

REAL ESTATE NEWSLETTER

NEWS

Life is a rollercoaster

Ban on upwards-only rent review

The English Devolution and Community Empowerment Act has received Royal Assent, with only limited amendments to the ban on upwards-only rent reviews. One amendment has, however, introduced a retrospective element which means the ban will catch leases granted pursuant to tenancy renewal arrangements entered into on or after 17 March 2026. The ban is expected to come into force next year and will apply to commercial leases where the revised rent is determined by reference to a variable, including the market rent, inflation or the tenant's turnover. Government guidance has suggested that there will be scope for allowing collars and reciprocal caps to soften the impact of the ban on landlords and investors while still affording tenants protection.

The market is, of course, very different to that in the early 2000s when a ban was first mooted and it will be interesting how big an impact it has in practice. It does seem likely to reinforce the trend toward shorter more flexible leases. This will result in an increase in the number of leases without rent review provisions and may lead to higher starting rents and an increase in the use of stepped rents. In addition to a tenant right to break linked to a rent review date, it is possible that landlord break rights may also start to appear. There is certainly plenty of scope for debate before the ban comes into effect.

Right on

Renters' Rights Information Sheet

The government has published details of the information landlords of residential tenancies will need to provide to their tenants. The information is contained in The Renters' Rights Act Information Sheet 2026. The Information Sheet

summarises the main changes to the UK's residential tenancy regime which will come into effect on 1 May 2026. These include the abolition of Section 21 "no-fault" eviction notices, the end of ASTs and fixed-term assured tenancies, controls on rent increases, rights in respect of pets and revised grounds for possession which the landlord of an assured tenancy must establish to obtain possession. The Information Sheet must be provided by the landlord or the letting agent to every individual named as a tenant on the existing tenancy agreement. It must be served by 31 May 2026. The government has indicated that service can be effected by sending a PDF by email or text, as well as by post or by-hand delivery. However, it will not be sufficient to simply send a link to the document.

A reminder that the provisions of the Renters' Rights Act 2025 will come into force in phases, starting on 1 May 2026 when the new residential tenancy regime will begin. The remaining provisions of the Act will be introduced in two further phases. The second phase is expected later this year and will include the new private rented sector database and the establishment of a landlord ombudsman. Phase three will focus on the introduction of a modernised Decent Homes Standard to the private rented sector. There is no indicated start date for Phase 3. A reminder that tenancies which are not assured tenancies will continue to operate outside of the statutory regime as common law tenancies. These include corporate lets and tenancies where the annual rent exceeds £100,000 or is below £1,000.

Standing in the way of control

New contractual control regime

The government has published draft regulations in relation to the introduction of the promised new regime for disclosing information in relation to agreements creating rights which control the ownership and use of land. The Provision of Information (Contractual Control) (Registered Land) Regulations 2026 set out details of the new

disclosure regime and the arrangements that will be caught when the regime comes into force on 6 April 2027. The policy behind the new regime is to give greater transparency in relation to land ownership and control. Accordingly, a person with the benefit of an option to acquire land will need to provide information about the terms of that option rather than simply protecting it by registering a notice on the title to the affected land. The new database will be created and maintained by the Land Registry. This will increase the workload of a Land Registry already struggling to process a significant backlog of applications for registration. The Land Registry is required to publish the information provided to it “as soon as practicable” after 6 April 2028. In addition to options, the regime will catch conditional contracts, rights of pre-emption or first refusal, and some promotion arrangements. Conditional contracts will include those conditional on the grant of planning permission for a new development project. There are some exclusions, including security arrangements, short-term arrangements of less than 18 months (including any renewal or extension of the original term), rights relating to short-term leases with less than 15 years of the term remaining when the right is granted, the grant of certain rights which do not relate to a future development, Section 106 obligations relating to infrastructure, amenities or services, and rights granted for the purposes of national security. The person with the benefit of the right must disclose the required information within a 30-day period. There are ongoing disclosure requirements which apply if the contractual arrangement is varied or assigned, as well as on its termination or expiry. Contractual rights granted after the Regulations are made later this year but before the regime comes into force will also be caught and details must be registered by 6 October 2027.

It is important to note that a variation or assignment of a pre-existing contractual right will trigger first registration of information in respect of that right. This means that details of confidential arrangements made before the Regulations are made may end up being publicly available. The database will include key information about the contractual arrangement, including the land affected, the identity of the person with the benefit, the type of right, the duration of the right and the date of grant or exercise. Non-compliance will be a criminal offence and the Land Registry can also refuse to

protect the relevant right on the register by notice or restriction. Land Registry guidance, including details of a proposed new digital submission process is awaited. It will be necessary to consider the new regime when drafting new provisions and also when reviewing existing arrangements, particularly if a variation, assignment or novation is contemplated. However, it seems clear that the new regime will not catch rights in respect of shares in a corporate vehicle holding the legal title. Nor does it apply to rights relating only to the grant of easements, such as an option to acquire a right of way necessary for freeing up land for development.

Common people

Bill maps out future of residential leases

A reminder that the Commonhold and Leasehold Reform Bill has been published and is making its way through the parliamentary process. The Bill provides for the significant reform for residential leases and follows the overhaul of residential tenancies provided for in Renters’ Rights Act 2025. The key reforms include the reinvigoration of the existing commonhold regime to ensure that it works for all stakeholders, including developers, investors, funders and owners and that it can be used across the full range of residential and mixed-use developments. It will also make it easier for existing developments to convert to commonhold.

A commonhold project will involve a Commonhold Community Statement and a Commonhold Association. All unit holders will be members of the Association, and the Association will own and manage the common parts. The Association is a company limited by guarantee. The Statement sets out the rules governing the building. To ensure that commonhold works for a range of buildings and unit owners, local rules can deal with specific issues. These can be introduced at the outset or can be added to or amended by the Association at a later date. To help facilitate the completion and handover of new development projects, the developer retains rights to enable it to complete the development and sell the units. The Bill also deals with the handover of the scheme to the Association. A developer can also subdivide a project into sections to ensure

separate interests have the correct maintenance and management functions to allow for the day-to-day operation of the development. For example, by separating the residential and commercial parts of a mixed-use project. The Bill also provides for the continued existence of leases in commonhold structures to cater for Sharia Law compliant finance structures and shared-ownership leases. To ensure that there are sufficient resources for maintenance and repair of the building, Associations must maintain reserve funds and there is scope for borrowing to cover emergency costs. On the sale of a unit, the owner must provide a Commonhold Unit Information Certificate setting out prescribed information about the property. After previous failed attempts to promote commonhold as a viable leasehold alternative, the government must ensure that the revised regime is fit for purpose because it will be the only available option: the Bill contains a ban on the sale of new long residential leases. Subject to limited exceptions, all new flats must be sold as commonhold units. The ban is not retrospective, as is the case with the conversion of fixed-term assured tenancies to periodic tenancies. Although it should be easier for existing leaseholds to convert to commonhold. The ban will not apply to build-to-rent blocks, student accommodation or social rented housing. Once the ban comes into force, a new lease of residential property cannot be registered at HM Land Registry unless it contains a prescribed statement that it complies with the legislation.

Ground rents in existing long residential leases will be capped before they are eventually abolished. An annual cap of £250 will apply for a period of forty years. Following which, any remaining ground rents will be reduced to a peppercorn. The phased elimination of existing residential ground rents follows the earlier prohibition of new ground rents in leases granted after 30 June 2022 under the Leasehold Reform (Ground Rent) Act 2022. To prevent the loss of a valuable asset and stop landlords from receiving an unjust windfall, it will no longer be possible to forfeit a long lease of residential property. Forfeiture will be replaced by a new enforcement scheme with greater court involvement. A court can make a compliance order, award damages and

ultimately make an order for the sale of the flat. Although an order for sale results in the loss of the tenant's flat, the tenant will receive any net proceeds of sale after the costs of the proceedings, the landlord's claim and sums owed to any mortgagee have been paid. The enforcement regime for estate rentcharges will also be aligned with the new enforcement regime for long residential leases.

CASES ROUND UP

I bet that you look good on the dancefloor

Landlord's redevelopment break right granted on renewal

Ministry of Sound v The British and Foreign Wharf Company Ltd: [2025]

The Ministry of Sound had applied for a new lease of its nightclub premises under the Landlord and Tenant Act 1954. The main issue was whether the renewal lease should contain a break right allowing the landlord to redevelop. The landlord wanted a rolling break and the tenant objected on the ground that it required certainty regarding the length of the term for its business plans. The existing lease did not contain a landlord break right.

The issue went to court where it was held that the landlord was entitled to a rolling break option exercisable from June 2028 by giving nine months' notice. The nightclub was in an area for potential redevelopment and there was a real possibility of the landlord having the necessary intention to redevelop during the term of the renewal lease. The court could not find any hurdle that would prevent a future redevelopment project being carried out by the landlord. The landlord would still need to establish the necessary intention to carry out the redevelopment for the purposes of Section 30(1)(f) of the Act if the exercise of its break right is to be effective.

The Lovecats

Cats and environmental health

R (Williamson) v Caerphilly County Borough Council: [2025] EWHC 3312

The claimant had challenged a decision by the Council that cats fouling in her garden did not

amount to a statutory nuisance under the Environmental Protection Act 1990. The claimant was concerned that her neighbour's cats used her garden for their business. The claimant was pregnant and concerned about the potential health risks, including toxoplasmosis. She sought judicial review of the Council's decision.

The High Court allowed the challenge. The Council had focused on whether the cats were kept in a manner that was prejudicial to health and not whether their fouling constituted "any deposit" prejudicial to health under the Act. The Council's decision had also considered the cats' right to roam and the facilities provided at their owner's property. The Council should have considered whether cat faeces were capable for being prejudicial to health. There was no exemption in the Act in relation to the deposits of roaming cats. The matter was referred back for determination in accordance with the correct principles.

Money for nothing

Provision of services was not rent

Garraway v Phillips: [2026] EWCA Civ 55

The Court of Appeal has considered whether a tenancy agreement granted in consideration of the tenant carrying out work on the landlord's estate was an assured tenancy. If the tenancy was an assured tenancy under the Housing Act 1988, the tenant would enjoy statutory protection. The tenant agreed to carry out work on two days each week. The issue was whether the work constituted rent for the purposes of the Act. The tenant argued that the services had a monetary value and qualified as rent. At common law, rent does not have to consist of the payment of money and could consist of some form of payment in kind. However, for the purposes of the 1988 Act, rent was limited to rent payable in money. Accordingly, no rent was payable and the tenancy was a common law tenancy and not an assured tenancy. The tenant did not enjoy any security of tenure under the Act and the landlord did not have to rely on a statutory ground for possession.

I won't let you go

Application for relief from forfeiture failed

Mentmore Golf Investments Ltd v Gaymer: [2025] EWHC 2604 (Ch)

Mentmore was the tenant of a golf course under a long lease. The landlord was Mr Gaymer and the lease had been charged to Mentmore Investments. The tenant and the mortgagee were related companies controlled by Mr Halabi. The tenant had been in breach of its repairing covenants and the landlord brought forfeiture proceedings. A possession order was granted but the tenant failed to give possession. Before the possession order was executed, the tenant and the mortgagee brought separate claims for relief from forfeiture. These were struck out and the mortgagee appealed. The issues were whether an application for relief from forfeiture can be made after a possession order is made but before it is executed and whether the subsequent execution of the order is a bar to relief. The court also considered whether the relationship between the tenant and the mortgagee made the application for relief an abuse of process.

The court held that the application for relief could be made after an order for possession was made but before it was executed on the basis the landlord was still proceeding to enforce forfeiture. However, the mortgagee's application was found to be an abuse of process designed to "string out" the proceedings.

Word up

No specific performance of oral contract

Conway v Conway and another: [2025] EWHC 33314 (Ch)

Another decision involving a family farm dispute. In this one, the parties are cousins. The applicant owned a farm which included a derelict barn. The respondents wished to convert the barn into residential accommodation. Discussions were entered into and it was agreed that the respondents would purchase the barn for £150,000 and that solicitors would be instructed

to effect the legal transfer. The parties did not enter into a written contract and the purchase price was not paid. The respondents went into occupation and commenced renovation works. Solicitors were instructed in relation to the transfer. However, the parties fell out regarding the terms of the transfer and negotiations ceased. The applicant demanded that the respondents cease work on the barn. The respondents carried on accessing the property and carrying out the works, at a total cost of around £230,000. The applicant sought a declaration that the respondents had no proprietary interest in the barn and also an injunction requiring them to cease accessing the barn and carrying out works. The respondents counterclaimed in proprietary estoppel and sought an order transferring the barn to them. They did not argue that there was a constructive trust of the barn or that they were entitled to compensation. At first instance, it was held that the respondents were entitled to specific performance of the oral agreement to transfer the property. The judge ruled that the court could enforce an agreement for the disposition of an interest in land which did not comply with the requirements of Section 2 of the Law of Property (Miscellaneous Provisions) Act 1989.

The applicant appealed on the basis that the respondents could not rely on proprietary estoppel to give effect to an oral contract which did not comply with Section 2. The High Court ruled that an order for specific performance could not be made to enforce an otherwise unenforceable contract. The judge referred the issue as to whether the respondents were entitled to compensation for the work carried out to a further hearing. The court could not grant specific performance in respect of a contract which did not comply with Section 2. However, the applicant may be entitled to equitable compensation.

State of independence

Flat and connected storage unit were not the same premises for SDLT purposes

Sehgal and another v HMRC: [2025] UKFTT 1439 (TC)

In this First-tier Tribunal decision, the Tribunal considered whether the purchase of a flat, car parking space and a separate storage unit were subject to residential or mixed/non-residential

rates of SDLT. The taxpayers paid a premium for the assignment of existing leases in relation to the flat and parking space and the grant of a new lease of a storage unit. Although not specifically linked to the flat, the storage unit could only be used for private residential storage by someone owning a flat in the block. It could only be assigned to an owner of a flat in the block but did not have to be assigned to a buyer of the taxpayers' particular flat.

The Tribunal decided that the purchase of the flat and the storage unit were separate transactions. It also considered whether, if it had been a single land transaction, whether the storage unit was "appurtenant to or pertaining" to the residential flat. Because the storage unit could be assigned separately and was not annexed to the particular flat in the same way as an easement, the Tribunal decided that it was not appurtenant to or pertaining to the flat. The storage unit was not residential property as it did not subsist for the benefit of a particular flat and the mixed/non-residential rates applied to consideration paid for the grant of the lease.

OUR RECENT TRANSACTIONS

We advised Song Capital on a £210 million refinancing secured on a portfolio of care homes.

We advised Herbert Smith Freehills Kramer on its new London headquarters at 8 Exchange Square.

We advised MorGen on its 20mw green hydrogen production facility in Milford Haven.

We are advising Gibson Dunn on its new London office at One Exchange Square, by Liverpool Street Station.

AND FINALLY

VAR vigilante

Many football fans are frustrated by the use of VAR, unless of course it works in their favour. In a German second division match, a fan of Preußen Münster unplugged the VAR equipment during a match against Hertha Berlin while a penalty decision was being made.

No WFH

A police sergeant has been sacked for falsely giving the impression she was working at home. The Avon and Somerset officer had placed an

object on her keyboard to give the impression something was going on.

Word of the year

Oxford University Press has named “rage bait” as its word of the year for 2025. This has confirmed the popularity of online terms following last year’s choice of “brain rot”. In 2023 it was “rizz”, which is a “6-7” out of 10. The Cambridge Dictionary opted for “parasocial” and Merriam-Webster chose “slop”. Other contenders included “vibe coding”, “aura farming” and “bio hack”.

Brutalist

London’s Southbank Centre has been granted Grade II listed building status. The concrete

building designed by Norman Engleback has polarised opinion since it opened in 1967.

Booze cruise

A cruise line operator is being sued after a passenger died. The passenger had consumed 33 drinks and the family claimed that the operator’s “all you can drink” package was a factor.

Working it out

A thief who swallowed a Fabergé egg pendant, valued at £14,250, has passed the stolen property six days after it was consumed. Police had been monitoring the situation.



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