



## Impact of Brexit on Key Legislation affecting Real Estate

Name of Legislation	Main Provisions and Effect	Source: EU or UK Based?	Likely Subject of Replacement or Repeal?
Law of Property Act 1925	This created the current system of two legal estates in land: freehold and leasehold.	UK	No
Landlord and Tenant Act 1927	This introduced the payment of compensation to tenants of business premises for "improvements". Where the tenant's alterations covenant in a lease is qualified, the Act also implies a term that the landlord's consent is not to be unreasonably withheld.	UK	No
Landlord and Tenant Act 1954	This introduced security of tenure for business tenancies and a statutory procedure for dealing with renewals and opposition to such renewals. It also set out circumstances on which a tenant will be entitled to compensation where its tenancy is not renewed.	UK	No
Misrepresentation Act 1967	Introduced an additional (tortious) remedy for contracting parties induced to enter contracts based on untrue statements.	UK	No

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Land Charges Act 1972	This updated the system for registering land charges and other rights affecting unregistered land.	UK	No
Unfair Contract Terms Act 1977	This imposed limits on the extent to which liability for breach of contract, negligence or other breaches of duty can be avoided by means of contractual provisions such as exclusion clauses.	UK	No
Law of Property (Miscellaneous Provisions) Act 1989	This sets out the formalities for land contracts.	UK	No
Value Added Tax Act 1994	Supplies of interests in, rights over, or licences to occupy commercial land or buildings are generally exempt supplies, unless the supplier has opted to tax. For this purpose, the relevant supply could be a grant, assignment, surrender or reverse surrender of a lease.	The UK's VAT system is underpinned by EU law – multiple VAT directives have been implemented in the UK through domestic UK legislation.	The implementing UK legislation will not automatically fall away. It is unlikely that the UK government will choose to repeal (in its entirety) a supply tax such as VAT without replacing it with something similar.  For now, lawyers should check when drafting their property contracts that any definition of VAT is a UK (rather than EU) law based definition.
Landlord and Tenant (Covenants) Act 1995	Releases tenants of "new" tenancies from their obligations under a lease upon a lawful assignment. Introduced the right for landlords to request the outgoing tenant enters into an Authorised Guarantee Agreement (AGA) guaranteeing performance of the incoming tenant's obligations (until the next lawful assignment of the lease) as a condition of obtaining the landlord's consent to the assignment.	UK	Possibly, but this would be due to considerable criticism surrounding the "AGA saga" rather than as a result of Brexit.

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Competition Act 1998 (the "1998 Act") and Article 101 of the Treaty of the Functioning of the European Union ("TFEU")	<p>Article 101 of the TFEU prohibits agreements that have as their object or effect the restriction, prevention or distortion of competition within the EU and which have an effect on trade between EU Member States. The 1998 Act mirrors this prohibition in respect of competition (and the effect on trade) within the UK.</p> <p>Currently, exclusivity granted to one tenant (for example a shopping centre owner granting exclusivity to one particular coffee shop at the centre when it could support further coffee shops) may be illegal under the current regime. Care also has to be given to the drafting of restrictive covenants relating to the future use of land on a disposal, as these may also fall foul of the regime.</p>	Both.	<p>The prohibition contained in Article 101 of the TFEU will fall away if and when the UK secedes from one TFEU, however, it is likely that any settlement allowing the UK access to the Single Market following Brexit will be conditional on the UK continuing to enforce the prohibition.</p> <p>Any proposed change to the UK specific regime will need to be implemented through repealing or changing the 1998 Act.</p>
Land Registration Act 2002	This modernised land registration law.	UK	No
Finance Act 2003 (as amended by the Finance Act 2004)	This introduced Stamp Duty Land Tax to replace the old system of stamp duty.	UK	No
Planning and Compulsory Purchase Act 2004	Updated the law on development, planning and compulsory acquisition of land by public bodies when the landowner is not willing to sell by agreement.	UK	No

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Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE")

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This provides that on a transfer of a business or undertaking or a service provision change:

- Employees of the “transferor” automatically transfer to the “transferee”.
- The transferee steps into the shoes of the transferor and inherits employment-related liabilities.
- The transferor and transferee have obligations to inform and consult representatives of their employees.
- Employees have special protection against dismissal and changes to their terms of employment.

As employers and employees may be landlords, tenants or facilities service providers, TUPE requires careful consideration in property transactions, particularly when property is transferring as part of a transfer of a business.

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Both. TUPE implements the Acquired Rights Directive 2001. English courts and employment tribunals are required to give TUPE a purposive construction to give effect to the general purpose of the underlying Directive, which is to safeguard employees' rights on the transfer of a business.

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Aspects of TUPE can cause headaches for employers, particularly among non-EU based businesses that are less accustomed to TUPE.

Although Parliament could repeal TUPE, this is unlikely as it may not be politically expedient to repeal legislation that is designed to protect employees, especially on the transfer of a going concern. At best, the UK Government might seek to remove some of what are regarded as the more “uncommercial” aspects, such as the application of TUPE on a service provision change.

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Official Journal of the European Union (“OJEU”) notices in Public Contracts Regulations 2006 and Public Contracts Regulations 2015 (together, the “PCC Regulations”)

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Certain types of works contracts (in particular public procurement contracts) need to be advertised in the OJEU by way of a contract notice. This invites expressions of interest. These will be evaluated and further information will be sent to selected parties. The purpose of the EU procurement rules and the implementing UK legislation is intended to ensure that contracts are awarded fairly, transparently and without discrimination on the grounds of nationality and that all potential bidders are treated equally.

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Both. The 2006 and 2015 Regulations implement the Public Sector Procurement Directive 2004 and Public Contracts Directive 2014.

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The UK may choose to remove “red tape” by repealing those aspects of the PCC Regulation that require UK entities to follow the OJEU notice process. However, it is unlikely that the PCC Regulations will be repealed in their entirety as they deal with transparency, fairness and procedures for public procurements in the UK more generally.

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Environmental Impact Assessment ("EIA") in Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (the "EIA Regulations")

The EIA process obliges developers to provide full information of any significant environmental effects to the relevant planning authorities before consent for the development is granted.

Both. The EIA Regulations implement matters required by the EIA Directive 2011.

It is unlikely that the UK will be obliged to implement the EIA Directive 2014 (assuming the formal "exit" process commences).

It will be up to Parliament to decide whether to amend or repeal the EIA Regulations, subject to any overarching international treaty obligations and / or any provisions or processes that may form part of the UK's new trading arrangements with the EU.

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Minimum Energy Efficiency Standards in:

- Energy Act 2011 (the "EA"); and
- Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (the "MEES Regulations")

The EA required the government to introduce measures, including MEES, to improve the energy efficiency of domestic and non-domestic private rented buildings in England and Wales and so cut carbon emissions.

Both. The EA implements obligations imposed on EU Member States by the EU Energy Performance of Buildings Directive 2010.

The EA and MEES Regulations could be subject to review, although a complete repeal is unlikely given the UK's domestic statutory and international treaty commitments to reduce carbon emissions.

The MEES Regulations:

- enable the tenant of a **domestic** privately rented property to request the landlord's consent (not to be unreasonably withheld) to the tenant making energy efficiency improvements to the property despite restrictions on making improvements in the lease; and
- require a landlord to ensure that their **domestic and/or non-domestic** privately rented property meets MEES (subject to certain exemptions), failing which a landlord may not grant a new tenancy, extend or renew an existing tenancy of after certain dates.

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<p>Energy Performance Certificates in Energy Performance of Buildings (England and Wales) Regulations 2012 (the "<b>EPC Regulations</b>")</p>	<p>Introduced the following requirements on any sale (which includes an assignment) or letting:</p> <ul style="list-style-type: none"> <li>– commission an EPC before marketing if there is no existing valid EPC;</li> <li>– put the EPC rating in any advertisements of the property for sale or for rent; and</li> <li>– make available to the prospective buyer or tenant a valid EPC for the property.</li> </ul>	<p>Both.</p> <p>EU regulations in 2002 required the introduction of EPCs and were further extended by the Energy Performance of Buildings Directive 2010 (the "<b>EPB Directive</b>").</p> <p>The EPC Regulations implemented the requirements of the EPB Directive (in places transcribing the EPB Directive verbatim).</p>	<p>The EPC Regulations could be subject to review, although a complete repeal is unlikely given the UK's domestic statutory and international treaty commitments to reduce carbon emissions.</p>
<p>Alternative Investment Fund Managers Regulations 2013 (the "<b>AIFMR</b>") and (parts of) FCA Handbook</p>	<p>This requires Alternative Investment Fund Managers to be authorised and contains provisions about how AIFMs should conduct their business and marketing AIFs.</p> <p>Currently, a "passporting" system allows Alternative Investment Funds established in the UK (or elsewhere in the EU) to market those AIFs to professional investors across the EU. This "passport" cuts through marketing barriers that may otherwise be established in those EU countries less open to allowing foreign funds to market in their jurisdiction.</p>	<p>Both. The Alternative Fund Managers Directive is implemented in the UK via the AIFMR and provisions in the Financial Conduct Authority's Handbook.</p>	<p>The AIFMR may be subject to amendment or repeal. There is certainly no guarantee that, following Brexit, the "passport" will be available to AIFs established in the UK.</p> <p>This could cut off (or certainly make it harder to access) sources of capital in the countries less open to foreign funds' advertising in the EU.</p>

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Immigration Act 2014

This prohibits private landlords of residential properties from allowing certain people (based on immigration status) from occupying those properties. Landlords and agents must check the status of prospective tenants and other authorised occupiers to ascertain whether those parties have the right to be in the UK.

UK

The UK may decide to amend to provisions of the Act (to remove the unlimited right of EEA nationals and the time-limited rights afforded by certain EU rights), subject to the outcome of any negotiated settlement with the EU (in terms of trade, services, and labour etc.).

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