

Article by **Matthew Spring**, **Dispute Resolution Partner** and **property dispute specialist** at **Payne Hicks Beach**, originally published online by Prime Resi on 3 February 2021 and is reproduced with kind permission <https://primeresi.com/the-falling-star-of-leasehold-reform-in-search-of-the-phenomenon/>



## The falling star of leasehold reform: In search of the phenomenon

*The government's recent promise to make "the biggest reforms to property law in 40 years" sounded fabulous to many leaseholders and the public - but no one knows how on earth they are going to do it all, or exactly when, writes Matthew Spring...*

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As unexpected and eye-catching as a falling star blazed the Government's announcement by Press Release on 7th January 2021 that it is about to make "the biggest reforms to property law in 40 years" by changing the law that governs leasehold ownership. And that phenomenon on the horizon, just like a falling star, seems miles away because none of its detail is visible to the naked eye.



The headline comments of 990 year leases, abolishing marriage value, optional exclusion of development value, zero ground rents and online price calculators yielding premiums tens of thousands cheaper all sound fabulous to many leaseholders and the public. Those in the property industry familiar with the

existing intricate legislation know that it cannot be as simple as that. Trying to divide between the Press Release and what the Law Commission said on this topic last year does not assist us to know exactly how the Government proposes to do it, because they have not told us.

Whatever it is will likely take time to implement. We are still waiting for the legislation first trailed in 2017 to abolish new-build leasehold houses and ground rents for brand new leases. The announcement suggests that will be enacted in the next session of Parliament. The thorny issue of dealing with existing leaseholds looks set for the second part of the reforms vaguely due before the next election in May 2024, subject of course to any legislation more urgently needed in a post-Brexit and post-pandemic nation. In other words, it may not be anytime soon.

When the new leasehold law arrives, there will be some tinkering around the edges. Standard 990 year extensions will replace the current 90 year version, but there has never been a massive valuation differential between the two. Likewise, it appears there will be some mechanism for leaseholders collectively buying their freehold to require an outgoing owner to impose on them a restrictive covenant not to develop, in order to avoid paying development value. Currently this happens voluntarily unless the freeholder requires them to pay it. Yet it won't avoid the need to buy out a more expensive release from that covenant in years to come, if development is desired.

*Greatest uncertainty and intrigue sits around how marriage value is to be "abolished" and existing ground rents capped when calculating premiums*

Greatest uncertainty and intrigue sits around how marriage value is to be "abolished" and existing ground rents capped when calculating premiums. Will the cap tune out onerous ground rents only or will new maximums go further? The additional value created by the marriage of a lease shorter than 80 years and the freeholder's interest above when a lease is extended, is a significant sum. The Church Commissioners estimated that marriage and other value yields them £34.75 million in annual receipts.

The act of abolishing marriage value does not tell us if some other valuation element will stand in its place to soften that blow to freeholders. A half-way house was mentioned, but not analysed, in the Law Commission proposals. Some suggest freeholders could resist this change through human rights challenges, but a 2019 Parliamentary Committee Report concluded controls or limitations on premiums could avoid that issue. There will need to be a precise valuation method if the expressed intention to provide an online calculator for leaseholders is ever to be realised. It's just we have no idea what is envisaged.

The outline sketch of the Press Release is a gradual process of moving away from leasehold towards commonhold, with a special body (the Commonhold Council) being set up to work out a plan of how we might get there. If we envisage a world in which (i) all new leasehold flats have ground rents at zero combined with special incentives to developers to build commonholds and (ii) the progressive regression of ground rent values and marriage value on existing leaseholds (making those interests more attractive to buy out which in turn removes ground rents on extended leases), then the economic imperative to remain entrenched in leasehold is largely removed and commonhold could become the new way of owning property.

It's just that from the Government announcement, none of us know how they are going to do all of this, or exactly when.

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