

Welcome to the latest edition of CS Insight, the newsletter from our Corporate Services team.

The credit squeeze that began in the financial markets last summer continues to have a marked effect on confidence in the UK commercial property market as well as on asset values. In this edition of CS Insight, we examine the regulatory burden that is additionally affecting the ownership and occupation of commercial property by our clients and also the new code of practice for commercial leases that seeks to promote a fairer lease in the future.



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Can you carry the burden?

Richard Corby, Partner, Agency & Corporate Services, guides you through the legislative burdens on the occupiers of commercial property that have been introduced since 2005.

Unlike investors who choose to own property, most companies occupy property out of necessity, but 2008 may well prove to be the year when many begin to closely re-examine this arrangement as a whole new set of burdens begin to stack up on top of those the owners and occupiers of commercial property already face.

Much of this new legislation is of course well intentioned; few would argue against the right of disabled people to be able to easily access buildings or the urgent need for us all to reduce the level of damaging CO2 emissions that we emit through our energy consumption.

However, many people will see the changes to the empty rates legislation, for example, as a thinly veiled attempt by the government to raise revenue, albeit justified by the government's commendable desire to reduce the number of unoccupied commercial buildings.

Whatever the motives, the administrative burden is set to increase for property occupiers and owners, thanks to the introduction of the following legislation. To help you navigate the most cost-effective path through the new legislation, a single point of contact in Edward Symmons' Corporate Services team can coordinate the response of our in-house specialists in the areas outlined below:

2005 – The Disability Discrimination Act 2005

The Disability Discrimination Act 2005 introduced new duties for property owners and managers, making it unlawful for landlords and managers to discriminate against a present or potential disabled tenant by failing, without justification, to comply with a duty to provide a reasonable adjustment for the disabled person.

Reasonable steps must be taken to provide an auxiliary aid or service to allow a tenant who is disabled to have enjoyment of the premises or the landlord risks legal actions from disgruntled members of the public, which can result in financial costs and bad publicity.

2006 – Control Of Asbestos Regulations 2006

Under Regulation 4 of the Control of Asbestos Regulations 2006 there is a legal responsibility for the Duty Holder to manage asbestos in non-domestic premises (including common areas of flats). The Duty Holder is the person or organisation that has clear responsibility for the maintenance and repair of the



premises either as a freeholder (owner occupier) or an occupier through an explicit agreement such as a lease.

The regulations requires the Duty Holder to take reasonable steps to find Asbestos Containing Materials (ACMs) in premises and check their condition, keeping an up to date written record or register of the location and condition of ACMs, assessing the risk of exposure to ACMs and preparing and putting into effect a plan to manage the risk. Where any works which might disturb the ACM are to be carried out, a risk assessment is also required.

Directors and officers of the company may be held liable if this is not carried out and there is a penalty of up to £20,000 for each breach and up to six months imprisonment if heard at a magistrates' court. Or, if the matter is serious enough to warrant a crown court hearing, the fine can be unlimited and up to two years imprisonment may be awarded.

2006 – The Regulatory Reform (Fire Safety) Order 2005

Fire safety regulations to non-domestic premises were comprehensively reformed by new regulations that came into effect on 1 October 2006.

Under the new regulations, responsibility for fire safety transferred from the Fire Authority to the "responsible person", i.e. the employer, where there is one; the person in control of premises for the carrying out of an undertaking; or, the owner or any other person who,



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Can you carry the burden? (continued)

to any extent, exercises control over the premises.

Rather than the Fire Authority confirming what is required for compliance, the responsible person is required to undertake a fire-risk assessment, identifying the risks and putting in place appropriate fire precautions. Failure to comply incurs similar penalties to the above relating to ACMs. The enforcement responsibility will however, remain with the Fire Authority, which can inspect and serve alterations, enforcement and prohibition notices. Under the new regulations current Fire Certificates cease to have any legal status.

2008 – Changes To Empty Rates Legislation

From April 2008, the existing rates relief in respect of empty commercial properties will be dramatically reduced.

After a three month period there will be no empty rates relief on shops and offices and after a six month period full rates will be payable in respect of industrial and warehouse properties. The legislation also includes various anti-avoidance measures.

Whilst the legislation is bad news for those companies with empty properties on their books, for those in the market for additional premises, an understanding of the new legislation may enable keener deals to be struck with landlords facing an additional expense on the unoccupied property in their portfolio.

2008 – Energy Performance Of Buildings Directive

From April 2008, Energy Performance Certificates (EPCs) will be needed for all non-residential building construction and for the sale or letting of non-residential buildings over 10,000 sq m. From 1 July 2008 the qualifying size threshold will drop to 2,500 sq m and from 1 October 2008 they shall be required for all other properties.

The EPC is a comprehensive energy report which aims to provide market differentiation on the energy performance of buildings, with a view to encouraging buyers and sellers to improve the energy efficiency of their properties. Non-compliance can result in a fine of up to £5,000.

Future "burdens" in the pipeline include an Air Conditioning Inspection Regime in 2009 and a Rating Revaluation in 2010.



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Are your Leasing Agreements top of the CLAS or could they be fairer?

Robert Stokely, Associate Partner, Corporate Services considers the introduction of the New Code of Practice for Commercial Leases and its relevance in the current market.

In March 2007, the government, with the support of such bodies as the RICS, Confederation of British Industry and the Federation of Small Businesses, published The Code for Leasing Business Premises in England and Wales 2007.

With the threat of legislation to follow if it is not adopted by the property industry, the principle objective of the Code is to "help the industry in its quest to promote efficiency and fairness in Landlord and Tenant relationships".

However, since the Code has been introduced, the shocks to the commercial property market caused by the global credit crunch appear to have sent some large scale developers and investors rushing back into the comforting arms of the "institutional" full repairing and insuring lease – at least in those parts of the market where the imbalance between supply and demand favours the investor or developer.

Landlords who are committed to the new Code can be easily identified by their membership of the Commercial Landlord's Accreditation Scheme (CLAS).

The code is set around ten key points including:

- Lease Negotiations
- Rent Deposits and Guarantees
- Length of Term, Breaks and Renewals
- Rent Review
- Assignment and Subletting
- Service Charges

- Repairs
- Alterations and Changes of Use
- Insurance
- Ongoing Management

At Edward Symmons, our surveyors have a strong appreciation of market forces and are well positioned to negotiate commercial leases around the UK on behalf of clients, acting for both freeholders and tenants. We are also well versed in the provisions of the new Code and are able to advise our clients about how to strike the right balance between the best practice set out in the Code and the market forces that ultimately determine the best available deal.

Whether the Code turns out to be a short term phenomenon or the basis of good practice in the longer term remains to be seen, but neither Landlord nor Tenant should underestimate the will of the current administration to legislate in order to achieve its objectives.



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