

NON-EXCEPTED AREAS - POLICY AND GUIDANCE (January 2016 Edition)

LEASEHOLD REFORM ACT 1967 (“the 1967 Act”)

LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993 (“the 1993 Act”)

These Acts give home owners the right to buy the freehold title (known as enfranchisement) or to extend the lease of their property. The Crown Estate is not bound by them but they have given an undertaking to Parliament by which they agreed that in most circumstances, where home owners would have these rights if their landlord were not The Crown Estate, they will give similar benefits to their tenants where possible. In this respect, they are said to be acting “by analogy” with the legislation.

There are exceptions to this policy. In certain areas, for example near the Royal Parks and where there is a long or historic association with the Crown, The Crown Estate will not sell its freehold title and deals with lease extensions in a different way. These are known as “Excepted Areas”. This policy is set out in a separate paper.

Also because they are not subject to the legislation, The Crown Estate cannot oblige third parties to abide by the policy. So, for example, if The Crown Estate is not your immediate landlord, i.e. they own the freehold title to your property but are not your immediate landlord you may not be able to extend your lease. The Crown Estate do encourage other landlords to abide by their policy and most do so.

This paper is intended to give general guidance as to the rights of tenants on The Crown Estate to enfranchise or seek an extended lease within the Non-Excepted Areas. It is only a broad summary of those rights and each individual case needs to be considered on its own facts. The paper does not constitute advice and is not comprehensive. The Crown Estate accepts no responsibility to anyone acting in reliance on this general guidance.

Any tenants wishing to buy a freehold or extend a lease are strongly recommended to obtain their own legal and valuation advice. In particular, it should be noted that collective claims and claims for lease extensions of flats are subject to strict procedural time limits and, by analogy, The Crown Estate expects those time limits to be observed.

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1. FLATS - COLLECTIVE ENFRANCHISEMENT

This right, given in the 1993 Act, is for tenants of blocks of flats, acting together, to purchase the freehold of and superior leasehold interests in their building; (for example, head leases owned by a management company)

To claim:

- 1.1. A building must be an independent building or be a part of a building that is capable of independent development
- 1.2. The amount of non-residential space in a mixed-use building must not exceed 25% of the total internal floor space.
- 1.3. There must be at least two flats in the building held by qualifying tenants; a qualifying tenant is a tenant who holds a “long lease” of a flat in the building; i.e. a lease granted at the outset for more than 21 years regardless of how long is left to run.
 - 1.3.1. A tenant who holds a business tenancy cannot be a qualifying tenant.
 - 1.3.2. Any tenant who owns three or more flats in the building does not qualify
- 1.4. Two-thirds of the flats in the building must be held by qualifying tenants.
- 1.5. There is no “low rent test”.
- 1.6. There is no “residency test”.
- 1.7. There is no required period of ownership for a qualifying tenant to participate in a collective enfranchisement.

Procedure:

- 1.8. A claim is made by serving an Initial Notice on the freeholder and a copy is given to any other landlord in the building.
- 1.9. The Initial Notice must be given by qualifying tenants of at least half the number of flats in the building. If there are only two flats in the building, then both must participate.
- 1.10. The Initial Notice must be signed by or on behalf of the participating tenants and amongst other things must specify
 - 1.10.1. the property to be acquired
 - 1.10.2. how the participating tenants meet the criteria set out above to qualify to make the claim
 - 1.10.3. the price that the participating tenants propose to pay

- 1.10.4. the names of all the qualifying tenants in the building
 - 1.10.5. the person or body appointed as the “nominee purchaser”. The “nominee purchaser” is a company or individual who will represent the participating tenants in the claim and will eventually be registered as the owner of the building on their behalf.
 - 1.10.6. a date by which the landlord is to serve his counter-notice. This must be a date at least two months after service of the Initial Notice.
- 1.11. The Commonhold and Leasehold Reform Act 2002 introduced provisions relating to Right to Enfranchise companies. These provisions have not been brought into effect and there is currently no timetable to do so.
- 1.12. The Crown Estate will by no later than the date given in the Initial Notice, send the nominee purchaser a counter-notice. If The Crown Estate agrees the claim is valid, the counter-notice admits the claim. It will also state whether or not the price offered by the participating tenants is accepted. If it is not accepted, The Crown Estate will propose a different price which it considers is the proper price to be paid.
- 1.13. The Crown Estate has agreed to follow the valuation basis set out in schedule 6 to the 1993 Act and their valuers are instructed on that basis.
- 1.14. Once the claim is admitted, The Crown Estate will negotiate with the tenant’s valuer to agree the price and this is achieved in the great majority of cases. If a negotiated settlement is not possible, then the First-tier Tribunal (Property Chamber) has jurisdiction as arbitrator to determine the price.
- 1.15. The parties will be expected to adhere to the requirements of and the timetable set down in the 1993 Act and in the Leasehold Reform (Collective Enfranchisement and Lease Renewal) Regulations 1993

Valuation

- 1.16. Valuations under the 1993 Act are not straightforward and tenants contemplating a collective claim are well advised to take advice from a surveyor or valuer who has expertise in this field.
- 1.17. By statute, the price to be paid is intended to reflect the open market value of the property, to include “marriage value” in the flats of the participating tenants and “hope value” in the flats of the non-participating tenants. There are however several assumptions made in the valuation which affect the price
- 1.17.1. the value of improvements made by participating tenants to their flats are disregarded.

- 1.17.2. marriage value is divided 50:50. Marriage value is the increased value of the freehold title which results from the participating tenants being able to grant themselves longer leases
 - 1.17.3. if a participating tenant has a lease with an unexpired term in excess of 80 years at the valuation date, then the marriage value on that flat is deemed to be nil
- 1.18. the valuation date is the date that the Initial Notice is given.
- 1.19. in certain circumstances, The Crown Estate may seek additional compensation if the effect of a collective enfranchisement is to reduce the value of other property of The Crown Estate.

General

- 1.20. The 1993 Act also includes provisions
- 1.20.1. to enable a qualifying tenant to obtain information about the ownership structure within the building
 - 1.20.2. to allow the landlord to claim 999-year lease-backs on certain units within the building (primarily short-term leasehold and vacant flats and commercial premises)
 - 1.20.3. to enable a landlord to resist a claim because the landlord has plans to develop the building

2. FLATS – LEASE EXTENSION

This right given in the 1993 Act is for the tenant of a leasehold flat to purchase a new lease. The new lease is on the same terms as the existing lease but with 90 years added to the unexpired term of the existing lease at a peppercorn rent for the rest of the term. A peppercorn rent means no rent is payable. The new lease will include a provision to permit the landlord to break the lease at the date the original lease would have come to an end if the landlord wishes to carry out redevelopment.

To claim:

- 2.1. The property must comprise a flat.
- 2.2. The tenant must have owned (i.e. been registered at the Land Registry) that flat for a period of at least two years before the claim is made.
- 2.3. A qualifying tenant is a tenant who holds a “long lease” i.e. a lease which was originally granted for a term of over 21 years.
 - 2.3.1. A tenant who holds a business tenancy cannot be a qualifying tenant
 - 2.3.2. There is no restriction on the number of flats that a tenant may own in the building for the purpose of a new lease claim.
- 2.4. There is no “low rent test”.
- 2.5. There is no “residency test”.
- 2.6. The personal representative of a deceased qualifying tenant (i.e. who qualified before death) is entitled to make a claim within two years of the date of grant of probate or letters of administration.

Procedure:

- 2.7. A claim is made by serving a Tenant’s Notice of Claim on the landlord and anyone else who is named in the lease.
- 2.8. A Tenant’s Notice of Claim must be signed personally by or on behalf of the qualifying tenant and amongst other things must specify
 - 2.8.1. the flat over which the claim extends
 - 2.8.2. how the qualifying tenant fulfils the criteria set out above
 - 2.8.3. the price that the qualifying tenant proposes to pay for the new lease
 - 2.8.4. what terms should be included in the new lease

- 2.8.5. The date by which the landlord is to serve his counter-notice. This must be at least two months after service of the Tenant's Notice of Claim.
- 2.9. Following receipt of the Tenant's Notice of Claim, The Crown Estate will ask for payment of a deposit. The amount will be 10% of the price suggested by the tenant in his notice or, if greater, £250. This deposit will be held by The Crown Estate solicitors as stakeholders on account of the price to be paid for the new lease.
- 2.10. The Crown Estate will, by no later than the date specified in the Tenant's Notice of Claim send the qualifying tenant a counter-notice. If The Crown Estate agrees that the claim satisfies all the necessary criteria, the counter-notice will say that The Crown Estate admits the claim. It will also state whether or not the price offered by the qualifying tenant is acceptable. If it is not, then The Crown Estate will propose a different figure which it considers is the proper price to be paid.
- 2.11. The Crown Estate has agreed to follow the valuation basis set out in schedule 13 to the 1993 Act and its valuers are instructed on that basis.
- 2.12. Once the claim is admitted, The Crown Estate will negotiate to try to agree the price and this is achieved in the great majority of cases. In the event that a negotiated settlement is not possible, then the First-tier Tribunal (Property Chamber) has jurisdiction as arbitrator to determine the price.
- 2.13. The parties will be expected to adhere to the requirements of and the timetable set down in the 1993 Act and in the Leasehold Reform (Collective Enfranchisement and Lease Renewal) Regulations 1993

Valuation

- 2.14. Valuations under the 1993 Act are not straightforward and a tenant contemplating a new lease claim is well advised to take advice from a surveyor or valuer who has expertise in this field.
- 2.15. The premium to be paid is intended to reflect the open market value of the landlord's interest in the flat, to include "marriage value". There are however several assumptions made in the valuation which can affect the premium
- 2.15.1. the value of improvements made by the qualifying tenant to his flat are disregarded.
- 2.15.2. marriage value is divided 50:50
- 2.15.3. if the existing lease has an unexpired term in excess of 80 years at the valuation date, then the marriage value is deemed to be nil
- 2.16. the valuation date is the date that the Tenant's Notice of Claim is given.
- 2.17. in certain circumstances, The Crown Estate may seek additional compensation if the effect of a new lease is to reduce the value of other Crown Estate property.

General

2.18. The 1993 Act also includes provisions

2.18.1. to enable a qualifying tenant to obtain information about the ownership structure within the building

2.18.2. to allow the landlord to resist a claim on the ground of redevelopment

3. HOUSES – ENFRANCHISEMENT

This right is granted by the 1967 Act and gives the tenant of a leasehold house the right to acquire the freehold of and any other leasehold interests in that house.

To claim

- 3.1. the property must comprise a house
- 3.2. the tenancy must be a “long tenancy”; i.e. the lease was originally for a term of over 21 years. For this purpose, a business tenancy for an original term of 35 years or less is not a “long tenancy”.
- 3.3. The tenant must have owned (i.e. registered at the Land Registry) the house for a period of at least two years before the claim is made.
- 3.4. There is no “low rent test” (but see paragraph 3.7 below).
- 3.5. There is no “residency test” save in those case where
 - 3.5.1. the tenancy is a business tenancy for an original term in excess of 35 years
 - 3.5.2. there is a flat within the house which is subject to a long lease held by a qualifying tenant for the purpose of the 1993 Act (see paragraph 2.3 above)
- 3.6. The personal representative of a deceased tenant who was qualified to make a claim before death is entitled to make a claim within two years of the date of grant of probate or letters of administration.
- 3.7. For properties within certain specified rural areas it will also be necessary for the long tenancy to be at a low rent

Procedure:

- 3.8. A claim is made by service of a Notice of Tenant’s Claim, which is in a form laid down by the legislation.
- 3.9. Following receipt of the Notice of Tenant’s Claim, The Crown Estate will ask for payment of a deposit. The amount will be three times the annual rent payable under the lease or, if greater, £25. This deposit will be held by The Crown Estate solicitors on account of the price to be paid for the freehold.
- 3.10. The Crown Estate will endeavour, within a period of two months from the giving of the Notice of Tenant’s Claim, to give to the tenant a landlord’s Notice in Reply.
- 3.11. The Crown Estate has agreed to follow the valuation basis set out in section 9 of the 1967 Act and its valuers are instructed on that basis.

- 3.12. If The Crown Estate agrees that the claim is valid, the Notice in Reply states that the claim is admitted. The Crown Estate will then negotiate to try to agree the price and this is achieved in the great majority of cases. In the event that a negotiated settlement is not possible, then the First-tier Tribunal (Property Chamber) has jurisdiction as arbitrator to determine the price.
- 3.13. The parties will be expected to adhere to the requirements of and the timetable set down in the 1967 Act and in the Leasehold Reform (Enfranchisement and Extension) Regulations 1967

Valuation

- 3.14. Valuations under the 1967 Act are not straightforward and a tenant contemplating a house enfranchisement claim is well advised to take advice from a surveyor or valuer who has expertise in this field.
- 3.15. In particular, there are three different bases of valuation, each of which is dependent on certain qualifying conditions. These are set out in sections 9(1), 9(1A) and 9(1C) of the 1967 Act.
- 3.16. A calculation of the price under section 9(1) applies to low value houses and is by reference to site value.
- 3.17. A calculation of the price under either section 9(1A) or section 9(1C) applies to higher value houses and is by reference to the open market value of the landlord's interest in the house and includes "marriage value". There are however several assumptions made in the valuation which can affect the price under these sections
- 3.17.1. the value of improvements made by the tenant to his house are disregarded.
 - 3.17.2. marriage value is divided 50:50
 - 3.17.3. if the tenancy has an unexpired term in excess of 80 years at the valuation date, then the marriage value is deemed to be nil
- 3.18. the valuation date is the date that the Notice of Tenant's Claim is given.
- 3.19. in certain circumstances, The Crown Estate may seek additional compensation if the effect of the sale of the house is to reduce the value of other Crown Estate property.

4. HOUSES – LEASE EXTENSION

This right is granted by the 1967 Act for the tenant of a leasehold house to claim an extended lease. The new lease is on the same terms as the existing lease but with 50 years added to the unexpired term of the existing lease at the same rent for the term of the existing lease and, throughout the 50-year extended term, at a “modern ground rent”. The new lease will include a provision to permit The Crown Estate to break the lease at any time during the 50-year extended term for the purpose of redevelopment. No price is paid for the grant of the 50-year extension.

To claim

- 4.1. the property must comprise a house
- 4.2. the house must fall within certain rateable value or other financial limits
- 4.3. the tenancy must be a “long tenancy”; i.e. the lease was originally for a term of over 21 years. For this purpose, a business tenancy for an original term of 35 years or less is not a “long tenancy”.
- 4.4. the tenant must have owned (i.e. been registered at the Land Registry) the “long tenancy” for a period of at least two years before the claim is made.
- 4.5. The tenancy must be at a “low rent”.
- 4.6. There is no “residency test” save in those case where
 - 4.6.1. the tenancy is a business tenancy for an original term in excess of 35 years
 - 4.6.2. there is a flat within the house which is subject to a long lease held by a qualifying tenant for the purpose of the 1993 Act (see paragraph 2.3 above)
- 4.7. The personal representative of a deceased tenant who was qualified to make a claim before death is entitled to make a claim within two years of the date of grant of probate or letters of administration.

Procedure:

- 4.8. A claim is made by service of a Notice of Tenant’s Claim, which is in a form laid down by the legislation.
- 4.9. The Crown Estate will endeavour, within a period of two months from the giving of the Notice of Tenant’s Claim, to give the tenant a landlord’s Notice in Reply, stating whether or not the claim is admitted.
- 4.10. The parties will be expected to adhere to the requirements of and the timetable set down in the 1967 Act and in the Leasehold Reform (Enfranchisement and Extension) Regulations 1967

5. **FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)**

- 5.1. First-tier Tribunals (Property Chamber) (“FTT”) have exclusive jurisdiction on matters of valuation and certain other issues arising under the 1967 Act and the 1993 Act in relation to properties in England.
- 5.2. Where the parties to a claim agree, FTTs have jurisdiction to determine as arbitrator disputes in relation to such valuation and other issues arising under the 1967 Act and the 1993 Act relating to Crown Estate properties.
- 5.3. Save in respect of properties that fall within the “Excepted Areas”, The Crown Estate has agreed to accept the FTT’s jurisdiction as arbitrator in relation to any such disputes.
- 5.4. Further information as regards FTT’s can be obtained from

Residential Property
10 Alfred Place
London WC1E 7LR

Tel: 0207 446 7700

Fax: 0207 637 1250

Email: rplondon@hmcts.gsi.gov.uk

Website: <http://www.justice.gov.uk/tribunals/residential-property/venues>

There are also regional offices in Manchester, Birmingham, Cambridge and Chichester

- 5.5 For properties in Wales, jurisdiction remains vested in the Leasehold Valuation Tribunal. Further information is available at:
<http://rpt.gov.wales/guidanceandforms/leasehold-valuation-tribunals/leasehold-enfranchisement/?lang=en>

PARLIAMENTARY UNDERTAKING

During the passage of the Commonhold and Leasehold Reform Act 2002 through Parliament, the Parliamentary Secretary, Lord Chancellor's Department (Baroness Scotland of Asthal) stated in a written reply:

“Following a statement made on 2 November 1992 by Sir George Young, the Crown authorities gave an undertaking that the Crown would, as landlord and subject to specified conditions, agree to the enfranchisement or extension of residential long leases under the same qualifications and terms which applied by virtue of the Leasehold Reform Act 1967 and the Leasehold Reform, Housing and Urban Development Act 1993 to lessees who hold from other landlords.

It was announced on 3 April 2001, Official Report, cols, WA 110–112 that the Crown authorities had confirmed that they would apply the undertaking to the provisions of the 1967 Act and the 1993 Act as amended by the Commonhold and Leasehold Reform Bill which was then before Parliament. As was announced by my noble and learned friend Lord Falconer of Thoroton during Third Reading of the Commonhold and Leasehold Reform Bill, which is before this Parliament, on 19 November 2001, (Official Report, col 927), the Crown authorities have now confirmed that this also applies to those Acts as amended by the current Bill. This undertaking accordingly supersedes the one given on 3 April 2001.

The full terms of the agreement made by the Crown are as follows:

- (1) the Crown as landlord will, subject to the conditions described below, agree to the enfranchisement or extension of residential long leases or the grant of new residential long leases, under the same qualifications and terms which will apply by virtue of the Leasehold Reform Act 1967 and the Leasehold Reform, Housing and Urban Development Act 1993 to lessees who hold from other landlords;
- (2) enfranchisement will be refused where property stands on land which is held inalienably;
- (3) enfranchisement will also be refused where certain circumstances, which only apply to the Crown, obtain. These are:
 - (i) where there are particular security considerations (on the advice of the Royal and Diplomatic Protection Group of the Metropolitan Police or other security agencies);
 - (ii) where properties are in, or intimately connected with, the curtilage of historic Royal Parks and Palaces;
 - (iii) where properties, or the areas in which they are situated, have a long historic or particular association with the Crown.
- (4) the areas referred to in paragraph (3) (iii) include the Off Islands within the Isles of Scilly (St Agnes, Bryher, St Martins and Tresco), the Garrison on St Mary's, the village of Newton St Loe and parts of central Dartmoor. The properties referred to in that paragraph include old land revenue and reverter properties and grace and favour properties;

- (5) where enfranchisement is refused on the grounds set out in paragraphs (2) and (3) but the tenant would otherwise qualify for enfranchisement, lease extension or the grant of a new lease by analogy with the statutes, the Crown will be prepared to negotiate new leases;
- (6) the Crown will follow the valuation bases set out in the Leasehold Reform Act 1967 and the Leasehold Reform, Housing and Urban Development Act 1993;
- (7) the Crown will agree to be bound by arbitration where there is dispute over valuation or other terms, except in cases under paragraphs (2) and (3). The Leasehold Valuation Tribunal¹ will be empowered to act as the arbitration body, and will hear such disputes on voluntary reference;
- (8) the Crown will be entitled to apply to the Leasehold Valuation Tribunal² for approval of a scheme of estate management in the same way as other landlords.”

¹ Save in the case of Wales, The Leasehold Valuation Tribunal has now been replaced by the First-tier Tribunal (Property Chamber)

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