estate possible?

Powers are available to public bodies, and other bodies exercising public functions (an "authority"), to acquire land compulsorily in a variety of situations. These powers of compulsory acquisition are given to help such bodies to fulfil their statutory responsibilities. Commonly used examples include powers of:

- Local authorities to acquire land for regeneration or housing purposes;
- Highway authorities to acquire land for construction or improvement of highways; and
- Other infrastructure providers and utilities to acquire land to provide major infrastructure – such as railways, airports, ports, power generation facilities or transmission networks, pipelines, and telecommunications.

Some powers are generally applicable and contained in Acts of Parliament, such as the power to acquire land for regeneration purposes. In other cases, particularly for large projects, powers are included in legislation authorising the project to proceed, (e.g. by Act of Parliament in relation to the High Speed 2 rail project, or by development consent order in relation to a nationally significant infrastructure project – see Q19).

While such powers are often exercised by an authority to acquire the land itself, powers of compulsory acquisition can also be used to acquire existing rights over land, or, in many cases, create new rights over land (e.g. rights of way). Powers of compulsory acquisition are mostly given by statute. An authority will make or obtain a compulsory purchase order in order to crystallise the power to acquire the land or rights. The complex process to make or obtain a compulsory purchase order will require significant consultation with affected parties. Often some form of public inquiry in front of an Inspector will be involved to consider objections against the order. An order will only be made if it is demonstrated to be in the public interest. Statutory compensation is available to an owner and / or occupier for land or rights acquired compulsorily. Where land is acquired, this broadly comprises three key elements:

- the open market value of the land; there is a considerable amount of law on the subject of how this value is determined;
- any loss caused by reason of losing possession of the land (known as 'disturbance'); this can include business losses; and
- loss of value caused to land held by the person claiming compensation by reason of it being severed from the land taken or otherwise detrimentally affected (known as 'severance' and 'injurious affection').

To the extent compensation cannot be agreed by the parties, the matter can be referred to a tribunal for determination as to the correct amount of compensation due.

Often for large infrastructure projects, the authority will offer additional compensation to compensate for losses or expenses that would not otherwise be covered by statutory compensation.

For residential and mixed-use property comprising a residential element, certain leasehold home owners have a statutory right to acquire the freehold interest in their property subject to the payment of compensation (enfranchisement). Residential leasehold homeowner also have the right to take over the management of their property. The nature and exercise of these rights are complex and beyond the scope of this Guide.

23. Is it possible to create mortgages over real estate and how are these protected and enforced?

Yes, mortgages can be created over real estate. As mentioned above, the answers in this Guide only relate to registered land in England and Wales. Where the real estate interest is leasehold, the terms of the lease must be first reviewed to ascertain if consent of the landlord is required in order to create the mortgage.

A legal mortgage will generally be compulsorily

registrable at HM Land Registry. The main exception is a mortgage over a leasehold property where the lease term has less than seven years to run. If the legal mortgage is not registered at HM Land Registry, it may lose priority as against third party interests (including another registered mortgage) even if that interest or mortgage was granted after the unregistered mortgage. Priority is generally determined by the date of registration and not creation.

A company or limited liability partnership incorporated in the UK under the Companies Acts must also register security with the Registrar of Companies within 21 days after the date the security is created. If the mortgage is not registered with the Registrar of Companies, it will be void as against third parties and other security subsequently registered will have priority.

Enforcement is generally straightforward. The lender has a number of methods of enforcing the mortgage, it can:

- appoint a receiver; the receiver will normally have wide powers to deal with the property including the power to sell or lease the property and use the proceeds to satisfy the debt;
- sell the real estate and use the proceeds to satisfy the debt;
- take possession of the real estate (this is unusual because of liabilities assumed by taking possession e.g. environmental liabilities); or
- obtain a court order vesting ownership of the freehold or leasehold real estate in the name of the mortgage holder (known as 'foreclosure', although this term may also be used in the sense of general enforcement of security over property); however this is rare.

24. Are there material registration costs associated with the creation of mortgages over real estate?

There are a variety of fees and expenses payable in relation to the registration of mortgages with appropriate registries but as a general rule they are unlikely to be significant enough to affect how the transaction should be structured, e.g. HM Land Registry fees on a scale of up to £305 per property for the registration of a mortgage and a Companies House fee of £15 for online filing of a charge.

There are no notarisation requirements or property taxes payable in relation to the creation of security over real estate. SDLT/LTT is not payable on the creation of security over real estate.

25. Is it possible to create a trust structure for mortgage security over real estate?

Yes. Where there are multiple beneficiaries of security it is common to use a security trustee to hold the security on trust for the beneficiaries which may include a syndicate of lenders. Under a trust structure, the beneficiaries of the security can change without any changes being required to the mortgage documentation. Also, the trust assets are not part of the security trustee's assets and are therefore not part of its estate in the event of its insolvency. The security trustee can enforce the security on behalf of the beneficiaries, e.g. by appointing a receiver (see Q23 above). Note that it is common in English law loan agreements for the security trustee to be referred to as a 'security agent'; however, the underlying arrangement is generally still a trust.

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