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25 November 2021

# Leasehold Reform (Ground Rent) Bill 2021-22



## Summary

- 1 Leasehold reform: The Bill in context
- 2 The Bill
- 3 Issues raised during consideration in the House of Lords

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## Summary

In England and Wales, most owner-occupied flats are owned on a long leasehold basis. All shared ownership properties (which are part owned and part rented) are sold on a long lease. Houses can also be owned on a long lease.

In 2018-19 there were an estimated 4.5 million leasehold dwellings in England, comprising 19% of all housing. In Wales, there are approximately 235,000 leasehold properties, comprising around 16% of all housing.

Long leases normally require the leaseholder to pay ground rent to their freeholder or landlord. The lease agreement will set out the amount of ground rent payable and the basis for increases over the term of the lease. The landlord is not required to provide a service in return for ground rent.

In some cases, the rights to receive ground rents from leaseholders have been bought and sold in the financial market as a long-term income stream for third party investors.

The Government has committed to comprehensive reform of the leasehold system. The Leasehold Reform (Ground Rent) Bill 2021-22 is the first part of this process. A bill on broader leasehold reform is expected in the third session of this Parliament. The Commons Library briefing, [Leasehold and commonhold reform](#), provides further information on the Government's leasehold reform proposals.

## Ground rent issues

### Onerous ground rents

Historically, ground rents were set at a 'peppercorn' or nominal level. However, in recent years a practice has emerged of selling properties on long leases with higher ground rents at the start and shorter ground rent review periods. As a result, long leaseholders can quite quickly face onerous and unsustainable ground rents. High and escalating ground rents can make it difficult for leaseholders to sell or re-mortgage their property.

### Ground 8 possession claims: assured tenancies

As ground rents have risen, an unintended consequence is that where they exceed £1,000 per year in Greater London and £250 elsewhere, the lease agreements are classed as [assured tenancies](#) under the Housing Act 1988. This means that for even small sums of arrears, leaseholders could be subject

to a mandatory possession order if they were to default on payment of ground rent.

## Enfranchisement and lease extensions

Onerous ground rent terms can have an adverse effect on leaseholders' ability to buy their freehold or to extend their lease. This is because the ground rent charged is a factor in the valuation process.

## The Bill

The Leasehold Reform (Ground Rent) Bill, together with its Explanatory Notes, Impact Assessment and an overview of its parliamentary progress, is available on the Parliament website: [Leasehold Reform \(Ground Rent\) Bill \[HL\]](#).

The Bill received its first reading in the House of Commons on 15 September 2021. Second reading is scheduled for 29 November 2021.

The Bill applies to England and Wales. Its provisions, once in force, will restrict ground rents on newly created long residential leases (with some exceptions) to a token one peppercorn per year. This effectively restricts ground rents to zero financial value. The intention is to make leasehold ownership fairer and more affordable for leaseholders.

The Bill places a duty on local weights and measures authorities (trading standards authorities) in England and Wales to enforce the Bill.

A breach of the ground rent restriction will be a civil offence for which enforcement authorities can impose a financial penalty of between £500 and £30,000. The money raised through financial penalties may be kept by authorities to fund their enforcement activities. They will also have the power to order the repayment of any unlawfully charged ground rent, plus interest, to leaseholders.

The Bill also prohibits the charging of administration charges in relation to peppercorn rents and makes provision for leaseholders to recover unlawfully charged ground rents through the First-tier Tribunal in England or the Leasehold Valuation Tribunal in Wales.

If enacted, the main provisions of the Act will come into force on a date to be specified by the relevant Secretary of State. But for retirement home leases (a lease relating to a dwelling that can only be occupied by people aged 55 or over), the Act's provisions must commence no earlier than 1 April 2023. This is intended to give the retirement sector, where ground rents are often used to help fund the additional costs of providing communal spaces and facilities, additional time to transition.

## Issues raised during consideration in the House of Lords

The Leasehold Reform (Ground Rent) Bill, HL Bill 1 of 2021-22 was introduced in the House of Lords on 12 May 2021. Transcripts of the House of Lords stages are available on the Parliament's Bill webpage: [Leasehold Reform \(Ground Rent\) Bill \[HL\]](#).

The Bill was widely welcomed as a positive first step in leasehold reform.

Nevertheless, several issues and concerns were raised during the Bill's passage through the Lords, including the following:

- the Bill will only apply to new leases and will not assist existing leaseholders faced with high and escalating ground rents;
- the lack of a firm timetable for the more substantive second part of leasehold reform legislation;
- concern that unscrupulous landlords may pressurise leaseholders to agree voluntary lease extensions, as a means to continue their ground rent arrangements;
- concern that trading standards authorities face budgetary pressures and may not have capacity to enforce the new legislation;
- the broad definition of 'ground rent' in the Bill; and
- the Bill's commencement date and the transition period for leases of retirement homes.

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# 1 Leasehold reform: The Bill in context

## 1.1 The nature of leasehold ownership

In England and Wales, most owner-occupied flats are owned on a long leasehold basis (ie with a lease of at least 21 years when first granted). All shared ownership properties (which are part owned and part rented) are sold on a long lease. Houses can also be owned on a long lease.

In 2018-19 there were an estimated 4.5 million leasehold dwellings (3.1 million leasehold flats and 1.4 million leasehold houses) in England. This equates to 19% of the English housing stock.<sup>1</sup> In Wales, there are approximately 235,000 leasehold properties, which equates to around 16% of all dwellings.<sup>2</sup>

Owners of long leasehold properties are not always aware that although they are owner-occupiers, they are in a landlord and tenant relationship with the freeholder. The rights and obligations of the parties are governed by the terms of the lease agreement, supplemented by statutory provisions. The freeholder (landlord) retains ownership of the land on which the property is built.

Essentially, long leaseholders buy the right to live in their property for a given period. Ground rent is normally payable to the landlord as a condition of the lease agreement. The lease will state the amount of ground rent payable and set out how often and the rate or amount by which the ground rent can increase over the term of the lease. There is currently no maximum limit or cap on ground rents. The landlord is not required to provide a service in return for the payment of ground rent.

In the case of flat-owners, 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. The lease agreement usually makes provision for the costs of the freeholder, or his/her agent, in discharging these management functions to be met in full by the leaseholders; these payments are referred to as service charges.<sup>3</sup>

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<sup>1</sup> MHCLG, [Estimating the number of leasehold dwellings in England, 2018-19](#), July 2020 [note these are classed as experimental statistics].

<sup>2</sup> Welsh Government Social Research, [Social research number 16/2021: Research into the sale and use of leaseholds in Wales](#), Carr, H. et al, 16 March 2021, Summary

<sup>3</sup> The Leasehold Advisory Service (LEASE) has a helpful overview: [Living in leasehold flats – a guide to how it works](#).



When a lease expires the landlord and tenant relationship continues. Unless either the tenant (leaseholder) or the landlord (freeholder) takes specific steps to end the tenancy, it continues on the same terms. It is open to the tenant to surrender the tenancy. There are a limited number of grounds on which a landlord can regain possession; a tenant can only be made to leave by a court order. A landlord can also end the tenancy by replacing it with an assured periodic tenancy. At this point the tenant no longer has any rights of ownership and is subject to the terms of the new assured periodic tenancy.<sup>4</sup>

Most long leaseholders of houses and flats have the statutory right to buy the freehold interest of their homes<sup>5</sup> (on a collective basis in the case of flat-owners) or extend their lease agreements. Exercising these rights means that the risk of the lease expiring should be substantially delayed or removed.

## 1.2

## Leasehold reform in two stages

The Commons Library briefing paper [Leasehold and commonhold reform \(CBP08047\)](#) provides further information on the Government's leasehold reform proposals.

Consultation on a new round of leasehold reforms began in July 2017.<sup>6</sup> [Tackling unfair practices in the leasehold market](#) included, amongst other things, proposals to tackle the sale of new-build houses on a leasehold basis and to control ground rent levels in new lease agreements.

The summary of responses received, together with the Government response was published in December 2017.<sup>7</sup> In the Ministerial Foreword, then-Secretary of State for Housing, Communities and Local Government, Sajid Javid, committed the Government to act on leasehold abuses:

Looking at the responses to this consultation it's clear to me that real action is needed to end such abuses and create a system that works in the best interests of consumers. And that's exactly what this government will deliver.<sup>8</sup>

Specifically, the 2017 Government said it would:

- legislate to prohibit the creation of new residential long leases on houses, whether newly built or on existing freehold houses, other than in exceptional circumstances;
- restrict ground rents in newly established leases of houses and flats to a peppercorn value;

<sup>4</sup> For more information on what happens when a long lease expires see: Leasehold Advisory Service (LEASE), [Security of tenure when the lease runs out](#).

<sup>5</sup> Also referred to as enfranchisement.

<sup>6</sup> Department for Communities and Local Government (DCLG), [Tackling unfair practices in the leasehold market](#), July 2017

<sup>7</sup> DCLG, [Tackling unfair practices in the leasehold market – Summary of consultation responses and the Government response](#), December 2017

<sup>8</sup> Ibid.

- address loopholes to improve transparency and fairness for leaseholders and freeholders; and
- work with the Law Commission to support existing leaseholders. This will include making buying a freehold or extending a lease “easier, faster, fairer and cheaper.”<sup>9</sup>

Several consultation exercises followed this announcement.<sup>10</sup> The Law Commission included leasehold reform in its 13<sup>th</sup> Programme of Law Reform. This work finished in 2020 with the publication of three final reports on leasehold ownership and a report on reinvigorating commonhold tenure.<sup>11</sup>

On 7 January 2021 [the Government announced](#):

Legislation will be brought forward in the upcoming session of Parliament, to set future ground rents to zero. This is the first part of seminal two-part reforming legislation in this Parliament. We will bring forward a response to the remaining Law Commission recommendations, including commonhold, in due course.<sup>12</sup>

This was followed by a [Written Ministerial Statement](#) on 11 January 2021 in which the Secretary of State described some of the changes that future legislation will implement:

- Reform the process of enfranchisement valuation used to calculate the cost of extending a lease or buying the freehold.
- Abolish marriage value.<sup>13</sup>
- Cap the treatment of ground rents at 0.1% of the freehold value and prescribe rates for the calculations at market value. An online calculator will simplify and standardise the process of enfranchisement.
- Keep existing discounts for improvements made by leaseholders and security of tenure.
- Introduce a separate valuation method for low-value properties.
- 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”.
- Allow for redevelopment breaks during the last 12 months of the original lease, or the last five years of each period of 90 years of the extension to continue, “subject to existing safeguards and compensation”.

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<sup>9</sup> Ibid.

<sup>10</sup> Full details are provided in a separate Commons Library briefing paper (CBP08047): [Leasehold and commonhold reform](#).

<sup>11</sup> ‘[Millions of leaseholders to benefit from Law Commission reforms](#)’, Law Commission, 21 July 2020

<sup>12</sup> ‘[Government reforms make it easier and cheaper for leaseholders to buy their homes](#)’, MHCLG, 7 January 2021

<sup>13</sup> Marriage value assumes that the value of one party holding both the leasehold and freehold interest is greater than when those interests are held by separate parties.

- Enable leaseholders, where they already have a long lease, to buy out the ground rent without having to extend the lease term.<sup>14</sup>

The Welsh Government announced on 17 March 2021 its ambition to similarly restrict ground rents on new leases.<sup>15</sup>

In the 2021 Queen’s Speech, the Government confirmed plans to introduce a Leasehold Reform (Ground Rent) Bill.<sup>16</sup>

During the Leasehold Reform (Ground Rent) Bill’s Committee Stage in the House of Lords, Lord Greenhalgh said the aim was to bring forward a Bill on wider leasehold reform in the third session of this Parliament.<sup>17</sup>

## 1.3 Ground rent issues

### Onerous ground rents

Historically, leases required a ground rent payment of no or little financial value. However, the 2017 consultation paper, [Tackling unfair practices in the leasehold market](#) observed a trend of significant ground rent increases, particularly in relation to new lease agreements.

Developers appeared to be selling properties on long leases with higher ground rents at the start and shorter ground rent review periods. In some cases, for example, leases included clauses providing for ground rents to double every 10 years. This means long leaseholders can quite quickly face “onerous and unsustainable ground rents”:

This has included cases of freeholders charging initial ground rents of £295 per year on properties purchased for just under £200,000, which increase to £9,440 per year after 50 years. In these cases the estimated cost of purchasing the freehold using a statutory valuation method would be over £35,000. In such cases leaseholders can also face difficulties selling or re-mortgaging.<sup>18</sup>

In some cases, the rights to receive ground rents from leaseholders have been bought and sold in the financial market as a long-term income stream for third party investors. The consultation paper highlighted the attractiveness of ground rents as a revenue stream for major investment funds:

Developers have highlighted that the returns from selling on ground rents can be up to 35 times the annual ground rent value. In the current market this can be considerably more than the amount

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<sup>14</sup> [HCWS695, 11 January 2021](#)

<sup>15</sup> Welsh Government, [Written Statement: Next steps on leasehold reform](#), 17 March 2021

<sup>16</sup> Prime Minister’s Office, 10 Downing Street, [Queen’s Speech 2021](#), 11 May 2021

<sup>17</sup> [HL Deb 9 June 2021 c282GC](#)

<sup>18</sup> DCLG, [Tackling unfair practices in the leasehold market](#), July 2017, para 4.7

normally charged to the purchaser of a new build house for the freehold interest at the point of sale.<sup>19</sup>

The Housing, Communities and Local Government (HCLG) Select Committee carried out an inquiry into leasehold reform over 2018-19. Witnesses referred to the impact of high ground rents on leaseholders' ability to sell their homes where the ground rent value "becomes disproportionate to the value of a home."<sup>20</sup> The UK Finance Lenders' Handbook requires ground rents "to be predictable, to be understood as to what the level is going to be, to be set out quite clearly, and to allow that to increase periodically by a reasonable amount."<sup>21</sup>

Not all witnesses agreed that ground rents which double after 10 years are onerous.<sup>22</sup> The point was made that much depends on the level of the initial ground rent. The Chief Executive of Redrow argued that ground rents of £400 per year which double every ten years and reach £12,800 in fifty years are "proportionate to the value of the properties concerned".<sup>23</sup>

The Committee noted that some mortgage lenders had moved to restrict lending on leasehold properties with a ground rent which is over 0.1% of the property value.<sup>24</sup> The Committee concluded:

Any ground rent is onerous if it becomes disproportionate to the value of a home, such that it materially affects a leaseholder's ability to sell their property or obtain a mortgage. In practical terms, it is increasingly clear that a ground rent in excess of 0.1% of the value of a property or £250—including rents likely to reach this level in future due to doubling, or other, ground rent review mechanisms—is beginning to affect the saleability and mortgage-ability of leasehold properties.<sup>25</sup>

The Competition and Markets Authority (CMA) estimates that 18,000 leases have a doubling ground rent clause that applies between every 10 and 15 years.<sup>26</sup>

## Ground 8 possession claims: assured tenancies

As ground rents have risen, an unintended consequence is that where they exceed £1,000 per year in Greater London and £250 elsewhere, the lease

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<sup>19</sup> Ibid., para 4.10

<sup>20</sup> Housing, Communities and Local Government Committee, [Leasehold Reform](#), HC 1468 2017-19, 19 March 2018, para 84

<sup>21</sup> Ibid., para 85

<sup>22</sup> Ibid., para 86

<sup>23</sup> Ibid.

<sup>24</sup> Ibid., para 88

<sup>25</sup> Ibid., para 91

<sup>26</sup> CMA, [Leasehold housing – Update report](#), 28 February 2020, para 74

agreements are classed as assured tenancies under the Housing Act 1988.<sup>27</sup> In turn, this means that where ground rent is paid annually if at least three months' arrears accrues the landlord can seek a court order for eviction under Ground 8 of Schedule 2 to the 1988 Act. Ground 8 is mandatory – meaning a judge cannot refuse to grant an order.

The consultation on [Tackling unfair practices in the leasehold market](#) sought views on amendments to the 1988 Act to rectify this “unintended consequence.” The Government said, “action will be taken to address this loophole and ensure that leaseholders are not subject to unfair possession orders.”<sup>28</sup>

## Enfranchisement, lease extensions and ground rents

Qualifying leaseholders in blocks of flats have a collective right to buy the freehold interest and an individual right to a 90-year lease extension 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.”<sup>29</sup>

Qualifying owners of leasehold houses have the right to buy the freehold interest 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 may increase to a modern rent,<sup>30</sup> reviewable after 25 years. This modern ground rent is payable during the additional term of the extended lease.

Onerous ground rent terms can have an adverse effect on leaseholders' ability to exercise these rights. This is because the ground rent charged is a factor in the valuation process.

## 1.4

## Action to help existing leaseholders

The Government has committed to future legislation which will allow existing house and flat leaseholders to extend their lease for 990 years with a ground rent of zero.<sup>31</sup> There is also a commitment to “enable leaseholders, where

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<sup>27</sup> For further information on assured tenancies see Shelter webpage, [Assured tenancy definition](#), last updated March 2021

<sup>28</sup> DCLG, [Tackling unfair practices in the leasehold market: government response](#), December 2017, para 75

<sup>29</sup> Section 56(1) of the Leasehold Reform, Housing and Urban Development Act 1993.

<sup>30</sup> ‘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 (under the current law). It is calculated by valuing the “site”, and then decapitalising that value.

<sup>31</sup> [‘Government reforms make it easier and cheaper for leaseholders to buy their homes’](#), MHCLG, 7 January 2021

they already have a long lease, to buy out the ground rent without the need to extend the term of the lease.”<sup>32</sup>

In the meantime, some developers have established schemes to assist leaseholders with onerous ground rents such as Taylor Wimpey’s [Ground Rent Review Assistance Scheme](#).

Over 60 developers and freeholders voluntarily signed up to the MHCLG’s [industry pledge](#) “to stop leaseholders being trapped in unfair and costly deals”.

The Competition and Markets Authority (CMA) opened an investigation in 2019 into the extent of any mis-selling and onerous leasehold terms, including whether they might constitute ‘unfair contract terms’.<sup>33</sup> An [Update report](#) on the investigation was published on 28 February 2020.<sup>34</sup>

It should not be assumed that the businesses under investigation have been involved in any or all of the outlined practices.

At that point the CMA had found “worrying evidence that people who buy leasehold properties are being misled and taken advantage of.”<sup>35</sup> On 4 September 2020 the [CMA announced](#) it was opening enforcement cases against four developers. These were Countryside Properties and Taylor Wimpey, for using possibly unfair contract terms, and Barratt Developments and Persimmon Homes over the possible mis-selling of leasehold homes.<sup>36</sup>

Firms who bought freeholds from the developers named above and who have continued to use the same unfair leasehold contract terms are within the remit of the CMA’s investigation, as are ground rent increases based on the Retail Price Index (RPI).

On 23 June 2021, the CMA [announced](#) it had secured the following undertakings<sup>37</sup> in respect of ground rent clauses from the investment company Aviva:

- The removal of clauses in lease agreements providing for ground rents to double and the removal of terms which had originally provided for doubling ground rents and which have been converted into RPI-based ground rent terms. Where Aviva is the freeholder, leaseholders’ ground rents will revert to the original amount – i.e. when the property was first sold – and this will not increase over time.
- Refunds to homeowners affected by doubling ground rent clauses.<sup>38</sup>

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<sup>32</sup> [HCWS695, 11 January 2021](#)

<sup>33</sup> [Letter to Chair of HCLG Committee from the CMA regarding the Committee’s report on Leasehold reform, 14 May 2019](#)

<sup>34</sup> CMA, [Leasehold Housing Update Report](#), CMA115, 28 February 2020

<sup>35</sup> ‘[CMA finds evidence of serious issues in leasehold selling](#)’, CMA, 28 February 2020

<sup>36</sup> ‘[Leasehold homes: CMA launches enforcement action](#)’, CMA, 4 September 2020

<sup>37</sup> Undertakings are provided voluntarily to the CMA without any admission of wrongdoing or liability.

<sup>38</sup> ‘[CMA secures landmark commitments for leaseholders](#)’, CMA, 23 June 2021

On 15 September 2021, the CMA [announced](#) that Countryside Properties had voluntarily given formal commitments to remove doubling ground rent terms from its leasehold contracts. Countryside will also remove terms which were originally doubling clauses but were converted so that the ground rent increased in line with the RPI.<sup>39</sup>

The Government has urged other developers to follow suit in amending their historic practices.<sup>40</sup> The CMA has raised the issue of ground rent terms with other investment companies:

The CMA has also written to the investment groups Brigante Properties, and Abacus Land and Adriatic Land, setting out its concerns and requiring them to remove doubling ground rent terms from their contracts. They now have the opportunity to respond to the CMA's detailed concerns and avoid court action by signing undertakings to remove such terms.<sup>41</sup>

The CMA's investigation into Barratt Developments and Taylor Wimpey is ongoing.

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<sup>39</sup> CMA, [Leaseholders freed from costly contract terms](#), 15 September 2021

<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

## 2 The Bill

The Leasehold Reform (Ground Rent) Bill 2021-22, together with its Explanatory Notes (which provide a clause by clause explanation of the Bill), Impact Assessment and an overview of its parliamentary progress, is available on the Parliament website: [Leasehold Reform \(Ground Rent\) Bill \[HL\]](#).<sup>42</sup>

The Bill extends to England and Wales and will apply to new long residential leaseholds in England and Wales.

The Welsh Government laid a [legislative consent memorandum](#) for the Bill before the Senedd in May 2021.

### 2.1 What does the Bill do?

The Bill seeks to restrict ground rents on newly created long leases of houses and flats to an annual rent of one peppercorn (a token of no financial value). The intention is to make leasehold ownership fairer and more affordable for leaseholders by ensuring that landlords (freeholders) will no longer be able to make financial demands for ground rent.

### 2.2 Regulated and excepted leases

The Bill's provisions are not retrospective

The Bill applies to new long residential leases which are created after the Act comes fully into force (the Bill refers to these as 'regulated leases'). Existing leaseholders will be unaffected except where a replacement lease is granted by way of a voluntary lease extension (discussed in section 2.3 below).

The Bill does not apply to:

- business leases;
- statutory lease extensions of houses and flats;<sup>43</sup>
- community housing leases; and
- home finance plan leases.

<sup>42</sup> <https://bills.parliament.uk/bills/2864/publications>

<sup>43</sup> ie lease extensions under Part 1 of the Leasehold Reform Act 1967 and Chapter 2 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993.



## 2.3

## Prohibited and permitted rent

The Bill provides that the landlord under a regulated lease must not require the leaseholder to pay a prohibited rent. A ‘prohibited rent’ means any rent, to the extent that it exceeds the ‘permitted rent’.

A single peppercorn has been used by English land lawyers for centuries as something which has no monetary value.<sup>44</sup>

The following rents are permitted under the Bill:

- a ‘peppercorn rent’ - which is defined as an annual rent of one peppercorn. This effectively restricts a ground rent to zero financial value. There is no obligation on a landlord to levy a peppercorn rent and it is not envisaged that landlords will request that leaseholders pay a peppercorn in practice.<sup>45</sup>
- a landlord can charge rent in respect of their share of a shared ownership property, but only a peppercorn rent is permitted to be charged with respect to the leaseholder’s share of the property.
- rent is permitted in the case of voluntary (ie informal or non-statutory) lease extensions, where a leaseholder is granted a lease that replaces one granted prior to commencement of the Act. Ground rent can only be charged for the unexpired term of the original lease. Once the period of the extension starts the ground rent must revert to a peppercorn. The ground rent for the unexpired term of the original lease cannot exceed the amount specified in the original lease.

Under clause 7 of the Bill,<sup>46</sup> any term in a regulated lease reserving a prohibited rent will be replaced by a term reserving a permitted rent, which is generally a peppercorn rent. Either a leaseholder or landlord of a regulated lease will be able to apply to the appropriate tribunal (the First-tier Tribunal in England and the Leasehold Valuation Tribunal in Wales) for a declaration as to the effect of clause 7 on a term in the lease (or a contract relating to the lease).

## 2.4

## Enforcement

The Bill places a duty on local weights and measures authorities (trading standards authorities) in England and Wales to enforce the Bill. District

<sup>44</sup> Philip Rainey QC’s [Leasehold Reform Briefing Note on ‘Peppercorn Rent’](#), 12 November 2018, explains the historic and legal background to the use of peppercorn rents in leases.

<sup>45</sup> Leasehold Reform (Ground Rent) Bill, HL Bill 1 of 2021-22, [Explanatory Notes](#), 12 May 2021, para 2

<sup>46</sup> Clause 7 of [The Leasehold Reform \(Ground Rent\) Bill 164 2021-22](#) (as brought from the Lords)

Councils that are not trading standards authorities will have power to enforce in England if they choose to do so.

An enforcement authority must have regard to any guidance issued by the Secretary of State (in relation to lease of premises in England) and the Welsh Ministers (in relation to a lease of premises in Wales) about the exercise of its functions under the Act.

The Schedule to the Bill contains provisions about:

- the procedure for imposing a financial penalty or making an order;
- the time limits for doing so;
- rights of appeal;
- the recovery of a financial penalty imposed or an amount ordered to be paid; and
- the retention of sums received.

An enforcement authority can help a leaseholder to:

- apply to the appropriate tribunal for a recovery order (see section 2.6 below);
- apply to the appropriate tribunal for a declaration as to the effect of clause 7 on the terms of a regulated lease; and
- recover an amount that the appropriate tribunal orders to be paid under a recovery order.

Assistance may include conducting proceedings or giving advice.

## 2.5 Financial penalties

The Bill provides that a breach of the ground rent restriction will be a civil offence for which enforcement authorities may impose a financial penalty of between £500 and £30,000. The money raised through financial penalties may be retained by authorities to finance enforcement activities. They will also have the power to order the repayment of any unlawfully charged ground rent, plus interest, to leaseholders.

## 2.6 Recovery of prohibited rent

### **By the enforcement authority**

If the enforcement authority is satisfied on the balance of probabilities that a leaseholder has made a payment of a prohibited rent and all or part of that

rent has not been refunded, they will be able to order the repayment of the prohibited rent by any of the following:

- the landlord at the time the prohibited rent was paid;
- the landlord at the time the enforcement authority makes the order; or
- a person acting on behalf of one of the above where the payment was paid to that person.

### **By the leaseholder**

The Bill provides for leaseholders to recover unlawfully charged ground rents, where all or part of that rent has not been refunded, by applying to the appropriate tribunal (the First-tier Tribunal in England and the Leasehold Valuation Tribunal in Wales) for a recovery order. The order may also include a requirement for interest to be paid. The prohibited rent will have to be repaid within 28 days of the order being made.

## **2.7**

### **Administration charges**

The Bill prevents landlords from levying an administration charge in respect of a ground rent that is restricted to a peppercorn by this Bill. This is intended to deter landlords from charging what is effectively a ground rent by another name.

Leaseholders will have the right to apply to the First-tier Tribunal in England, or the Leasehold Valuation Tribunal in Wales, for a determination as to whether an administration charge is payable, or for an order varying the lease on the ground that such an administration charge is not payable.

## **2.8**

### **Crown application**

The Bill applies to Crown land, which is defined in the Bill as land where there is or has at any time been an interest or estate in the land:

- comprised in the Crown Estate;
- belonging to Her Majesty in right of the Duchy of Lancaster;
- belonging to the Duchy of Cornwall; or
- belonging to a government department or held on behalf of Her Majesty for the purposes of a government department.

## 2.9 Delegated powers

The Bill contains a number of provisions that confer delegated powers to the Secretary of State and Welsh Ministers to make regulations and publish guidance. [A Memorandum](#) from the Ministry of Housing, Communities and Local Government (MHCLG) to the House of Lords Delegated Powers and Regulatory Reform Committee explained in each case why the power has been taken and the nature of, and the reason for, the procedure selected.<sup>47</sup> The Delegated Powers and Regulatory Reform Committee scrutinised the Bill and concluded that the Bill's provisions delegating legislative power were appropriate.<sup>48</sup> MHCLG subsequently submitted a [Supplementary Memorandum](#) to the Committee which identified Government amendments to the Bill at Report stage to confer powers to make delegated legislation to Welsh Ministers.<sup>49</sup>

## 2.10 Commencement

The following sections will come into force on the day the Act is passed:

- Sections 2 and 9 (but only for the purpose of making regulations); and
- Sections 20 to 26.

The main provisions will come into force on a date to be specified by the Secretary of State in regulations. The Secretary of State may appoint different days for different purposes, including for different kinds of leases.

At Report stage in the House of Lords the Minister of State for the Ministry of Housing, Communities and Local Government, Lord Greenhalgh, made a commitment that the Bill would be commenced within six months of Royal Assent.<sup>50</sup>

With regards to retirement home leases (ie a lease relating to a dwelling that can only be occupied by people aged 55 or over), the Act's provisions must commence no earlier than 1 April 2023. This is intended to give the retirement sector additional time to transition (see section 3.3 for further discussion on this).

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<sup>47</sup> MHCLG, [Leasehold Reform \(Ground Rent\) Bill: Memorandum from the Ministry of Housing, Communities and Local Government to the Delegated Powers and Regulatory Reform Committee](#), 12 May 2021

<sup>48</sup> House of Lords, [Delegated Powers and Regulatory Reform Committee](#), 1st Report of Session 2021-22, HL Paper 8, 19 May 2021

<sup>49</sup> MHCLG, [Leasehold Reform \(Ground Rent\) Bill: Supplementary Memorandum from the Ministry of Housing, Communities and Local Government to the Delegated Powers and Regulatory Reform Committee](#), 14 July 2021

<sup>50</sup> [HL Deb 20 July 2021 c174](#)

## 3 Issues raised during consideration in the House of Lords

The Leasehold Reform (Ground Rent) Bill, HL Bill 1 of 2021-22 was introduced in the House of Lords on 12 May 2021. It received its second reading on 24 May 2021.

The Bill was considered in Grand Committee on 9 and 14 June 2021. 28 amendments to the Bill were tabled at Committee stage, of which: 1 was disagreed; 9 were withdrawn and 18 were not moved.

Report stage took place on 20 July 2021. 46 amendments to the Bill were tabled, of which: 26 were agreed, 2 were disagreed, 3 were withdrawn and 15 were not moved. There were three divisions. The majority of the agreed amendments were minor/technical Government amendments.

The Bill received its third reading on 14 September 2021.

Transcripts of the House of Lords stages are available on the Parliament's Bill webpage: [Leasehold Reform \(Ground Rent\) Bill \[HL\]](#).<sup>51</sup>

The Bill has been widely welcomed as a positive first step in leasehold reform.<sup>52</sup> Nevertheless, the following key issues were raised during the Bill's passage through the House of Lords.

### 3.1 Lack of application to existing leaseholders

A key concern, raised at second reading and in Grand Committee, was that the Bill only applies to new leases and fails to help existing leaseholders faced with high and escalating ground rents. It was suggested that this could create a two-tier market, with buyers seeking new-build properties with peppercorn ground rents, leaving existing leaseholders unable to sell their properties.

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<sup>51</sup> <https://bills.parliament.uk/bills/2864/stages>

<sup>52</sup> See for example: 'The start of the end of leasehold - Ground Rent Bill', National Leasehold Campaign, 18 May 2021; 'Conveyancing Association seeks Government legislation to deliver leasehold reform', The Conveyancing Association, 12 July 2021; 'The Queen's Speech - what it means for homeowners', HomeOwners Alliance, 13 May 2021; and 'Leasehold Reform Bill published', PropertyMark, 13 May 2021

Lord Greenhalgh, Minister of State for the Ministry of Housing, Communities and Local Government, explained that the decision to focus on new leases was a deliberate one:

We are working to make the leasehold system fairer and more transparent for leaseholders, but we also need to ensure that we are fair to freeholders. Setting existing leases to a peppercorn raises complex issues and could have negative consequences that may extend beyond the leasehold sector. As just one example of these consequences, your Lordships will be aware that there are pension providers who hold existing investments dependent on ground rent income that were entered into some years ago. These are long-term financial commitments that service the needs of many of our elderly citizens.<sup>53</sup>

He emphasised that the Government had not committed to abolish existing ground rents. Instead, it proposed to make it as easy as possible for leaseholders to enfranchise or to buy themselves out of the ground rent obligation. The second tranche of leasehold reform legislation, which is expected in the third session of this Parliament, would address a range of issues facing existing leaseholders.

Lord Greenhalgh also pointed out that the Competition and Markets Authority (CMA) was investigating potential mis-selling and unfair terms in the leasehold sector, including the issue of onerous ground rents. Meanwhile, the Government wanted to “get this Bill through as speedily as possible” and any broadening of the Bill’s scope risked causing significant delay.<sup>54</sup>

Lords expressed frustration at the slow pace of leasehold reform and pressed the Minister to commit to a firmer timetable for the more substantive second tranche of leasehold legislation. Lord Greenhalgh pointed out that the leasehold legislation was complex and it was important to get the detail of the reforms right. He assured Lords that the Government wanted to “move at great speed to establish that very important second stage.”<sup>55</sup>

Several amendments were tabled in Grand Committee which sought to extend the ground rent restrictions to all leaseholders and speed up the pace of leasehold reform. Following debate, the amendments were withdrawn or not moved.

At Report stage, Lords again pressed the Government to broaden the scope of the Bill to include existing leaseholders, without success. Lord Lennie’s amendment ([Amendment 26](#)) would have required the Government to introduce further legislation to remove ground rent for all leaseholders within 30 days of the Act’s prohibited ground rent provision coming into force. The House rejected the amendment on division [Content – 219, Not Content –

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<sup>53</sup> [HL Deb 9 June 2021 c281GC](#)

<sup>54</sup> [HL Deb 9 June 2021 c283GC](#)

<sup>55</sup> [HL Deb 24 May 2021 \[Leasehold Reform \(Ground Rent\) Bill \[HL\]\] c864](#)

243].<sup>56</sup> Baroness Pinnock’s amendment ([Amendment 27](#)) would have required a review of the financial impact of the Act within six months of Royal Assent and a recommendation as to whether a further extension of the ground rents ban could benefit existing leaseholders. The House also rejected this amendment on division [Content – 245, Not Content – 256].<sup>57</sup>

## 3.2 Exemption for business leases

In Grand Committee Lord Young of Cookham moved an amendment ([Amendment 3](#)) to probe the application of the Bill to mixed-use part business and part residential premises.<sup>58</sup> He was concerned that the Bill as drafted might provide a loophole that could be exploited by developers. By way of example, he suggested that a developer might try to claim a business lease exemption by including a communal working space on the ground floor of a residential block.<sup>59</sup> Lord Stunell similarly queried whether developers might try to designate leases for residents’ car parking spaces as business leases.<sup>60</sup>

Lord Greenhalgh explained that the Government had always been clear that the Bill would only apply to residential and not business leases, hence the exemption for business leases. Paragraph 2(1)(b) of the Bill<sup>61</sup> provides an exemption for the small number of mixed-use leases, where a single lease comprises both business and residential purposes – for example, a flat above a shop where the occupant of the flat is a shop worker who is required to remain on site. The exemption will not apply to mixed-use developments which include both business and residential premises, but on separate leases.<sup>62</sup>

Furthermore, the exemption for mixed-use leases will only apply if “the use of premises demised by the lease as a dwelling significantly contributes to the business purposes”.<sup>63</sup> This is intended to prevent a landlord charging ground rent on a premises that is to all intents and purposes a residential one. With regards to leases for residential car park spaces, the Minister noted that the Bill defined “dwelling” as including gardens or appurtenances, which in his view should include parking spaces. However, he undertook to clarify that specific point before Report and ensure that the business exemption was as clear as possible.<sup>64</sup> On that basis Lord Young of Cookham withdrew his amendment.<sup>65</sup>

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<sup>56</sup> Leasehold Reform (Ground Rent) Bill [HL], [Division 5](#), 20 July 2021

<sup>57</sup> Leasehold Reform (Ground Rent) Bill [HL], [Division 6](#), 20 July 2021

<sup>58</sup> House of Lords, [Marshalled list of amendments to be moved in Grand Committee](#), 4 June 2021

<sup>59</sup> [HL Deb 9 June 2021 c286GC](#)

<sup>60</sup> *Ibid.*, c287GC

<sup>61</sup> Paragraph 2(1)(b) of the Leasehold Reform (Ground Rent) Bill, HL Bill 1 of 2021-22

<sup>62</sup> [HL Deb 9 June 2021 c288GC](#)

<sup>63</sup> Paragraph 2(1)(b) of Leasehold Reform (Ground Rent) Bill, HL Bill 1 of 2021-22

<sup>64</sup> [HL Deb 9 June 2021 c288GC](#)

<sup>65</sup> [HL Deb 9 June 2021 c289GC](#)

### 3.3

## Application to retirement housing

Providers of retirement housing schemes often capitalise ground rents and sell them to investors to fund the extra capital costs of providing communal spaces and facilities (eg a clubroom, garden area, restaurant, guest room etc) and maintain their ability to invest in future projects. Providers argue that without ground rent income, they would have to increase purchase prices of retirement properties by around £15,000.<sup>66</sup>

The Government initially indicated that leasehold retirement properties would be exempt from ground rent restrictions,<sup>67</sup> but it subsequently decided that the Bill should apply to these properties. This is to ensure that purchasers of retirement homes have the same rights and protections as other leaseholders.<sup>68</sup> Commencement for leases of retirement homes will be deferred and come into force no earlier than 1 April 2023 to give the retirement housing sector additional time to prepare.<sup>69</sup>

In Grand Committee Lord Best tabled an amendment ([Amendment 4](#)) which would have provided an exemption for retirement properties already under development.<sup>70</sup> It was estimated that this would affect some 180 developments comprising 4,200 homes.<sup>71</sup> In response, Lord Greenhalgh asserted that the transition arrangements were intended to be fair to both developers and leaseholders. Lord Best withdrew the amendment.<sup>72</sup>

At Report stage Lord Lennie tabled an amendment ([Amendment 44](#)) which would have removed the transition period for leases of retirement properties, thereby ensuring that those leaseholders could benefit from the Act's provisions without any further delay. Lord Greenhalgh restated the Government's view that that the transition period was a pragmatic and fair compromise for both leaseholders and developers. Lord Lennie withdrew the amendment.<sup>73</sup>

### 3.4

## Rent permitted for voluntary lease extensions

Clause 6 allows for rent other than a peppercorn rent in the case of voluntary (ie informal or non-statutory) lease extensions, where a leaseholder is

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<sup>66</sup> MHCLG, [Implementing reforms to the leasehold system in England: Summary of consultation responses and Government response](#), 27 June 2019, para 3.23

<sup>67</sup> Ibid., para 3.29

<sup>68</sup> '[Government reforms make it easier and cheaper for leaseholders to buy their homes](#)', MHCLG, 7 January 2021

<sup>69</sup> Subsection 25(4) of the Leasehold Reform (Ground Rent), HL Bill 1 of 2021-22

<sup>70</sup> House of Lords, [Marshalled list of amendments to be moved in Grand Committee](#), 4 June 2021

<sup>71</sup> [HL Deb 9 June 2021 c292GC](#)

<sup>72</sup> [HL Deb 9 June 2021 c297GC](#)

<sup>73</sup> [HL Deb 20 July 2021 c204](#)



granted a lease that replaces one granted prior to commencement of the Act.<sup>74</sup>

Where a lease extension is agreed by the landlord and the leaseholder, ground rent may be paid for the period until the original lease would have terminated (the ‘excepted period’), provided the ground rent does not exceed that which would have been payable under the original lease. A peppercorn rent must apply from the date when the original lease would have terminated until the termination of the replacement lease (the ‘regulated period’).

In Grand Committee several Lords expressed concern that unscrupulous landlords might pressurise leaseholders to agree voluntary lease extensions, as a means to continue their ground rent arrangements. The Lords debated a range of options to address this issue, including removing clause 6 from the Bill and strengthening transparency around the implications of informal lease extensions for leaseholders.

In response, Lord Greenhalgh pointed out that non-statutory (ie voluntary) lease extensions provided flexibility and could be more cost-effective and speedier than the statutory process. The Government therefore wanted this option to remain. He also noted that the Government was considering the Law Commission’s recommendations on enfranchisement, which include a recommendation that the Government considers regulating lease extensions that are not on statutory terms.<sup>75</sup>

The Minister assured Lords the Government was working with a wide range of stakeholders to strengthen leaseholders’ awareness of their rights and ensure that better information, advice and support are offered to them. He undertook to consider if the Government could strengthen this where appropriate.<sup>76</sup>

Lords pressed the Government again on this issue at Report stage. Lord Stunell tabled an amendment ([Amendment 9](#)) which would require all landlords to inform leaseholders of the ground rent changes introduced by the Act before entering a formal or informal renegotiation or extension of an existing lease. Where a landlord failed to do so, they would face a penalty of between £500 and £30,000.

Whilst Lord Greenhalgh supported the principle of the amendment, he pointed out that it would only cover the period from Royal Assent to commencement. Furthermore, the Government did not support the imposition of financial penalties which landlords might inadvertently incur. The Minister said he had held discussions with several Lords about the implementation of the Act and how to ensure awareness of its provisions. Several solutions had

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<sup>74</sup> Clause 6 of [The Leasehold Reform \(Ground Rent\) Bill, HL Bill 47 of 2021-22](#) (as amended on Report)

<sup>75</sup> [HL Deb 9 June 2021 c307GC](#)

<sup>76</sup> [HL Deb 9 June 2021 c307GC](#)

been proposed and he had asked officials to consider how these might be taken forward.<sup>77</sup>

Nevertheless, Lord Stunell moved Amendment 9 and it was agreed to on a division [Content – 243; Not Content – 238].<sup>78</sup>

## 3.5 Effective enforcement

At second reading several Lords expressed concern that trading standards authorities face budgetary pressures and might not have capacity to enforce the new legislation.

In response, Lord Greenhalgh said that funding for new burdens would be taken into account in future local government settlements. Enforcement authorities would also be able to retain the proceeds of any financial penalties they impose and use this to help cover enforcement costs. The Minister also committed to publishing guidance to local authorities and trading standards to help them enforce the Bill and work closely on implementation.<sup>79</sup>

In Grand Committee Baroness Greender tabled amendments ([Amendments 14 and 15](#)) which sought to raise the minimum financial penalty under the Bill from £500 to £5,000 and the maximum financial penalty from £5,000 to £30,000. Several Lords considered the financial penalties in the Bill to be too low and would neither act as a sufficient deterrent to freeholders, nor incentivise enforcement authorities to pursue enforcement action.<sup>80</sup>

Lord Greenhalgh explained that the penalties had been set with reference to typical ground rents currently collected by landlords. He considered that the penalties were at an appropriate level to act as an effective deterrent without resulting in a disproportionate enforcement regime. He noted that £500 was a minimum financial penalty and the penalty applied per lease. This meant that landlords could be liable for multiple financial penalties for the same building; for example, a block of flats consisting of 40 leases could leave a landlord exposed to a maximum fine of £200,000. Lord Greenhalgh also pointed out that in addition to any financial penalties, enforcement authorities and the First-tier Tribunal would be able to order the landlord to refund any prohibited ground rent, plus interest.<sup>81</sup> Amendment 14 was withdrawn and Amendment 15 was not moved.<sup>82</sup>

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<sup>77</sup> [HL Deb 20 July 2021 c173](#)

<sup>78</sup> Leasehold Reform (Ground Rent) Bill [HL], [Division 4](#), 20 July 2021

<sup>79</sup> [HL Deb 24 May 2021 \[Leasehold Reform \(Ground Rent\) Bill \[HL\]\] c865](#)

<sup>80</sup> House of Lords, [Provisional third marshalled list for Grand Committee](#), 11 June 2021

<sup>81</sup> [HL Deb 14 June 2021 c350GC](#)

<sup>82</sup> [HL Deb 14 June 2021 c351GC](#)

At Report stage Lord Greenhalgh tabled an amendment ([Amendment 10](#)) to increase the maximum financial penalty from £5,000 to £30,000. He said that he had listened to Lords' concerns that the balance between proportionality and deterrence was not quite right and had concluded that the maximum penalty should be raised to £30,000, which is in line with the Tenant Fees Act 2019. The minimum penalty would remain at £500, as this was considered proportionate, for example, for a small landlord. Amendment 10 was agreed.<sup>83</sup>

## 3.6 The definition of ground rent

Subsection 23(2) of the Bill provides that:

‘rent’ includes anything in the nature of rent, whatever it is called.<sup>84</sup>

At second reading and in Grand Committee several Lords expressed concern that the definition of rent was too broad and could inadvertently apply to other legitimate charges, such as service charges and buildings insurance contributions, which are defined as ‘rent’ in many modern leases. Lord Young of Cookham referred to the Law Society’s view that:

The main issue with the Bill at present is the failure to distinguish between different types of rent. Although the Government’s clear intention is to tackle ground rents alone, the Bill does not make this focus clear.<sup>85</sup>

The point was made that a clear, workable definition was required, to avoid leaseholders having to engage in litigation with landlords to clarify the definition.

Lord Greenhalgh explained that, after extensive consideration, the Government decided to define ground rent broadly to prevent landlords from requiring spurious periodic charges under other names, for example a ‘garden rent’ or ‘parking space rent’. He asserted that a broad definition would require landlords to be clear in future leases about what a charge is and what a leaseholder receives in return. Nevertheless, the Minister was sympathetic to Lords’ views and undertook to continue to explore the matter further before Report.<sup>86</sup>

At Report stage Lord Greenhalgh said the Government had considered alternatives to the broad definition of rent in the Bill, but all had been found lacking. The Government still considered that a broad definition was vital to

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<sup>83</sup> [HL Deb 20 July 2021 c180](#)

<sup>84</sup> Subsection 23(2) of [The Leasehold Reform \(Ground Rent\) Bill, HL Bill 47 of 2021-22](#) (as amended on Report)

<sup>85</sup> [HL Deb 14 June 2021 c363GC](#)

<sup>86</sup> [HL Deb 14 June 2021 cc367-368GC](#)

prevent landlords from finding loopholes through which to reintroduce ground rents by another name. However, Lord Greenhalgh tabled an amendment ([Amendment 41](#)) to clarify that service charges, council tax, insurance and similar payments that are reserved as ‘rent’ in a lease, should not to be treated as prohibited rent for the purposes of the Bill. This would enable landlords to continue to pass legitimate charges on to leaseholders.<sup>87</sup> Amendment 41 was agreed without division.<sup>88</sup>

## 3.7 Commencement

Following commencement, the main provisions will come into force on a date to be specified by the Secretary of State in regulations. There was some concern that the Act would not come into force on a specified date, which meant there was a risk of delayed implementation. In Grand Committee, Lord Kennedy of Southwark tabled an amendment ([Amendment 24](#)) intended to ensure that the Act would come into force within six months of the day on which it is passed, if regulations were not introduced by then. Lord Blencathra tabled an amendment ([Amendment 26](#)) which would require the Act to come into force on the day of Royal Assent.<sup>89</sup>

Responding to the amendments, Lord Greenhalgh assured Lords that the Government was fully committed to bringing the provisions into force without delay. However, he said that commencing all the Bill’s clauses immediately on Royal Assent was “simply not workable”:

This would leave no time for the laying of regulations and other important matters relating to the implementation process. While most of the delegated powers in the Bill are intended for later use should the need arise—such as to close a loophole—some will be beneficial when the rest of the clauses are commenced and will need to be prepared prior to this. For example, regulations under Clause 2, specifying the form and content of notices to be exchanged by landlords and leaseholders in respect of a business lease, will aid transparency and understanding of the obligations of both parties under this legislation—an outcome which I am sure noble Lords would welcome. I am sure that noble Lords will want the Government to get such regulations right. I am also sure that the noble Lord will appreciate that, with the unpredictability of the parliamentary timetable, I cannot give a guarantee that the Act can come into force on the day it is passed.<sup>90</sup>

<sup>87</sup> [HL Deb 20 July 2021 c198-c199](#)

<sup>88</sup> [HL Deb 20 July 2021 c199](#)

<sup>89</sup> House of Lords, [Provisional third marshalled list for Grand Committee](#), 11 June 2021

<sup>90</sup> [HL Deb 14 June 2021 c373GC](#)

Nevertheless, Lord Greenhalgh agreed to reconsider whether the Government could be more specific about commencement dates.<sup>91</sup> On that basis, Amendment 24 was withdrawn and Amendment 26 was not moved.<sup>92</sup>

At Report stage Lord Greenhalgh made a commitment to commence the provisions within six months of Royal Assent.<sup>93</sup>

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<sup>91</sup> [HL Deb 14 June 2021 c374GC](#)

<sup>92</sup> [HL Deb 14 June 2021 c375GC](#)

<sup>93</sup> [HL Deb 20 July 2021 c174](#)

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