

Real Estate 2013: Legal developments you need to know



Welcome

This is a short guide to the key legal developments for the real estate sector in 2013.

The developments include new planning rules, information on the review of communications legislation, details of the CRC Energy Efficiency Scheme and the Green Deal, changes to the taxation of high value residential properties, forthcoming developments regarding rights to light and recent changes to empty property rates.

For further information or advice, please contact your usual contact at Mayer Brown or any of the Real Estate Partners at our London Office referred to in the contact list at the end of this guide.

Early 2013



Rights to Light

The Law Commission's recent work on easements, covenants and profits à prendre highlighted the need for further work on rights to light. As a result, in March 2012, the Law Commission embarked upon an examination of rights to light to investigate whether the current law by which rights to light are acquired and enforced provides an appropriate balance between the important interests of landowners and the need to facilitate the appropriate development of land. It will also examine the interrelationship with the planning system, and whether the remedies available to the courts are reasonable, sufficient and proportionate. A consultation paper is expected to be published in early 2013. The Commission will then review, in discussion with Government, how to take the project forward in the light of the consultation responses. If further work is required, it is anticipated a final report with draft bill will be published in early 2015.

Early 2013



The Green Deal

The Green Deal is the Government's flagship initiative for improving the energy efficiency of buildings by providing finance from accredited Green Deal providers, to allow a range of energy efficiency measures to be installed in commercial and domestic properties at no up-front cost. The costs will be repaid in instalments through an added charge to the properties' energy bills. The Green Deal was launched by the Department of Energy and Climate Change on 1 October 2012 and access to finance for the Green Deal measures will be available in early 2013.

Early 2013



Growth and Infrastructure Bill

The new Growth and Infrastructure Bill aims to streamline and speed up the planning system. The main provisions of the Bill include: (i) the option to make planning applications directly to the Secretary of State; (ii) broadening the limits on the powers that local planning authorities have to require information with planning applications; (iii) allowing for the reconsideration of economically unviable affordable housing requirements; (iv) limitations on town and village green registrations; and (v) simplifying consent applications under the Electricity Act 1989. The Bill's third reading debate in the House of Lords is due in early 2013.

March 2013



Non-domestic renewable heat incentive (RHI)

The Non-Domestic RHI Scheme supports renewable heat installations in business, industry and the public sector. RHI payments are made to the owner of the heat installation over a twenty year period and tariff levels have been calculated to bridge the financial gap between the cost of conventional and renewable heat systems. The Scheme currently supports the following technologies: biomass, heat pumps, solar thermal collectors and bio-methane and biogas. In September 2012, the Department of Energy and Climate Change (DECC) consulted on proposals for expanding the Scheme to include additional technologies such as air source heat pumps and combined heat and power (CHP). Currently CHP installations can receive RHI payments on their heat output, but there is no tariff specific to CHP. The DECC are proposing to introduce a specific tariff for heat from biomass CHP. The consultation closed on 7 December 2012. It is expected the Government will publish its policy for extending support to new technologies in the non-domestic sector in March 2013.

April 2013



Taxation of high value residential property

As announced in Budget 2012, and following consultation over the summer 2012, legislation will be introduced for an annual residential property tax to be payable by certain non-natural persons that own interests in dwellings valued at more than £2million. This tax will come into effect on 1 April 2013. It is an annual tax, and returns and payments will be required annually. Returns will usually be due on 30 April with payment on 30 April, but for the first year returns will be due on 1 October 2013 and payment by 31 October 2013. There are a number of reliefs available to taxpayers to cover cases where the dwelling is being, or is to be, used for a number of genuine commercial activities. Also, from April 2013, the Capital Gains Tax regime will be extended to gains on the disposal of residential property valued at more than £2 million and shares or interests in such property owned by non-natural persons. Both changes are subject to consultation.

April 2013



Company reporting of greenhouse gas emissions

Following a consultation, the Government announced in June 2012 that it will be introducing regulations requiring all businesses listed on the Main Market of the London Stock Exchange to report their levels of greenhouse gas emissions in their annual reports. The aim of the reporting is to enable investors to see which companies are effectively managing the hidden costs of greenhouse gas emissions. The new regulations will be introduced from April 2013. They will be reviewed in 2015, before the Government decides whether to extend the approach to all large companies from 2016.

Spring 2013



Sustainable Drainage Systems (SuDS)

Sustainable Drainage Systems or “SuDS” as they are commonly known, are designed to collect surface water run off and release it slowly (rather than discharging it straight into the public sewer system like conventional drainage systems). The effect of this slow release is to reduce the risk of flooding. The Government wants to encourage developers of residential, commercial and industrial developments to build more SuDS to reduce flood risk. The Government originally intended the SuDS to be implemented on 1 October 2012. However, the Department for Environment, Food and Rural Affairs (DEFRA) are continuing to analyse the responses received from its consultation in August 2012, and will now prepare the Government response and implementation plans for Spring 2013.

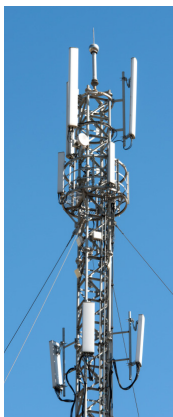
Spring 2013



Abolition of distress

Distress for rent is a common law remedy which gives a landlord the right to seize goods belonging to a tenant and sell them to satisfy the tenant's debt in respect of unpaid rent due to the landlord. Unsurprisingly, in the current economic climate, distress for rent has been a valuable remedy for landlords as tenants become unable to meet their lease obligations. The Government plans to replace the law of distress with a new statutory regime called Commercial Rent Arrears Recovery (CRAR). Under the new regime, commercial landlords will be required to serve an enforcement notice on the tenant and wait a prescribed period of time, before seizing goods. There will also be a requirement that a minimum amount of rent remains unpaid before CRAR will become exercisable. It was anticipated that the Government would implement CRAR in April 2012. However, implementation has been delayed and will now take place in Spring 2013 at the earliest.

Spring 2013



Electronic Communications Code

The Electronic Communications Code sets out the regime that governs the rights of electronic communication operators to maintain infrastructure on public and private land. In June 2012, the Law Commission published a consultation on its proposals to reform and update the Code. The areas highlighted for potential reform include: (i) the rights of operators and landowners under the Code, and the position of third parties; (ii) operators obligations and rights under the Code; (iii) the test applied to determine whether code rights are granted to an operator where a landowner objects; (iv) the measure of the financial reward to be paid to the landowner where an operator is granted code rights; (v) the appropriate forum for the resolution of disputes; and (vi) the interaction between the Code and other statutory regimes including the Landlord and Tenant Act 1954. The consultation closed on 28 October 2012. The Law Commission is currently analysing the responses to the consultation with a view to producing a Report with recommendations to Government (but no draft Bill) in Spring 2013.

June 2013



Flood Risk Insurance

The Government currently has an agreement with the insurance industry, called the “Statement of Principles”, that commits insurers to continue to offer insurance to existing customers where they are at significant risk of flooding and where the Environment Agency has announced plans and notified the Association of British Insurers (ABI) of its intention to reduce that risk within five years. This agreement is due to end in June 2013.

The Government and the ABI are currently in negotiations to determine a mutually acceptable replacement scheme. However, in the interim, there is a risk insurers will avoid offering insurance against flood in high risk areas, leaving property owners faced with the prospect of either bearing the risk of flood damage themselves, or paying higher premiums to keep the property fully insured. In many cases, the situation is further complicated by obligations owed to tenants (as many leases include flood damage as an ‘insured risk’ against which a landlord must insure) and lenders, who may be unwilling to lend against a property at high risk of flood without insurance.

Summer 2013



Registering Town and Village Greens

Over the past few years, there has been a significant increase in the number of applications to register land as a town or village green. This has led to concern by the Government that the current system is being misused by some as a tool to try and delay or stop authorised developments. In response, the Government has published the Growth and Infrastructure Bill which contains a number of reforms to the law for registering new town and village greens in order to make the process more efficient and robust. The reforms are expected to come into force by Summer 2013.

October 2013



Empty property rates

The Chancellor announced in his Autumn Statement that from October 2013 all newly built commercial property completed between 1 October 2013 and 30 September 2016 will be exempt from empty property rates for the first eighteen months following completion of construction.

2013



CRC Energy Efficiency Scheme: simplification

The Carbon Reduction Commitment (CRC) was introduced in 2010 and is a mandatory scheme aimed at improving energy efficiency and cutting carbon emissions in large targeted public and private sector organisations. Participants are required to report on their carbon emissions and buy sufficient allowances to cover the amount emitted each year. Each allowance represents one tonne of carbon dioxide. However, since it began, a number of aspects of the scheme have been criticised, in particular, that it was too complex, difficult to understand and costly for participants to administer. Consequently, in the 2012 Budget, the Government announced that unless major administrative savings could be made, it will bring forward proposals in autumn 2012 to replace the CRC with an alternative environmental tax. On 27 March 2012, it published a consultation on simplifying the CRC which contained proposals for a leaner, simplified and re-focused scheme. The consultation closed on 18 June 2012. The Chancellor announced in his Autumn Statement that the CRC will be simplified from 2013, rather than replaced, but the effectiveness of the CRC will be reviewed in 2016.

2013



Overhead Power Lines

In October 2012, the Department for Energy and Climate Change opened three consultations on the overhead power line regime. The consultations are part of the Government's push towards reducing regulation for developers and costs for taxpayers and include: (i) proposed reforms to the necessary wayleaves regime; (ii) proposed revision of the fees payable on applications for development consent for electric lines; and (iii) proposed amendment of the Planning Act 2008 to allow applications for development consent for 'minor works' not to have to be submitted to the Planning Inspectorate. The proposed reforms will be of interest to both utility providers and developers, as they will impact upon infrastructure projects and new developments in the future. The consultations closed in November 2012 and the Government's response is expected in 2013.



High Speed Two (HS2)

In January 2012, the Government announced its decision to proceed with the new national high speed rail network (HS2) linking London to Birmingham, Manchester and Leeds. HS2 will be delivered in two phases, with the first phase to be built between London and Birmingham by 2026 and the second phase to be built from Birmingham to Manchester and Leeds by 2033. By the end of 2013 the Government will introduce in the House of Commons a hybrid bill to provide necessary powers to construct and operate phase 1 (London to Birmingham) of the railway. This will be followed in early 2014 by a formal consultation on the preferred route for phase 2 (Birmingham, to Manchester and Leeds) and a chosen route will be finalised by late 2014. The Chancellor also revealed in his Autumn Statement that plans will be announced in early 2013 to take HS2 to the North West and West Yorkshire.

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