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20 January 2022

# Leasehold Reform (Ground Rent) Bill 2021-22



## Summary

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## Summary

The Leasehold Reform (Ground Rent) Bill 2021-22 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 Bill was introduced in the House of Lords on 12 May 2021. Having progressed through the House of Lords, it received its first reading in the House of Commons on 15 September 2021 and second reading on 29 November 2021. Report stage is scheduled for 24 January 2022.

This briefing explains the background to the Bill, the Bill's main provisions, and the Bill's progress through Parliament to date.

## Ground rent issues

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.

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.

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. Onerous ground rent terms can also 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 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 for transition.

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

## Comment

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

Nevertheless, several issues have been raised during the Bill's passage through the Lords and the Commons, including:

- 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 freeholders may pressurise leaseholders to agree voluntary lease extensions before the Act is fully in force, 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.

## Leasehold reform

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.

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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;
- address loopholes to improve transparency and fairness for leaseholders and freeholders; and

<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.

- 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”.
- 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>

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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> MHCLG, [Government reforms make it easier and cheaper for leaseholders to buy their homes](#), 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.

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

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>

Most recently, on 12 January 2022 the Department for Levelling Up, Housing and Communities (DLUHC) opened a further consultation on aspects of the Law Commission's proposals to broaden access to enfranchisement and the Right to Manage. Submissions are invited up to 22 February 2022.<sup>18</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>19</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

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<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> DLUHC, [Reforming the leasehold and commonhold systems in England and Wales](#), 12 January 2022

<sup>19</sup> DCLG, [Tackling unfair practices in the leasehold market](#), July 2017, para 4.7

be considerably more than the amount normally charged to the purchaser of a new build house for the freehold interest at the point of sale.<sup>20</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>21</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>22</sup>

Not all witnesses agreed that ground rents which double after 10 years are onerous.<sup>23</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>24</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>25</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 mortgageability of leasehold properties.<sup>26</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>27</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 agreements are classed as assured tenancies under the Housing Act 1988.<sup>28</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

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<sup>20</sup> Ibid., para 4.10

<sup>21</sup> Housing, Communities and Local Government Committee, [Leasehold Reform \(PDF\)](#), HC 1468 2017-19, 19 March 2018, para 84

<sup>22</sup> Ibid., para 85

<sup>23</sup> Ibid., para 86

<sup>24</sup> Ibid.

<sup>25</sup> Ibid., para 88

<sup>26</sup> Ibid., para 91

<sup>27</sup> CMA, [Leasehold housing – Update report \(PDF\)](#), 28 February 2020, para 74

<sup>28</sup> For further information on assured tenancies see Shelter webpage, [Assured tenancy definition](#), last updated March 2021

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>29</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>30</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>31</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>32</sup> There is also a commitment to “enable leaseholders, where they already have a long lease, to buy out the ground rent without the need to extend the term of the lease.”<sup>33</sup>

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<sup>29</sup> DCLG, [Tackling unfair practices in the leasehold market: government response](#), December 2017, para 75

<sup>30</sup> Section 56(1) of the Leasehold Reform, Housing and Urban Development Act 1993.

<sup>31</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>32</sup> [‘Government reforms make it easier and cheaper for leaseholders to buy their homes’](#), MHCLG, 7 January 2021

<sup>33</sup> [HCWS695, 11 January 2021](#)

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<sup>34</sup> [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>35</sup> An [Update report \(PDF\)](#) on the investigation was published on 28 February 2020.<sup>36</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>37</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>38</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>39</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>40</sup>

On 15 September 2021, the CMA [announced](#) 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

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<sup>34</sup> Now the Department for Levelling Up, Housing and Communities.

<sup>35</sup> [Letter to Chair of HCLG Committee from the CMA regarding the Committee's report on Leasehold reform, 14 May 2019 \(PDF\)](#)

<sup>36</sup> CMA, [Leasehold Housing Update Report \(PDF\)](#), CMA115, 28 February 2020

<sup>37</sup> 'CMA finds evidence of serious issues in leasehold selling', CMA, 28 February 2020

<sup>38</sup> 'Leasehold homes: CMA launches enforcement action', CMA, 4 September 2020

<sup>39</sup> Undertakings are provided voluntarily to the CMA without any admission of wrongdoing or liability.

<sup>40</sup> 'CMA secures landmark commitments for leaseholders', CMA, 23 June 2021

increased in line with the RPI.<sup>41</sup> On 22 December 2021, the CMA [announced](#) Taylor Wimpey had voluntarily given the same formal commitments with regards to its leasehold contracts.<sup>42</sup>

The Government has urged other developers to follow suit in amending their historic practices.<sup>43</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>44</sup>

The CMA's investigation into Barratt Developments is ongoing.

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<sup>41</sup> [‘Leaseholders freed from costly contract terms’](#), CMA, 15 September 2021

<sup>42</sup> [‘CMA action frees leaseholders from costly contract terms’](#), CMA, 22 December 2021

<sup>43</sup> Ibid.

<sup>44</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>45</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 \(PDF\)](#) for the Bill before the Senedd in May 2021. A Legislative Consent Motion was approved by the Senedd on 14 December 2021.<sup>46</sup>

### 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>47</sup>

<sup>45</sup> <https://bills.parliament.uk/bills/2864/publications>

<sup>46</sup> Letter from the Chief Executive and Clerk of the Senedd to the Clerk of the Parliaments and the Clerk of the House of Commons, [Leasehold Reform \(Ground Rents\) Bill – Legislative Consent \(PDF\)](#), 15 December 2021

<sup>47</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.

- community housing leases; and
- home finance plan leases.

## 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>48</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>49</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 and this cannot exceed the amount specified in the original lease. Once the period of the extension starts the ground rent must revert to a peppercorn.

Under clause 7 of the Bill,<sup>50</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).

<sup>48</sup> Philip Rainey QC’s [Leasehold Reform Briefing Note on ‘Peppercorn Rent’ \(PDF\)](#), 12 November 2018, explains the historic and legal background to the use of peppercorn rents in leases.

<sup>49</sup> Leasehold Reform (Ground Rent) Bill, HL Bill 1 of 2021-22, [Explanatory Notes \(PDF\)](#), 12 May 2021, para 2

<sup>50</sup> Clause 7 of [The Leasehold Reform \(Ground Rent\) Bill 2021-22](#) (as amended in the Public Bill Committee)

## 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 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 conferring 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)<sup>51</sup> 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>52</sup> The Delegated Powers and Regulatory Reform Committee scrutinised the Bill and concluded the Bill's provisions delegating legislative power were appropriate.<sup>53</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>54</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>55</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>51</sup> Now the Department for Levelling Up, Housing and Communities (DLUHC).

<sup>52</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 \(PDF\)](#), 12 May 2021

<sup>53</sup> House of Lords, [Delegated Powers and Regulatory Reform Committee \(PDF\)](#), 1st Report of Session 2021-22, HL Paper 8, 19 May 2021

<sup>54</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 \(PDF\)](#), 14 July 2021

<sup>55</sup> [HL Deb 20 July 2021 c174](#)

## 3 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>56</sup>

The Bill has been widely welcomed as a positive first step in leasehold reform.<sup>57</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 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.

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

<sup>56</sup> <https://bills.parliament.uk/bills/2864/stages>

<sup>57</sup> See for example: 'The start of the end of leasehold - Ground Rent Bill', National Leasehold Campaign, 18 May 2021; 'Conveyancing Association welcomes leasehold reform', Mortgage Finance Gazette, 13 May 2021; 'The Queen's Speech - what it means for homeowners', HomeOwners Alliance, 13 May 2021; and 'Leasehold Reform Bill published', Propertymark, 13 May 2021

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>58</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>59</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>60</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 – 243].<sup>61</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>62</sup>

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<sup>58</sup> [HL Deb 9 June 2021 c281GC](#)

<sup>59</sup> [HL Deb 9 June 2021 c283GC](#)

<sup>60</sup> [HL Deb 24 May 2021 \[Leasehold Reform \(Ground Rent\) Bill \[HL\]\] c864](#)

<sup>61</sup> Leasehold Reform (Ground Rent) Bill [HL], [Division 5](#), 20 July 2021

<sup>62</sup> Leasehold Reform (Ground Rent) Bill [HL], [Division 6](#), 20 July 2021

## 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>63</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 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>64</sup> Lord Stunell similarly queried whether developers might try to designate leases for residents' car parking spaces as business leases.<sup>65</sup>

Lord Greenhalgh explained the Government had always been clear 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>66</sup> provided 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>67</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>68</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 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 stage and ensure that the business exemption was as clear as possible.<sup>69</sup> On that basis Lord Young of Cookham withdrew his amendment.<sup>70</sup>

## 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

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<sup>63</sup> House of Lords, [Marshaled list of amendments to be moved in Grand Committee](#), 4 June 2021

<sup>64</sup> [HL Deb 9 June 2021 c286GC](#)

<sup>65</sup> *Ibid.*, c287GC

<sup>66</sup> Paragraph 2(1)(b) of the Leasehold Reform (Ground Rent) Bill, HL Bill 1 of 2021-22

<sup>67</sup> [HL Deb 9 June 2021 c288GC](#)

<sup>68</sup> Paragraph 2(1)(b) of Leasehold Reform (Ground Rent) Bill, HL Bill 1 of 2021-22

<sup>69</sup> [HL Deb 9 June 2021 c288GC](#)

<sup>70</sup> [HL Deb 9 June 2021 c289GC](#)

that without ground rent income, they would have to increase purchase prices of retirement properties by around £15,000.<sup>71</sup>

The Government initially indicated that leasehold retirement properties would be exempt from ground rent restrictions,<sup>72</sup> but it subsequently decided 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>73</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>74</sup>

In Grand Committee Lord Best tabled an amendment ([amendment 4](#)) which would have provided an exemption for retirement properties already under development.<sup>75</sup> It was estimated that this would affect some 180 developments comprising 4,200 homes.<sup>76</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>77</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>78</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 granted a lease that replaces one granted prior to commencement of the Act.<sup>79</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

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<sup>71</sup> MHCLG, [Implementing reforms to the leasehold system in England: Summary of consultation responses and Government response](#), 27 June 2019, para 3.23

<sup>72</sup> *Ibid.*, para 3.29

<sup>73</sup> '[Government reforms make it easier and cheaper for leaseholders to buy their homes](#)', MHCLG, 7 January 2021

<sup>74</sup> Subsection 25(4) of the Leasehold Reform (Ground Rent), HL Bill 1 of 2021-22

<sup>75</sup> House of Lords, [Marshallled list of amendments to be moved in Grand Committee \(PDF\)](#), 4 June 2021

<sup>76</sup> [HL Deb 9 June 2021 c292GC](#)

<sup>77</sup> [HL Deb 9 June 2021 c297GC](#)

<sup>78</sup> [HL Deb 20 July 2021 c204](#)

<sup>79</sup> Clause 6 of [The Leasehold Reform \(Ground Rent\) Bill, HL Bill 47 of 2021-22](#) (as amended on Report)

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 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>80</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>81</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 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 been proposed and he had asked officials to consider how these might be taken forward.<sup>82</sup>

Nevertheless, Lord Stunell moved amendment 9 and it was agreed to on a division [Content – 243; Not Content – 238].<sup>83</sup>

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<sup>80</sup> [HL Deb 9 June 2021 c307GC](#)

<sup>81</sup> [HL Deb 9 June 2021 c307GC](#)

<sup>82</sup> [HL Deb 20 July 2021 c173](#)

<sup>83</sup> Leasehold Reform (Ground Rent) Bill [HL], [Division 4](#), 20 July 2021

## 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 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>84</sup>

In Grand Committee Baroness Greener 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 that they would neither act as a sufficient deterrent to freeholders, nor incentivise enforcement authorities to pursue enforcement action.<sup>85</sup>

Lord Greenhalgh explained the penalties had been set with reference to typical ground rents currently collected by landlords. He considered 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>86</sup> Amendment 14 was withdrawn and amendment 15 was not moved.<sup>87</sup>

At report stage Lord Greenhalgh tabled an amendment ([amendment 10](#)) to increase the maximum financial penalty from £5,000 to £30,000. He said 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>88</sup>

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<sup>84</sup> [HL Deb 24 May 2021 \[Leasehold Reform \(Ground Rent\) Bill \[HL\]\] c865](#)

<sup>85</sup> House of Lords, [Provisional third marshalled list for Grand Committee \(PDF\)](#), 11 June 2021

<sup>86</sup> [HL Deb 14 June 2021 c350GC](#)

<sup>87</sup> [HL Deb 14 June 2021 c351GC](#)

<sup>88</sup> [HL Deb 20 July 2021 c180](#)

## 3.6

# The definition of ground rent

Subsection 23(2) of the Bill provides:

‘rent’ includes anything in the nature of rent, whatever it is called.<sup>89</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>90</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, 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 said 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 the report stage.<sup>91</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 a broad definition was vital to 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>92</sup> Amendment 41 was agreed without division.<sup>93</sup>

<sup>89</sup> Subsection 23(2) of [The Leasehold Reform \(Ground Rent\) Bill, HL Bill 47 of 2021-22](#) (as amended on Report)

<sup>90</sup> [HL Deb 14 June 2021 c363GC](#)

<sup>91</sup> [HL Deb 14 June 2021 cc367-368GC](#)

<sup>92</sup> [HL Deb 20 July 2021 c198-c199](#)

<sup>93</sup> [HL Deb 20 July 2021 c199](#)

## 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>94</sup>

Responding to the amendments, Lord Greenhalgh assured Lords 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>95</sup>

Nevertheless, Lord Greenhalgh agreed to reconsider whether the Government could be more specific about commencement dates.<sup>96</sup> On that basis, Amendment 24 was withdrawn and amendment 26 was not moved.<sup>97</sup>

At report stage Lord Greenhalgh made a commitment to commence the provisions within six months of Royal Assent.<sup>98</sup>

<sup>94</sup> House of Lords, [Provisional third marshalled list for Grand Committee \(PDF\)](#), 11 June 2021

<sup>95</sup> [HL Deb 14 June 2021 c373GC](#)

<sup>96</sup> [HL Deb 14 June 2021 c374GC](#)

<sup>97</sup> [HL Deb 14 June 2021 c375GC](#)

<sup>98</sup> [HL Deb 20 July 2021 c174](#)

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## 4 Consideration in the House of Commons

### 4.1 Second Reading

The Bill received its first reading in the House of Commons on 15 September 2021. Second reading took place on 29 November 2021. The debate was opened by the Minister for Rough Sleeping and Housing, Eddie Hughes, who outlined the rationale for the Bill:

The starting point for this legislation has to be our shared recognition that for many people, to be a leaseholder is also to be a homeowner, and we are clear that homes that have been bought should be theirs to live in and enjoy, not be treated as cash cows for third-party investors. This Government are on the side of homeowners, which is why in our manifesto we committed to introduce this important legislation.

Hon. Members will be well aware of the problems that many leaseholders have faced in recent years, including, as pointed out by Opposition Members, spiralling ground rents and onerous conditions that have turned the dream of home ownership into a nightmare for some leaseholders. This Bill is the first of our seminal two-part legislation to reform and improve the leasehold system. Further legislation will follow later in this Parliament to continue to address the historic imbalances in the leasehold system.<sup>99</sup>

The Minister went on to explain the key provisions of the Bill.

Members from across the House welcomed the Bill as a positive step towards reform. However, Lucy Powell, then Shadow Secretary of State for Housing, emphasised its limitations:

In conclusion, the Bill is a tentative attempt at reform. While it is welcome, it represents a massive missed opportunity to transform a leaseholder sector that continues to scam working people on an industrial scale. Even in a slimmed-down Bill, the Government have failed to close loopholes, protect those already in leasehold homes or end the sale of new houses as leasehold altogether. Wholesale reform is urgently needed to ensure that nobody continues to be voiceless, trapped in leasehold homes they cannot sell, and facing ever-growing bills and charges.<sup>100</sup>

The debate was wide-ranging, touching on broader leasehold reform, freehold estate charges<sup>101</sup> and other matters. With regards to the Bill itself,

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<sup>99</sup> [HC Deb 29 November 2021 c704](#)

<sup>100</sup> [HC Deb 29 November 2021 c713](#)

<sup>101</sup> For further information on this specific issue see Commons Library briefing CBP08497: [Freehold houses: estate charges](#).

Members raised similar concerns to those raised in the House of Lords (see section 3), including:

- 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 clear timetable for the more substantive second tranche of leasehold reform legislation;
- the impact of the Bill's provisions on the retirement sector; and
- the risk that unscrupulous freeholders may seek to avoid ground rent restrictions through voluntary lease extensions before the Act is fully in force.

Justin Madders (Lab), co-chair of the All-Party Parliamentary Group on Leasehold and Commonhold Reform, paid tribute to the work of the National Leasehold Campaign in bringing the unfairness of leasehold to the public's attention.<sup>102</sup>

The Bill was agreed to without division and was committed to a Public Bill Committee.

## 4.2 Public Bill Committee

The Bill's committee stage took place over three sittings on 7 December 2021 (morning and afternoon) and 9 December 2021.

The Public Bill Committee was chaired by Philip Hollobone and Julie Elliott and consisted of the following members:

Aiken, Nickie (Cities of London and Westminster) (Con)  
Amesbury, Mike (Weaver Vale) (Lab)  
Byrne, Ian (Liverpool, West Derby) (Lab)  
Colburn, Elliot (Carshalton and Wallington) (Con)  
Eagle, Maria (Garston and Halewood) (Lab)  
Gideon, Jo (Stoke-on-Trent Central) (Con)  
Greenwood, Lilian (Nottingham South) (Lab)  
Greenwood, Margaret (Wirral West) (Lab)  
Grundy, James (Leigh) (Con)  
Hudson, Dr Neil (Penrith and The Border) (Con)  
Hughes, Eddie (Parliamentary Under-Secretary of State for Levelling Up, Housing and Communities)  
Long Bailey, Rebecca (Salford and Eccles) (Lab)  
Mann, Scott (Lord Commissioner of Her Majesty's Treasury)  
Mortimer, Jill (Hartlepool) (Con)

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<sup>102</sup> [HC Deb 29 November 2021 c718](#)

Smith, Jeff (Manchester, Withington) (Lab)  
Vickers, Martin (Cleethorpes) (Con)  
Young, Jacob (Redcar) (Con)

The Government tabled 8 minor/technical amendments which were all agreed. Of the remaining 7 amendments: 1 was rejected on a division, 2 were withdrawn following debate, 2 were not called and 2 were not selected.

Clause 8 (duty to inform the tenant), which had been inserted by the Lords, was rejected on a division.

The Opposition tabled 3 new clauses: 1 was rejected on a division, and 2 were withdrawn following debate.

A record of what happened to each clause, amendment, and new clause considered at committee stage is set out in a document published on the Bill pages of the Parliament website.<sup>103</sup> Transcripts of the [committee stage debates](#) are also available.

The following sections of the paper provide commentary on key parts of the debate on the clauses and highlight the changes made. **Note: clause numbers refer to [Bill 164 2021-22, as brought from the Lords](#).**

## 4.3

### Clause by clause scrutiny

#### Regulated leases (clause 1)

The Bill applies to long residential leases (with some exceptions) which are granted for a premium and created after the Act comes fully into force. These are referred to as ‘regulated leases’.

The Government tabled technical amendments 1 and 2 to provide that where there is a deemed surrender and regrant of a regulated lease or a pre-commencement lease, the new lease may be a regulated lease even if it is not granted for a premium.

The Minister for Rough Sleeping and Housing, Eddie Hughes, explained:

For the benefit of those who are not experts in property law, we included, when the extent of the demise is changed—for example, where an extension is made to a property or to correct an error, or where there is an extension to the term of a lease—the lease is deemed to be surrendered and regranted to the leaseholder.

Government amendments 1 and 2 provide further protection for leaseholders in situations where that happens. Taken together, the two amendments disapply the requirement for a premium to be paid when a regulated lease or a lease granted before the Bill’s commencement day has been surrendered and

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<sup>103</sup> [Leasehold Reform \(Ground Rents\) Bill \[Lords\] \(Committee Stage Decisions\) \(PDF\)](#)

regranted. In other words, a lease can have a peppercorn rent under this legislation after it has been regranted even if no new premium is paid.

Without these amendments, there is a significant risk that a previously regulated lease could cease to be regulated, leaving leaseholders to pay a potentially significant premium for a simple change, such as correcting an error within the lease, or leaving them to pay a ground rent.<sup>104</sup>

The amendments were agreed and the clause, as amended, was ordered to stand part of the Bill.

## Excepted leases (clause 2)

Clause 2 sets out the types of leases that are not regulated by the Bill. The Minister explained the exceptions:

- **business leases** – commercial leases containing a dwelling and which meet certain criteria are exempt from the Bill. The landlord and tenant will be required to exchange written notices at or before the lease is granted confirming the intention to use the premises for the business purposes set out in the lease. The form of this notice will be prescribed in regulations.
- **statutory lease extensions of houses and flats** – statutory lease extensions for flats<sup>105</sup> are already required to be at a peppercorn rent, so are exempt from the Bill in order to avoid duplication. Statutory lease extensions for houses<sup>106</sup> are required to be for 50 years for payment of no premium, but for a modern ground rent. Restricting the rent to a peppercorn would deprive the landlord of income for the granting of the lease extension. Thus, those lease extensions are exempt from the Bill. However, the Government intends to address the wider issue of enfranchisement in future legislation.
- **community housing leases** – this applies to long leases where the landlord is a community land trust, or the lease is a dwelling in a building that is controlled or managed by a co-operative society. The Government considers the use of ground rent in community housing schemes, where residents contribute to the cost of shared community services, is different from ground rent for long residential leases where no clear service is provided in return.
- **home finance plan leases** – certain specialist financial products - regulated home reversion plans and homes bought using rent to buy arrangements - are exempt from the Bill because a form of rent is needed for the products to operate as intended.

Clause 2 was agreed and ordered to stand part of the Bill.

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<sup>104</sup> [PBC 7 December 2021 cc4-5](#)

<sup>105</sup> Under Part 1 of the Leasehold Reform Act 1967.

<sup>106</sup> Under Chapter 2 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993.

## Prohibited rent (clause 3)

The Bill provides that the landlord under a regulated lease must not require the leaseholder to pay a prohibited rent and must, if they receive a prohibited rent payment, refund it within 28 days. A ‘prohibited rent’ means any rent, to the extent that it exceeds the ‘permitted rent’.

The Minister, Eddie Hughes, explained the Government had made a conscious decision to apply the prohibited rent provisions to current and former landlords, to ensure that they could be held to account. The provisions also apply to former leaseholders, to enable them to seek redress, for example, if they realise their former lease contained a prohibited rent.<sup>107</sup>

Maria Eagle (Lab) asked whether there were any time limitations on a former landlord’s liability to repay a prohibited payment.<sup>108</sup> The Minister returned to this question later in the proceedings and confirmed that the statute of limitations will apply, which is generally six years.<sup>109</sup>

Clause 3 was agreed and ordered to stand part of the Bill.

## Permitted rent: general rule (clause 4)

Clause 4 introduces the general rule for regulated leases that a permitted rent is an annual rent of one peppercorn. This effectively restricts a ground rent to zero financial value.

Members welcomed this provision, but some were concerned the Bill would only apply to new and not existing leases.

Lilian Greenwood (Lab) suggested existing leaseholders could be worse off because of the Bill, as buyers might seek to buy new properties with peppercorn ground rents, leaving existing leaseholders unable to sell their properties.<sup>110</sup> She also questioned whether some developers might rush to get new leases agreed before the Bill is enacted, in order to retain ground rent provisions.

In response, the Minister, Eddie Hughes, said there had already been a decrease in the number of new properties sold with leases with onerous and escalating ground rents. It was clear the Bill and other Government action was already having a positive effect.<sup>111</sup>

Clause 4 was agreed and ordered to stand part of the Bill.

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<sup>107</sup> [PBC 7 December 2021 c9](#)

<sup>108</sup> [PBC 7 December 2021 c10](#)

<sup>109</sup> [PBC 7 December 2021 c23](#)

<sup>110</sup> [PBC 7 December 2021 c12](#)

<sup>111</sup> [PBC 7 December 2021 c17](#)

## Permitted rent: shared ownership leases (clause 5)

Mike Amesbury (Lab) tabled amendment 11 which, together with amendment 13, would provide that shared ownership landlords could not charge ground rent in respect of their share of the property if service charges exceeded £100 per month. The amendments were intended to raise the issue of high service charges in the shared ownership tenure.<sup>112</sup>

Several Members shared examples of leaseholders who faced extortionate service charges. This was particularly problematic for shared owners who were charged 100% of the service charge, whilst only owning a share of the property.

The Minister, Eddie Hughes, explained the rent paid on a share of a property is not the same as the service charge paid for repairs and maintenance. The effect of amendments 11 and 13 would be to remove the ability of a shared ownership landlord to receive the rent they were rightly due in cases where the service charge was more than £100 per month. This would be unfair to shared ownership landlords and would undermine confidence in the sector. He said the law already provides for service charges to be reasonable and, where costs relate to work or services, the work or services must be of a reasonable standard. He therefore urged the Member to withdraw amendment 11.<sup>113</sup>

Amendment 11 was withdrawn and amendment 13 was not called.

Mike Amesbury (Lab) then tabled amendment 12 which, together with amendment 14, would provide that shared ownership landlords could not charge ground rent in respect of their share of the property if any remedial costs were charged. The amendments were intended to assist shared owners who face substantial costs for the remediation of unsafe cladding and other building defects. The provisions would help relieve financial pressure on shared owners by ensuring they could not be charged for ground rents whilst also being charged for remediation work.<sup>114</sup>

The Minister reiterated that reasonable service charges remain the proper and accountable way through which landlords should recover costs for repairing and maintaining a building. He considered remediation costs as outside the scope of the Bill and it would be more appropriate to address them through the Building Safety Bill.

Amendment 12 was put to a vote and rejected (Ayes 7, Noes 9).<sup>115</sup> Amendment 14 was not called.

Clause 5 was agreed and ordered to stand part of the Bill.

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<sup>112</sup> [PBC 7 December 2021 c18](#)

<sup>113</sup> [PBC 7 December 2021 cc19-20](#)

<sup>114</sup> [PBC 7 December 2021 c21](#)

<sup>115</sup> [PBC 7 December 2021 c22](#)

## Permitted rent: leases replacing pre-commencement leases (clause 6)

Under clause 6, 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, and this cannot exceed the amount specified in the original lease. Once the period of the extension starts the ground rent must revert to a peppercorn.

The Government tabled technical amendments 3, 4 and 5 to provide that clause 6 can apply where there has been a deemed surrender and regrant of a lease (see also clause 1 above). The Minister, Eddie Hughes, explained:

As currently drafted, it was not clear, where there was a pre-commencement lease where a demise was changed, whether such leases would be captured by clause 6. It was raised in the other place that, if not, any existing ground rent in those leases would be reduced to a peppercorn. We recognise that that might make some landlords reluctant to agree to such changes, thereby disadvantaging their leaseholders, which is not the Bill's intention. The amendments make clear that the demise of a lease can be changed and the resulting surrender and regrant will not reduce the ground rent on the balance of the term of the pre-commencement lease to a peppercorn.

Any extension to the term of the pre-commencement lease will be required to be a peppercorn, in the same way as for voluntary lease extension. By clarifying that ground rent in pre-commencement leases can continue in this way, the amendment ensures that freeholders need not withhold consent for a lease variation unnecessarily. It also ensures that there is a consistent approach towards existing leaseholders throughout the Bill. As with amendments 1 and 2, the amendments are designed to avoid unintended consequences.<sup>116</sup>

The amendments were agreed and the clause, as amended, was ordered to stand part of the Bill.

## Duty to inform the tenant (clause 8)

Clause 8 requires 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, if the sections of the Act in relation to prohibited rent are not yet in force. In effect, this clause would apply in the interim period, expected to be around 6 months, between Royal Assent and the Act coming fully into force.

Where a landlord fails to do so, they will face a penalty of between £500 and £30,000. The clause was inserted by the Lords in order to protect leaseholders from unscrupulous landlords and raise awareness of the Act's provisions.

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<sup>116</sup> [PBC 7 December 2021 c22-23](#)

The Minister, Eddie Hughes, said he supported the principle behind the clause, but doubted whether it was the most effective means of achieving the objective:

It places a duty on all landlords but does not specify how each landlord must satisfy that duty. Furthermore, it relates only to the short period between Royal Assent and the peppercorn limit coming into effect. It would therefore place a significant burden on enforcement authorities for a limited period. Additionally, the changes that the clause requires for the penalty enforcement process to align with the rest of the Bill would delay the implementation of new peppercorn rents.<sup>117</sup>

The Opposition expressed support for the clause, contending it would support leaseholders by removing a potential loophole that could be exploited by landlords and increasing transparency around ground rents.

The Minister assured Members the Government would communicate with professional bodies to ensure all solicitors are informed of and understand the forthcoming legislative changes. He also undertook to continue to work with Mr Amesbury (Lab) during the passage of the Bill to see whether the clause's objective could be met in other ways.<sup>118</sup>

The question that the clause stand part of the Bill was put to a vote and disagreed (Ayes 7, Noes 9). Clause 8 was therefore removed from the Bill.

### **Enforcement authorities (clause 9)**

Several Members expressed concern that trading standards authorities face budgetary pressures and might not have capacity to enforce the new legislation.

The Minister, Eddie Hughes, said the Government expected compliance with the new legislation to be high and the number of enforcement cases to be small. Nevertheless, he committed to “work with the Local Government Association and others to ensure that local authorities are properly remunerated in preparation and that they are properly resourced.”<sup>119</sup>

Clause 9 was agreed and ordered to stand part of the Bill.

### **Enforcement authorities: supplementary (clause 13)**

Clause 13 and paragraphs 11 and 12 of the schedule provide enforcement authorities may retain the proceeds from financial penalties to finance leasehold enforcement activities. Any excess proceeds must be paid to the Secretary of State. The Government tabled amendment 9 to the schedule which would ensure that any excess proceeds from financial penalties

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<sup>117</sup> [PBC 7 December 2021 cc27-28](#)

<sup>118</sup> [PBC 7 December 2021 c29](#)

<sup>119</sup> [PBC 7 December 2021 c36](#)

imposed in relation to leases of premises in Wales would be paid to Welsh Ministers.<sup>120</sup>

Maria Eagle (Lab) asked whether enforcement authorities might have a perverse incentive to pitch financial penalties at a higher level in order to increase their income. The Minister, Eddie Hughes, responded that the intention was for fines to be set at an appropriate level commensurate with the level of the crime.<sup>121</sup> The Government would be issuing guidance to ensure enforcement authorities act with consistency. He also pointed out that enforcement authorities would not benefit from any excess proceeds from financial penalties as these had to be returned to the Secretary of State.

Clause 13 and amendment 9 were agreed. Clause 13 and the schedule, as amended, were ordered to stand part of the Bill.

### Assistance (clause 17)

Clause 17 enables enforcement authorities to assist leaseholders, where they request it, with various applications to the appropriate tribunal for redress.

Maria Eagle (Lab) asked why the Bill gave enforcement authorities the discretion to assist, rather than requiring them to assist leaseholders in this regard. The Minister, Eddie Hughes, explained this enabled different enforcement options to be pursued as necessary:

If somebody comes to the authority seeking advice, and it decides that, given its expertise in the field, it would be better if it pursued the claim itself, perhaps it might be minded to do that. In that case, it would be “may” rather than “must”. That leaves the leaseholder with a choice as to the route that they take. It is appropriate that both options are available to them.<sup>122</sup>

Clause 17 was agreed and ordered to stand part of the Bill.

### Interpretation (clause 23)

The Government tabled amendment 7 to clause 23 (interpretation). This was a minor technical amendment to clarify the definition of ‘premium’ in the Bill.

The amendment was agreed and clause 23, as amended, was ordered to stand part of the Bill.

### Commencement (clause 26)

The main provisions of the Bill 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

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<sup>120</sup> [PBC 7 December 2021 cc40-41](#)

<sup>121</sup> [PBC 7 December 2021 c42](#)

<sup>122</sup> [PBC 7 December 2021 c46](#)

report stage in the House of Lords, Lord Greenhalgh made a commitment to commence the legislation within six months of Royal Assent.<sup>123</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 provisions must commence no earlier than 1 April 2023. This is intended to give the retirement sector additional time to adapt to the forthcoming changes (see section 3.3 for further discussion on this).

On clause 26, Mike Amesbury (Lab) moved amendment 10 which would remove the transition period for the retirement sector, thereby ensuring the Act would apply to the retirement sector at the same time as other leasehold properties. Mr Amesbury explained the amendment was intended to ensure all leaseholders are treated equally and “the 50,000 or so leasehold owners of retirement properties are not subject to unjust costs while other leaseholders are free from them.”<sup>124</sup>

The Minister said the transition period struck the right balance between protecting retirement property consumers and providing a fair period of adjustment for developers.

The amendment was withdrawn and clause 26 was ordered to stand part.

## 4.4

## New clauses

### Ground rent for existing long leases (new clause 1)

Mike Amesbury (Lab) moved new clause 1 which would require the Government to introduce further legislation to remove ground rents for all existing leaseholders. The draft legislation would need to be published within 30 days of the Bill coming into force.

Mr Amesbury urged the Government to “be bolder” and extend ground rent restrictions to all leaseholders, not just new leaseholders.<sup>125</sup>

The Minister, Eddie Hughes, said he shared concerns about the substantial difficulties some existing leaseholders face, including burdensome lease terms. He reminded Members of the ongoing investigation and enforcement action by the Competition and Markets Authority (CMA) regarding unfair contract terms and the potential mis-selling of leasehold homes (see section 1.4 for further information on this). This action had already secured settlements with leading house developers which would benefit thousands of existing leaseholders.<sup>126</sup>

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<sup>123</sup> [HL Deb 20 July 2021 c174](#)

<sup>124</sup> [PBC 9 December 2021 c57](#)

<sup>125</sup> [PBC 9 December 2021 c62](#)

<sup>126</sup> [PBC 9 December 2021 c64](#)

The Minister also assured Members the Government was “working at pace” to bring forward wider legislative reform. However, he asserted that leasehold law was complex and it was important to take time to get the reforms right. To this end, he considered the arbitrary deadline in the new clause was not helpful.<sup>127</sup>

The new clause was put to a vote and rejected (Ayes 6, Noes 9).

## Commonhold ownership (new clause 2)

Mike Amesbury (Lab) moved new clause 2 which would require the Government to publish an assessment of the legislation’s impact on levels of commonhold ownership. The impact assessment would have to be published within 60 days of the Act’s passage.

Mr Amesbury pointed out that, over many years, Members across the House had spoken in favour of making commonhold the default tenure. He considered this would address many of the issues associated with leasehold. However, current levels of commonhold were very low. New clause 2 would require the Government to understand the impact of the Bill on levels of commonhold. He also asked for more information on the Government’s policy on increasing commonhold uptake.<sup>128</sup>

The Minister acknowledged levels of commonhold were low; fewer than 20 developments had been created since the Commonhold and Leasehold Reform Act 2002 came into force.<sup>129</sup> However, he assured members the Government wanted to increase levels of commonhold and outlined the Government’s actions to achieve this:

The change brought about through this legislation will help to create the conditions for more commonholds. It will level the playing field, as it will remove an incentive for developers to build leasehold rather than commonhold homes. However, we also need further to lay the groundwork for greater use of commonhold, which is why we have established the Commonhold Council—a partnership of industry, leaseholders and Government—to prepare consumers and the market for the widespread take-up of commonhold. It is also why we asked the Law Commission to recommend reforms to reinvigorate commonhold as a workable alternative to leasehold, for existing and for new homes. We are reviewing those proposals and will respond in due course.<sup>130</sup>

The Minister considered new clause 2 was unnecessary. Furthermore, it would take up considerable resources, which could delay further leasehold reform.

New clause 2 was withdrawn.

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<sup>127</sup> [PBC 9 December 2021 c65](#)

<sup>128</sup> [PBC 9 December 2021 cc66-67](#)

<sup>129</sup> [PBC 9 December 2021 c67](#)

<sup>130</sup> Ibid.

## Service charges (new clause 3)

Mike Amesbury (Lab) moved new clause 3 which would require the Government to publish an assessment of the legislation's impact on the level of service charges and other costs charged to long leaseholders. The impact assessment would have to be published within two years of the Act's passage.

Mr Amesbury explained the new clause was driven by concerns that freeholders would seek other avenues of income from leaseholders once ground rents were restricted.

In response the Minister contended the definition of "rent" in the Bill had been broadly defined in order to prevent freeholders from charging additional fees by another name:

If any landlord seeks to recoup what they consider to be lost ground rent or other funds through service charges or any other charge, the wide definition of the term "rent" in the Bill will allow a tribunal to take the charge into account when deciding if it is actually prohibited rent. That is why the Bill has been drafted as it has, and why we have adopted a flexible definition of rent.<sup>131</sup>

The Minister also noted the penalties in the Bill for landlords who charged a prohibited rent were significant – up to £30,000 per lease - and this should act as a deterrent. Furthermore, he pointed out it would be difficult to carry out such an impact assessment during a period of wider leasehold reform.

Lilian Greenwood (Lab) queried whether leaseholders would be aware of their rights under the ground rents legislation. The Minister said the fact that the legislation was being enacted, combined with the possible financial penalties for freeholders, were good reason to "be confident that nobody will try to introduce rents through the back door."<sup>132</sup>

New clause 3 was withdrawn.

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<sup>131</sup> [PBC 9 December 2021 c69](#)

<sup>132</sup> [PBC 9 December 2021 c70](#)

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