

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.

Whereas in “Non-Excepted Areas”, The Crown Estate will act by analogy with the provisions of the 1967 Act and the 1993 Act in relation to enfranchisement and lease extensions, in certain parts of The Crown Estate the undertaking given to Parliament does not apply. These are known as the “Excepted Areas”. However, The Crown Estate has a voluntary policy of acting within the spirit of the legislation for those areas on the conditions set out in this paper.

The application is made by way of completion of a form prepared for this purpose; a copy of which is attached.

This paper is intended to give general guidance as to the rights of tenants on The Crown Estate to seek an extended lease of properties lying within the “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 extend a lease are strongly recommended to obtain their own legal and valuation advice.

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1. FLATS - (where The Crown Estate is your immediate landlord)

Enfranchisement is not available. Instead a qualifying tenant of a flat may apply to extend his existing term by an additional 90 years, subject to a maximum aggregate term of 150 years. If the qualifying criteria are satisfied, The Crown Estate will enter into negotiations for a new lease.

The qualifying criteria

- 1.1. The property must comprise a flat.
- 1.2. 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 application is made.
- 1.3. A qualifying tenant is a tenant who holds a “long lease” i.e. a lease which was originally granted for a term over 21 years. A tenant who holds a business tenancy cannot be a qualifying tenant
- 1.4. There is no “low rent test”.
- 1.5. There is no “residency test”.
- 1.6. The personal representative of a deceased tenant who fulfilled the qualifying criteria immediately before death is entitled to make an application within two years of the date of grant of probate or letters of administration.

Procedure

- 1.7. A claim is made by giving to The Crown Estate a completed “Tenant’s Application for a new Long Lease” in the form annexed (“the Application”) and by making the payment in paragraph 1.8
- 1.8. The Application should be signed personally by or on behalf of the tenant and should be accompanied by a cheque made out in favour of Pemberton Greenish LLP (The Crown Estate’s solicitors) in an amount equal to 10% of the price proposed in paragraph 6 of the Application or (if greater) the sum of £250. The said amount will be held by Pemberton Greenish LLP as stakeholders on account of the price to be paid for the new lease
- 1.9. The Crown Estate will as soon as reasonably practicable following receipt of the Application advise the applicant whether it considers that the Application is valid and if so, whether the Application is accepted. At the same time, The Crown Estate will also advise the applicant whether or not the price offered 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.

Terms of the lease

- 1.10. Unlike a lease extension in a “Non-Excepted Area”, the terms of the lease will be a matter for negotiation between the parties and a rent will be payable

Valuation

- 1.11. The Crown Estate will apply the principles of the valuation provisions set out in schedule 13 of the 1993 Act to determine the premium for the new lease but with such modifications as are appropriate to relate that schedule to a sale of a lease at a rent.
- 1.12. 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
 - 1.12.1. the value of improvements made by the qualifying tenant to his flat are disregarded.
 - 1.12.2. marriage value is divided 50:50
 - 1.12.3. 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
- 1.13. the valuation date is the date that the Application is received by The Crown Estate.
- 1.14. in certain circumstances, The Crown Estate may seek additional compensation if the effect of a new lease is to reduce the value of other property of The Crown Estate.

Costs

- 1.15. Whether or not a new lease is completed, the tenant will reimburse The Crown Estate the reasonable costs and fees that it incurs with its valuers and solicitors in (a) investigating the Application (b) obtaining valuation advice and negotiating and settling the price to be paid for the new lease and (c) preparing settling and completing the new lease

Completion

- 1.16. when the price for the new lease has been settled, either by negotiation or by arbitration, then The Crown Estate will expect completion of the new lease to take place within a period of two months following the date of submission of the draft lease by its solicitors.
- 1.17. in the event that, at the fault of the applicant, the new lease is not completed within such period of two months, then The Crown Estate will treat the Application as having been withdrawn and will not be prepared to consider any new Application for a period of twelve months from the date of such withdrawal.
- 1.18. In the event that the Application is treated as having been withdrawn, The Crown Estate will repay to the applicant a sum equal to the amount paid under paragraph 1.8 above after deduction of the costs payable under paragraph 1.15 above

2. FLATS - (where The Crown Estate is not your immediate landlord)

There will be occasions when a tenant is unable to apply for a lease extension from his landlord because the unexpired term of the landlord's lease will be shorter than the term by which he wishes to extend.

- 2.1. To date there have been various methods for dealing with this, the most popular of which has been the granting of concurrent leases. The policy is now to grant concurrent leases in all cases in "Excepted Areas".
- 2.2. The qualification criteria, lease terms and valuation principles in these circumstances are as stated in paragraphs 1.1 to 1.18 above.

3. HOUSES

Enfranchisement i.e. buying the freehold is not available. Instead, tenants of houses may apply to extend their existing term by an additional 90 years, subject to a maximum aggregate term of 150 years. If the qualifying criteria are satisfied, The Crown Estate will enter into negotiations for a new lease.

The qualifying criteria

- 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 application 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 1.3 above)
- 3.6. The personal representative of a deceased tenant who fulfilled the qualifying criteria immediately 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 giving to The Crown Estate a completed “Tenant’s Application for a new Long Lease” in the form annexed (“the Application”) and by making the payment referred to in paragraph 3.9
- 3.9. The Application should be signed personally by or on behalf of the tenant and should be accompanied by a cheque made out in favour of Pemberton Greenish LLP (The Crown Estate’s solicitors) in a sum equal to three times the amount of the annual rent stated in paragraph 4 of the Application or (if greater) the sum of £25. The said amount will be held by Pemberton Greenish LLP as stakeholders on account of the price to be paid for the new lease

3.10. The Crown Estate will as soon as reasonably practicable following receipt of the Application advise the applicant whether it considers that the Application is valid and if so, whether the Application is accepted. At the same time, The Crown Estate will also advise the applicant whether or not the price offered 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.

Terms of the lease

3.11. Unlike a lease extension in a “Non-Excepted Area”, the terms of the lease will be a matter for negotiation between the parties and a rent will be payable.

Valuation

3.12. The Crown Estate will apply the principles of the valuation provisions set out in section 9 of the 1967 Act to determine the premium for the new lease but with such modifications as are appropriate to relate that section to a sale of a lease at a rent.

3.13. 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.

3.14. A calculation of the price under section 9(1) applies to low value houses and is by reference to site value.

3.15. 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

3.15.1. the value of improvements made by the tenant to his house are disregarded.

3.15.2. marriage value is divided 50:50

3.15.3. 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

3.16. the valuation date is the date that the Application is received by The Crown Estate.

3.17. in certain circumstances, The Crown Estate may seek additional compensation if the effect of the sale of the extended lease is to reduce the value of other property of The Crown Estate.

Costs

3.18. Whether or not a new lease is completed, the tenant will reimburse The Crown Estate the reasonable costs and fees that it incurs with its valuers and solicitors in (a) investigating the Application (b) obtaining valuation advice and negotiating and settling the price to be paid for the new lease and (c) preparing settling and completing the new lease

Completion

- 3.19. when the price for the new lease has been settled, either by negotiation or by arbitration, then The Crown Estate will expect completion of the new lease to take place within a period of two months following the date of submission of the draft lease by its solicitors.
- 3.20. in the event that, at the fault of the applicant, the new lease is not completed within such period of two months, then The Crown Estate will treat the Application as having been withdrawn and will not be prepared to consider any new Application for a period of twelve months from the date of such withdrawal.
- 3.21. In the event that the Application is treated as having been withdrawn, The Crown Estate will repay to the applicant a sum equal to the amount paid under paragraph 3.9 above after deduction of the costs payable under paragraph 3.18 above

4. ARBITRATION POLICY

If a property is within an “Excepted Area”, the First-tier Tribunal (Property Chamber) does not have jurisdiction and so an arbitration policy has been set up in case valuers cannot agree the price to be paid for the new lease. This policy is:

1. Where The Crown Estate has quoted terms for the grant of a new extended lease in respect of premises located in an Excepted Area and these are not accepted, it will be prepared to enter into negotiations with the tenant regarding the premium to be paid.
2. If agreement is not reached within 6 months of the date of the letter quoting the terms on which The Crown Estate is prepared to grant the new lease, the tenant may apply to have the premium determined by arbitration.
3. The application is made by notifying The Crown Estate (via their agents Savills) in writing that you wish to have the matter determined by an arbitrator. It must be accompanied by reasonable surveyors’ costs. The application will not be treated as valid unless it is accompanied by the fee. The application must be received by The Crown Estate not later than 6 months beginning with the date of the letter quoting the terms on which The Crown Estate is prepared to grant the new lease. This is a strict time limited. It will not be extended.
4. If an application is not made within the time limit The Crown Estate will not grant the new lease. The Application for a new extended lease will automatically be deemed withdrawn. Reasonable legal and surveyors costs shall be payable within 14 days of the deemed withdrawal. A fresh Application can be made but not until the expiration of a period of 12 months beginning with the last date on which an application to refer the matter to arbitration could have been made. Further costs will be payable if the tenant subsequently decides to make another claim for an extended lease.
5. On receipt of the tenant’s notification that he wishes to have the premium determined by arbitration, The Crown Estate will provide the tenant with names of five independent surveyors who will be prepared to act as arbitrator. The tenant must then select three of the surveyors from the list and notify that selection to The Crown Estate (via Savills) in writing within 14 days of receipt of the list of names. The notification shall state which of the three surveyors is preferred. The Crown Estate will then invite the preferred surveyor to accept an appointment. If he or she is unable to do so, the 2nd or 3rd nominated surveyor shall be appointed.
6. The arbitration will be conducted in accordance with the provisions of the Arbitration Act 1996. Both the tenant and The Crown Estate will be bound by the arbitrator’s terms and conditions of the appointment and the directions he or she may give. Save in exceptional cases, The Crown Estate will invite the arbitrator to deal with the application on the basis of written submissions.
7. The arbitrator shall have the power to award costs.

8. The new lease must be entered into within a period of two months following the date of submission of the draft lease by our solicitors. Any award in relation to the payment of costs must be complied with on completion of the grant of the new lease.

List of Arbitrators

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5. 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)

² Save in the case of Wales, The Leasehold Valuation Tribunal has now been replaced by the First-tier Tribunal (Property Chamber)

	Date of Commencement of Term:	
3.	Qualifying conditions (Note 2) What is the date on which you acquired your lease? (Note 4)	
4.	What is the amount of rent currently payable under your lease?	£
5.	Do you carry on at the property any business activity?	Yes/No (delete whichever does not apply)
6.	What price are you prepared to offer for the new substitute long lease?	£
7.	Name and address of your solicitor (if any)	
8.	Name and address of your valuer (if any).	

Signed

Dated

NOTES

1. Background. The Crown Estate is not bound by the Leasehold Reform Act 1967 or the Leasehold Reform, Housing and Urban Development Act 1993. However, in common with other Crown authorities, The Crown Estate has undertaken in most cases to apply the statutory provisions on a voluntary basis. This undertaking was given in a statement to the House of Commons by Baroness Scotland of Asthal on 11 December 2001 in which she also indicated the circumstances in which exceptionally the statutory rights would not be available on a voluntary basis. For convenience the areas which are so excepted are referred to as “Excepted Areas”. In accordance with that statement, The Crown Estate is willing to negotiate for the grant of new long leases in the “Excepted Areas” both for houses and flats. Such leases will be granted in substitution for existing leases and for a term equal to the unexpired term of the existing lease plus 90 years, but subject to an aggregate maximum of 150 years (the longest lease which The Crown Estate has power to grant under s.3(2) of the Crown Estate Act 1961).

2. Qualifying Conditions. New long leases will only be offered to tenants who meet qualifying conditions derived from the Leasehold Reform Act 1967 (as amended) (for houses) and the Leasehold Reform, Housing and Urban Development Act 1993 (as amended) (for flats).

3. Long Lease. Essentially the existing lease must have been granted for an original term exceeding 21 years. .

4. Ownership. The qualifying condition is that the applicant must own the property at the date of application and, for both flats and houses, must own the property for two years before the date of application.