



What to expect in 2013 – a real estate forecast

In 2013 there will be some changes to the law and practice affecting real estate transactions, as well as some new rules on EPCs and planning.

New taxes on residential property

As we reported in December 2012, unless any of the relevant exemptions apply, two new taxes will become payable in April on residential properties worth over £2m if they are owned by a "non-natural person" ("**NNP**"):

- Annual Residential Property tax ("**ARPT**") comes into effect on 1 April and both returns and payments are due in October. The amount of tax payable depends on the value of the property, ranging from £15,000 for properties worth under £5m, to £140,000 for properties worth over £20m. The thresholds will increase in line with consumer price inflation.
- Capital gains tax ("**CGT**") charge - a new tax charge will be payable by NNPs on gains accruing on or after 6 April if they were liable to the new ARPT on the relevant property. This means that those considering unwinding existing structures will no longer suffer a penalty if they fail to do so before 6 April. The rate of CGT is expected to be 28 per cent on all gains on disposals of residential property worth over £2 million, with marginal relief for profits close to the £2m threshold.

There will be extensive exemptions from these provisions for cases where property is held for genuine commercial operations, provided that the owner does not want to live in the property.

The Growth and Infrastructure Bill

The Growth and Infrastructure Bill had its first reading in Parliament in October 2012 and is due to come into force early this year. Its *raison d'être* is the promotion of economic regeneration through the removal of unnecessary bureaucracy. Amongst other things it will:

- permit certain planning applications to be made directly to the Secretary of State;
- allow landowners in England to deposit a map and statement to protect their land from registration as a town or village green; and
- postpone the next business rate valuation date in England from 1 April 2015 to 1 April 2017.

New rules on Energy Performance Certificates ("EPCs**")**

New EPC Regulations came into force on 9 January, revoking the old ones and making the following changes to the regime:

- listed buildings and buildings in a conservation area will not be subject to the EPC regime where compliance with certain minimum energy performance requirements would affect the character or appearance of the building;
- only the asset rating (the graph or numerical and alphabetic grading) of a building need be displayed in marketing information, although the whole EPC should be available to prospective purchasers or tenants on request; and
- the EPC must now be displayed in buildings over 500sqm which are frequently visited by the public where an EPC has already been commissioned (i.e. there is no need to commission an EPC just for display purposes).

Stamp Duty Land Tax ("SDLT**") on leases**

The Finance Bill 2013 is expected to contain a number of SDLT measures which will simplify the rules on paying SDLT on the grant of new leases and include:

- the abolition of the concept of an abnormal rent increase;
- the streamlining of the rules governing periods in which the tenant holds over and the ensuing grant of a new lease; and
- the simplification of the requirements which apply when the effective date of a lease occurs before the lease is granted.

The Law Commission

In February the Law Commission is due to open its consultation on rights to light. The Commission will investigate whether the law by which rights to light are acquired and enforced provides an appropriate balance between landowners' interests and the

need to facilitate development. It will examine the interrelationship between the law and the planning system, and will consider whether the remedies available to the courts are reasonable, sufficient and proportionate.

In March the Law Commission is due to report on its consultation on changes to the Electronic Communications Code. It has been examining the provisions of the Code (with a view to making recommendations for its revision and re-drafting) to assess the balance struck by the Code between the rights of electronic communications operators and landowners. It aims to clarify the statutory framework, the drafting of which has been criticised by both the courts and practitioners as being unclear and inaccessible, and to enable issues arising under the Code to be dealt with more efficiently.

Flood insurance

In July the statement of principles issued by the Association of British Insurers ("**ABI**") on flood insurance will expire. It states that, for both domestic properties built before the end of 2008 and for small businesses:

- ABI members will make flood insurance available as a feature of standard household and small business policies in areas where the annual risk of flooding is not "significant" (i.e. no worse than a 1.3% chance of flooding or the probability of one flood in 75 years);
- its members will also offer flood cover to existing customers at "significant" flood risk provided that the Environment Agency has announced plans and notified the ABI of its intention to reduce the risk to those customers to below "significant" within five years; and
- the offer of flood cover will be extended to the new owner of any applicable property subject to satisfactory information about that new owner.

When the terms of this statement expire, insurers will be free to operate "risk-based pricing", choosing which properties to offer insurance for, and the price and terms for that cover. This could mean that many property owners and business occupiers will not be able to take out flood insurance cover. Although talks are said to be continuing at a high level, no solution to this problem has been proposed yet.

Overriding interests

On 12 October this year there will be a change to the status of some of the third party interests which have until now been classified as overriding interests. This category includes manorial rights, franchises and chancel repairs liability. At midnight on 12 October they will cease to be overriding and will need to be registered at the Land Registry as a notice (if the affected land is already registered) or as a caution against first registration (if the affected land is unregistered) in order to bind purchasers for value. The effect of non-registration depends on whether the affected land is registered or not on 12 October:

- if the land is not yet registered: the landowner is bound by the third party interest. When first registration takes place, though, the interest must be entered on the title as a notice as part of the registration process for the owner to be bound; whereas
- if the land is already registered: the owner at that date is bound by the interest whether it is registered or not but a purchaser of the land for valuable consideration will not be affected by it if it is not registered.

Anyone with the benefit of such an interest should therefore ensure that it is registered as soon as possible.

Listed buildings

The current system for obtaining listed buildings consent is perceived to be overly time-consuming for both the applicant and the planning authority and insensitive to the distinctions between minor improvements and significant alterations. The Department for Culture, Media and Sport carried out a consultation last summer and published its response in October. It plans to:

- introduce a system of local and national class consents granting deemed consent;
- introduce a certificate of lawful works to listed buildings;
- consider the use by local authorities and applicants of accredited agents to make expert recommendations; and
- consider what enforcement powers are most appropriate for buildings at risk.

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