Global Corporate Real Estate Guide - England and Wales

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*This chapter was last reviewed in May 2023.*

# Authors

# Real Estate Law

## What is included in the term “real estate”?

The term "real estate" includes the following:

Land

Any buildings or structures on it

## What laws govern real estate transactions?

Property law in England and Wales is governed by statute and English common law principles.

## What is the land registration system?

The system of land registration in England and Wales was first introduced in the late 19th century and is dealt with by the Land Registry pursuant to various United Kingdom statutes. All dealings with freehold interests in England and Wales are registerable as are all dealings with leases with terms of seven or more years.

## Which authority manages the registration of titles?

In England and Wales, the relevant authority is the Land Registry, a quasi-governmental body that has regional offices throughout England and Wales.

## What rights over real property are required to be registered?

In addition to transfers of freehold land and leases for more than seven years, all charges over land should be registered to be fully enforceable.

In addition, other rights and interests are capable of being registered. These include the following:

Rights over land

Restrictive covenants

Easements

Options

Contracts for sale

It is also possible for third parties to register certain notices against registered titles without the consent of the owner (registered proprietor). Such notices are often used to protect third parties who believe that they have an interest in the property or the proceeds of sale.

## What documents can landowners use to prove ownership over real property?

The Land Registry no longer issues formal title deeds since the land registers are open to public inspection. Accordingly, the entries at the Land Registry are regarded as sufficient proof of ownership.

Upon application, the Land Registry will issue an official copy of the entries relating to any given property. Such official copy comprises the following:

The Property Register describes the property and any appurtenant rights.

The Proprietorship Register shows the name and address of the registered proprietor, and any noted restrictions placed on dealings with the property.

The Charges Register shows any encumbrances (including mortgages) that may affect the property. If the property is subject to leases that are registerable, then such leases will usually be listed in a Schedule of Leases that forms part of the Charges Register.

The File Plan shows the location and boundaries of the property, usually edged in red.

## Can a title search be conducted online?

Yes. All registered titles are available to the public upon payment of a fee and most related documents are also available online.

## Can foreigners own real property? Are there nationality restrictions on land ownership?

There are no nationality restrictions on land ownership whether as individuals or corporate entities.

However, any overseas legal entity (not including an individual) that wishes to own freehold or registrable leasehold property (i.e., a lease for a term exceeding 7 years) in England & Wales must first register itself in the Overseas Entities Register at Companies House, and identify its beneficial owner(s). In order to register the acquisition of property at the Land Registry, an overseas entity will (subject to limited exceptions) have to provide its overseas entity identification number, and thereafter comply with its annual duty to update the Overseas Entities Register. Failure to do so would place a block on the entity's ability to dispose of, lease or mortgage that property, and expose it to penalties.

## Can the government expropriate real property?

Property can be expropriated by government, quasi-governmental authorities and local authorities but appropriate compensation must be paid.

## How can real estate be held?

Broadly speaking, there are two ways (or estates) in which property can be held:

Freehold

Leasehold

There are two main categories of registered title:

Absolute title is the best form of title and applies to most registered titles.

Possessory title implies that, upon application to the Land Registry, the applicant could not deduce a satisfactory paper or documentary title to the property in question notwithstanding that the applicant is, in fact, in actual occupation or possession of the land in question.

There is an additional category for leasehold land, namely "good leasehold" title. This form of title is usually granted where the tenant applicant cannot deduce the freehold title from which the lease is derived.

## What are the usual structures used in investing in real estate?

Any person or entity with a separate legal identity can be registered as a proprietor of registered land. These would include the following:

Corporations

Co-owners

Partnerships (subject to a maximum of four partners, as registered proprietors who would hold the registered estate in trust for the remaining partners, if any)

Limited partnerships (typically holding through the General Partner)

Limited liability partnerships

Charities

Trusts (bare or nominee)

More often than not, investment in real estate will be through the direct acquisition of the real estate asset. However, there may be circumstances where it is preferable to invest indirectly, for instance, through the acquisition of shares of the company holding the property.

The actual structure used will be driven by tax considerations.

## How are real estate transactions usually funded?

Traditionally, real estate transactions have been funded by banks or other lending institutions where the interest rate charged is a margin over the base rate of the Bank of England or the London Interbank Offered Rate (LIBOR). The length of such funding will vary depending on the commercial terms agreed.

Generally speaking, borrowing to finance a residential property would be over a long period, usually 15 to 25 years, whereas borrowing to finance commercial property is usually on a short-term basis of three to five years. Longer funding terms for commercial property are available in the market place.

Typically, it will be the borrower’s responsibility to pay for all the lender’s legal and other costs such as commitment and processing fees, valuations and surveys.

In commercial loans, lending institutions would typically take a first charge over the property in question together with a charge over any rental income. Often, other collateral security is also sought.

The typical security package is as follows:

Debenture over the borrowing company

Share charge over the shares in the borrowing company from its parent

A deed of subordination in relation to any shareholder’s funds or parent loan

An intercreditor deed if any mezzanine or secondary loans are to be secured against the property

A duty of care deed with the managing agents

Possibly a guarantee from the parent or a director of the borrowing company

Banks and other institutions lending in the UK market are generally regulated under UK legislation.

## Who usually produces the documentation in real estate transactions?

Generally, the seller’s lawyer will prepare the draft sale agreement, particularly where the property is being sold in a traditional asset sale.

In fact, even where the property owning vehicle is being sold by way of a share sale, it is often the seller’s solicitor who will prepare the initial share sale and purchase agreement.

Likewise, the landlord’s solicitor will prepare the draft lease and associated documents where a property is being let.

## Can an owner or occupier inherit liability for matters relating to the real estate even if they occurred before the real estate was bought or occupied?

In relation to freehold interests, broadly speaking, a purchaser inherits the liabilities of the seller and, accordingly, a full due diligence exercise is recommended in relation to any real estate acquisition in England and Wales. This is to ensure that any contingent liabilities are properly reflected in the purchase price and that appropriate indemnities and guarantees are negotiated.

From an environmental perspective, while the concept that the “polluter pays” is applicable under UK law, the current owner of the land from which the contamination or pollution emanates would be primarily liable even if the contamination was historic, hence the need for appropriate indemnities.

In relation to leasehold, depending on the lease terms, the tenant can take on a number of the landlord's liabilities, and so again, full due diligence is recommended.

## Does a seller or occupier retain any liabilities relating to the real estate after they have disposed of it?

It is possible for a seller to retain liabilities relating to real estate after a sale since most obligations entered into in relation to real estate are deemed to be of a personal contractual nature between the original contracting parties.

Accordingly, appropriate indemnities are important to a seller to ensure that it is adequately indemnified against future breaches of covenants affecting the land, which were given by the seller or which affected the land during the seller’s period of ownership. As a result, a “chain” of indemnity covenant is continued and extended whenever the property is sold.

In relation to leasehold land, where the lease was granted before 1996, the original tenant (and usually all subsequent tenants) retain direct personal liability to the landlord to observe and perform all covenants within the lease during the term, including the payment of rent. However, for leases granted on or after 1 January 1996, an outgoing tenant is only liable on its covenants to the landlord (a) until it assigns the premises, or (b) if later, and where reasonable for the landlord to request the tenant to guarantee the assignee's lease compliance, whilst its assignee remains the tenant under the lease.

For example, if the landlord grants a 10-year lease to A, which A then (subject to its guarantee) assigns to B after two years, A is liable to the landlord throughout the period of B’s ownership. If B assigns to C after a further three years, then A has no further liability from the point of such assignment, but B is liable (subject to giving its own guarantee) to the landlord for so long as C remains as the tenant.

# Acquisition of Real Property

## What are the usual documents involved in such transactions?

The first document in any real estate transaction is normally a sale and purchase agreement between the buyer and the seller.

Such agreements are in a broadly standard format and will contain all commercial terms agreed between the parties. In addition, the agreement will incorporate certain standard conditions that have been developed over many decades and are nationally recognized.

The sale and purchase agreement will contain any appropriate additional conditions and will also include appropriate indemnities and warranties.

However, it should be noted that the general principle in UK real estate transactions is that of caveat emptor (buyer beware) so that, broadly speaking, it is for the purchaser to investigate the seller’s title to the property and raise appropriate enquiries of the seller. In replying to such enquiries, the seller must be careful not to make any misrepresentations since this could lead to a claim for damages should any statement made by the seller be either deliberately or negligently untrue.

Accordingly, a purchaser is always recommended to undertake its own full due diligence exercise including a structural survey, an environmental survey and all appropriate searches of governmental and public authorities.

In relation to sale and purchase agreements relating to leasehold land, in addition to the above matters, such agreements will often be expressed to be conditional upon obtaining an appropriate license from the landlord for the assignment of the lease and, possibly, a license for any alterations that the purchaser may wish to undertake.

## What are the warranties given by a seller to a buyer?

The general principle in UK real estate transactions is a caveat emptor so that in a traditional asset sale, warranties and representations are relatively limited.

However, if the sale is structured as a sale of the shares in the property-owning vehicle, then more extensive warranties and representations are given to reflect the fact that it is a sale of a company rather than the underlying real estate asset. In share sales in particular, the UK has seen a trend towards the use of Warranty & Indemnity (W&I) insurance. W&I policies are designed to enable a seller to limit its contingent liability whilst providing a buyer with additional comfort in the event of a claim being made after completion.

## When is the sale legally binding?

The parties are legally bound as soon as the sale and purchase agreement is dated and exchanged. Until that point, either party is entitled to withdraw from the transaction without penalty.

## When is title transferred?

Usually, the sale and purchase agreement will stipulate a completion or closing date when legal title is to be transferred. However, from the point of exchange of contracts, the seller holds the legal estate in trust for the purchaser who, from that point, is the beneficial owner.

However, it should be noted that when dealing with registered land, it is only once formal registration of the transfer has been completed that the purchaser’s title is legally complete.

Consequently, there is often a “registration gap”, being the time lapse between the date of completion of the transfer of the legal title to the purchaser and the date of registration at the Land Registry. In the vast majority of cases, this is not problematic but in certain circumstances (such as the service of a notice on the registered proprietor by a third party who is unaware of the pending or completed sale), it can cause issues.

## What are the costs usually shouldered by the parties?

The seller usually meets its own legal costs and the costs of the selling agent.

The buyer usually pays for the following:

Buyer’s agent’s or adviser’s fees

Buyer’s legal costs

Due diligence costs for surveys, assessments, reports, etc.

Search costs of statutory and government authorities

Land registration fees (rate ranges from GBP 20 to GBP 1,105)

VAT

Generally, the sale of a property will be subject to VAT at the standard rate (20%) if the land is subject to an option to tax made by the vendor or the property comprises “a civil engineering work” or is the freehold of a new commercial building

A transaction that satisfies the rules that apply to the transfer of a going concern is not subject to VAT. On the other hand, the first sale of a newly constructed residential building will be zero-rated for VAT purposes

If a mortgage is involved, a buyer will also pay the mortgagee’s legal fees and, if the buyer is a UK incorporated entity, registration fees at Companies House

Stamp Duty Land Tax (SDLT)

SDLT ranges from 0–15%, as follows:

Residential Property

Acquisition of freehold or existing lease

**Freehold Purchase Price or Lease Premium and their SDLT rate**

Up to GBP 250,000 -- Zero
The next GBP 675,000 (the portion from GBP 250,001 to GBP 925,000) -- 5%
The next GBP 575,000 (the portion from GBP 925,001 to GBP 1.5 million) -- 10%
The remaining amount (the portion above GBP 1.5 million) -- 12%

An SDLT discount (relief) is available for first-time buyers of properties costing GBP 625,000 or less, such that no SDLT is payable up to GBP 425,000, and 5% SDLT payable on the portion from GBP 425,001 to GBP 625,000.

Where a purchase results in the purchaser (including the purchaser’s spouse) owning two or more residential properties worldwide, an additional 3% surcharge is applied on top of the SDLT rates set out above (unless the property being purchased is replacing the purchaser’s main residence which is being sold). -- +3%.

Where the purchaser has not been a UK resident for at least 183 days in the 12 months preceding purchase, an additional 2% SDLT surcharge will usually be payable - +2%.

Where the purchaser is a “non-natural person” (e.g., a company, a partnership with at least one corporate partner or a unit trust (though trustees and bona fide property development businesses may be excluded from the 15% rate if certain conditions are met)) and the chargeable consideration is over GBP 500,000, a flat SDLT rate of 15% is calculated on the entire purchase cost.

Acquisition of new lease

Where a new residential lease is granted, a purchaser must pay SDLT on both:

 the lease premium applying the rates above; and

the “net present value” (NPV), being the value of the rents payable over the first five years of the lease. Where the NPV exceeds the GBP 250,000 threshold, SDLT at a flat rate of 1% is payable on the excess amount - 1%

Non-Residential and Mixed Use Property

Acquisition of freehold or existing lease

**Purchase Price and its SDLT rate**

Up to GBP 150,000 -- Zero
The next GBP 100,000 (the portion from GBP 150,001 to GBP 250,000) -- 2%
The remaining balance over GBP 250,000 -- 5%

Acquisition of new lease

Where a new non-residential or mixed use leasehold is granted, a purchaser must pay SDLT on both:

the lease premium applying the rates above; and

the “net present value,” being the value of the rents payable over the first five years of the lease, applying the rates below.

**Net Present Value of Rent and its SDLT rate**

Up to GBP 150,000 -- Zero
The next GBP 4.5 million (the portion from GBP 150,001 to GBP 5 million) -- 1%
Over GBP 5 million -- 2%

# Leases

## What are the usual forms of leases?

Leases of land in England and Wales are infinitely variable and can contain such terms as the parties may agree. However, in general terms, there are two main forms of lease:

Long lease granted for a premium with a nominal or ground rent.

For commercial property such leases are usually in excess of 50 years and, possibly, may extend to 999 years. Usually, a substantial capital premium is paid by the tenant on the grant of the lease and the annual rent thereafter is a nominal amount. Very often, such long leases are granted to developers who also assume building obligations such as city center re-developments.

In those circumstances, once the relevant buildings have been constructed, they will then be let on standard commercial lease terms and it is possible that the nominal ground rent paid during the course of the building works will increase to represent a percentage of the rental income achieved by the developer from such commercial leases.

Such long leases or “virtual freeholds” are regularly bought and sold. Shopping centers are a prime example of this.

Leases of residential flats or houses are also usually granted by way of a long lease (99 years plus) and a premium is paid to the developer by the original tenant. An additional ground rent of between GBP 100 and GBP 250, (increasing regularly throughout the term of the lease, usually at 25- or 33-year intervals) may also be payable in respect of leases granted before 30 June 2022.

There is considerable legislation relating to residential leases, particularly the sale of the underlying freehold and the administration of service charges. In recent years, and in an attempt to maximize income from residential leases, many developers adopted the practice of imposing higher levels of initial ground rent combined with rent review mechanisms which result in significant increases on review (generally every 10, 15 or 25 years). On review, the ground rent is usually doubled or increased in line with the retail prices index.

This practice has the effect of increasing the value of the freehold reversion in the hands of the developer and, as a result, an active market in the sale of freehold reversions as a separate investment class has developed.

However, in some cases, the review mechanisms have been thought to be so onerous that the residential properties concerned are potentially unsaleable. As a result, new residential leases granted since 30 June 2022 are no longer permitted to contain a ground rent.

Rack rented leases

Commercial premises in the UK are usually let on commercial leases for a term of between five to 20 years at an open market rent. However, It is increasingly common in the case of retail, and some hospitality, leases for rent to be charged based upon a percentage of the tenant's turnover, or a combination of a fixed initial rent and a turnover rent.

Rent is generally reviewed at regular intervals (usually five yearly) on an upward-only basis.

In recent years, there has been a move toward geared or fixed rent reviews where the parties agree at the outset that the rent will increase at a rate equivalent to the rise in the Retail Prices or, more recently, the Consumer Prices Index at a relevant review date. Currently in England and Wales, it would be highly unusual to have a rent review mechanism that allows the rent to go down as well as up.

If a new lease is being negotiated, the parties will agree the commercial terms and there will usually be an agreement for lease, which is then followed at a later date by the formal grant of the lease. Often, the intervening period is used by the landlord to complete certain fit-out works on behalf of the tenant or to obtain any necessary consents to the grant of the lease.

In addition, existing commercial leases are regularly assigned from one tenant to another where the incoming party accepts the existing terms of the lease in question. It is rare for a premium to be paid by an incoming tenant to an outgoing tenant. In fact, it is not unusual to see a “reverse premium” paid where the outgoing tenant makes a capital contribution to the incoming tenant to facilitate the assignment. Such reverse premiums can often be substantial in circumstances where the existing lease is viewed as “over-rented” compared to the open market rent then payable on new premises.

Generally, commercial leases are granted on a full repairing and insuring (FRI) basis, which means that, in addition to the rent payable to the landlord, the tenant is also responsible (whether directly or by way of service charge) for the cost of repair and insurance of the premises. In addition, the tenant, as occupier, will be liable to pay business rates (a tax to local government).

In some retail leases, rents are based on the turnover generated by the business being carried on at the premises or, possibly, a combination of a base rent and a turnover rent.

Increasingly, there is a move to include “Green Lease” provisions in new leases, and many of the UK’s leading commercial property owners have worked with the UK Better Buildings Partnership to develop an industry standard set of green lease provisions for new leases and a “toolkit” for affecting changes into existing lease structures, to retroactively “green-up” existing leases via a more informal memorandum of understanding.

Legally binding “green” lease clauses in new leases are likely to address issues such as data sharing on water and energy usage, participation in a building management committee and restrictions on alterations and reinstatement, whilst some may go further to mandate more proactive collaboration, for example, the supply and use of renewable energy.

## Are lease provisions regulated or freely negotiable?

Generally speaking, lease provisions are unregulated and are freely negotiable between the parties, although it is fair to say that there is a recognized format for commercial leases.

There are also a number of industry codes or guidelines that recommend certain standard provisions. Such codes of practice (for example, the Commercial Lease Code 2020 recommended by the Royal Institution of Chartered Surveyors ("RICS Lease Code")) are gaining increasing recognition.

## Is there a maximum term for leases? Can these be extended?

In reality, there is no maximum term for a lease although lease terms must not be indefinite.

Commercial lease terms can be extended by negotiation although this could give rise to an additional charge to SDLT.

## What are the usual lease terms?

Most commercial leases have between five and 15-year terms (although the current market trend is for shorter-term leases). In some industry sectors, such as the leisure sector, longer leases of 20-30 years are often the norm.

## Are there instances where tenants may demand an extension of the lease?

Many commercial or business leases enjoy the protection afforded by the provisions of the Landlord and Tenant Act 1954 (the “1954 Act”) which, broadly speaking, grant to a tenant the right to call for a new lease at the end of the original term of years unless the landlord objects to such renewal and demonstrates to the court’s satisfaction that the renewal should not be granted.

There are a limited number of grounds on which a landlord may object to a renewal and the landlord must prove such ground(s) to the satisfaction of the court. One such ground is that the landlord wishes to redevelop the property at the end of the term. Another is that the landlord wishes to occupy the premises for its own business at the end of the term.

Usually, the parties are able to negotiate the basis of a renewal lease without the need for a court to impose terms. However, if the parties are unable to agree the terms of such renewal lease, then the court will direct that the renewal lease be granted on similar terms to the existing lease but at an open market rent for a maximum term of 15 years.

However, increasingly, parties agree at the beginning of the lease that the tenant will not enjoy the security of tenure protection offered by the 1954 Act. The effect of this is that the lease automatically expires at the end of the original term with no right for the tenant to renew.

The parties must follow a simple statutory procedure to exclude the lease from the provisions of the 1954 Act.

The provisions of the 1954 Act are currently undergoing a review by the Law Commission.

In relation to residential leases, legislation exists that entitles a long residential tenant to demand, at a cost, an extension or renewal of the lease. In certain circumstances, long residential tenants may also exercise a legal right (known as collective enfranchisement) to join together and buy the freehold of their building.

## On what grounds may a lease be terminated?

It is not unusual for the parties at the outset of a lease transaction to negotiate formal break or termination rights in a lease which can be either mutual rights or operated by one party only.

In the absence of any contractual right to terminate the lease, then the tenant will have no ability to bring the lease to an end prior to its contractual term. However, a landlord may terminate or forfeit a lease in the event of a breach of covenant by the tenant or upon the tenant’s insolvency.

There is a formal procedure to be followed in relation to such termination and it is open to the tenant or any other interested party (such as a subtenant or a mortgagee) to apply to the court for relief from forfeiture. On such an application, the court will consider the relative merits and commercial interest of the parties in deciding whether or not to grant such relief.

## Must rents be paid in local currency?

The parties are free to set the rent in currencies other than sterling but such arrangements are very unusual.

## Is rent paid on a monthly basis? Is it required to be paid in advance?

Traditionally, rent is paid quarterly in advance on the usual English quarter days of 24 March, 24 June, 29 September and 25 December.

However, it is open to the parties to negotiate different timings for the payments of rent.

## How is rent reviewed? Are there limits to the increase in rent?

In a typical commercial lease, the rent is reviewed at regular five-yearly intervals on an upward-only basis, which means that the rent passing can never be less than the rent agreed at the outset of the term.

Traditionally, such rent reviews are carried out on an open market basis with certain agreed assumptions and disregards. However, rent reviews may also be based upon fixed rental increases or, possibly, the higher of a fixed rental increase (usually linked to the increase in the Retail or Consumer Prices Indices) or the open market rent at the time of review.

Currently, there are no limits to the increase in rent of commercial leases.

## What are the basic obligations of landlords and tenants?

The following is usually required of landlords:

Repair and maintain the structure of the property

Insure the property

Manage the property in a multi-tenanted building

The following is usually required of tenants:

Pay rent

Pay service charges

Keep the interior of the premises in good repair and condition

Comply with the express terms of the lease as to user and signage

Allow the landlord access for inspections and work

## What provisions or restrictions typically apply to the transfer of the lease by the tenant? May a tenant sublet the leased premises?

There are usually very detailed provisions as to the ability of a tenant to assign or sublet a lease but it is rare that there is a total prohibition against such assignment and subletting, other than in very short term lettings.

The landlord is required to act reasonably when considering the tenant’s request for an assignment or subletting and must not unreasonably withhold or delay such consent. There are statutory provisions that entitle the tenant to apply to court if it believes that the landlord has either acted unreasonably in refusing consent or has unreasonably delayed the grant of its consent.

## What happens in the event of destruction of the leased premises?

This is a matter for negotiation between the parties but generally speaking, if the premises are substantially damaged or destroyed by an “insured risk,” then the lease will provide that the tenant is relieved from its obligations to pay the rent for a period of up to three years, during which time the landlord takes on an obligation to rebuild or reinstate the premises to allow the tenant to resume its occupation. Accordingly, the landlord will usually take out loss of rent insurance, the premium for which is met by the tenant as part of the service charge.

In circumstances where a landlord is unable to rebuild the premises after the agreed period, then it is usual for either party to have an ability to determine the lease upon notice.

In cases where the damage has been caused by an “uninsured risk,” leases have historically been silent, leaving it for the parties to negotiate an exit route. The RICS Lease Code recommends that uninsured risk issues are addressed by the parties at the outset. The Code further recommends that the lease should terminate in the event of damage by an uninsured risk unless the landlord notifies the tenant that it intends to rebuild or reinstate the premises within a specified period of three years. If the landlord makes such an election, then the lease continues but the tenant is not obligated to pay any rent. New leases now increasingly set out the "uninsured risk" position.

## Who is usually responsible for insuring the leased premises?

The landlord is usually responsible for insuring the leased premises and recovers the cost from the tenant as part of the service charge.

## Will the lease survive if the owner sells the leased premises?

All leases survive a sale of the immediately superior interest and remain binding upon both the new owner/landlord and the existing tenants.

## Will the lease survive if the leased premises are foreclosed?

Generally, existing leases will survive any foreclosure.

# Planning and Environmental Issues

## Who has authority over land development and environmental regulation?

Land development and environmental regulation are primarily governed by statutory legislation, which in turn stipulates the various bodies with relevant authority.

In the case of land development, the main body with powers to regulate development is the local planning authority for the relevant area (usually the local district council) although there is a separate ‘track’ direct with a central government body to oversee large infrastructure-type projects.

In London, the Greater London Authority and the Mayor’s office also have an overarching role in relation to developments of “potential strategic importance.”

In relation to environmental regulation, the principal body overseeing environmental issues is the Environment Agency, although in some cases, the local district council for the relevant property will also have powers of regulation.

## What environmental laws affect the use and occupation of real estate?

The principal statute governing environmental issues in relation to real estate in England and Wales is the Environmental Protection Act 1990 (which creates a contaminated land regime). However, there are numerous other statutes dealing with specific aspects of land that either supplement the Environmental Protection Act or create standalone regimes in their own right, dealing with such issues as asbestos, pollution prevention and control, waste, water pollution, protection of wildlife, and habitats and carbon reduction.

## What main permits or licenses are required for building or occupying real estate?

The principal permit required to either build property or use it in a particular way is a planning permission (which is usually authorized by the local planning authority for the relevant property). Virtually all building work also requires building regulation consent, which is again controlled by the relevant local authority.

Specific uses of property by an occupier may also give rise to the requirement for further permits. In particular, the use for the sale of alcohol or operation of a property as a restaurant will usually require a premises and/or restaurant license and also, possibly, food hygiene permits.

## Can an environmental cleanup be required?

Yes. The broad principle under the Environmental Protection Act 1990 is that the person who caused any relevant contamination has the primary responsibility for cleanup. However, the land owner from time to time also has a co-existent liability (which may be enforced if the actual polluter cannot be found) simply through ownership of the land. Some form of environmental risk assessment is almost always therefore required on the acquisition of a property in England and Wales.

## Are there minimum energy performance requirements for buildings?

Yes. In March 2015 the UK Government introduced legislation prescribing minimum energy performance requirements for existing buildings. There are already detailed requirements for the energy efficiency characteristics and certification of new buildings (which are enforced through the planning consent and building regulation regimes).

Legislation has also been introduced in the last few years, which requires energy performance certificates (giving details of a building’s energy efficiency) to be provided to a purchaser and/or tenant on any transactional sale. However, such certificates are currently only advisory in nature and do not actually require any rectification to be carried out by any party.

From 1 April 2023, new minimum energy efficiency standards regulations mean it will be illegal for landlords to grant a new lease, or to extend, renew or continue an existing tenancy, of a domestic or non-domestic property that does not meet a minimum “E” rating on an energy performance certificate where one exists or is required, unless exemptions apply. A landlord of a non-compliant property will need to make appropriate energy efficiency upgrades or to have carried out an assessment and registered any available exemptions before the relevant lease transaction can be completed, or, in the case of continuation or extension of an existing lease, to avoid penalties. Exemptions available include a cost-effectiveness test for the required works based on a seven-year payback calculation; or where necessary consent cannot be obtained e.g., from the tenant, mortgagees or planning; or if the required improvement works would adversely affect the market value of the property by more than 5%; or if wall insulation improvements would cause structural damage.

Most exemption applications must be renewed every five years or earlier if the existing tenant vacates. Exemptions are personal and non-transferable and therefore any new investor who becomes a landlord of such a property will need to apply for its own exemptions and will be granted a six month temporary exemption in which to do so.

In either case, fines of up to GBP 5,000 are applicable in relation to breaches concerning domestic properties. For non-domestic properties, fines of up to GBP 50,000 are applicable upon initial breach, rising to a maximum of GBP 150,000 per breach for persistent offenders. Note that compliance with the regulations is entirely the responsibility of landlords. Tenants cannot therefore be fined and the validity of any leases granted in breach of the regulations is unaffected.

The same regulations also allow tenants of qualifying residential properties to request consent, under certain circumstances, from their landlords to carry out relevant energy efficiency improvements even where their leases may otherwise prohibit such alterations. Landlords are under a duty not to unreasonably refuse consent to applicable requests but may insist that any such improvements are undertaken by the landlord instead. The rights and obligations are enforceable through the courts but there is no provision for the imposition of financial penalties for non-compliance.

## Are there other regulatory measures that aim to improve the sustainability of newly constructed and existing buildings?

Yes. There is an increasingly strong focus on sustainability of newly constructed and existing buildings (both residential and commercial) in the UK in light of the UK government’s target of net zero carbon emissions by 2050. This is partly being tackled through the building regulation regime, which requires increasingly sophisticated materials to be used in the construction of buildings. It is also being addressed by local planning authorities through the use of sustainability assessments as part of the production of the local development plan. Environmental impact assessments may be mandated before certain types of development are approved for planning permission, allowing the local planning authority to impose mitigation measures to ensure compliance with its sustainability agenda.

Some large UK organizations are already subject to mandatory GHG emissions or other climate-related reporting obligations. Amongst them, the Streamlined Energy and Carbon Reporting (SECR) requirements under the Companies Act 2006 impose obligations on quoted companies, large unquoted companies and large LLPs to gather and report their energy use and carbon emissions data through their annual report for financial years starting on or after 1 April 2019. The SECR requirements are in addition to those which exist under the Energy Savings Opportunity Scheme (ESOS) requiring large organizations meeting certain qualification criteria to carry out audits of their energy use to identify cost-effective energy saving measures.

The Climate Change Levy aims to encourage businesses to reduce their energy usage and increase consumption from renewable energy sources by imposing a carbon tax on non-domestic consumers of certain energy resources (including gas, electricity and solid fuel).

In addition, there are a number of mandatory and voluntary appraisal techniques and codes that developers will increasingly need to comply with to secure planning permission, access funding for a project or comply with end-user sustainability strategies. In the UK, these include the BRE Environmental Assessment Method (BREEAM) for non-residential buildings, Part L (Conservation of fuel and power) of the Buildings Regulations for all buildings and BREEAM Infrastructure (formerly CEEQUAL)'s assessment and award scheme for assessing the energy performance of civil engineering and public realm projects.

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