

Who will be eligible? Recommendations for reform in the leasehold sector



[Amy Jackson](#) looks at how the Law Commission proposes to reform the qualification criteria for tenants looking to buy their freehold or extend their lease and the potential ramifications for both landlords and homeowners.

Following Anna Favre's article on the [background to the reforms](#), this article summarises the main changes the Law Commission proposes to the eligibility criteria for leaseholders looking to extend their lease or acquire their freehold, both collectively of a block of flats, or individually of a house. The principle aim is to allow more leaseholders to take advantage of the legislation by relaxing the criteria and removing obstacles and creating a regime that is simplified and unified. This will, however, have an impact on landlords and developers who have, until now, sought to protect themselves from the risk of enfranchisement.

Importantly, the Law Commission proposes to no longer distinguish between houses and flats, and to introduce the concept of a 'residential unit'. A qualifying lease must still have been originally granted for at least 21 years.

Lease extensions

Under the current regime, leaseholders of houses and flats enjoy different rights to a lease extension. A leaseholder of a flat is entitled to a 90 year extension added to their existing term, whereas a leaseholder of a house is (whilst seldom sought) only entitled to an additional 50 years. In both cases, the leaseholder must have been the registered owner of their lease for at least 2 years before being able to make a claim. The terms of the new lease will be the same as the existing lease, save that the rent will be reduced to a peppercorn and the term will be extended.

Proposals for all 'residential units':

- Abolish the two year ownership rule, allowing any leaseholder to apply for a lease extension, instead of waiting until they have owned their property for two years when the premium will have likely increased.
- 990 year extension. The landlord will retain the ability to take back the property on the grounds of re-development in the last 5 years of every 90 year period, subject to certain requirements.
- New right for leaseholders with very long leases to buy out their ground rent, without having to extend their lease.
- New right for leaseholders with onerous ground rents to extend their lease term, without having to buy out their rent.

Collective freehold acquisition of blocks of flats

Currently, leaseholders of blocks of flats have the right to collectively acquire the freehold interest in their building, as well as any intermediate leasehold interests. There are currently stringent conditions that the leaseholders, and the building, must hurdles.

Proposals:

- Raise the limit of permitted non-residential use from 25% to 50%, drastically increasing the number of buildings which qualify, particularly impacting landlords of mixed-use premises.
- New 'multi-building' regime permitting leaseholders of more than one building to make a claim together provided each building would qualify of its own accord.
- Remove the restriction of owning more than two flats in a building as a bar to being a qualifying leaseholder.
- Abolish the resident landlord exemption.

Individual freehold acquisition of houses

The right for an individual to acquire the freehold of their house is overly complex. The qualification criteria is archaic and the information required to instigate a claim can be difficult to obtain. Unbelievably, the definition of what is a 'house' is still unclear.

Proposals:

- New 'residential unit' concept will avoid the ambiguity of applying the definition of a 'house'.
- Abolish the two year ownership rule.
- Abolish all qualifying criteria based on financial limits, such as the low rent test and rateable values, except where the existing law protected leaseholders and preserves low premiums.

The Law Commission has produced a [flow chart \(see page 395\)](#) which aims to help leaseholders understand if they qualify for any form of enfranchisement right. The reforms will certainly achieve its aim of applying more widely to leaseholders and would simplify the qualification process. It will, unquestionably, also have an impact on landlords who may receive more claims and therefore an increased income through premiums, but will also be at risk of losing their interest in the buildings they had otherwise structured to retain.

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