

LEASEHOLD REFORM (GROUND RENT) BILL [HL]

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Leasehold Reform (Ground Rent) Bill [HL] as brought from the House of Lords on 15 September 2021 (Bill 164).

- These Explanatory Notes have been prepared by the Department for Levelling up, Housing and Communities in order to assist the reader. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 Through this Bill the Government aims to make leasehold ownership fairer and more affordable for leaseholders by ensuring that freeholders/landlords will no longer be able to make financial demands for ground rent. The Bill also prohibits the charging of administration charges in relation to peppercorn rents.
- 2 This Bill seeks to achieve the above by restricting ground rents on newly established leases of houses and flats to a token one peppercorn per year, effectively restricting ground rents 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 their tenants pay a peppercorn as a rent in practice.
- 3 A ground rent is a payment specified in the lease that the leaseholder is required to make to the landlord (directly or indirectly through an agent or representative) without obligation on the landlord (or person acting on behalf of the landlord) to provide a clear service in return to the leaseholder.
- 4 The Bill defines a peppercorn rent as an annual rent of one peppercorn.
- 5 Note: In the following sections of these Explanatory Notes, unless otherwise stated, the terms “leaseholder” and “tenant” refer to the person who currently owns the leasehold interest in the property. The term “landlord” refers to the person who is the immediate landlord of that person (either the freeholder or another leaseholder with a superior interest in the property).
- 6 The Bill places a duty on 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. This Bill also makes provision for leaseholders to recover unlawfully charged ground rents through the appropriate tribunal.
- 7 A breach of the ground rent restrictions is a civil offence with a financial penalty of between £500 and £30,000. Local authorities will be able to retain the money raised through financial penalties with this money reserved for covering the cost of enforcement in relation to residential leasehold property.
- 8 The Bill makes exceptions for a small number of types of leases: business leases, statutory lease extensions of houses and flats, community led housing and home finance plan leases (either a type of equity release financial product known as a Home Reversion Plan or a rent to buy arrangement). Rent may continue to be charged on the landlord’s share of shared ownership leases, and where it is agreed on leases replacing pre-commencement leases on the remaining term of the pre-commencement lease (known as voluntary lease extensions).

Policy background

- 9 The leasehold housing sector is an important part of the national housing market. It houses an estimated 4.6 million households in England and Wales. Approximately two thirds of these properties are flats and one third houses.
- 10 Long leases (generally leases granted for more than 21 years) normally provide for the leaseholder to pay ground rent to their freeholder for renting the land that the leasehold property is on.
- 11 Historically, many ground rents were set at a nominal level. However, in recent years many ground rents have risen from nominal levels to more than 0.1% of the property's value, and the practice of granting leases including terms requiring frequent rent reviews where the ground rent amount doubles has emerged. 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. Leaseholders receive no clear service in return for these ground rent payments and it is not always clear what costs leaseholders will have to pay when they purchase their home. As a result, some leaseholders may face difficulties in selling or re-mortgaging or find it costly to buy the freehold through enfranchisement.
- 12 In July 2017 the Government consultation Tackling unfair practices in the leasehold market sought views on introducing measures to limit ground rents in new leases to start and remain at a 'peppercorn' (zero financial) level. In December 2017 the Government committed to reducing ground rents on newly established leases of houses and flats to a peppercorn rent. In October 2018 a technical consultation Implementing reforms to the leasehold system in England asked for views on the detail of the implementation of these proposals, including circumstances where exemptions may be necessary.
- 13 This Bill takes forward these proposals to make leasehold ownership fairer and more affordable by limiting ground rents for long residential leases to a token one peppercorn per year.
- 14 The Government is committed to promoting fairness and transparency for homeowners and ensuring that consumers are protected from abuse and poor service. This Bill is the first of two-part seminal legislation to reform the leasehold system.

Legal background

- 15 The main legislation relevant to the rights of residential leaseholders is:
 - the Leasehold Reform Act 1967;
 - the Landlord and Tenant Act 1987;
 - Schedule 2 of the Housing Act 1988;
 - the Local Government and Housing Act 1989;
 - the Leasehold Reform, Housing and Urban Development Act 1993;
 - the Commonhold and Leasehold Reform Act 2002.

Ground rents

- 16 The Commonhold and Leasehold Reform Act 2002 requires landlords to serve written notice before ground rent becomes payable and prevents landlords from starting forfeiture action unless they have issued a written notice and the ground rent arrears exceed a specified sum or have been in arrears for more than a specified period.

Lease extensions

- 17 For qualifying tenants of a long lease of a house, the Leasehold Reform Act 1967 sets out the right to the grant of a new lease for the remainder of the existing term plus a further 50 years, commonly referred to as a lease extension. No premium is payable, but the new lease can contain a modern ground rent, reviewable after 25 years.
- 18 For qualifying tenants of flats, the Leasehold Reform, Housing and Urban Development Act 1993 sets out the right to a new lease for the remainder of the existing term plus a further 90 years, commonly referred to as a lease extension. A premium is payable, but the new lease must contain a peppercorn ground rent.

Security of tenure

- 19 Section 186 and Schedule 10 of the Local Government and Housing Act 1989 provides security of tenure for long residential leases with low rent. Under that Act, when a long lease comes to an end, the tenant is likely to qualify for an assured tenancy which is afforded further protection under the Housing Act 1988.

Territorial extent and application

- 20 Clause 25 sets out the territorial extent of the Bill, that is the jurisdictions in which the Bill forms part of the law. The territorial extent of this Bill is England and Wales. The Bill will apply to long residential leaseholds in England and Wales.
- 21 The provisions in the Bill are related to the law of property which is restricted under the Government of Wales Act 2006.
- 22 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Senedd Cymru without the consent of the legislature concerned. The matters to which the provisions of the Bill relate are not within the legislative competence of the Senedd Cymru, however as the Bill transfers executive competence to Welsh Ministers in respect of the definition of community housing leases, enforcement and provision of guidance this therefore gives rise to the need for a legislative consent motion in the Senedd Cymru.
- 23 The Welsh Government laid a legislative consent memorandum for the Bill before the Senedd in May of this year. Senedd Cymru has not yet considered its position on legislative consent.
- 24 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Bill

Clause 1: Regulated leases

- 25 Generally, this Bill applies in relation to leases of single dwellings granted on or after commencement of the relevant provision of the Bill. This includes leases created by virtue of a variation of a lease which results in a deemed surrender and regrant.
- 26 This Bill does not apply to long residential leases of single dwellings where the leaseholder does not pay a premium for the granting of the lease.
- 27 However, where, prior to commencement, buyers and sellers have entered into a legally binding contract in relation to the grant of the lease (other than an option or right of first refusal), the provisions will not apply. The provisions will additionally not be applicable to some exceptions listed in clause 2.

Clause 2: Excepted leases

- 28 Clause 2 sets out the types of leases that are exempt from the Bill. The exceptions are:
- Business leases where:
 - the lease expressly permits business purposes without further consent needed of the landlord;
 - the nature of the permitted business purposes is such that the use of the premises as a dwelling significantly contributes to the business purposes; and
 - the landlord and tenant exchange written notices at or before the lease is granted confirming the intention to use and continue to use the premises for the business purposes set out in the lease.
 - The Secretary of State may make further provision about the form and content of the notices required to be exchanged in regulations.
 - Business includes a trade, profession or employment but not a home business under the Landlord and Tenant Act 1954.
 - Statutory lease extensions of houses, under Part 1 of the Leasehold Reform Act 1967, or of flats, under Chapter 2 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993.
 - Community housing where it is a community housing lease and where it meets any further conditions specified in regulations made by the relevant authority. A community housing lease is where the landlord is a community land trust (as defined in section 79 of the Housing and Regeneration Act 2008), or it is a dwelling in a building controlled or managed by a co-operative society (as set out in paragraph 2B of Schedule 14 to the Housing Act 2004).
 - Home finance plan leases which also meet any conditions specified in regulations made by the Secretary of State. A home finance plan lease is:
 - A lease granted in connection with a home reversion plan under Chapter 15A of Part 2 of the Financial Services and Markets Act (Regulated Activities) Order 2001, or
 - A lease granted by a finance provider to a home buyer in connection with a 'rent to buy' arrangement. A 'rent to buy' arrangement is where a person buys a freehold or leasehold interest in land (or an undivided share of such an interest) from a finance provider over a defined period by means of payment of a rent.

Clause 3: Prohibited rent

- 29 Clause 3(1) prohibits any landlord (or person acting on the landlord's behalf) of a regulated lease to require a tenant (or tenant's guarantor) to make a payment of a prohibited rent. A prohibited rent is defined in subsection (4) as any rent that exceeds the permitted rent as defined in clauses 4 to 6.
- 30 The meaning of 'require a tenant to make a payment of prohibited rent' is explained in subsection (2). A landlord requires a tenant to make a payment of a prohibited rent if they (or a person acting on their behalf) ask the tenant for payment or having received payment, fail to refund it within 28 days.
- 31 Those subsections taken together mean that a landlord or person acting on the landlord's behalf is prohibited from asking the tenant for a prohibited rent and must, if they receive a prohibited rent, refund it within 28 days after its receipt.
- 32 Clause 3(3) explains that in this clause references to landlord includes a person who has ceased to be a landlord, and references to tenant include a person who has ceased to be a tenant, a person acting on behalf of a tenant or a tenant's guarantor.

Clause 4: Prohibited rent: general rule

- 33 Generally, the permitted rent is an annual rent of one peppercorn. The effect of a peppercorn rent is to restrict the rent so that no money can be charged or paid as rent under this Bill.

Clause 5: Prohibited rent: shared ownership leases

- 34 Clause 5 makes special provision for shared ownership leases in which the landlord retains a share.
- 35 Clause 5(2) provides that for the tenant's share in the premises, the only permitted rent is a peppercorn rent but that landlords can continue to charge any rent on their share.
- 36 Since April 2006 it has been a condition of all shared ownership schemes funded by Government that the amount of rent and any annual increases is capped. This is also usually the case for shared ownership properties delivered through agreements entered under section 106 of the 1990 Town and Country Planning Act. Providers are generally required to cap rent at 3% of the capital value of their retained equity, with an overall target of 2.75%. Rents can vary across different schemes. The rent on the unsold share increases over time. Annual rent increases are also limited as a condition of grant funding to the Retail Price Index (RPI) plus 0.5%. By way of example: if a tenant has a total share of 60% of the value of the premises and the landlord has a share of 40% of the value of the premises, the landlord would be permitted to charge the tenant rent on their 40% share, in line with the above rent caps.
- 37 Clause 5(7) provides that where the lease does not distinguish between rent on the tenant's share and rent on the landlord's share, any rent payable under the lease is to be treated as payable in respect of the landlord's share.

Clause 6: Permitted rent: leases replacing pre-commencement leases

- 38 Clause 6 allows for rent other than a peppercorn rent in the case of voluntary lease extensions, where a tenant is granted a lease that replaces a lease that was granted prior to commencement of the applicable provision of the Act (referred to as a "pre-commencement lease" – a term defined in subsection (8)(a)).
- 39 The permitted rent during the period up to the expiry date specified in the pre-commencement lease is a rent that is no more than the rent specified in the pre-commencement lease. The permitted rent for the period of the new lease following the expiry date specified in the pre-commencement lease is to be a peppercorn rent.
- 40 Subsection (5) makes provision for a case where a lease that is itself a replacement lease is replaced

by a new lease.

- 41 Subsections (6) and (7) makes provision for a case where the pre-commencement lease is a relevant shared ownership lease (as defined in subsection (9)).

Clause 7: Term reserving prohibited rent treated as reserving permitted rent

- 42 The effect of clause 7 is that any term in a regulated lease reserving a prohibited rent is replaced by a term reserving a permitted rent, which is generally a peppercorn rent unless clause 5 or 6 applies.
- 43 The table in clause 7 sets out what rent is to be substituted for the prohibited rent in each case.

Clause 8: Duty to inform the tenant

- 44 This clause places a duty on a landlord to inform a tenant who is entering a formal or informal renegotiation or an extension of an existing lease of changes to be introduced through this legislation. This duty would apply in the period between the Act being passed and the clauses on prohibited rent being in force.
- 45 This clause imposes financial penalties on a landlord for breaching the duty of not less than £500 and not more than £30,000.

Clause 9: Enforcement authorities

- 46 Clause 9(1) requires local weights and measures authorities (trading standards authorities) in England and Wales to enforce clause 3 where a breach of that clause occurs in their area and allows them to enforce clause 3 elsewhere.
- 47 Subsection (2) allows a district council, which is not a trading standards authority, to enforce clause 3 (both inside the council's district and elsewhere in England). They are not however required to do so.
- 48 Subsection (3) explains that where a breach of clause 3 occurs, the area in which it occurs is the area in which the premises under the lease are located. Where the premises are located on a local authority boundary, the breach is taken to have occurred in each of the areas in which the relevant premises are located.
- 49 Subsection (4) provides that the duty and powers to enforce clause 3 conferred by subsections (1) and (2) are subject to clause 10(8) which provides that an enforcement authority may not impose a penalty on a person if another enforcement authority has already imposed a penalty in respect of the same breach.
- 50 Subsection (5) defines enforcement authority, a term used throughout the Bill (and the following sections of these explanatory notes) to refer to both local weights and measures authorities in England and Wales who have a duty to enforce and district councils that have a power to enforce.

Clause 10: Financial penalties

- 51 This clause allows the enforcement authority to impose a financial penalty on a person if the authority is satisfied beyond reasonable doubt that the person has breached clause 3(1) by requiring a tenant to make a payment of a prohibited rent.
- 52 The amount of the financial penalty is at the discretion of the enforcement authority, subject to a minimum of £500 and a maximum of £30,000 (subsection 2).
- 53 A landlord who commits multiple breaches in relation to the same lease is generally only liable to one financial penalty. However, they will be liable for a further penalty if, having previously had a financial penalty imposed for an earlier breach, they then commit a further breach (subsection (3)).
- 54 Subsection (4) clarifies that for the purpose of subsection (3) 'landlord' includes a person who has

ceased to be the landlord.

- 55 Subsections (5), (6) and (7) deal with multiple breaches in relation to multiple leases. Where a person has committed one or more breaches in relation to two or more leases, an enforcement authority may choose to impose a single financial penalty in respect of all those breaches. If a single penalty is imposed in respect of multiple breaches, the amount of a penalty must not be less than the total minimum amount that would have been imposed or exceed the total maximum amount that could have been imposed if each breach had been penalised separately (taking into account the effect of subsection (3)).
- 56 Subsection (8) provides that an enforcement authority may not impose a penalty on a person if another enforcement authority has already imposed a penalty on the person for the same breach.
- 57 Subsection (9) enables the relevant authority to make regulations amending the minimum and maximum penalty amounts set out in subsection (2) by way of regulations. This power may only be exercised where the relevant authority considers it expedient to do so to reflect changes in the value of money (subsection 10).

Clause 11: Recovery of prohibited rent by enforcement authority

- 58 If the enforcement authority is satisfied on the balance of probabilities that a tenant under a regulated lease has made a payment of a prohibited rent and all or part of that rent has not been refunded, the enforcement authority can 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.
- However, the above does not apply if the tenant (or person acting on behalf of the tenant) has made an application to the appropriate tribunal to recover the prohibited rent under clause 14 or an enforcement authority has previously made an order under clause 11 in relation to the payment (subsection (3)).
- 59 Where a tenant has made multiple payments of a prohibited rent under the same lease and these have not been refunded, the enforcement authority may make a single order for repayment for all the prohibited rent that has not been refunded (subsection (4)).

Clause 12: Interest on amounts ordered to be paid under section 11

- 60 Clause 12(1) provides that where an enforcement authority is imposing a penalty under clause 11, they can also require interest on the outstanding amount to be paid.
- 61 Subsections (2) and (3) set out how this interest is to be calculated and subsection (4) specifies that the rate of interest is the judgment rate.
- 62 Subsection (5) caps the total amount of interest that can be charged. The total amount of interest paid must not exceed the amount of the rent order to be repaid under clause 11 (subsection (5)).

Clause 13: Enforcement authorities: supplementary

- 63 Subsection (1) requires enforcement authorities to have regard to any guidance issued by the Secretary of State about its functions under this Bill in relation to a lease of premises in England and have regard to any guidance issued by Welsh Ministers about its functions under this Bill in relation to a lease of premises in Wales.
- 64 Subsection (3) makes provision for the investigatory powers available to domestic enforcers under Schedule 5 of the Consumer Rights Act 2015 to be available to enforcement authorities enforcing

clause 3 of this Bill.

- 65 Subsection (4) introduces the Schedule to the Bill which sets out the procedure for imposing a financial penalty under clause 10 or making an order under clause 11 including the time limits, rights of appeal, recovering the financial penalty or an amount ordered to be paid and retention of sums received.

Clause 14: Recovery of prohibited rent by tenant

- 66 This clause allows tenants (or person acting on behalf of a tenant) under a regulated lease who have paid prohibited rent that has not been refunded to apply to the appropriate tribunal for a recovery order.
- 67 A recovery order is an order requiring the repayment of any of the prohibited rent that has not already been refunded by any of the following:
- the landlord of the lease at the time the prohibited rent was paid,
 - the landlord of the lease at the time the application is made,
 - a person acting on behalf of one of the above where the payment was paid to that person.
- 68 The prohibited rent must be repaid within 28 days after the order has been made (subsection (3)).
- 69 Subsection (5) provides that where multiple payments of prohibited rent have been made and not refunded, the enforcement authority can make a single recovery order in respect of all of those payments.
- 70 Subsection (6) means that the appropriate tribunal must not make a recovery order if an enforcement authority has already ordered the recovery of the prohibited rent under clause 11.
- 71 Nothing in this clause prevents a person recovering monies owed under contractual remedies in the general law (subsection (7)).

Clause 15: Interest on amount ordered to be paid under section 14

- 72 Clause 15 allows the appropriate tribunal to include in the recovery order (see clause 14) a requirement for interest to be paid. Interest is payable from the day on which the payment of prohibited rent was made until the day on which the amount ordered is paid.
- 73 Where the penalty relates to more than one payment of prohibited rent, interest is payable from the day on which each payment of prohibited rent was made until that part of the amount is paid.
- 74 The rate of interest is specified in section 17 of the Judgements Act 1838.
- 75 The total amount of interest payable must not be more than the amount ordered to be paid.

Clause 16: Application to appropriate tribunal as to effect of section 7

- 76 This clause allows either a tenant or landlord of a regulated lease to apply to the appropriate tribunal for a declaration as to the effect of clause 7 on a term in the lease (or a contract relating to the lease).
- 77 Following such an application, if the appropriate tribunal is satisfied that the lease includes a prohibited rent, it must make a declaration as to the effect of clause 7 on the terms of the lease (or related contract).
- 78 Where there are two or more regulated leases with the same landlord, a single application may be made in respect of those leases, by either the landlord or by a tenant of one of the leases with the consent of the tenant(s) of the other leases (subsection (3)).
- 79 Where the tenant is the registered proprietor of the leasehold the appropriate tribunal can also direct

the landlord to apply to the Chief Land Registrar, and pay the appropriate fee, to enter the declaration in the registered title. The tenant may apply to the Chief Land Registrar, and pay the appropriate fee, for the declaration to be entered in the registered title (subsection (5)).

Clause 17: Assistance

- 80 This clause allows an enforcement authority to help a tenant or former tenant, a person acting on behalf of a tenant or former tenant or the guarantor of a tenant or former tenant to apply for a recovery order (clause 14) and to recover an amount that the appropriate tribunal orders to be paid under a recovery order.
- 81 This clause also allows an enforcement authority to help a tenant or a person acting on behalf of a tenant to apply for an order declaring the effect of section 7 on a regulated lease (clause 16).
- 82 The help that an enforcement authority can provide under this section can include conducting proceedings or giving advice.

Clause 18: Interpretation of enforcement provisions

- 83 Clause 18 defines “tenant”, for the purposes of clauses 11, 14 and 17, to include a person acting on behalf of a tenant and (except in relation to clause 17(1)(b) which relates to applications for a declaration of the effect of clause 7 on the terms of a regulated lease) a former tenant or a guarantor.
- 84 This clause also specifies that the “appropriate tribunal” is the First-tier Tribunal where the lease of the premises is in England and a leasehold valuation tribunal where the lease of the premises is in Wales.

Clause 19: Administration charges for peppercorn rents

- 85 Clause 19 requires that no administration charge is payable in relation to the collection of any ground rent that is restricted to a peppercorn by this Bill. It does this by amending relevant provisions in the Commonhold and Leasehold Reform Act 2002. The tenant will be able to apply to the First-tier Tribunal in England or in Wales to a leasehold valuation tribunal for a determination whether an administration charge is payable or for an order varying the lease on the ground that such an administration charge is not payable.
- 86 The tenant may also apply (under section 24 of the Landlord and Tenant Act 1987) to the First-tier Tribunal in England or in Wales to a leasehold valuation tribunal to request that it makes an order appointing a manager where prohibited administration charges have been made. This will enable the appropriate tribunal to take action where, for example, a landlord includes administration charges in leases on numerous occasions.

Clause 20: Amendments to Housing Act 1985

- 87 Clause 20 makes a consequential amendment to Part 5 of the Housing Act 1985 (right to buy).

Clause 21: Consequential amendments

- 88 Clause 21 enables the Secretary of State to make provision that is consequential on this Bill by regulations. Such regulations may amend an Act of Parliament including an Act passed in the same session as this Act.

Clause 22: Regulations

- 89 Clause 22(1) states that any power to make regulations under this Bill includes power to make consequential, supplementary, incidental, transitional or saving provision and different provision for different purposes.
- 90 Regulations under this Act are to be made by statutory instrument and are subject to annulment by a resolution of either House of Parliament if the regulations are made by the Secretary of State, or

Senedd Cymru if the regulations are made by the Welsh Ministers with the exception of:

- a. regulations under clause 21 which amend an Act of Parliament which must be made in draft and laid before and approved by a resolution of each House of Parliament;
- b. commencement regulations under clause 26.

Clause 23: Interpretation

- 91 Clause 23 defines various terms used throughout the Bill. Subsection (1) defines a long lease as one granted for a period exceeding 21 years (whether or not it may be terminated sooner). It also includes a lease granted for a fixed term but with an obligation or covenant that means the lease will be continually renewed, other than a sub-lease of a lease which is not a long lease, or a lease that is terminated after a death, marriage or civil partnership.
- 92 Subsection (2) defines dwelling as a building or part of building that is occupied or intended to be occupied, and any land usually enjoyed around it such as a garden or outhouses. Subsection (2) also makes clear that in the Bill the term lease means either an equitable or legal lease (and that references to grant of a lease are to be construed accordingly) and includes a sub-lease, but does not include a mortgage term. It defines rent as anything in the nature of rent, regardless of what it is called.
- 93 Subsection (2) also defines a premium as any consideration in money or money's worth for the grant of the lease, other than rent, so that a premium may include consideration in more than money alone.
- 94 In addition, subsection (2) sets out the meaning of the "relevant authority" to mean the Secretary of State in relation to a lease of premises in England and to mean the Welsh Ministers in relation to a lease of a premises in Wales.
- 95 Subsection 3 clarifies that a sum expressed to be payable in respect of rates, council tax, services, repairs, maintenance, insurance or other ancillary matters is not rent for the purposes of this Act merely because it is reserved as rent in the lease.

Clause 24: Crown application

- 96 Clause 24(1) provides that the Bill applies to Crown land as defined in subsection (2).

Clause 25: Extent

- 97 This clause is explained under paragraphs 20 and 21 of these Explanatory Notes above.

Clause 26: Commencement

- 98 This clause is explained under Commencement below.

Clause 27: Short title

- 99 This clause is self-explanatory.

Schedule: Enforcement: procedure, appeals and recovery etc.

- 100 The Schedule sets out the procedure to be followed by an enforcement authority when it imposes a financial penalty and/or makes an order to recover prohibited rent.
- 101 Paragraph 2 requires that before imposing a penalty and/or making an order for repayment, the enforcement authority must serve notice of their intent. The notice of intention must set out:
 - the date of the notice being served
 - the amount of the proposed penalty and/or terms of the order

- the reasons for imposing the penalty and/or making the order
- information about the right to make written representations.

102 Paragraph 3(1) deals with timescales for issuing the notice of intent. This notice must be served within 6 years of the day of the breach and within 6 months of the enforcement authority knowing of evidence that the authority considers justifies serving the notice.

103 Sub-paragraph (2) sets out the days on which it is to be considered that a breach of clause 3(1) has taken place, for the purposes of calculating the timescales in subparagraph (1). A breach involving a request for a prohibited rent takes place on the date of that request. Where no request for payment has been made and the landlord fails to refund prohibited rent received, a breach takes place at the end of the period of 28 days after the rent is received.

104 Paragraph 4 relates to written representations regarding the notice. Anyone who receives a notice of intent may make written representations about the proposal. They must make these written representations within 28 days of the notice being served.

105 Paragraph 5 relates to the issuing of the final notice. After the end of the 28-day period for written representations, the enforcement authority must decide whether to impose a financial penalty and/or make the order. If it decides to impose a penalty and/or make an order the authority must decide the amount of the penalty and/or the terms of the order. The enforcement authority must then issue a final notice requiring a penalty to be paid and/or the order to be complied with within 28 days of the date of the final notice. The final notice must set out:

- 1 the date the final notice is served
- 2 the amount of the penalty and/or terms of the order
- 3 the reasons for imposing the penalty and/or making the order
- 4 information about how to pay the penalty and/or comply with the order
- 5 information about rights of appeal
- 6 the consequences of failure to comply with the notice.

106 Paragraph 6 deals with an enforcement authority withdrawing or amending the notice of intent or final notice. The enforcement authority is allowed, at any time, to withdraw a notice of intent or final notice, to reduce the amount specified in a notice of intent or final notice, or to remove the proposal to impose or the imposition or a penalty or the proposal to make or the making of an order to recover prohibited rent. The authority can do this by writing to the person on whom the relevant notice was served.

107 Paragraph 7 relates to appeals. A final notice may be appealed to the appropriate tribunal. Appeals can be against the decision to impose the penalty or make the order; the amount of the penalty; or the terms of the order. The person on whom the final notice was served must appeal within 28 days of the service of that notice. The notice will then be suspended until the appeal is finally determined, withdrawn or abandoned.

108 An appeal will be a re-hearing of the enforcement authority's decision and may be determined having regard to matters that the enforcement authority was unaware of. The appropriate tribunal may quash, confirm or vary the notice. However, if varying the notice, the appropriate tribunal cannot vary a notice so as to make it impose a financial penalty of less than the minimum or more than the maximum penalty that the enforcement authority could have imposed.

109 Paragraphs 8 and 9 deal with recovery of the financial penalty, prohibited rent and interest. If the person fails to pay all or part of the penalty or fails to repay the prohibited rent in accordance with an order, the enforcement authority may recover the penalty or the prohibited rent on the order of the county court as if it were payable under order of that court.

110 Paragraph 10 gives an enforcement authority power to help a person to apply for a court order if an enforcement authority's order to repay a prohibited rent or interest on that amount has not been complied with. For example, by helping the person conduct proceedings or by giving advice.

111 Paragraphs 11 and 12 set out how the enforcement authority should deal with the financial proceeds from enforcement action. The enforcement authority may retain the financial proceeds of any penalties it imposes and put it towards the costs (administrative or legal) incurred in carrying out its enforcement functions in relation to residential leasehold property. Any proceeds of a financial penalty which are not used for this purpose must be paid to the Secretary of State.

Commencement

112 The Bill will come into force on such day as the Secretary of State may appoint by regulations, except for the following clauses which come into force the day this Act is passed:

- Clauses 2 and 9 (but only for the purpose of making regulations)
- Clauses 20 – 26

113 The Secretary of State may appoint different days for different purposes including for different kinds of leases.

114 In relation to a lease of a retirement home, the regulations may not appoint a day for commencement that is any earlier than 1 April 2023. A lease of a retirement home is a lease relating to a dwelling that can only be occupied by people aged 55 or over.

115 The Secretary of State may by regulations made by statutory instrument make transitional or saving provisions in connection with the coming into force of any provision of the Bill. This includes the power to make different provisions for different purposes including for different kinds of leases.

Financial implications of the Bill

- 116 An Impact Assessment has been prepared for the Bill and covers the implications on private sector bodies and home purchasers which derive from this Bill. The Impact Assessment illustrates a *de minimis* impact of less than £5m.
- 117 The Department for Levelling Up, Housing and Communities estimates that the number of enforcement cases will be very small. The enforcement of the provisions contained in this Bill by enforcement authorities is intended to be fiscally neutral since enforcement authorities may retain the proceeds of any financial penalties for the purposes of any of their enforcement functions relating to residential leasehold property under this Bill.
- 118 Over and above the use of the proceeds arising from the enforcement action, a further amount of expenditure will be required to provide additional capacity within the National Trading Standards function to support local weights and measures authorities. Leasehold law is a complex area, and it is felt that a central support function will aid the effective introduction of the provisions of this Bill. The cost estimate of this support function is £29,000 per annum.

Parliamentary approval for financial costs or for charges imposed

- 119 A money resolution is required for the Bill. There is potential for an increase to public expenditure as powers are conferred upon relevant enforcing authorities, namely local weights and measures authorities and district councils, to perform certain functions to enforce the provisions of this bill further to clauses 8(2), 9(1), 9(2), 10(1), 11(2), 11(4), 13(1), 13(4), 17(1) and the Schedule.

Compatibility with the European Convention on Human Rights

- 120 Michael Gove, Secretary of State for Levelling up, Housing and Communities has made a statement under section 19(1)(a) of the Human Rights Act 1998 that, in his view, the provisions of the Bill are compatible with the Convention rights.

Related documents

- 121 The following documents are relevant to the Bill and can be read at the stated locations:
- Government commitment to reducing ground rents on future residential leases to a peppercorn, December 2017: <https://www.gov.uk/government/news/crackdown-on-unfair-leasehold-practices--2>
 - Government technical consultation on the implementation of this policy, October 2018: <https://www.gov.uk/government/consultations/implementing-reforms-to-the-leasehold-system>
 - Government response to the Housing, Communities and Local Government Committee's report on Leasehold Reform, July 2019: <https://www.gov.uk/government/publications/leasehold-reform-government-response-to-the-select-committee-report>
 - Announcement that this Bill will also apply to retirement leasehold properties, January 2021: <https://www.gov.uk/government/news/government-reforms-make-it-easier-and-cheaper-for-leaseholders-to-buy-their-homes>

Annex - Territorial extent and application in the United Kingdom

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the Senedd for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion sought?
Clauses 1 – 27 and Schedule	Yes	Yes	No	No	No	Yes	Yes	Yes

LEASEHOLD REFORM (GROUND RENT) BILL [HL]

EXPLANATORY NOTES

These Explanatory Notes relate to the Leasehold Reform (Ground Rent) Bill [HL] as brought from the House of Lords on 15 September 2021 (Bill 164).

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