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Research Briefing

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Leasehold and Freehold Reform Bill 2023-24

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Summary

The Leasehold and Freehold Reform Bill 2023-24 was introduced to the House of Commons on 27 November 2023. The Bill's second reading is scheduled for 11 December 2023.

The Bill, together with its explanatory notes (which provide a clause-by-clause explanation of the Bill) are available on the Parliament website: Leasehold and Freehold Reform Bill publications.

The Bill applies to England and Wales. It would make long-term changes intended to improve homeownership for leaseholders and freeholders.

This briefing explains the background to the Bill and the Bill's main provisions.

What is leasehold tenure?

Freehold is ownership that lasts forever, and generally gives fairly extensive control of the property. Leasehold provides time-limited ownership (for example, a 99-year lease), and control of the property is shared with, and limited by, the freehold owner.

In England and Wales, most flats are owned on a leasehold basis. Around 8% of houses in England are leasehold. All shared ownership properties are leasehold.

The residential leasehold sector accounts for 20% (4.98 million properties) of the housing stock in England and 16% in Wales (approximately 235,000 properties).

Leaseholders have long reported a range of problems with the tenure, including: high service and administration charges and a lack of transparency over charges; disproportionate costs to extend leases or buy the freehold; poor practices by managing agents; a slow and costly sales process; and imbalanced dispute mechanisms, with the potential to become liable for the freeholder's legal costs.

What measures are in the Bill?

The Bill implements commitments in the 2017 housing white paper to "improve consumer choice and fairness in leasehold" and in the Conservative Party Manifesto 2017 (PDF) to "crack down on unfair practices in leasehold". It also

takes forward many of the leasehold reform recommendations made by the Law Commission in their reports of 2020.

The Bill's main provisions would:

- make it cheaper and easier for leaseholders in houses and flats to extend their lease and buy the freehold.
- increase the standard lease extension term to 990 years, with ground rent reduced to a peppercorn (zero financial value), upon payment of a premium.
- change the qualifying criteria to give more leaseholders the right to extend their lease, buy their freehold and take over management of their building.
- improve the transparency of service charges and ensure leaseholders receive key information on a regular basis.
- give leaseholders a new right to request information about service charges and the management of their building.
- improve the transparency of administration charges and buildings insurance commissions.
- ensure leaseholders are not subject to any unjustified legal costs and can claim their own legal costs from their freeholder.
- give freehold homeowners who pay charges for the maintenance of communal areas and facilities on a private or mixed-tenure residential estate the right to challenge the reasonableness of charges and the standard of services provided.
- improve the transparency of estate charges and ensure freehold homeowners receive key information on a regular basis.
- ensure a rentcharge owner is not able to take possession or grant a lease on a freehold property where the rentcharge remains unpaid for a short period of time.

Alongside the Bill, the Government launched a consultation seeking views on options to restrict ground rents for existing leaseholders. The consultation closes on 21 December 2023. Subject to that consultation, the Government will look to introduce a ground rent cap through the Bill.

The Bill is the second part of a legislative package to reform leasehold law. It follows on from the Leasehold Reform (Ground Rent) Act 2022, which put an end to ground rents for most new residential leasehold properties in England and Wales.

What measures are not in the Bill?

The background briefing notes to the King's Speech on 7 November 2023 said the Bill would:

- ban the creation of new leasehold houses.
- make buying or selling a leasehold property quicker and easier, by setting a maximum time and fee for the freeholder to provide the information required to make a sale.
- require freeholders, who manage their building directly, to belong to a redress scheme.
- protect leaseholders by extending the measures in the Building Safety Act 2022 to ensure it operates as intended.

These provisions do not appear in the Bill as introduced to Parliament. The Government has indicated it intends to introduce amendments to the Bill as it makes its way through Parliament.

The Government has also committed to reinvigorate the commonhold tenure and regulate property managing agents. The Bill does not contain these measures.

Reaction to the Bill

The Bill has been broadly welcomed and has cross-party support.

However, the Government has been criticised for not going far enough in its leasehold reforms. Leasehold campaigners, the Homeowners Alliance and others have expressed disappointment that the proposed ban on creating new leasehold houses does not extend to flats. According to The Guardian, some backbench Conservative MPs could seek to amend the Bill to achieve this.

Matthew Pennycook, the Shadow Housing Minister was quoted in The Guardian as saying "commonhold should be the default tenure for all new properties, with the system completely overhauled so that existing leaseholders can collectively purchase more easily and move to commonhold if they wish."

Groups that represent leaseholder interests, such as the Leasehold Knowledge Partnership (LKP), the National Leasehold Campaign (NLC) and Commonhold Now, have also campaigned for the leasehold tenure to be abolished and replaced by commonhold.

The British Property Federation, which represents the UK real estate industry, has expressed concern about the impacts on freeholders of proposals to increase the enfranchisement threshold in mixed-use buildings and cap ground rents.

The Property Institute, which represents the residential property management sector, considers the lack of any provision to introduce competency standards or regulation to the property management sector a missed opportunity.

1 The Bill in context

1.1 The nature of leasehold ownership

In general, homeownership in England and Wales consists of two tenure types: freehold and leasehold. Freehold is ownership that lasts forever, and generally gives fairly extensive control of the property. Leasehold provides time-limited ownership (for example, a 99-year lease) and control of the property is shared with, and limited by, the freehold owner.

In England and Wales, most flats are leasehold, with a lease term of at least 21 years when first granted. Although less common, houses can also be leasehold. All shared ownership properties (which are part owned and part rented) are leasehold.

Owners of leasehold properties do not necessarily appreciate that, although they are owner-occupiers, they are in a landlord and tenant relationship with the freeholder. The rights and obligations of the respective parties are governed by the terms of the lease agreement, which is supplemented by statutory provisions.

Essentially, leaseholders buy the right to live in their property for a given period – the lease will normally be granted for a fixed-term such as 99 years. The value of a lease decreases over time as the remaining length of the lease reduces. When the length of a lease falls below 80 years, the cost of a lease extension increases significantly due to 'marriage value'.[1] Unless a leaseholder extends their lease, the property will revert to the freeholder when the lease comes to an end.

Leaseholders do not have the same control over their home as a freehold owner. The lease agreement will normally include restrictions on their use of the property. For example, they may need to obtain permission from their freeholder if they want to make alterations to the property.

In addition, freeholders may have different interests from leaseholders. For example, the freeholder may regard a leasehold property as an investment

[1] 'Marriage value' is the increase in the value of the property following the completion of the lease extension, reflecting the additional market value of the longer lease. The Leasehold Advisory Service provides a more detailed explanation of marriage value.

opportunity or a means to generate income, while for leaseholders the property may be their home as well as a capital investment.[2]

Enfranchisement and lease extensions

Qualifying leaseholders have statutory rights to buy the freehold (either individually for houses, or collectively in the case of leaseholders of flats) and extend their lease. The process of buying the freehold is often referred to as enfranchisement.

When a leaseholder exercises their right to buy the freehold or extend their lease, they must pay a price (known as the premium) to the freeholder (except for lease extensions of houses, where a 'modern ground rent'[3] is paid instead of a premium).

Ground rents

Leaseholders are normally required to pay ground rent to the freeholder. The lease agreement will set out the amount of ground rent payable and the basis for increases over the term of the lease. The freeholder is not required to provide a service in return for ground rent.

Ground rents, and any potential increases through rent review provisions set out in the lease, are factored into the calculation of premiums for enfranchisement and lease extension claims.

From 30 June 2022, the Leasehold Reform (Ground Rent) Act 2022 prohibited the charging of a financial ground rent for most new leases. However, the 2022 Act did not alter the position for existing leaseholders.[4]

Service charges

In the case of leaseholders of flats, management of the block, including its maintenance and insurance, normally remains in the hands of the freeholder. In turn, the freeholder may employ a managing agent to carry out the day-to-day management of the block. Under the terms of the lease agreement, the costs of these services can usually be recharged to the leaseholders. These payments are referred to as service charges and they may be fixed or variable.

The Landlord and Tenant Act 1985 provides that service charges must be "reasonable," and services and works must be carried out to a "reasonable standard."

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2 Law Commission, Leasehold home ownership: buying your freehold or extending your lease, HC584, 21 July 2020, paras 1.16 and 1.17

3 'Modern ground rent' is the rent (determined under section 15 of the Leasehold Reform Act 1967) payable during the additional term of a lease extension of a house. It is calculated by valuing the "site", and then decapitalising that value.

4 With the exception of voluntary (in other words, informal or non-statutory) lease extensions.

There are two government-approved codes of practice – the Royal Institution of Chartered Surveyors Code of Practice, and the Association of Retirement Housing Managers Code of Practice – which outline best practice for managing agents, freeholders or other relevant parties in relation to residential leasehold property management.

In certain circumstances, leaseholders of a building may have the right to take over its management without buying the freehold (which is known as the Right to Manage), or to seek the appointment of a new manager.

Dispute resolution

Where freeholders or leaseholders are in breach of the statutory provisions or the terms of their lease agreement, in most cases, enforcement takes place through an application to the First-Tier Tribunal (Property Chamber) in England, and to the Leasehold Valuation Tribunal in Wales.

The tribunal system is intended to provide leaseholders with a cheaper and quicker means of resolving disputes than going through the courts.

Further information

The Library briefing on Leasehold and commonhold reform provides more detailed information on how leasehold ownership operates.[5]

The Leasehold Advisory Service (LEASE) has a guide to leaseholder ownership: Living in Leasehold Flats - A guide to how it works.

1.2 The extent of leasehold ownership

The Department for Levelling Up, Housing and Communities (DLUHC) estimates there are around 4.98 million leasehold properties in England, equating to 20% of the English housing stock. 70% (3.5 million) of leasehold homes are flats and 30% (1.5 million) are houses.[6]

In England, an estimated 94% of owner-occupied flats and 8% of all houses are leasehold.[7]

There are around 235,000 leasehold properties in Wales, equating to 16% of the Welsh housing stock.[8]

Land Registry data tells us more about leasehold sales in England and Wales. 24% of residential property transactions in 2022 were leasehold – around

5 Commons Library briefing CBP-8047, Leasehold and commonhold reform
6 DLUHC, Leasehold dwellings, 2021 to 2022, Table 1, 11 May 2023
7 DLUHC, Leasehold dwellings, 2021 to 2022, Table 1, 11 May 2023
8 Welsh Government, Research into the sale and use of leaseholds in Wales: summary, 16 March 2021

207,000 transactions in total. Almost all flats are sold on a leasehold basis, compared with 7% of houses.[9]

The proportion of new-build houses sold as leasehold rose from 7% in 1995 to a peak of 15% in 2016. Following the 2017 Government's announcement that it intended to restrict new leasehold houses in all but exceptional cases,[10] the proportion has fallen substantially and was less than 1% in December 2022.[11]

The Library briefing on Leasehold and commonhold reform provides a more detailed statistical analysis of the extent of leasehold ownership.[12] Constituency-level data on leasehold sales is available to download from the landing page of the briefing.

1.3 Problems associated with leasehold ownership

While there are examples of leasehold working well, leaseholders have long reported a range of problems, including:

- high service charges and a lack of transparency over charges
- excessive administration charges and a lack of transparency over charges
- disproportionate costs to extend leases or buy the freehold
- onerous ground rents which can make it difficult for leaseholders to sell or re-mortgage their property
- poor services provided by managing agents
- freeholders who block leaseholder attempts to exercise the Right to Manage
- alleged mis-selling of leasehold properties by developers
- a slow and costly sales process for leasehold properties
- imbalanced dispute mechanisms and the potential to become liable for the freeholder's legal costs
- a lack of knowledge over their rights and obligations

9 HM Land Registry, Price Paid Data Single File (accessed on 12 September 2023). The PPD file is updated monthly as new sales transactions are registered.

10 MHCLG, Tackling unfair practices in the leasehold market, 21 December 2017

11 HM Land Registry, Price Paid Data Single File (accessed on 12 September 2023). The PPD file is updated monthly as new sales transactions are registered.

12 Commons Library briefing CBP-8047, Leasehold and commonhold reform

Some of these issues are examined in more detail in the following sections of this briefing.

The Library briefing on Leasehold and commonhold reform also provides more detailed information on the problems associated with leasehold ownership.[13]

1.4 The Law Commission's 13th Programme of Law Reform

In 2017, the Government asked the Law Commission to review certain areas of leasehold law. Leasehold reform was included in the Law Commission's 13th Programme of Law Reform.

Following various calls for evidence and consultation exercises, the Law Commission published three final reports on leasehold reform in 2020:

- Leasehold home ownership: buying your freehold or extending your lease (21 July 2020)
- Leasehold home ownership: buying your freehold or extending your lease: Report on options to reduce the price payable (9 January 2020)
- Leasehold home ownership: exercising the right to manage (21 July 2020)

A further report summarised the Law Commission's residential leasehold and commonhold reports and set out how they fit with other reforms the Government had announced: The future of home ownership (PDF).

The Government has carried out further consultation on some of the Law Commission's recommendations (see section 1.5).

The Bill would take forward many of the Law Commission's recommendations.

1.5 Timeline of UK Government policy on leasehold reform

The housing white paper, Fixing our broken housing market (February 2017) included a commitment to "improve consumer choice and fairness in

[13] Commons Library briefing CBP-8047, Leasehold and commonhold reform

leasehold".[14] The Conservative Party Manifesto 2017 (PDF) committed to "crack down on unfair practices in leasehold".[15]

The consultation paper, Tackling unfair practices in the leasehold market, marked the first step in fulfilling these commitments. The Government's consultation response, published in December 2017, committed to legislate to:

- prevent the use of new residential long leases on houses, other than in exceptional circumstances.
- restrict ground rents in newly established leases of houses and flats to a peppercorn (zero financial value).
- ensure that freeholders on private or mixed-tenure estates have equivalent rights to leaseholders to challenge the reasonableness of service charges.[16]
- ensure that, where a freeholder pays a rentcharge, the rentcharge owner is not able to take possession or grant a lease on the property where the rentcharge remains unpaid for a short period of time.

The Government also committed to work with the Law Commission to make buying a freehold and extending a lease easier, faster, fairer and cheaper.[17]

In October 2018, the Government published a further technical consultation, Implementing reforms to the leasehold system in England, seeking views on the detail of the implementation of it proposals. The consultation response was published on 27 June 2019.[18]

The then Minister for Housing, Ester McVey, confirmed the Johnson Government's intention to take forward leasehold reform measures in a written statement on 31 October 2019.[19]

On 7 January 2021, the Government announced legislation to comprehensively reform leasehold would be implemented in two stages. As a first step, it intended to legislate to restrict future ground rents to zero.[20]

On 11 January 2021, the then Secretary of State for Housing, Communities and Local Government, Robert Jenrick, provided additional information on

14 MHCLG, Fixing our broken housing market, 7 February 2017, para 4.38
15 The Conservative and Unionist Party Manifesto 2017 (PDF), p59
16 See section 1.7 of this briefing for information on freehold estates.
17 MHCLG, Tackling unfair practices in the leasehold market, 21 December 2017
18 MHCLG, Implementing reforms to the leasehold system in England: summary of consultation responses and government response, 27 June 2019
19 HCWS55 31 October 2019
20 MHCLG, Government reforms make it easier and cheaper for leaseholders to buy their homes, 7 January 2021

planned leasehold reforms in a written ministerial statement. In summary, the Government committed to:

- reform the valuation method used to calculate the cost of extending a lease or buying the freehold, by:
  - abolishing marriage value;
  - capping the treatment of ground rents at 0.1% of the freehold value; and
  - prescribing rates for the calculations at market value.
- retain the separate valuation methodology for low-value properties known as "section 9(1)".
- give leaseholders of flats and houses the same right to extend their lease agreements "as often as they wish, at zero ground rent, for a term of 990 years".
- enable leaseholders, where they already have a long lease, to buy out the ground rent without having to extend the lease term.

The Government committed to respond to the Law Commission's remaining recommendations "in due course".[21]

The Leasehold Reform (Ground Rent) Act 2022 came into force on 30 June 2022. It restricts ground rents on newly created long leases of houses and flats (with some exceptions) to an annual rent of one peppercorn (a token of no financial value).[22]

In 2022, the Government carried out a further consultation on Reforming the leasehold and commonhold systems in England and Wales. This sought views on certain Law Commission proposals for improving access to enfranchisement and the right to manage, and reinvigorating commonhold. The Government's response was published on 27 November 2023.[23]

The King's Speech on 7 November 2023 announced a 'Leasehold and Freehold Bill' would be introduced in the 2023-24 parliamentary session. The Bill is the second part of the Government's legislative package to reform leasehold law.

21 HCWS695 [on Leasehold, Commonhold and Ground Rents] 11 January 2021

22 The Commons Library briefing CBP-8047, Leasehold and commonhold reform provides further information on issues surrounding ground rents.

23 DLUHC, Reforming the leasehold and commonhold systems in England and Wales: summary of responses and government response, 27 November 2023

1.6 Leasehold reform in Wales

The legislation governing leasehold ownership currently applies in England and Wales but there are some differences in notices and other document requirements.[24]

Whilst housing is a devolved policy area, the law of property is a reserved matter in relation to Wales.

On 1 May 2018, the then Minister for Housing and Regeneration, Rebecca Evans, announced the Welsh Government had formally joined the Law Commission's leasehold reform project.[25]

The Welsh Government established a multi-disciplinary task and finish group on leasehold reform.[26] The Group published its independent report, Residential Leasehold Reform, on 17 July 2019.

On 17 March 2021, Julie James, then Minister for Housing and Local Government, published a written statement on the Welsh Government's research into the sale and use of leasehold in Wales, and the experience of those who live in leasehold properties. The statement referred to the Welsh Government's full support for the Law Commission's recommendations.[27]

The Leasehold Reform (Ground Rent) Act 2022 has effect in Wales.

On 28 November 2023, Julie James, Minister for Climate Change, published a written statement confirming the Welsh Government's intention to lay a Legislative Consent Memorandum in respect of the Bill:

> The UK Government introduced the Leasehold and Freehold Reform Bill into UK Parliament on 27 November.
>
> The Bill will legislate for England and for Wales. It is my view that working together with the UK Government represents the best way to achieve these changes. In doing so we will be able to reduce complexity, maximise the clarity and coherence of the law and ensure the new fairer reformed system applies to all.
>
> I will be laying a Legislative Consent Memorandum in respect of the Bill, given housing is within the legislative competence of the Senedd...[28]

24 See: LEASE, Wales- differences in notices and other documents, updated December 2020
25 Welsh Government, Wales joins project on residential leasehold reform, 1 May 2018
26 Welsh Government, Written Statement: update on actions relating to Leasehold Reform, 13 July 2018
27 Welsh Government, Written Statement: Next steps on leasehold reform - The Leasehold Advisory Service, 18 March 2021
28 Welsh Government, Written Statement: Leasehold and Freehold Reform Bill, 28 November 2023

1.7 Freehold estates

Most houses are sold as freehold, although an increasing number of freehold homeowners live on private or mixed-tenure residential estates where the communal areas are owned, paid for and maintained privately, rather than by the local authority.

Freehold homeowners are required to contribute towards the maintenance of the shared areas through payment of an estate rentcharge or equivalent contribution. There are an estimated 20,000 freehold estates in England.[29] (see section 6 for further information on freehold estate management)

1.8 What is commonhold tenure?

The Commonhold and Leasehold Reform Act 2002 introduced commonhold as a new tenure.

Commonhold grants homeowners the freehold of their property from the outset and provides a framework for collective ownership and control of the shared parts of the building.

The tenure was intended to overcome the disadvantages of leasehold ownership. It was assumed, once in place, commonhold would become the standard form of tenure for new-build blocks of flats. However, the tenure has failed to take off; fewer than 20 commonhold developments have been established since the commonhold legislation came into force.[30]

In 2017, the Government tasked the Law Commission with considering how to "reinvigorate commonhold to provide greater choice for the consumer." The Law Commission's report on Reinvigorating commonhold: the alternative to leasehold ownership (July 2020) made recommendations "to make commonhold not only a workable, but a preferred form of homeownership to residential leasehold".[31]

In January 2021, the then Secretary of State for Housing, Communities and Local Government, Robert Jenrick, announced the Government would set up a Commonhold Council to advise on implementation of a reformed commonhold regime:

> In 2017 the Government also asked the Law Commission to recommend reforms to reinvigorate commonhold as a workable alternative to leasehold, for both existing and new homes.

29 Explanatory notes to the Leasehold and Freehold Bill 2023-24 as introduced, para 9
30 Law Commission's Commonhold webpage (accessed on 1 December 2023)
31 As above

> Having closely reviewed their report, I am confirming I will establish a new Commonhold Council as a partnership of industry, leaseholders and Government that will prepare homeowners and the market for the widespread take-up of commonhold. I will start this work immediately, including considering legislation. I know this will take time and close working with consumers and industry, and the Commonhold Council will be the critical first step of this.[32]

The Commonhold Council was established in May 2021.[33]

The Government's consultation on Reforming the leasehold and commonhold systems in England and Wales (January 2022) sought views on a number of Law Commission recommendations, including how shared ownership products could work in commonhold settings and the provision of information for buying and selling a commonhold property.[34] The Government's consultation response (November 2023) supported the Law Commission's proposals in these areas,[35] but said these would not be included in the Bill.[36]

In November 2023, the Parliamentary Under-Secretary of State at the Department for Levelling Up, Housing & Communities, Baroness Penn, confirmed the Government was "committed to reinvigorating commonhold to give developers and home owners a viable alternative to leasehold should they choose it" and would be taking forward reforms to the commonhold system at a later date.[37]

Section 5 of the Library briefing on Leasehold and Commonhold reform provides further information on commonhold.[38]

1.9 Parliamentary activity around leasehold reform

The Housing, Communities and Local Government Committee published a report on Leasehold Reform on 19 March 2019. The Committee identified significant problems with the leasehold sector and concluded that fundamental reform was required:

> Too often, leaseholders—particularly in new-build properties—have been treated by developers, freeholders and managing agents, not as homeowners or customers, but as a source of steady profit. The balance of power in existing

32 HCWS695 [on Leasehold, Commonhold and Ground Rents], 11 January 2021
33 For further information on commonhold see section 5 of Commons Library briefing CBP-08047, Leasehold and commonhold reform.
34 DLUHC, Reforming the leasehold and commonhold systems in England and Wales, January 2022
35 DLUHC, Reforming the leasehold and commonhold systems in England and Wales: summary of responses and government response, 27 November 2023
36 DLUHC, webpage on reforming the leasehold and commonhold systems in England and Wales (accessed on 2 December 2023)
37 HL Deb 30 November 2023 c1179
38 Commons Library briefing CBP-8047, Leasehold and commonhold reform

> leases, legislation and public policy is too heavily weighted against leaseholders, and this must change. Our report sets out recommendations for how this might happen.[39]

The Government's response to the Committee was published on 4 July 2019.[40]

In 2017, the All Party Parliamentary Group (APPG) on Leasehold and Commonhold Reform published a report, A preliminary report on improving key areas of leasehold and commonhold law (PDF), recommending reforms in several areas.

39 House of Commons Housing, Communities and Local Government Committee, Leasehold Reform, HC 1468 2017-19, 19 March 2019, Summary

40 Government response to the Housing, Communities and Local Government Select Committee report on Leasehold Reform, CP 99, 4 July 2019

2 The Bill: An overview

The Leasehold and Freehold Reform Bill (13 of 2023-24) was introduced to the House of Commons on 27 November 2023. The Bill's second reading is scheduled for 11 December 2023.

The Bill consists of 65 clauses and 8 schedules.

The Bill, together with its explanatory notes (which provide a clause-by-clause explanation of the Bill) and the Government's delegated powers memorandum are available on the Parliament website: Leasehold and Freehold Reform Bill publications.

2.1 What would the Bill do?

The Bill would make long-term changes intended to improve homeownership for leaseholders and freeholders in England and Wales.

The main measures in the Bill are summarised below.

Enfranchisement and lease extensions

The Bill would:

- make it cheaper and easier for leaseholders in houses and flats to extend their lease and buy the freehold. For example, by removing the requirement for leaseholders to pay the freeholder's non-litigation costs.
- revise and simplify the method for calculating the premium for a statutory lease extension or freehold acquisition by: removing the requirement for marriage value[41] to be paid; capping the treatment of ground rents at 0.1% of the freehold value; and prescribing the rates used in the calculations.
- increase the standard lease extension term to 990 years for houses and flats (up from 50 years in houses and 90 years in flats), with ground rent reduced to a peppercorn (zero financial value) upon payment of a premium.

[41] 'Marriage value' is the increase in the value of the property following the completion of the lease extension, reflecting the additional market value of the longer lease. The Leasehold Advisory Service provides a more detailed explanation of marriage value.

- remove the requirement for a new leaseholder to have owned their house for two years before they can extend their lease or buy their freehold (and for flats before they can extend their lease).
- increase the 'non-residential limit' from 25% to 50% to enable more leaseholders in buildings with a mixture of homes and other uses, such as shops and offices, to qualify to collectively buy their freehold.
- introduce a new right for leaseholders who have very long leases (with over 150 years remaining) to buy out their ground rent without extending the term of their lease or buying the freehold.

Right to manage

The Right to Manage (RTM) enables leaseholders to collectively take over the management of a building, without having to buy the freehold. The Bill would:

- increase the 'non-residential limit' for the RTM from 25% to 50% to enable more leaseholders in mixed-use buildings to take over management of their building.
- require each party to bear its own costs of the RTM process.

Regulation of leasehold

The Bill would:

- improve the transparency of service charges and ensure leaseholders receive key information on a regular basis, including: a standardised service charge demand form, a statement of accounts and an annual report. This is intended to enable leaseholders to scrutinise and better challenge costs if they are considered unreasonable.
- give leaseholders a new right to request information from their landlord.
- replace opaque buildings insurance commissions for managing agents and landlords with a transparent insurance handling fee.
- improve the transparency of administration charges by requiring landlords to publish an administration charge schedule.
- ensure leaseholders are not subject to any unjustified legal costs and can claim their own legal costs from their landlord.

Regulation of estate management

The Bill would give freehold homeowners who pay charges for the maintenance of communal areas and facilities on a private or mixed-tenure residential estate new rights to:

- challenge the reasonableness of charges and the standard of services or work carried out on the estate, by taking a case to the tribunal.
- be consulted if the cost of works to be charged were to exceed an "appropriate amount".
- receive key information on charges on a regular basis, including: a standardised estate management demand form, an annual report, and an administration charge schedule.

Rentcharges

A rentcharge is an annual sum paid by a freehold homeowner to a third party who normally has no other interest in the property. The Bill would:

- ensure a rentcharge owner is not able to take possession or grant a lease on a freehold property where the rentcharge remains unpaid for a short period of time.

Consultation on restricting ground rents

Alongside the Bill, the Government launched a consultation seeking views on options to restrict ground rents for existing leaseholders. The consultation closes on 21 December 2023. Subject to that consultation, the Government will look to introduce a ground rent cap through the Bill.

2.2 Where and when would the Bill take effect?

The Bill extends and applies to England and Wales.[42]

The main subject matter of the Bill is the law of property which is a reserved matter in relation to Wales.

The UK Government is seeking a Legislative Consent Motion (LCM) from the Senedd Cymru/Welsh Parliament for some subject matters which are within the legislative competence of the Senedd. Annex A to the Bill's explanatory notes (PDF) provides more detailed information on the territorial extent and application of the Bill.

Most of the provisions in the Bill would come into force on a date appointed by the Secretary of State to be set out in regulations.

Part 6 would come into force once the Bill receives Royal Assent.

[42] The extent of a Bill is the legal jurisdiction of which it forms part of the law; application refers to where it has practical effect.

Section 59 (regulation of remedies for rentcharge arrears) would come into force two months after Royal Assent.

2.3 What isn't included in the Bill?

The background briefing notes to the King's Speech on 7 November 2023 said the Bill would:

- ban the creation of new leasehold houses so that - other than in exceptional circumstances - every new house in England and Wales would be freehold from the outset.
- make buying or selling a leasehold property quicker and easier by setting a maximum time and fee for the provision of information required to make a sale (such as building insurance or financial records) to a leaseholder by their freeholder.[43]
- require freeholders, who manage their building directly, to belong to a redress scheme so leaseholders can challenge poor practice if needed.
- protect leaseholders by extending the measures in the Building Safety Act 2022 to ensure it operates as intended.[44]

These provisions do not appear in the Bill as introduced to Parliament. The Government has indicated it intends to introduce amendments to the Bill as it makes its way through Parliament.[45]

The Bill would grant freehold homeowners on private or mixed-tenure estates the same statutory right as leaseholders to challenge unreasonable service charges and the standard of services or work carried out. However, it does not give freeholders the equivalent right to apply to the tribunal to appoint a new manager or take over management of the estate via a Right to Manage company. (see section 6)

The Bill does not include any reforms to commonhold legislation. The Law Commission put forward proposals for improving commonhold in 2020.[46] The

43 In its response to the consultation on implementing reforms to the leasehold system (June 2019) the Government said it would: 1) Set a statutory requirement for a turnaround time of no more than 15 working days to provide leasehold information to a prospective buyer; and 2) Set a maximum fee of £200+VAT for producing leasehold information to prospective buyers in the form of a leasehold property enquiry pack (LPE1).

44 Prime Minister's Office, 10 Downing Street, The King's Speech: background briefing notes, 7 November 2023, pp45-47

45 Department for Levelling Up, Housing and Communities (DLUHC), Leasehold reforms give more rights and protections to homeowners, 27 November 2023

46 Law Commission, Reinvigorating commonhold: the alternative to leasehold ownership, HC586, 21 July 2020

Government has said it is committed to reinvigorating commonhold and will bring forward reforms at a later date.[47] (see section 1.8)

The 2017 Government committed to regulating property managing agents "to protect leaseholders and freeholders alike".[48] A working group for the regulation of property agents was set up to help develop a new regulatory model. The working group reported in July 2019[49] and the Government is considering its recommendations.[50]

The Bill does not introduce a new regulatory regime for managing agents, although it does seek to improve the transparency of information that leaseholders receive on service and administration charges.

2.4 Reaction to the Bill

The Bill has been broadly welcomed and has cross-party support.

However, the Government has been criticised for not going far enough in its leasehold reforms.

On publication of the Bill, Harry Scoffin, the founder of the campaign group Free Leaseholders, said the proposed ban on the creation of new leasehold houses should be extended to flats:

> It is absolutely surreal that the leasehold new-build houses ban, the one leasehold policy that has survived six years and four prime ministers, doesn't feature in the actual wording of this government's supposedly landmark leasehold and freehold reform bill.
>
> More seriously, the bigger crime is not to commit to a ban on future leasehold flats, where the real money is being made and abuse of homeowners [is] routine. While government has dodged commonhold, they could at least give new-build apartment buyers a share of the freehold for resident control from day one.[51]

The chief executive of the Homeowners Alliance, Paula Higgins, welcomed the Bill but also expressed concern that it did not ban new leasehold flats:

> We welcome the promise of a Leasehold and Freehold Reform Bill and the reform that will bring; it covers a lot of ground.

47 HL Deb 30 November 2023 c1179

48 Ministry of Housing, Communities and Local Government (MHCLG), Protecting consumers in the letting and managing agent market: Government response, April 2018, para 12

49 MHCLG, Regulation of Property Agents: working group report, 18 July 2019

50 PQ 203866 [on Letting Agents: Regulation], 23 October 2023

51 'Gove's leasehold reform bill does not ban leaseholds on new-build houses', The Guardian, 29 November 2023

> We were disappointed that ground rents have not been tackled directly today, but understand this is a complex area so welcome the opportunity to consult to find the right solution.
>
> But we are disappointed that the government's plans for leasehold reform fall short of breaking homeowners free from the shackles of leasehold completely by still allowing the sale and purchase of leasehold flats in the future. This Bill has the opportunity to put a stop to – as Michael Gove referred to it himself – an outdated feudal system. We will continue to campaign for commonhold flats and a ban on leasehold...[52]

According to The Guardian, some backbench Conservative MPs could seek to amend the Bill to ban leaseholds for new flats as well as houses.[53]

The Labour Party has committed to fundamentally reform the leasehold system. Matthew Pennycook, the Shadow Housing Minister, told The Guardian that all new flats should be sold as commonhold and existing leaseholders enabled to move to commonhold:

> It is deeply disappointing that the government appears set on legislating only for new houses to be sold as freehold, leaving those who buy flats trapped in an archaic system of home ownership.
>
> Labour believes commonhold should be the default tenure for all new properties, with the system completely overhauled so that existing leaseholders can collectively purchase more easily and move to commonhold if they wish.[54]

Groups that represent leaseholder interests, such as the Leasehold Knowledge Partnership (LKP), National Leasehold Campaign (NLC) and Commonhold Now, have campaigned for the leasehold tenure to be abolished and replaced by commonhold.

The British Property Federation (BPF), which represents the UK real estate industry, has expressed concern about the impacts on freeholders of the proposals to increase the enfranchisement threshold in mixed-use buildings and cap ground rents. Ian Fletcher, Director at the BPF, said:

> This is a Bill of missed opportunity and stored up problems. It wants to improve the experience of leaseholders yet says nothing about their main day-to-day interaction with managing agents, who are unregulated. It wants to scrap ground rents, yet says nothing about the disruption that will cause to everyday management, and building remediation efforts, as freeholders' businesses become unviable. Silence kicks commonhold into the long-grass, perhaps for ever. And by raising the enfranchisement threshold on mixed-use property, it damages the mixed-use property investment market, as more landlords lose their development rights, and control of their property's management, hurting levelling-up in the process. Though they may not know it, the Bill will wipe

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52 Homeowners Alliance, Leasehold reform 2023: What you need to know, undated

53 'Tory MPs to challenge government if leaseholds ban does not apply to flat', The Guardian, 4 November 2023

54 'Tory MPs to challenge government if leaseholds ban does not apply to flat', The Guardian, 4 November 2023

> billions of pounds off the savings of not just investors, but charities, pensioners, and local authorities.[55]

The Property Institute (TPI),[56] which represents the residential property management sector, welcomed the Bill. In particular, it supported the stronger regulation of estate management and greater transparency of service charges. However, it considered the lack of any provision to introduce competency standards or regulation to the property management sector was a missed opportunity. Andrew Bulmer, chief executive officer of TPI, commented:

> We consider mandatory qualifications and training to be the logical first step towards a regulatory framework for all property managers to help safeguard resident communities. The nearly 5 million leaseholders in this country deserve to live in safe, well-managed buildings and receive a high-quality professional service from a competent, qualified, and diligent property manager.
>
> We urge the government to be more ambitious and use this Bill to introduce mandatory qualifications and regulation of property managers to help protect leaseholders. Failure to align the private sector with the new provisions in the social sector by at least mandating minimum competency standards is a missed opportunity to protect residents and raise standards...[57]

2.5 Terminology

Sections 3 to 7 of this briefing provide an overview of the Bill's main provisions.

References in the briefing to the "appropriate authorities" mean the Secretary of State in relation to England and the Welsh Ministers in relation to Wales.

References in the briefing to "the tribunal" mean the First-tier Tribunal (Property Chamber) in relation to England and the Leasehold Valuation Tribunal in Wales.

Long leaseholders are essentially in a landlord and tenant relationship with the freeholder. In the main, the briefing refers to "the freeholder(s)", but in some cases it refers to "the landlord(s)" to reflect the terminology used in the relevant legislation.

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55 'British Property Federation comments on the Leasehold and Freehold Reform Bill proposed in the King's Speech', British Property Foundation, 7 November 2023

56 The Property Institute was formed in 2021 following the merger of the Association of Residential Managing Agents (ARMA) and the Institute of Residential Property Management (IRPM).

57 'Leasehold & Freehold Reform Bill – Analysis & Reaction from The Property Institute', The Property Institute, 28 November 2023

3 Leasehold enfranchisement and extension

3.1 Background

Qualifying leaseholders in blocks of flats have a collective right to buy the freehold of their blocks and an individual right to a 90-year lease extension (or repeated extensions, if needs be) under the Leasehold Reform, Housing and Urban Development Act 1993. The ground rent on an extended lease is set at a "notional rent of a peppercorn" (zero financial value).

Qualifying owners of leasehold houses have the right to buy the freehold of their homes under the Leasehold Reform Act 1967 and a right to a lease extension for a maximum term of 50 years. No premium is payable for a lease extension under the 1967 Act, but the ground rent can increase to a modern rent,[58] reviewable after 25 years. This modern ground rent is payable during the additional term of the extended lease.

The Law Commission's final report on Leasehold home ownership: buying your freehold or extending your lease (July 2020) identified the following issues with the current legal framework:

- **The inherent unfairness of leasehold tenure:** leaseholders buy a time-limited interest, frequently at a value close to, or even equivalent to, the freehold value. As the term of a lease diminishes its value also decreases, particularly once there are fewer than 80 years remaining on the lease. Leaseholders then find themselves compelled to pay a premium to extend the lease or buy the freehold.
- **An inconsistent regime:** the current enfranchisement regime consists of over 50 Acts of Parliament. There are numerous anomalies and unintended consequences as a result of piecemeal reforms. For example, the rules for houses and flats often differ without any logical reason.
- **Complexity and uncertainty:** many aspects of the enfranchisement regime are complex. It can be difficult to work out whether a leaseholder qualifies for enfranchisement rights. Furthermore, the procedure for

[58] 'Modern ground rent' is the rent (determined under section 15 of the 1967 Act) payable during the additional term of a lease extension of a house. It is calculated by valuing the "site", and then decapitalising that value.

exercising enfranchisement rights is complicated, and varies depending on the right being exercised.

- **Costly procedure:** the complexity of the enfranchisement process gives rise to legal costs, and the complexity of valuation gives rise to valuation costs. Both sets of costs can be significant and disproportionate to the property value. While these costs are borne by both leaseholders and landlords, leaseholders are required to pay towards their landlords' costs.

- **Undesirable incentive structures:** various aspects of the enfranchisement regime create undesirable incentive structures. For example, the regime can encourage a tactical "gaming" approach to negotiations, which tends to favour more experienced landlords over leaseholders. The threat of litigation, and the time it can take to resolve disputes, can be used tactically against a party who is seeking to complete the process quickly and at minimal cost.[59]

The Law Commission's final reports on Leasehold home ownership: buying your freehold or extending your lease (July 2020) and options to reduce the price payable (January 2020) set out recommendations intended to make the process fairer, cheaper and easier for leaseholders. The Bill would implement many of these recommendations.

3.2 The Bill

Eligibility for enfranchisement and extension

Clauses 1 to 4 would remove various restrictions to enable more leaseholders to access rights to enfranchisement and lease extension.

Removal of qualifying period before enfranchisement and extension claims

The Law Commission's final report on Leasehold home ownership: buying your freehold or extending your lease (July 2020) recommended the abolition of the requirement that a leaseholder must have owned the property for two years before they can exercise the right to buy the freehold or extend the lease. In particular, because the two-year period constitutes a reduction in the remaining term of the lease, which can increase the cost of the extension or freehold acquisition.[60]

Clause 1 would amend the Leasehold Reform Act (LRA) 1967 to remove the requirement that the leaseholder of a house must have owned the property

[59] Law Commission, Leasehold home ownership: buying your freehold or extending your lease, HC584, 21 July 2020, paras 2.16-2.23

[60] For further information on this see: Law Commission, Leasehold home ownership: buying your freehold or extending your lease, HC584, 21 July 2020, paras 6.119 to 6.131

for at least two years before they qualify to extend their lease or buy their freehold.

It would also amend the Leasehold Reform, Housing and Urban Development Act (LRHUDA) 1993 to remove the requirement for the leaseholder of a flat to have owned the property for at least two years before they qualify to extend their lease.

These amendments would therefore allow leaseholders of houses to extend their lease or buy their freehold, and leaseholders of flats to extend their lease, as soon as they acquire their lease, rather than having to wait for two years.

Removal of restrictions on repeated enfranchisement and extension claims

The Law Commission's final report on Leasehold home ownership: buying your freehold or extending your lease (July 2020) recommended:

- there should be no bar on a leaseholder starting a fresh enfranchisement claim when an earlier claim in respect of the same premises has been withdrawn, struck out, or has otherwise failed.[61]
- leaseholders of flats and houses should be entitled to obtain a new, extended lease as often as they so wish.[62]

Clause 2 would remove restrictions on repeated enfranchisement and lease extension claims, specifically it would:

- remove the provisions of the LRA 1967 and the LRHUDA 1993 that prevent leaseholders from starting new enfranchisement or lease extension claims for 12 months where an earlier claim fails to complete.
- remove provisions of the LRA 1967 that give the court the power to order compensation and prevent new enfranchisement or lease extension claims for five years where a claim has failed, and the leaseholder did not act in good faith or attempted to misrepresent or conceal material facts.
- repeal the restriction in the LRA 1967 on bringing a further lease extension claim where a lease extension has already been obtained under the Act.

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61 Law Commission, Leasehold home ownership: buying your freehold or extending your lease, HC584, 21 July 2020, para 12.165. Note: The Law Commission report also recommended that freeholders should be able to apply to the tribunal for an order prohibiting a leaseholder from bringing a further claim without the permission of the tribunal (an Enfranchisement Restraint Order (ERO)). This would, for example, prevent a leaseholder from making repeated claims without merit or that were vexatious.

62 Law Commission, Leasehold home ownership: buying your freehold or extending your lease, HC584, 21 July 2020, para 3.36

Change of non-residential limit on collective enfranchisement claims

Under the current law, leaseholders cannot collectively enfranchise if more than 25% of the floor space in their building, excluding common parts, is used for non-residential purposes.

The Law Commission's final report on Leasehold home ownership: buying your freehold or extending your lease (July 2020) recommended an increase in the non-residential limit for collective enfranchisement from 25% to 50%.[63] The Law Commission considered that enfranchisement rights should, as a matter of principle, attach to leaseholders in buildings that can fairly be described as residential, and a building with 50% or less non-residential use should be considered a residential building.

The Government's consultation on Reforming the leasehold and commonhold systems in England and Wales (January 2022) said it supported the Law Commission's recommendation in principle.[64] However, it recognised there could be unintended consequences arising from such a change, and therefore sought views through the consultation.

The Government's consultation response (November 2023) confirmed it viewed the Law Commission's recommendation as a proportional change to improve access to enfranchisement, and was not convinced by arguments presented in opposition to this change.[65]

Clause 3 would amend the LRHUDA 1993 so that a building would be excluded from collective enfranchisement rights if more than 50% of the internal floorspace were used for non-residential purposes (such as a ground-floor shop). This increase in the non-residential limit would bring many more currently excluded leaseholders within the collective freehold acquisition regime.

Eligibility for enfranchisement and extension: Specific cases

Clause 4 gives effect to **Schedule 1**, which would repeal limitations on enfranchisement rights under the LRA 1967 and the LRHUDA 1993 relating to redevelopment or reoccupation by the freeholder and limitations on the rights of sub-lessees.[66]

63 Law Commission, Leasehold home ownership: buying your freehold or extending your lease, HC584, 21 July 2020, paras 6.317 to 6.338.

64 DLUHC, Reforming the leasehold and commonhold systems in England and Wales, 11 January 2022, para 21

65 DLUHC, Reforming the leasehold and commonhold systems in England and Wales, 27 November 2023, Para 2.15

66 A sub-lessee is a person who holds a sub-lease. He or she holds a leasehold interest, and his or her immediate landlord is also a leaseholder.

Effects of collective enfranchisement

Acquisition of intermediate interests in collective enfranchisement

The most common relationship in flat ownership is where there are two parties: the freeholder and the leaseholder. However, in some blocks of flats there may be intermediate leases between the freeholder and the flat owner.

The Law Commission's final report on Leasehold home ownership: buying your freehold or extending your lease (July 2020) made a series of recommendations in relation to the treatment of intermediate or other leasehold interests in an enfranchisement claim. These were intended to simplify the statutory provisions and ensure the presence of intermediate leases does not present "an unreasonable statutory, financial or practical impediment to leaseholders who wish to bring an enfranchisement claim".[67]

Clause 5 would amend the LRHUDA 1993. According to the explanatory notes, the Bill would:

- treat intermediate interests as merged into the freehold for the purposes of determining the premium a leaseholder must pay. This would simplify the valuation process for leaseholders, and in many cases would reduce the premium payable and reduce their costs.
- introduce a new right for an intermediate landlord to reduce ('commute') the rents that they pay where a ground rent is reduced to a peppercorn following a lease extension or ground rent buyout claim.
- introduce a right for leaseholders to leave in place the parts of intermediate leases that are superior to leaseholders who qualify for enfranchisement, but do not participate in the claim.
- introduce certain protections for intermediate landlords and extend the right to a lease extension to certain sublessees.[68]

Right to require leaseback by freeholder after collective enfranchisement

The Law Commission's final report on Leasehold home ownership: buying your freehold or extending your lease (July 2020) recommended that leaseholders making a collective enfranchisement claim should be able to require the freeholder to take a leaseback[69] of any units within the building that are not let to leaseholders participating in the claim.[70] The Law Commission considered this would make it cheaper for leaseholders to acquire the

67 Law Commission, Leasehold home ownership: buying your freehold or extending your lease, HC584, 21 July 2020, para 2.50 and Chapter 13

68 Explanatory notes to the Leasehold and Freehold Reform Bill 2023-34 as introduced, paras 17 and 18

69 The term 'leaseback' refers to when a property is leased back to the seller.

70 Law Commission, Leasehold home ownership: buying your freehold or extending your lease, HC584, 21 July 2020, para 5.172

freehold of their building and so increase the uptake of collective freehold acquisition:

> We thought that this proposal would help to make collective freehold acquisition a possibility for more groups of leaseholders. We are aware that the need to fund the purchase of the landlord's interest in any units which are not let to qualifying leaseholders, and in the flats of any qualifying but non-participating leaseholders, can affect the ability of some groups of leaseholders to enfranchise. Some landlords are willing to agree to leasebacks of these parts of the premises, on a voluntary basis. Others, however, refuse to do so, perhaps knowing that without such leasebacks, the leaseholders will never be able to afford to pursue the collective enfranchisement claim to its conclusion. This proposal gives those leaseholders another option: instead of having to pay for the reversionary value of those flats and units as part of their claim, they can ensure that value remains with the landlord by requiring him or her to take a leaseback.[71]

Clause 6 would amend the LRHUDA 1993 to insert a new leaseback right for leaseholders participating in a collective enfranchisement claim. The participating leaseholders would be able to require the freeholder to take a leaseback of any unit in the building which was not let to a participating leaseholder (for example, a commercial unit), thereby reducing the price payable for acquiring the freehold.

Effects of lease extension

Under current law, leaseholders of houses and flats have different rights to extend their leases (see section 3.1).

The Law Commission's final report on Leasehold home ownership: buying your freehold or extending your lease (July 2020) recommended that both house and flat owners should have an improved, uniform right to a lease extension for a term of 990 years at a peppercorn ground rent.[72] On 7 January 2021 the Government said this would be implemented.[73]

Clauses 7 and 8 would amend the lease extension rights under the LRA 1967 (for leaseholders of houses) and the LRHUDA 1993 (for leaseholders of flats) to ensure that the rights available under each Act were equivalent to one another.

The amendments made by these clauses would mean that a qualifying leaseholder of either a house or a flat could obtain a 990-year lease extension at a peppercorn ground rent, in exchange for the payment of a premium set by the amended valuation scheme set out in clauses 9 to 11.

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71 Law Commission, Leasehold home ownership: buying your freehold or extending your lease, HC584, 21 July 2020, para 5.155

72 Law Commission, Leasehold home ownership: buying your freehold or extending your lease, HC584, 21 July 2020, para 2.50

73 MHCLG, Government reforms make it easier and cheaper for leaseholders to buy their homes, 7 January 2021

Clause 8 also contains consequential amendments of the LRA 1967 which are required due to the change to the lease extension right.

Price payable on enfranchisement or extension

In January 2020, the Law Commission published Leasehold home ownership: buying your freehold or extending your lease: Report on options to reduce the price payable.[74] The report set out three alternatives schemes for reducing premiums and simplifying the way in which premiums are calculated.

Additional options for reforms suggested by the Law Commission included:

- Prescribing the rates used in calculating the price, to remove a key source of disputes, and make the process simpler, more certain and predictable.
- Helping leaseholders with onerous ground rents, by capping the level of ground rent used to calculate the premium.
- The creation of an online calculator for determining the premium to make it easier to find out the cost of enfranchisement, and reduce uncertainty around the process.
- Enabling leaseholders who are collectively enfranchising a block of flats to avoid paying "development value" to the landlord unless and until they actually undertake further development.[75]

The Law Commission did not make recommendations on which scheme and options for reform should be adopted, as it considered this was ultimately a decision for Government and Parliament.

In a written ministerial statement on 11 January 2021 the then Secretary of State for Housing, Communities and Local Government, Robert Jenrick, confirmed the Government's plans to reform the calculation of the premium payable:

> The Government will abolish marriage value, cap the treatment of ground rents at 0.1% of the freehold value and prescribe rates for the calculations at market value. The Government will also introduce an online calculator, further simplifying the process for leaseholds and ensuring standardisation and fairness for all those looking to enfranchise.[76]

Clause 9 would amend the LRA 1967 to provide that the premium payable to acquire the freehold of a house, or a lease extension of a house, must be calculated in accordance with clause 11.

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74 Law Commission, Leasehold home ownership: buying your freehold or extending your lease: Report on options to reduce the price payable, HC13, 9 January 2020

75 Law Commission webpage on Leasehold enfranchisement (accessed on 4 December 2023)

76 HCWS695, 11 January 2021

Clause 10 would amend the LRHUDA 1993 to provide that the premium payable to acquire the freehold of a block of flats, or a lease extension of a flat, must be calculated in accordance with clause 11.

Clause 11 would provide that the premium payable for acquiring the freehold or extending a lease would be comprised of two elements:

1) the market value, which would be calculated in accordance with Schedule 2; and

2) any other compensation, which would be calculated in accordance with Schedule 3.

Schedule 2 sets the method for calculating the market value element of the premium for buying the freehold and extending the lease. The Bill's explanatory notes confirm the Bill would:

- remove the requirement for marriage value[77] to be paid;
- cap the treatment of ground rents in the valuation calculation at 0.1% of the freehold value; and
- give the appropriate authority the power to prescribe the rates used in the valuation calculations. This would standardise the process and reduce costs by negating the need for a case-by-case assessment. The power would be subject to the negative procedure.

Costs of enfranchisement or extension

Under the current law, leaseholders are required to pay for certain non-litigation costs (such as valuation and conveyancing fees) incurred by freeholders when they respond to a claim for enfranchisement or lease extension.

A number of criticisms have been made of this requirement. Some leaseholders object in principle to paying their freeholder's costs. Others have criticised both the amount of those costs, and/or the difficulty of predicting at the start of a claim what the amount is likely to be. It is argued that the risk of having to pay a significant sum as a contribution to the freeholder's non-litigation costs can lead some leaseholders to accept proposed terms that they might otherwise reject.[78] Furthermore, it can be costly for leaseholders to challenge a freeholder's claim for non-litigation costs.

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77 'Marriage value' is the increase in the value of the property following the completion of the lease extension, reflecting the additional market value of the longer lease. The Leasehold Advisory Service provides a more detailed explanation of marriage value.

78 Law Commission, Leasehold home ownership: buying your freehold or extending your lease, HC584, 21 July 2020, para 12.8

The Law Commission recommended that, as a general rule, leaseholders should not be required to contribute to their freeholder's non-litigation costs.[79]

Clause 12 and **Clause 13** would establish a new costs regime for enfranchisement and lease extension. Under the regime, leaseholders of houses and flats who are buying their freehold or extending their lease would generally no longer pay the freeholder's non-litigation costs of dealing with the claim. In general, each party would bear their own costs.

The clauses would give the appropriate authority the power to make regulations with regards to the new costs regime. The power would be subject to the negative procedure in Parliament.

Jurisdiction of the county court and tribunals

The current law divides the responsibility for resolving disputes and issues that arise during an enfranchisement claim between the county court and the tribunal. This division creates complexity and can cause confusion and additional expense for the parties. Furthermore, the powers of the county court and of the tribunal to order one party to pay the other party's litigation costs are different. The Law Commission therefore recommended that all enfranchisement disputes and issues should be determined exclusively by the tribunal.[80]

Clauses 14, 15, 16 and **17** would amend the jurisdiction for enfranchisement disputes from the county court to the tribunal, so that as far as possible all disputes would be determined by the tribunal.

Jurisdiction of the High Court

Clause 18 is intended to prevent parties from using the High Court as an alternative forum to the tribunal for determining enfranchisement matters at first instance. It would prevent an application being made to the High Court at first instance in respect of an enfranchisement matter falling within the tribunal's jurisdiction under the LRA 1967 or the LRHUDA 1993.

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79 Law Commission, Leasehold home ownership: buying your freehold or extending your lease, HC584, 21 July 2020, para 12.56

80 Law Commission, Leasehold home ownership: buying your freehold or extending your lease, HC584, 21 July 2020, para 11.29

4 Other rights of long leaseholders

4.1 Right to vary long lease to buy out ground rent

Background

The Law Commission's final report on Leasehold home ownership: buying your freehold or extending your lease (July 2020) recommended that leaseholders who already have very long leases should be given a new right to buy out the ground rent payable under their lease (in other words, to extinguish the ground rent payable on the lease by paying a premium) without extending the term of the lease.[81]

The Commission's summary report notes that: "This was strongly supported by consultees and will be very useful to those leaseholders who are faced with a high or onerous ground rent but who have no need to extend the term of their lease."[82]

The Bill

Clause 21 would bring **Schedule 7** into effect.

Schedule 7 would introduce a new right for leaseholders who already have very long leases (with over 150 years remaining) to buy out their ground rent without extending the term of their lease or buying the freehold.

Specifically, it would give leaseholders of houses and flats with qualifying leases the right to have their lease varied so as to replace an obligation to pay rent with an obligation to pay a peppercorn rent (one of no financial value). To qualify, a lease must have an unexpired term of 150 years or more and meet certain other criteria.

Schedule 7 sets out the procedure for claiming the right to a peppercorn rent. It also gives the appropriate authority the power to make regulations giving effect to leaseholder rights under this schedule. Regulations would be subject to the negative procedure in Parliament.

81 Law Commission, Leasehold home ownership: buying your freehold or extending your lease, HC584, 21 July 2020, para 3.112

82 Law Commission, Leasehold home ownership: buying your freehold or extending your lease Summary, 21 July 2021, para 1.16

4.2 The Right to Manage (RTM)

Background

The Commonhold and Leasehold Reform Act (CLRA) 2002 introduced a Right to Manage (RTM) for long leaseholders in blocks of flats.[83] The aim was to enable leaseholders to collectively take over the landlord's management functions in respect of their building, without having to buy the freehold. It is a "no-fault" right, which leaseholders can exercise without the need to prove a complaint against their landlord or managing agent.[84]

The 2002 Act sets out what was intended to be a simple process, beginning with the leaseholders setting up a dedicated "RTM company" of which the leaseholders are members. If the RTM is claimed successfully, the leaseholders, through the RTM company, take control of services, repairs, maintenance, improvements, and insurance in respect of their building.[85] No compensation is payable to the landlord when the RTM is exercised.

Problems with the RTM

However, as reported by the Law Commission, stakeholders have identified problems with the existing RTM regime, including:

- unpredictable and sometimes excessive costs of claiming the RTM, particularly as the RTM company is liable for the landlord's costs as well as its own;
- restrictive qualifying criteria meaning it is not possible to claim the RTM in respect of multiple blocks on an estate, buildings with more than 25% non-residential space, or leasehold houses;
- information about the building and management functions being provided to the RTM company too late in the process, so that the leaseholders cannot always make informed decisions about claiming the RTM or prepare for an efficient handover of management functions; and
- uncertainty as to how the RTM applies to areas which are shared with other buildings, such as gardens and car parks.[86]

83 Some exemptions apply, for example, local authority long leaseholders cannot exercise the RTM under the 2002 Act.

84 Where a freeholder is not fulfilling their obligations under the lease, leaseholders of flats have the right, under the Landlord and Tenant Act 1987, to apply to a tribunal for the appointment of a new manager.

85 Law Commission, Leasehold home ownership: exercising the right to manage - Summary, 21 July 2020, para 1.2

86 Law Commission, Leasehold home ownership: exercising the right to manage - Summary, 21 July 2020, para 1.3

Law Commission recommendations improve the RTM

The Government's consultation on Protecting consumers in the letting and managing agent market, published in October 2017, sought views on how to make it easier for leaseholders to access the RTM.[87] The Government's response (April 2018) committed to simplify the RTM process.[88]

On 4 July 2018, the then Secretary of State for Housing, Communities and Local Government, James Brokenshire, asked the Law Commission to review the RTM legislation and propose reforms to improve its use in practice.[89] The Law Commission's final report, Leasehold home ownership: exercising the right to manage, published on 21 July 2020, made a number of recommendations to improve the RTM, including:

- requiring each party to bear its own costs of the RTM process, including of any tribunal action.
- relaxing the qualifying criteria, so that leasehold houses, and buildings with up to 50% non-residential space, could qualify for the RTM.
- providing the tribunal with discretion to allow the RTM to be acquired over self-contained parts of buildings which do not meet the qualifying criteria but which are capable of being managed independently.
- permitting multi-building RTM.
- reducing the number of notices that leaseholders must serve in order to claim the RTM.[90]

In January 2022, the Government launched a consultation seeking views and further evidence on the impact of the Law Commission's proposals.[91] The Government's consultation response (November 2023) confirmed it accepted the Law Commission's recommendation to increase the non-residential limit for the RTM from 25% to 50%. It considered this change would improve access to the RTM for qualifying leaseholders in mixed-use buildings.

The Bill

Clause 22 would amend Schedule 6 to the Commonhold and Leasehold Reform Act (CLRA) 2002 so that a building would be excluded from the RTM if more than 50% of the internal floorspace were used for non-residential purposes (such as a ground-floor shop), rather than 25%. This increase in the

87 DCLG, Protecting consumers in the letting and managing agent market: call for evidence, October 2017, Q4.3

88 MHCLG, Protecting consumers in the letting and managing agent market: Government response, April 2018

89 Law Commission, Law reform needed to help leaseholders take control of their buildings, 4 July 2018

90 Law Commission, Leasehold home ownership: exercising the right to manage, HC 585, 21 July 2021, para 2.35

91 DLUHC, Reforming the leasehold and commonhold systems in England and Wales, 11 January 2022

non-residential limit would make the RTM available to more leaseholders in a wider variety of buildings.

Clause 23 would replace the existing costs regimes for RTM claims under the CLRA 2002. Leaseholders exercising their RTM would, in general, no longer pay the landlord's costs of dealing with the claim (such as legal fees). Each party would generally bear their own costs. This is intended to reduce the costs of making an RTM claim for leaseholders, thereby bringing the RTM within reach of more leaseholders.

Clause 24 would amend the CLRA 2002 to transfer the power to make an order requiring a person to comply with a requirement imposed under the RTM provisions of the Act from the county court to the tribunal. The amendments would also make provision in relation to enforcement of certain compliance orders made by the tribunal.

Clause 25 would prevent an application being made to the High Court at first instance in respect of an RTM matter falling within the tribunal's jurisdiction under the CLRA 2002. It is intended to prevent parties from using the High Court as an alternative forum for determining RTM matters at first instance.

5 Regulation of leasehold

5.1 Service charges

Background

The day-to-day management and maintenance of blocks of flats is usually the responsibility of the freeholder. This responsibility can be contracted out to an agent on the freeholder/landlord's behalf. The cost of the work is usually recharged to leaseholders via a service charge.

The lease agreement will normally set out what services charges can and cannot be charged by the landlord or managing agent, and the proportion of the charge to be paid by the individual leaseholder.

Service charges should reflect the cost of services to the landlord or managing agent. The Landlord and Tenant Act 1985 provides that service charges must be "reasonable" and services provided must be carried out to a reasonable standard.

Demands for payment of a service charge must contain the landlord's name and address and include a summary of leaseholders' rights and obligations. The law also requires that upon request, the landlord must supply a summary of the service charge account and allow for inspection of documents within certain time limits.

In the event of a dispute over service charges, leaseholders can apply to the tribunal if they consider that:

- a service charge is unreasonable;
- the standard of work it relates to is unsatisfactory; or
- they don't consider they should be paying the charge.

LEASE, an advice service for leaseholders, provides a fact sheet on Service charges and more detailed information on Service charges and other issues.

Issues with service charges

Service charges are a highly contentious area for leaseholders. There are complaints about excessive charges and a lack of transparency over what services are provided and how they are charged. Leaseholders are often reluctant to take service charge disputes to a tribunal. An unfair balance of

power, and potential to become liable for the freeholder's costs, are cited as barriers.

The Government's call for evidence on Protecting consumers in the letting and managing agent market (October 2017) identified concerns around the transparency of service charges:

> Many leaseholders are unclear about their service charges, how they were priced, and whether or not costs are justified or if are paying too much. Some suggested that managing agents did not want to over-burden their clients with too much detailed information. However, others thought that managing agents' clients might be more accepting and understanding of the charges if there was a clearer breakdown of costs. A number of respondents highlighted the need for a standardised format for information on charges, which would improve understanding of costs and allow comparison between providers and properties.[92]

In response, the Government said it would ask the Regulation of Property Agents Working Group to consider how fees should be presented for consumers and explore the best means to challenge fees which are unjustified. The Working Group's final report, published in July 2019, put forward recommendations on how fees and charges should operate where a managing agent is employed.[93] The Government is considering the recommendations.[94]

The Bill

The Bill seeks to improve the transparency of the service charge information that leaseholders receive.

Clause 26 would make technical amendments to the Landlord and Tenant Act 1985 to extend part of the existing regulatory framework to cover fixed service charges. Under current provisions there is no regulation of fixed service charges, which are those that are fixed at the start of a 12-month accounting period (based on a prescribed formula, or a regular landlord assessment of cost, or some other mechanism).

Clause 27 would replace existing provisions in the 1985 Act with a new provision that requires demands for the payment of a service charge must be:

- in a specified form
- contain specific information; and
- provided to the leaseholder in a specified manner.

92 DCLG, Protecting consumers in the letting and managing agent market: call for evidence, October 2017, para 111

93 MHCLG, Regulation of Property Agents: working group report, 18 July 2019

94 PQ 183794 [on Property Management Companies: Regulation], 15 May 2023

Where a demand for payment of a service charge did not comply with these requirements, a provision of the lease relating to non-payment or late payment of service charges would have no effect.

The clause gives the appropriate authorities the power to make regulations with regards to service charge demands. The power would be subject to the negative procedure in Parliament.

Clause 28 would amend the 1985 Act to create a new requirement for landlords to provide leaseholders with a written statement of accounts in relation to variable service charges. Landlords would need to provide this within six months of the end of the 12-month accounting period for which service charges apply. The statement of accounts must be certified by a qualified accountant. The clause would also require landlords to provide an annual report in respect of services charges to leaseholders.

The clause would give the appropriate authorities the power to make regulations with regards to the written statement of accounts and annual report, including their form and content. The power would be subject to the negative procedure in Parliament.

Clause 29 would amend the 1985 Act to create a new right for leaseholders to request information from their landlord, and an obligation on landlords to provide information in their possession, or in certain circumstances, to request information from a third party (who in turn would be obliged to provide requested information in their possession).

Information may relate to: 1) service charges; or 2) services, repairs, maintenance, improvements, insurance, or management of dwellings. Landlords may charge individuals for the cost of providing information, or the provision of information may be a relevant cost for the purposes of a variable service charge.

The clause would give the appropriate authorities the power to make regulations with regards to the new right for leaseholders to obtain information, for example, specifying how information requests should be made and any exceptions that may apply. The power would be subject to the negative procedure in Parliament.

Clause 30 would substitute existing section 25 of the 1985 Act to enable applications to be made to the tribunal where:

- the landlord had not complied with the requirements with regards to service charge demands and/or the annual service charge report; and
- the landlord, or another person, had not complied with the requirements with regards to the provision of information.

The tribunal may order the landlord (or another person) to comply with the requirements and/or pay damages of up to £5,000 and/or make any other order which the tribunal considers consequential.

The clause would give the appropriate authorities the power to make regulations with regards to the enforcement of duties relating to service charges. The power would be subject to the negative procedure in Parliament.

5.2 Insurance

Background

It is common, especially in residential multi-occupancy buildings, for the freeholder to organise building insurance and recover the cost either as a separate insurance rent or as part of the service charge.

The Commonhold and Leasehold Reform Act 2002 gave leaseholders of houses the right to organise their own building insurance provided certain requirements are fulfilled.[95] Leaseholders in blocks of flats must abide by any provision in the lease concerning building insurance, although they can request a summary of the insurance policy and challenge the cost of the insurance if they think it is unreasonable.

Concerns have been raised about a significant increase in building insurance premiums in the wake of the Grenfell Tower fire. In January 2022, the Government asked the Financial Conduct Authority (FCA), in consultation with the Competition and Markets Authority (CMA), to review the way the market for multi-occupancy buildings insurance operates.

The FCA report on insurance for multi-occupancy buildings, published in 2022, identified a number of issues with the market for multi-occupancy buildings insurance, including:

- insurance premium rates doubled between 2016 and 2021.
- evidence of some high commission rates and poor practice which are not consistent with driving fair value to the customer. (Commission is paid by the insurer to the insurance broker, who often shares the commission with the freeholder or the property managing agent).
- lack of transparency and increased cost for leaseholders leading to significant distress.
- competition is not working effectively for customers.[96]

A second FCA report on multi-occupancy buildings insurance - broker renumeration, published in April 2023, found absolute levels of remuneration, including commissions, had risen by nearly 40% between 2019 and 2022. The

[95] For more information see Commons Library briefing CBP-01821, Long leaseholders: building insurance requirements

[96] FCA, Report on insurance for multi-occupancy buildings, 21 September 2022

FCA sample of 16 insurance brokers had paid over £80m of insurance commission to other parties (including freeholders and property managing agents) during the period. Most of these brokers had not provided adequate evidence to show they delivered fair value consistently for multi-occupancy buildings products.[97]

The FCA subsequently consulted on rule changes to address some of the issues with the market and published its proposals in September 2023.[98] Rule and guidance changes will come into force on 31 December 2023.

Under existing legislation, leaseholders do not have to be made aware of the level of any commission being taken by those involved in arranging the insurance, which gives intermediaries the opportunity to take substantial commissions without needing to demonstrate the reasonableness of the costs. This arrangement may incentivise freeholders, landlords or those working on their behalf, to maximise their own remuneration as opposed to choosing the best value.[99]

The Secretary of State for Levelling Up, Housing and Communities, Michael Gove, responded to the FCA's proposals in January 2023.[100] He welcomed the proposed changes but also said "I am clear that government too needs to act."[101] He set out intended actions:

> I will take action to ban managing agents, landlords and freeholders from taking commissions and other payments when they take out buildings insurance, replacing such payments with more transparent fees. I will press insurance firms, managing agents, landlords and freeholders to change their practices as a matter of priority. I will also arm leaseholders with more information to enable them to better scrutinise their insurance costs, while also ensuring that leaseholders are not subject to unjustified legal costs and that they can claim their legal costs back from their landlord.[102]

The Bill

Clause 31 would insert new sections 20G, 20H and 20I into the Landlord and Tenant Act (LTA) 1985. The provisions would:

- prevent certain insurance costs[103] from being charged in a variable service charge; and

97 FCA, Multi-occupancy buildings insurance – broker remuneration, 21 April 2023

98 FCA, PS23/14: Multi-occupancy building insurance: Feedback to CP23/8 and final rules, 29 September 2023

99 Explanatory notes to the Leasehold and Freehold Reform Bill 2023-24 as introduced, para 31

100 DLUHC, Response to the Financial Conduct Authority's (FCA) report on the buildings insurance market for multiple-occupancy residential buildings, 30 January 2023

101 As above

102 As above

103 'Excluded' insurance costs would be those attributable to payments made to arrange or manage insurance and that were not attributable to a permitted insurance payment . 'Permitted' insurance payments would be defined in secondary legislation.

- create a new right to claim damages through the tribunal when a leaseholder considers that insurance costs that are not permitted under the legislation have been charged.

The intention is to prohibit opaque and excessive insurance commissions from being recovered from leaseholders through their service charge. Instead, those placing or managing insurance would be permitted to charge a transparent insurance handling fee, so long as the cost was commensurate with the work and time undertaken.

The clause gives the appropriate authorities the power to make regulations with regards to permitted insurance costs. The power would be subject to the affirmative procedure in Parliament.

Clause 32 would amend the Schedule to the LTA 1985. It would place an obligation on the landlord to provide specified information on buildings insurance to the leaseholders within a specified time period. This could include what the building insurance premium covers and what quotes were obtained by the landlord when placing the insurance.

Leaseholders would have the right to apply to the tribunal if the landlord failed to comply. The tribunal could make an order for the landlord to comply and/or pay damages up to £5,000.

The detail would be set out in regulations subject to the negative procedure in Parliament.

5.3 Administration charges

Background

A lease agreement might require leaseholders to pay for the landlord's costs when dealing with applications for approvals (for example, permission to adapt a property) or for the provision of information or documents. These are known as administration charges or permission fees.

Administration charges may be fixed (in other words, the lease agreement may specify a fixed charge or include a formula for calculating the administration charge) or variable.

Under the Commonhold and Leasehold Reform Act 2002, variable administration charges must be reasonable and leaseholders can challenge unreasonable administration charges through the tribunal system.

Leaseholders have complained about excessive administration charges and a lack of transparency. In some cases, they may be aware that an administration charge is payable, but do not know in advance how much the charge will be. Leaseholders are often reluctant to take administration charge disputes to a tribunal because of the costs involved.

The Government's response to its consultation on Protecting consumers in the letting and managing agent market (October 2017) concluded: "It is clear that existing requirements around the setting and scrutiny of fees is too opaque and open to abuse."[104]

The Government said it would ask the Regulation of Property Agents Working Group to look into fees, including administration charges, and consider under what circumstances they are justified, and if they should be capped or banned. The working group's final report, published in July 2019, put forward recommendations on how fees and charges should operate where a managing agent is employed.[105]

The Government is considering the recommendations.[106]

The Bill

The Bill seeks to improve the transparency of administration charges that leaseholders may face.

Clause 33 would substitute paragraph 4 of Schedule 11 to the Commonhold and Leasehold Reform Act 2000 to require landlords to publish an administration charge schedule.

For each charge, the schedule should set out the amount payable and, if that's not possible, how the amount would be determined if it became payable.

Leaseholders would have the right to apply to the tribunal if the landlord failed to comply. The tribunal could make an order for the landlord to comply and/or pay damages up to £1,000.

Details, such as the form and content of the schedule and how it should be published, would be set out in regulations subject to the negative procedure in Parliament.

5.4 Litigation costs

Background

Under the terms of a lease, leaseholders may be liable to pay the legal costs of their landlord, regardless of the outcome before the court or tribunal. Currently, leaseholders must apply to the court or tribunal to limit their

[104] DCLG, Protecting consumers in the letting and managing agent market: call for evidence, October 2017, para 123

[105] MHCLG, Regulation of Property Agents: working group report, 18 July 2019

[106] PQ 183794 [on Property Management Companies: Regulation], 15 May 2023

liability to pay their landlord's legal costs recovered either through the service charge or as an administration charge.

In addition, leaseholders are only able to claim their own legal costs from their landlord under very limited circumstances. This may deter some leaseholders from bringing challenge.[107]

The background briefing notes to the 2022 Queen's Speech confirmed the Government's commitment to ensure leaseholders are not subject to any unjustified legal costs and can claim their own legal costs from their landlord.[108]

The Bill

Clause 34 would amend the Landlord and Tenant Act (LTA) 1985 and the Commonhold and Leasehold Reform Act 2022. The new provisions would require landlords to apply to the relevant court or tribunal for an order before they could pass their legal costs on to individual leaseholders as an administration charge, or on to all leaseholders (regardless of their participation in legal action) through the service charge.

The clause would give the appropriate authority the power to make regulations to specify: 1) the application procedure; and 2) matters the relevant court or tribunal should take into account when deciding whether to make an order on an application for costs. The power would be subject to the negative procedure in Parliament.

Clause 35 would amend the LTA 1985 to imply a term[109] into all leases to give leaseholders a new right to apply to the relevant court or tribunal for an order that their landlord pay any or all of their litigation costs.

The clause would give the appropriate authority the power to make regulations to specify matters the relevant court or tribunal should take into account when deciding whether to make an order on an application for costs. The power would be subject to the negative procedure in Parliament.

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107 Explanatory notes to the Leasehold and Freehold Reform Bill 2023-24 as introduced, para 33

108 Prime Minister's Office, 10 Downing Street, Queen's speech 2022: background briefing notes, 10 May 2022, page 69

109 In other words, this term would be implied into all leases by statute and would override any terms to the contrary in existing leases.

6 Regulation of estate management

6.1 Background

Freehold estates are private or mixed-tenure estates where, unlike other residential areas, communal areas and facilities, such as roads, play areas and open spaces, are not owned or looked after by the local authority.

Ownership and management of communal areas and facilities will instead rest with a private company (often the original developer) or homeowners themselves through a residents' management company (RMC). The private company or RMC will normally employ a management company to organise the necessary maintenance work on the estate.

The deed of transfer when the property is first sold by the developer usually requires freeholders to make a financial contribution towards the maintenance of communal areas and facilities, or it may be required as part of the purchase contract.[110]

Freeholders' rights

Freehold homeowners on these estates have extremely limited rights over the cost and quality of services provided. Unlike long leaseholders, freeholders do not have a statutory right to:

- challenge unreasonable service charges and the standard of work carried out via an application to the tribunal.
- apply to the tribunal to appoint a new manager.
- take over management of the estate via a Right to Manage company.

Therefore, freeholders do not have the equivalent rights to hold management companies to account, even though they may be paying for the same or similar services as leaseholders.

[110] The estate charge will normally be paid to the estate manager – this could be the developer, an estate management company or a residents' management company, depending on how the estate management is organised.

Proposals to strengthen freeholders' rights

Following a consultation on tackling unfair practices in the leasehold market, the Government announced an intention to legislate in this area on 21 December 2017.[111]

The Government's subsequent consultation on implementing reforms to the leasehold system in England (October 2018) found the majority of respondents supported legislation to address the disparity between leaseholder and freeholder rights. In June 2019 the Government committed to equal rights for freeholders:

> … we will legislate to give freeholders on private and mixed tenure estates equivalent rights to leaseholders to challenge the reasonableness of estate rent charges (replicating relevant provisions in the Landlord and Tenant Act 1985) as well as a right to apply to the First-tier Tribunal to appoint a new manager to manage the provision of services covered by estate rent charges (replicating relevant provisions of the Landlord and Tenant Act 1987).[112]

The consultation elicited mixed responses with regards to giving freeholders an equivalent Right to Manage (RTM).[113] Some respondents supported a Right to Manage, while others suggested it would be too complex and onerous in a freeholder setting.

The Government therefore concluded it would consider the implications for introducing a RTM for freeholders after the Law Commission had reported and made recommendations on reform to the RTM for leaseholders.[114]

The Law Commission's final report Leasehold home ownership: exercising the Right to Manage was published on 21 July 2020.

The Bill, as introduced, does not include provisions to give freeholders the right to appoint a manager or to take over management of the estate through an RTM company.

The Library briefing on Freehold houses: estate charges provides more detailed background information.[115]

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111 Department for Communities and Local Government, Tackling unfair practices in the leasehold Market: Summary of consultation responses and Government response, 21 December 2017, para 80

112 MHCLG, Implementing reforms to the leasehold system in England: summary of consultation responses and government response, 27 June 2019, p9

113 The Commonhold and Leasehold Reform Act 2002 gives leaseholders the right to take over the freeholder's management functions without having to buy the freehold (known as the Right to Manage).

114 MHCLG, Implementing reforms to the leasehold system in England: summary of consultation responses and government response, 27 June 2019, pp38-39

115 Commons Library briefing CBP-0847, Freehold houses: estate charges

Wales

Freehold estate charges were debated in the Senedd Cymru/Welsh Parliament (then National Assembly for Wales) following a Member's Legislative Proposal on 14 March 2018. The proposal suggested bringing in similar reforms to those consulted on in England.

The motion was agreed; the responding Minister said the Welsh Government would create a "task and finish group" to look at the matter. The group published its report, Residential Leasehold Reform: A Task and Finish Group Report, in July 2019.

The then Minister for Housing and Local Government, Julie James, launched a call for evidence on estate charges on 6 February 2020. The summary of responses to the call for evidence (November 2020) concluded that the practice of estate charges was not working effectively for everyone and the Government would consider options for change.

In May 2022, the Minister for Climate Change confirmed the Welsh Government was committed to introducing legislation to give freeholders equivalent rights to leaseholders:

> I have also committed to working with the UK Government to introduce legislation on a Wales and England basis that will give freeholders equivalent rights to leaseholders in relation to such matters. This would include the right to apply to a tribunal to challenge the fairness of estate charges, and to appoint a new manager to manage the provision of services covered by estate rent charges...
>
> Although it is usually my preference to make legislative change for Wales in the Senedd, I believe that pursuing these joint measures through a Bill introduced in the UK Parliament will be the most efficient route to change. Such a Bill would, of course, be subject to the legislative consent of the Senedd...[116]

In a written statement on 28 November 2023, Julie James, Minister for Climate Change, said she was "pleased to see that the UK Government has acted on my request that they fulfil their commitments to address the situation of freeholders on these estates." She confirmed she would lay a Legislative Consent Memorandum in respect of the Bill.[117]

6.2 The Bill

Part 4 of the Bill would give freeholders on private or mixed-tenure estates new statutory rights to make it easier to hold estate management companies to account.

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116 WQ85002 **(e) 5 May 2022**

117 Welsh Government, Written Statement: Leasehold and Freehold Reform Bill, 28 November 2023

Limitation of estate management charges

Clause 41 provides that an estate management charge would only be payable if the costs were reasonably incurred, and if the services or works were of a reasonable standard.[118]

Clause 42 provides that an estate manager would be required to consult with freeholders if the cost of any works to be charged as an estate management charge were to exceed an "appropriate amount". The amount a freeholder would be required to financially contribute to the cost of works would be limited to the appropriate amount, except where the consultation requirements had been met or the tribunal had dispensed with these requirements.

The clause would give the appropriate authority the power to make regulations setting the "appropriate amount" as well as the detail of the consultation requirements. Regulations would be subject to the negative procedure in Parliament.

Clause 43 provides that an estate manager would be unable to charge a freeholder for costs more than 18 months after the works had taken place and if they had also failed to notify the freeholder within this 18-month period that they would remain liable for the costs.

Clause 44 sets out the circumstances under which a freeholder could apply to the tribunal to determine the reasonableness of an estate management charge.

Rights relating to estate management charges

The Bill would impose requirements around the transparency of and access to information relating to estate management charges:

- demands for the payment of an estate management charge would have to: be in a specified form; contain specified information; and be provided in a specified manner, as prescribed in regulations made by the appropriate authority. (**Clause 45**)
- estate managers would be required to provide freeholders with an annual report. Regulations may specify: the information to be contained in the report; the form of the report; and the manner in which the report is to be provided. (**Clause 46**)
- freeholders would be entitled to request and receive information from estate managers. The appropriate authority would have the power to make regulations to, amongst other things; specify the information that

[118] Clause 41 mirrors Section 19 of the Landlord and Tenant Act 1985 in relation to leasehold service charges.

may be requested; how it may be requested; and the circumstances in which a duty to comply with a request would not apply. (**Clause 47**)

Clause 49 would create new enforcement measures whereby a freeholder could apply to the tribunal if an estate manager failed to comply with the requirements in clauses 45 to 48. The tribunal could make an order requiring the estate manager to comply within 14 days and/or pay damages of up to £5,000 to the freeholder. The tribunal could also make any other order that it considered consequential on these orders. The appropriate authority would be able to amend the level of damages via regulations.

The regulations in clauses 45 to 49 would be subject to the negative procedure in Parliament.

Administration charges

Freeholders on private or mixed-tenure estates are often subject to administration charges over which they have no control or protection. For example, fees may be charged for varying the deed of the property or for handling requests for information.

The Bill would create a new regulatory framework for administration charges.

Clause 50 defines the meaning of "administration charge". The appropriate authority would be able to amend the definition by regulations subject to the affirmative procedure in Parliament.

Clause 51 would require estate managers to publish a schedule setting out information about administration charges. The appropriate authority could, by regulations, specify the form and content of the administration charge schedule and how it must be published and provided to freeholders. Regulations would be subject to the negative procedure in Parliament.

Clause 53 provides that an administration charge must be reasonable and specifies the circumstances in which an administration charge would not be payable.

Freeholders would be able to apply to the tribunal:

- on the grounds that the estate manager had not complied with the requirements with regards to publishing administration charges. The tribunal could make an order requiring the manager to meet the requirements within 14 days and/or pay damages to the owner of up to £1,000 for the failure. (**Clause 52**)
- for a determination as to whether an administration charge was payable. (**Clause 54**)

The appropriate authority would be able to amend the level of damages by regulations subject to the negative procedure in Parliament.

Codes of management practice: Extension to estate managers

Clause 55 would amend section 87 of the LRHUDA 1993 to enable the appropriate authority to approve or publish a code of management practice in relation to freehold estates. The code could be taken into account as evidence at a tribunal or court.

7 Rentcharges

7.1 Background

A rentcharge is generally an annual sum paid by a freehold homeowner to a third party who normally has no other interest in the property. A rentcharge can also be referred to as a 'chief rent'.[119]

Most rentcharges are part of an historic system whereby land owners who released part of their land for development could charge a regular payment from the people living on it.[120] Since the Rentcharges Act 1977 no new income-supported rentcharges can be created, and any existing charges will be phased out by 2037.[121]

Failure to pay a rentcharge within 40 days of its due date means that under section 121 of the Law of Property Act 1925, the recipient of the rentcharge (the rentcharge owner) may take possession of the premises until the arrears and all costs and expenses are paid, or the rentcharge owner may grant a lease of the premises to a trustee that the rentcharge owner may set up themselves.[122]

The Government's response to its consultation on Tackling unfair practices in the leasehold market (July 2017) identified this issue and committed to address it:

> A small number of lawyers and lenders raised concerns where freeholders are subject to a rentcharge. Significant issues can arise where a small yearly rentcharge, which can be as little as £1, remains unpaid for over 40 days. This can result in the freeholder being at risk of possession or a lease being assigned on their property by the rent charge owner. Respondents suggested a small amendment to the Law of Property Act 1925 would resolve the issues highlighted in Morgoed Estates Ltd v Lawton [2016] UKUT 395 (TCC) so that the threat of possession or of a lease being assigned are ended and more suitable existing approaches to seek payment are used, such as seeking payments through court.
>
> [...]

[119] A rentcharge is not the same as ground rent on leasehold properties.

[120] Gov.uk, Guidance: Rentcharges, 18 December 2019

[121] Explanatory notes to the Leasehold and Freehold Reform Bill 2023-24 as introduced, para 40

[122] As above, para 41

> We will also ensure that, where a freeholder pays a rentcharge, the rentcharge owner is not able to take possession or grant a lease on the property where the rentcharge remains unpaid for a short period of time.[123]

7.2 The Bill

The Bill seeks to ensure that a rentcharge owner is not able to take possession or grant a lease on the property where the rentcharge remains unpaid for a short period of time.

Clause 58 would amend the definition of "estate rentcharge" in section 2(4)(b) of the Rentcharges Act 1977 Act to cover "improvements" in addition to maintenance, repairs and other costs.

Clause 59 would amend the Law of Property Act 1925. It would introduce new measures in instances where a freehold homeowner failed to pay a rentcharge within 40 days of its due date. The proposals would prevent rentcharge owners from using certain statutory remedies and require new notification procedures before rentcharge owners could seek to recover or compel payment.

The clause gives the appropriate authority the power to make regulations to limit the amounts payable by freehold homeowners in respect of action to recover or compel payment of rentcharge arrears, or to provide that no amount is payable. Regulations would be subject to the negative procedure in Parliament.

[123] DCLG, Tackling unfair practices in the leasehold Market: Summary of consultation responses and Government response, 21 December 2017, paras 78 and 81

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