LEASEHOLD AND FREEHOLD REFORM BILL 2023

EUROPEAN CONVENTION ON HUMAN RIGHTS MEMORANDUM

Introduction

1. The Leasehold and Freehold Reform Bill ("the Bill") was introduced in the House of Commons on 27 November 2023.

2. The leasehold sector represents one in five (4.98 million properties) of the English housing stock and one in six homes in Wales. Under the current system, many leaseholders have very limited control over their property or building, with the landlord (who may also be the ultimate freeholder) making decisions about the management and maintenance of the building and passing on the costs to leaseholders. While many freeholders/landlords will provide adequate service for a reasonable cost, the Government is concerned that the current legislation leaves leaseholders exposed to the risk of abuse and bad practice. It is difficult for leaseholders to enforce their rights to tackle these issues.

3. Issues faced by leaseholders include a significant lack of transparency over charges they are required to pay, escalating ground rents and unfair lease terms, as well as limited access to redress and an unequal liability to cover legal costs in disputes.

4. Taking control over the freehold or the management of the building is often complex and can be prohibitively expensive. Existing legislation contains barriers restricting many leaseholders from taking up these rights; many do not have these rights at all due to outdated and restrictive qualifying criteria.

5. Further, under existing legislation, leaseholders do not have to be made aware of the level of commission on buildings insurance being taken, which gives intermediaries the opportunity to take substantial commissions without needing to demonstrate the reasonableness of the costs.

6. Government intervention is needed to help rebalance power in the market and empower leaseholders to take greater control of the homes they have paid for, whilst maintaining the legitimate rights of landlords/freeholders.

7. The Bill will implement a streamlined package of the enfranchisement and right to manage ("RTM") reforms recommended by the Law Commission in their reports of July 2020, together with other leasehold and home ownership reforms. The Bill will also regulate the relationship between residential landlords and leaseholders and regulate residential estate management. This will include preventing insurance commissions from being passed on to leaseholders through their service charge, which will be required to be more transparent, and requiring managing agents/freeholders to proactively provide details of the service charge to leaseholders, with more information available on request. The Bill will address gaps in the ability of freehold homeowners living on managed estates to challenge the costs they face and will expand access to redress for those living in leasehold properties or on managed estates. It will also require sales information to be provided on request to both leaseholders and freeholders on managed estates and will regulate rentcharges.

8. This memorandum addresses issues arising under the European Convention on Human Rights ("Convention") in relation to the Bill. It has been prepared by the Department for Levelling Up, Housing and Communities.

9. The provisions of the Bill engage the following Convention rights:

   a. *Article 6* – this right provides that in the determination of a person's civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law;
   b. *Article 8* – this right provides that persons have the right to respect for their home and private life;
   c. *Article 1 Protocol 1 ("A1P1")* – this right provides that persons (both natural and legal) have the right to the peaceful enjoyment of their possessions.

10. At Commons Committee stage, the Government introduced a number of amendments, that have now been added to the Bill. In all cases, the Government considers that the provisions in the Bill are compatible with the relevant Convention rights, and that in the case of provisions engaging Article 8 and A1P1 that any interferences are justified and proportionate.

11. The Government considers that clauses or Schedules which are not mentioned in this memorandum do not give rise to any human rights issues which the Government considers ought to be brought to the attention of the Committee.

12. All enabling powers in this Bill are capable of being exercised in a way that is compatible with Convention rights and the Secretary of State is required to act compatibly with Convention rights when making secondary legislation.

13. The following abbreviations are used throughout this memorandum:
    i. "CLRA 2002" means the Commonhold and Leasehold Reform Act 2002;
    ii. "LPA 1925" means the Law of Property Act 1925;
    iii. "LRA 1967" means the Leasehold Reform Act 1967;
    iv. "LRHUDA 1993" means the Leasehold Reform, Housing and Urban Development Act 1993;
    v. "LTA 1985" means the Landlord and Tenant Act 1985;
    vi. "LTA 1987" means the Landlord and Tenant Act 1987; and
    vii. "the Tribunal" means the First-tier Tribunal (Property Chamber) in England and the Leasehold Valuation Tribunal in Wales
    viii. "Tribunal Rules" The Tribunal Procedure rules for the First-tier Tribunal (Property Chamber) in England and the Leasehold Valuation Tribunal in Wales.

Statement under section 19 of the Human Rights Act

14. On introduction in the House of Commons the Secretary of State for Levelling Up, Housing and Communities, Michael Gove, 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. The Government considers that the provisions of the Bill added by amendment at Commons Committee stage are also compatible with Convention rights.

ECHR analysis by clause

15. References to clauses in this memorandum are to the Bill as amended in Commons Committee.

PARTS 1 & 2: LEASEHOLD ENFRANCHISEMENT AND EXTENSION, AND OTHER RIGHTS OF LONG LEASEHOLDERS

<u>Removal of the two-year qualifying period for enfranchisement and lease extension claims (clause 1) and removal of restrictions on repeated enfranchisement and extension claims (clause 2)</u>

16. **Clause 1** removes the requirement that a leaseholder of a house must have owned the lease for at least two years before qualifying to buy their freehold or extend their lease. The LRHUDA 1993 is also amended to remove the requirement that a leaseholder of a flat must have owned their lease for two years before qualifying for a lease extension.

17. **Clause 2** removes the restrictions on repeated enfranchisement and extension claims. The provisions of the LRA 1967 and the LRHUDA 1993 that prevent leaseholders from starting new enfranchisement or lease extension claims for 12 months, where an earlier claim fails to complete, are removed. Provisions of the LRA 1967 that give the court the power to order compensation and prevent new enfranchisement or lease extension claims for 5 years, where a claim has failed and the leaseholder did not act in good faith or attempted to misrepresent or conceal material facts, are removed. Additionally, the restriction in the LRA 1967 on bringing a further lease extension claim, where a lease extension claim has already been obtained under the Act, is repealed.

18. The Government's view is that the measures to amend the qualifying criteria do not directly engage A1P1. While landlords might be exposed to an enfranchisement claim up to two years earlier than they might have expected, the change does not change the "class" of leaseholders who qualify; it simply alters the point at which they qualify. Even if these measures do directly engage A1P1, the Government is of the view that such measures are compliant given that adequate compensation will be received by landlords for their interests. The measures are rationally connected with the Government's aim of improving access to enfranchisement for all leaseholders and simplifying the enfranchisement process.

<u>Changing the non-residential limit of 25% for collective enfranchisement and RTM claims to 50% (clauses 3 and 22)</u>

19. **Clause 3** changes the non-residential limit of 25% for collective enfranchisement claims to 50%. Section 4(1)(b) of the LRHUDA 1993 is amended so that a building is excluded from collective enfranchisement rights if more than 50% of the internal floorspace is used for non-residential purposes (such as a ground-floor shop). **Clause 22** changes the non-residential limit of 25% for RTM claims to 50%. It amends paragraph 1(1) of Schedule 6 to the CLRA 2002 so that a building is excluded from the RTM if more than 50% of the internal floorspace is used for non-residential purposes (such as a ground-floor shop).

20. The Government's view is that A1P1 is not itself engaged by the measure increasing the non-residential threshold from 25% to 50%, as the increase in percentage limit does not itself involve an interference with landlords' or freeholders' property rights. The effect of the change will be to change the qualification criteria for collective enfranchisement and RTM claims, and to increase the number of buildings which would be eligible for these rights.

21. However, even if A1P1 is engaged by this measure as regards collective enfranchisement claims, the Government's position is that it is compatible with A1P1 on the basis that it is proportionate to the overall policy objective of improving access to, and affordability in respect of, collective enfranchisement claims for leaseholders. In addition, the Government does not consider that the current non-residential threshold of 25% achieves the purpose of confining collective enfranchisement claims to buildings that are predominantly residential: increasing the non-residential threshold to 50% is therefore appropriate and justified.

22. In the event that A1P1 is engaged by this measure as regards RTM claims, the Government's position is that it is compatible with A1P1, on the basis that it is proportionate to the overall policy objective of putting management back in the hands of leaseholders where the majority of floorspace in premises is used for residential purposes. Setting the non-residential limit at 50% strikes a fair balance between the interests of residential leaseholders and the interests of commercial leaseholders and landlords as it ensures RTM claims cannot be brought in respect of premises which are predominantly non-residential.

<u>Eligibility for enfranchisement and extension: specific cases (clause 4 and Schedule 1)</u>

23. **Clause 4** and **Schedule 1** provide for eligibility for collective enfranchisement and lease extensions in specific cases. Clause 4 gives effect to Schedule 1.

24. **Paragraphs 1 to 3** repeal limitations on enfranchisement rights under the LRA 1967 and the LRHUDA 1993 relating to redevelopment or reoccupation by the landlord, and limitations on the rights of sublessees. Provisions that allow a landlord to defend a lease extension claim (for a house or a flat) or a collective enfranchisement claim because they intend to redevelop the property are repealed. The power for the landlord to defeat a freehold acquisition or lease extension claim and retake possession of the property, so that the landlord or their family can reside in it, is repealed. The power for a Minister to certify that property belonging a public authority is needed for development, and

thereby prevent a leaseholder of the property bringing a lease extension or freehold acquisition claim, is repealed. Limitations that prevent a sublessee from claiming a lease extension, if their sublease was granted by an intermediate leaseholder out of a lease that had been extended under the relevant Act, are removed.

25. The new redevelopment break rights regime for lease extensions (paragraph 3 of Schedule 6, discussed below) and the repeal of the redevelopment defences in enfranchisement claims will engage A1P1. For example, landlords of houses let on long leases will be impacted in that they will only be able to break the lease in the last 5 years of each subsequent 90 period term under the lease extension, rather than at any time during the extension period of 50 years. However, the measure is considered to be compatible with A1P1, as it is both rational and proportionate. Removing the archaic defences, which would run counter to the new redevelopment break rights measure, is necessary to achieve Government's policy aim of rebalancing the interests of landlords and leaseholders in the context of redevelopment of leasehold premises, which is the objective underpinning the new redevelopment break rights measure. Landlords will be compensated for losses under the new valuation measures and, in the context of freehold acquisitions, this may include specific sums related to the possibility of, or steps taken towards, development.

26. **Paragraphs 4 and 5 of Schedule 1** provide for an exemption from collective enfranchisement claims for community-led housing (CLH). The exemption will apply to a CLH organisation which has obtained a declaration from the Tribunal to that effect that it satisfies or will satisfy the definition of community-led housing.

27. A1P1 is engaged by this measure in the sense that unless the application process for an exemption is applied for these types of houses will not be exempt from the wider reforms. The measure is proportionate as the exemption is a means of providing an affordable supply of housing to members of a community for the long-term benefit of that community as affected properties will remain in community ownership, which is a legitimate policy aim.

28. **Paragraphs 7 and 8 of Schedule 1** provide for the following new regime of enfranchisement rights for National Trust owned properties, in place of the current limited rights available to leaseholders:

i. For certain, specified leases of inalienable National Trust land, for example, leases of visitor attraction properties, the National Trust will enjoy a complete exemption from all enfranchisement claims under the new regime in the Bill, though on the basis that where any such leases would benefit from the lease extension right under the LRA 1967 Act, that right will remain available.

ii. All other leases of inalienable land will be excluded from freehold acquisition rights, but will benefit from the same 990-year lease extension right as all other long leaseholders.

iii. Where a leaseholder of inalienable National Trust land has extended their lease under the new regime in the Bill, the lease will thereafter be subject to a right of first refusal in favour of the National Trust. The National Trust will be entitled to "buy back" the lease whenever the leaseholder seeks to dispose of it.

29. A1P1 is engaged by this measure though Government considers it to be compliant. The proposals have been consulted on and designed in conjunction with National Trust leaseholders and the National Trust, with a balance being struck between the interests of leaseholders having the same lease extension rights as ordinary leaseholders, with that of the National Trust in holding the property for the benefit of the public in perpetuity. Freehold acquisition rights continue to be excluded and where a lease is extended, the right of first refusal will enable the National Trust to take back the property if the leaseholder wishes to sell. The new valuation methodology will apply to provide compensation to the National Trust for lease extensions at market value.

<u>Acquisition of intermediate leases in collective enfranchisement (clause 5)</u>

30. **Clause 5** reforms the rights for the acquisition of intermediate interests in collective enfranchisement claims. **Schedule A1** sets out a new scheme for acquiring leases and parts of leases during a collective enfranchisement. The clause also makes consequential amendments of the LRHUDA 1993.
31. The provisions relating to the acquisition of intermediate leases will engage A1P1 as enfranchising leaseholders will be given the option to acquire intermediate leases as part of enfranchising. However, the Government's view is that these provisions are compliant with A1P1 because they are proportionate and necessary to achieve the legitimate aim of reducing complexity and increasingly affordability in collective enfranchisement claims where intermediate leasehold interests are involved, and to enable the new mandatory leaseback measure to work in practice. They also create

clarity for the scenarios where a head leaseholder has enfranchisement rights and where a leaseholder is also an intermediate landlord.

The right to require a leaseback to the freeholder after collective enfranchisement (clause 6)

32. **Clause 6** provides a right to require a leaseback to the freeholder after a collective enfranchisement. This gives a new right to leaseholders participating in a collective enfranchisement claim to be able to require the freeholder to take a leaseback of particular units in the building. Leaseholders can thereby reduce the costs of the collective enfranchisement. This will enable more leaseholders to be able to bring collective enfranchisement claims as removing such units from the premium valuation will remove a significant financial barrier.

33. The Government considers that A1P1 is engaged by this measure as it reduces the premium that a freeholder will receive for their interest, and also oblige them to take back a lease in respect of relevant units. Government considers this measure is on the basis that the policy aims of making collective enfranchisement more accessible and affordable for leaseholders is a legitimate policy aim and the new mandatory leaseback measure is a proportionate means of achieving that aim. Although the exchange of a freehold interest for a leasehold interest represents a loss to the landlord, they will retain a valuable proprietary interest, while also receiving compensation for the loss of the freehold element of the interest in the property. The Government therefore believes that the exchange of a freehold interest for a leasehold one is justified given the significant benefit to leaseholders of a reduced collective enfranchisement premium and increased certainty of the cost.

990-year lease extensions at a peppercorn rent (clauses 7-8)

34. **Clauses 7 and 8** provide for 990-year lease extensions for houses and flats. The amendments made by these clauses mean that a qualifying leaseholder of either a house or a flat can obtain:

i. a 990-year lease extension,

ii. at a peppercorn ground rent,

iii. in exchange for the payment of a premium set by the amended valuation scheme set out in **clauses 9 to 11 and Schedules 2, 3, 4 and 5**.

35. The introduction of a uniform right to repeated lease extensions for leaseholders of houses and flats, and increasing the length of lease extensions to 990 years for both flats and houses, will engage A1P1. The Government's position is that a statutory lease extension right (even one for an extension as long as 990 years) amounts to a control of use of the property, not a deprivation of property, for the purposes of A1P1. The Government considers that this measure is compliant with A1P1 because the landlord will be sufficiently compensated for the reduction in value of their entitlement under the lease through the new valuation measures (discussed further below from paragraph 36 onwards) and therefore achieves a fair balance between the interests of freeholders/landlords and leaseholders. The measures pursue a legitimate policy aim of addressing the historic imbalance between freeholders/landlords and leaseholders. Furthermore, redevelopment break rights are being introduced (see [paragraph 3 of Schedule 6, discussed below) which will ensure fairness to landlords who need to redevelop their properties.

Price payable on enfranchisement or extension (clauses 9-11 and Schedules 2, 3, 4 and 5)

36. **Clause 9** provides that the premium payable to acquire the freehold of a house, or a lease extension of a house, must be calculated in accordance with clause 11. **Clause 10** amends the LRHUDA 1993 to provide that the premium payable to acquire the freehold of a block of flats, or for a lease extension of a flat, must be calculated in accordance with clause 11.

37. **Clause 11** provides for a new method for calculating the price payable for enfranchisement or extension of leases. This provides that a premium is payable when exercising any of the four enfranchisement rights, namely acquiring the freehold of a house; extending a lease of a house; acquiring the freehold of a block of flats; and extending a lease of a flat. The clause does not apply to premiums calculated under the preserved section 9(1) of the LRA 1967. The premium comprises two elements: the market value, which is to be calculated in accordance with a new compulsory standard valuation method set out in **Schedule 2**, and any other compensation, which is to be calculated (outside of the compulsory standard valuation method) in accordance with **Schedule 3**. The compulsory standard valuation method is set out in **Part 5 of Schedule 2**. A key aspect of the calculation of the market value payable for a landlord's interest are a series of assumptions that are made with respect to the property which are set out in **Part 4 of Schedule 2**. **Schedules 4 and 5** concern interpretation and consequential amendments accordingly.

38. All premium valuation and calculation reforms will engage A1P1 as they are measures determining the level of compensation that a freeholder/landlord will be paid for the loss or change of their proprietary rights. The Government's position is that they are nevertheless compliant as they balance fairness to leaseholders against the legitimate rights of landlords/ freeholders, and pursue legitimate aims, further detail of which is set out below.

Removal of marriage value and hope value from enfranchisement calculations (Schedule 2, para 17(3))

39. **Paragraph 17(3) of Schedule 1** sets out **Assumption 2**, which has the effect of ensuring that marriage value and hope value do not form part of the premium. Marriage value is the additional value an interest in land gains when the landlord's and leaseholder's separate interests are joined into single ownership. Hope value is the additional value that can be derived from the potential for marriage value being realised in the future.

40. The Government considers that A1P1 is engaged by this measure, as it will reduce the premium that landlords will receive for their interests. However, Government considers that the measure is compliant with A1P1. Excluding marriage (and hope) value from calculations is "reasonably related" to the value of the property and consequently the premiums produced reflect "market value". The reduced premiums that the measure would occasion are justified and proportionate in light of the legitimate aims of reducing the premium payable by leaseholders to enfranchise, addressing historic imbalance between leaseholders and freeholders, and simplifying the enfranchisement process.

Prescription of rates used in calculations (Schedule 2 paragraphs 26(8) and 27(8) (deferment rate) and 38(1) (capitalisation rate))

41. To calculate the market value, rates need to be applied to the "term" value and the "reversion" value of a property. The term value is the amount of ground rent the landlord is entitled to receive for the remainder of the lease term. To calculate the capital sum for rent that the landlord is entitled to receive in the future, a "capitalisation" rate is applied to the rent that would be demanded in the remainder of the term. The reversion value is the value of the landlord's right to receive the property back at the end of the

lease term. A “deferment” rate is used to discount the value of the freehold interest to reflect that instead of the landlord receiving the property back at the end of the term they will receive monies now. **Part 5 and Part 7 of Schedule 2** concern the application of these rates in premium calculations and there is a power for the Secretary of State to set these rates in regulations at **paragraphs 26(8), 27(8) and 38(1) of Schedule 2**.

42. As the rates will impact on the level of compensation that freeholders/landlords will receive, the Government considers A1P1 to be engaged.

43. The Government considers that the measure is compliant as prescribing rates at market value will have obvious benefits for long term market stability and consistency. Government intends to set the rates at market value. It will remove the need for valuers to negotiate appropriate rates on a case-by-case basis or for parties to challenge rates through the Tribunal system. This will provide greater certainty from the outset for both leaseholders and freeholders, reduce professional costs for both parties, and speed up the process. The Bill sets a requirement for the rates to be reviewed by the Secretary of State on a 10-yearly basis.

Capping ground rent at 0.1% of the freehold value of the property for the purposes of enfranchisement calculation (Schedule 2, Part 5, paragraph 25(4))

44. **Schedule 2 Part 5** sets out the standard valuation method, including the 0.1% cap on ground rent of the open market value of the freehold of the relevant property at **paragraph 25(4)**. This will apply to all calculations of the term value, save for in two exceptional circumstances: where the leaseholder did not pay a premium for their lease on the basis that a higher ground rent would be payable, and where the seller can show that the lease was specifically negotiated to be at a high ground rent, in order to compensate for a corresponding reduction to the premium.

45. The Government considers that this measure engages A1P1. However, introducing the cap will increase access to enfranchisement, make leasehold properties easier to sell (or obtain a mortgage over), and remove the current inequality between leaseholders with high or escalating ground rents and those without. On that basis, the cap on ground rent is compliant, as it is proportionate and justified.

Assumption of merger of intermediate leases with the freehold interest (Schedule 2, para 17(2))

46. **Schedule 2 Part 17(2)** sets out **Assumption 1**, under which various leases are treated as merged with the freehold for valuation purposes. These are leases which, under the LRA 1967 or the LRHUDA 1993, are acquired in a freehold acquisition claim or are deemed to be surrendered and regranted in a lease extension claim. The effect of Assumption 1 is that the presence of intermediate leases in a property will not generally have an effect on the leaseholder's premium.

47. A1P1 is engaged by these provisions, but the Government's view is that they are compliant because a reduction of compensation payable to landlords and/or intermediate landlords as a result of this measure is proportionate and not unduly excessive when measured against the legitimate aims of ensuring that intermediate leases do not present an unreasonable financial or practical impediment to leaseholders wishing to bring an enfranchisement claim, and simplifying valuation methodology. The compulsory valuation methodology produces a fair market value premium for the interests of landlords.

Assumption of compliance by leaseholders with repairing obligations under the lease and disregarding improvement works carried out by the leaseholder (Schedule 2, paras 18 and 19)

48. **Paragraphs 18 and 19 of Schedule 2** sets out **Assumption 3**, which is twofold. First, it must be assumed that the leaseholder has complied with the repairing obligations in their lease. As a result, a leaseholder's property which has fallen into disrepair (in breach of the repairing obligations in the lease) will not be devalued, and so their premium will not be reduced by reason of their breach. Second, it must be assumed that the leaseholder (or previous leaseholder) has not made any improvements to their property. As a result, the premium will not be increased because the leaseholder has, at their own expense, made improvements to their property so that it is more valuable. This will apply when determining the value of a freehold or lease.

49. A1P1 is engaged in that these measures will impact on the premium that is payable in respect of a landlord's interest. However, Government considers that these measures are compliant in that they ensure that the landlord does not lose out financially due to a premium being reduced by a leaseholder's breach of repairing covenant, or that a leaseholder essentially pays twice for improvements that they have carried out at their own expense due to this resulting in an uplift in value and therefore a higher premium.

These measures balance the rights of freeholders/landlords and leaseholders where, depending on the circumstances, they are both otherwise liable to suffer unjustified financial loss.

Assumption that the freehold is subject to any leases granted in accordance with section 36 of the LRHUDA 1993 (Schedule 2, paragraph 19(3))

50. Section 36 of the LRHUDA 1993 and Parts 2 and 3 of Schedule 9 to the Act make provision for situations where the former freeholder in a collective enfranchisement claim must be granted leasebacks of non-qualifying units in the building. **Assumption 4**, per **paragraph 19(3) of Schedule 2** sets out that it must be assumed that the freehold is subject to such leases in the valuation of the freehold, so that the value of such units does not form part of the premium.

51. A1P1 is engaged by this measure as it will impact on the premium that is payable in respect of a landlord's interest. However, Government considers that these measures are compliant as they reduce the premium by excluding from the value of the freehold the units that the freeholder will substantively retaining through receiving a leaseback. This is rationally connected to Government's aims of addressing the historic imbalance between freeholders and leaseholders and increasing access to collective enfranchisement and fairness for leaseholders, as well as reducing the complexity of the enfranchisement valuation process.

Discount for holding over (Schedule 2, para 21)

52. **Paragraph 21 of Schedule 2** makes revisions to the discount available under the current law for the right to "hold over" at the end of the lease term, ie the right to remain in the property on an assured tenancies on expiration of the term pursuant to Schedule 1 of the Local Government and Housing Act 1989. The discount for this right is being retained; however, it will be possible to apply for this in a valuation only where the unexpired term is 5 years or less.

53. A1P1 is engaged by this measure as it will impact on the premium payable to landlords in respect of their interest. The Government considers that the measure is compliant in that the ability to claim the discount is preserved though its availability is limited to unexpired terms that are likely to genuinely give rise to the right being exercised. The operation of the current law in respect of claiming this discount has been fraught with difficulties and has led to a diversity of outcomes. Retaining, though limiting, the

discount is proportionate as a means of achieving the legitimate policy aim of simplifying enfranchisement premium calculations.

Valuation of all intermediate leases on the same basis – repeal of MST and MILI designations and valuation formulae (Para 3(6) of Schedule 5 and paras 10(4) and (5) of Schedule 6)

54. Where the intermediate lease is a "minor superior tenancy" ("MST") (in the case of a house) or a "minor intermediate leasehold interest" ("MILI") (in the case of a block of flats), such interests are valued differently from other intermediate leasehold interests. The purpose of the provisions for MSTs and MILIs is to provide a formula to apply where an interest is of very small value, to save the parties arguing over the appropriate capitalisation rate for what will amount to a small portion of the overall premium. **Paragraph 3(6) of Schedule 5** repeals provisions for valuing MSTs in the LRA 1967 and **paragraph 10(4) and (5) of Schedule 6** repeals equivalent provisions for MILIs in the LRHUDA 1993. Such leases will be valued on the same basis as all other intermediate leases under the new valuation measures.

55. This measure engages A1P1 as it will impact the level of compensation that freeholders/landlords will receive. However, the MST and MILIs are low value intermediate leases with a short reversion. The designations and formulae are complex and create difficulties and disputes in practice. There was widespread approval to the Law Commission's proposal to remove them, as they have little practical use. Therefore, repeal of these measures is considered to be compliant with A1P1 as it is proportionate and is in pursuit of the legitimate policy aim of simplifying the enfranchisement valuation process.

Other compensation (para 2 of Schedule 3)

56. **Schedule 3** deals with other compensation that may be payable as part of the enfranchisement premium. **Paragraph 2(1)** provides that where a person has an interest in property which is not subject to the freehold acquisition or lease extension claim and which is devalued by that claim, compensation is payable. The qualifying leaseholder(s) must also pay reasonable compensation for any other loss or damage to that person's other property that is caused by the claim. **Paragraph 2(2)** provides that the loss or damage can include the loss of development value (in the property subject to the claim), to the extent that this loss is referable to that person's other property. **Paragraph 2(3)** provides that, in determining the amount of compensation payable in a collective enfranchisement claim, it does not matter if the freeholder could

have reduced their loss by requiring a leaseback to be granted to them but chose not to do so.

57. A1P1 is engaged by this measure as it will impact on the amount of compensation that is payable in respect of enfranchisement. The Government considers that the measure is compliant as, by and large, the current law is being preserved. Broadly speaking, "other compensation" will operate as it does now save that the circumstances in which it may be claimed are clearly set out to avoid the new valuation regime in terms of the compulsory standard valuation method and its benefits being undermined. These revisions are proportionate and in pursuit of the legitimate policy aim of simplifying the valuation regime.

Apportionment of the premium (Schedule 2, Part 6)

58. **Part 6 of Schedule 2** is concerned with the apportionment of the premium which has been determined under **Parts 1 to 5 of Schedule 2**. It provides that the premium should be paid on a pro rata basis to all persons whose interests have been devalued or lost as a result of the enfranchisement claim. Paragraph 30(2) provides that no marriage value or hope value is taken into account when each eligible person's loss is calculated, by requiring Assumption 2 to be made in that calculation.

59. A1P1 is engaged by this measure in that it concerns the premium received by landlords and freeholders in respect of the devaluation or loss of their interest. Government considers this measure to be compliant as it pursues the legitimate policy aim of removing complexity from the enfranchisement regimes where there are multiple landlords. Division of the premium through pro rata apportionment simplifies the enfranchisement process and achieves an equitable apportionment of the premium across the parties in a way that is clear and less complicated to apply.

<u>Costs of enfranchisement or lease extension and RTM claims (clauses 12, 13 and 23)</u>

60. **Clause 12** amends the provisions for costs of enfranchisement and lease extension claims under LRA 1967 for houses by replacing the separate costs regimes for enfranchisement and lease extension claims under the LRA 1967.

61. **Clause 13** amends the provisions for costs of enfranchisement and extension under LRHUDA 1993 of flats by replacing the separate costs regimes for collective enfranchisement and lease extension claims under the LRHUDA 1993.

62. **Clause 23** makes RTM companies liable for reasonable costs incurred by the landlord of complying with the right to obtain information required to complete an RTM claim notice under section 82 of the CLRA 2002 and amends the costs provisions for RTM claims by replacing the costs regimes under CLRA 2002.

63. The effect of these clauses is that, as a general rule, leaseholders will no longer be required to make any contribution to the costs incurred by another person arising from an enfranchisement, lease extension or RTM claim. That means landlords and leaseholders/RTM companies will generally have to pay their own costs of a claim.

64. However, for an enfranchisement or lease extension claim, there are four main exceptions to the general rule:

i. Where the court or Tribunal orders the payment of litigation costs in accordance with existing court/Tribunal rules (new sections 19A(4) and 89A(8)). In such a case, the parties will be liable for costs in accordance with the judgment or order.

ii. Where the claim ceases to have effect for a reason other than a permitted reason (new sections 19B, 89B and 89E). Roughly, this exception applies where the leaseholder's claim fails because it is invalid or flawed, or because the leaseholder fails to progress the claim. Where the criteria are met, the enfranchising party will be liable to pay a prescribed amount to the landlord.

iii. Where the statutory price is below a prescribed sum (in other words, a low-value claim) (new sections 19C, 89C and 89F). Where the costs incurred by the landlord are reasonable and do not exceed the prescribed amount, the enfranchising party is liable to pay the difference between the price payable and the costs incurred. Where the costs incurred by the landlord are reasonable and exceed the prescribed amount, the enfranchising party is liable to pay the difference between the price payable and the prescribed sum.

iv. For collective freehold acquisitions only, where the freeholder is required to accept a leaseback of a unit, the nominee purchaser will be liable to pay a prescribed amount to the freeholder (section 89D).

65. For an RTM claim, there are two exceptions to the general no-costs rule:

i. Where the court or Tribunal orders the payment of litigation costs in accordance with existing court/Tribunal rules, the parties will be liable for costs in accordance with the judgment or order; and

ii. Where an RTM claim fails (i.e. is withdrawn, deemed withdrawn, or ceases to have effect) and the RTM company acted unreasonably (in making the claim, or in not withdrawing the claim earlier), the Tribunal may make an order that the RTM company pays the reasonable costs of the landlord (or a third party to the lease, or a statutory manager).

66. The Government considers that A1P1 is engaged by the enfranchisement and lease extension costs measures, but that they are compliant as any interference has the legitimate aims of addressing historic imbalance between freeholders and leaseholders, ensuring fairness for leaseholders and making the enfranchisement process less complex and expensive. The measures are rationally connected to those aims. In particular, it is likely that removing the requirement to pay landlords' non-litigation costs will remove a significant barrier to bringing enfranchisement claims, will encourage landlords to complete the enfranchisement process more quickly and efficiently, and will incentivise landlords to drive down their non-litigation costs, which will also create downward pressure on these costs for leaseholders.

67. Similarly, as regards the RTM costs measure, the Government considers that A1P1 is engaged but it is considered to be compliant as the removal of a landlord's existing ability to recover its non-litigation costs of dealing with a RTM claim is proportionate and justified, and does not impose an excessive burden on landlords. Removing leaseholders' liability for these costs pursues a legitimate aim of improving accessibility to and the practical effectiveness of the RTM. It is also likely to remove a significant deterrent to leaseholders from pursuing the RTM. Furthermore, the landlord will be able to apply to the Tribunal to recover any reasonable non-litigation costs it has incurred where the RTM claim is withdrawn, deemed to be withdrawn, struck off or otherwise ceases to have effect, and the RTM company has acted unreasonably in serving or proceeding with the claim.

Jurisdiction of the county court and the Tribunal (clauses 14-18 and 24-25)

68. **Clause 14** repeals and replaces sections 20 and 21 of the LRA 1967 with new **sections 20, 21, 21A, 21B and 21C** which set out new general jurisdiction provisions applicable under the LRA 1967. Jurisdiction is transferred from the county court to the Tribunal for a number of matters and the Tribunal is provided with additional powers to facilitate the exercise of the tribunal's expanded jurisdiction.

69. **Clause 15** amends the LRA 1967 to transfer jurisdiction for specific matters from the court to the Tribunal. **Subsection (3)** amends various provisions to permit or require payment into the Tribunal, rather than payment into court. **Subsections (4) to (7)** make various consequential amendments to provisions of the LRA 1967 to reflect the Ttribunal's expanded jurisdiction.

70. **Clause 16** amends and inserts new **sections 27A, 91 and 91A** into the LRHUDA 1993 to provide for new general jurisdiction provisions applicable under the LRHUDA 1993. Jurisdiction is transferred from the county court to the Tribunal for a number of matters and the Tribunal is provided with additional powers to facilitate the exercise of the Tribunal's expanded jurisdiction.

71. **Clause 17** amends the LRHUDA 1993 to transfer jurisdiction for specific matters from the court to the Tribunal. **Subsection (3)** amends various provisions to permit or require payment into the Tribunal, rather than payment into court. **Subsections (4) to (14)** make various consequential amendments to provisions of the LRHUDA 1993 to reflect the Tribunal's expanded jurisdiction.

72. **Clause 18** prevents first instance applications to the High Court in Tribunal matters. As part of its inherent jurisdiction, the High Court has the power to make declarations on matters that would otherwise fall within the jurisdiction of another court or tribunal. Clause 18 prevents an application being made to the High Court at first instance in respect of an enfranchisement matter falling within the Tribunal's jurisdiction under the LRA 1967 or the LRHUDA 1993. It is intended to prevent parties from using the High Court as an alternative forum for determining enfranchisement matters at first instance, to avoid litigating in a costs neutral forum. The new provision does not affect the ability to appeal a decision of the Tribunal (under the Tribunals, Courts and Enforcement Act 2007) or the jurisdiction of the High Court to consider judicial review claims in respect of decisions of the tribunal that are not subject to a statutory appeal.

73. **Clause 24** provides for a power to order compliance with obligations arising under Chapter 1 of Part 2 of CLRA 2002. The provision transfers the jurisdiction for making such an order from the county court to the Tribunal, which will now be able to make an order requiring a person who has failed to comply with a requirement imposed under the RTM provisions (of the CLRA 2002) to make good the default within a specified time.

74. **Clause 25** requires, for RTM claims, that no first-instance applications can be made to the High Court in Tribunal matters. As part of its inherent jurisdiction, the High Court has the power to make declarations on matters that would otherwise fall within the jurisdiction of another court or tribunal. Clause 25 prevents an application being made to the High Court at first instance in respect of an RTM matter falling within the Tribunal's jurisdiction under the CLRA 2002. It is intended to prevent parties from using the High Court as an alternative forum to the Tribunal for determining RTM matters at first instance, to avoid litigating in a costs neutral forum. The provision does not affect the ability of a party to appeal a decision of the Tribunal (under the Tribunals, Courts and Enforcement Act 2007) or the jurisdiction of the High Court to consider judicial review claims in respect of decisions of the Tribunal that are not subject to a statutory appeal.

75. The effect of the **clauses 14-18** will be that the Tribunal will generally have exclusive jurisdiction in enfranchisement disputes. Parties will generally meet their own costs of enfranchisement disputes (subject to preserving the Tribunal's power to order one party to pay the other party's litigation costs under Rule 13 of the Tribunal Rules). Terms of a lease which purport to enable a landlord to recover any litigation costs arising out of an enfranchisement claim will be unenforceable.

76. Under **clauses 24-25**, the Tribunal will have exclusive jurisdiction over all RTM disputes, and parties will bear their own litigation costs (subject to preserving the Tribunal's costs powers under Rule 13 of the Tribunal Rules). Any term in a lease which enables a landlord to recover any litigation or non-litigation costs in respect of an RTM claim will be rendered unenforceable.

77. The Government considers that for both enfranchisement and the RTM, on their own, the jurisdictional reforms outlined above would not interfere with parties' A1P1 property rights or Article 6 rights. Both landlords and leaseholders will benefit from the enhanced expertise that the Tribunal, as a specialist tribunal, will be able to offer. With regard to

the RTM jurisdiction reforms, most RTM disputes already fall within the Tribunal's jurisdiction, so the impact is likely to be less than for enfranchisement disputes. In most cases, there will be no change to the costs position, so the proposed measures will not interfere with the parties' Article 6 and A1P1 rights. The exception is in relation to those disputes which previously were litigated in the county court, and those disputes as to whether an RTM company is entitled to acquire the RTM, where landlords will no longer be entitled to recover their costs if they are successful in such proceedings. Under the current law there is a one-way cost shifting towards landlords who are entitled to recover their litigation costs if an RTM company is unsuccessful in an application to the Tribunal as to their entitlement to acquire the RTM. In these cases, the measures are considered to be compliant with Article 6 and A1P1. The measure removing one-way costs shifting in disputes concerning the right to acquire the RTM is an appropriate equalising measure given both the relative inequality and imbalance in bargaining power between the parties, and the unusual nature of the rule given that the Tribunal is generally a costs neutral forum. The measures are considered proportionate in light of the legitimate aims of making RTM claims easier and less costly for leaseholders.

78. The prevention of first instance applications to the High Court is compliant with the Article 6 rights of all parties. These measures are necessary to prevent parties seeking to circumvent the costs neutral Tribunal forum by bringing applications to the High Court instead of the Tribunal which will have exclusive jurisdiction. The ability to appeal a decision of the Tribunal in the usual way remains available, as well as the High Court's jurisdiction to consider judicial review claims in respect of Tribunal decisions not subject to a statutory appeal.

<u>Enfranchisement and extension: miscellaneous amendments (clause 19)</u>

79. **Clause 19** implements **Schedule 6** which contains miscellaneous amendments to the LRA 1967 and the LRUHDA 1993. **Paragraph 3(1)** adjusts the periods in which a landlord can apply to terminate a lease of a house that has been extended under the LRA 1967 for the purposes of redevelopment (and on payment of compensation to the tenant). The new periods take account of the change from 50-year to 990-year lease extensions – see **clause 7**. The landlord can apply to retake possession:

i. in the last 12 months of the term of the tenant's original lease (before it was replaced by the new extended lease);
ii. in the last five years of each 90-year period of the 990-year extension; and

iii. in the last five years of each 90-year period of any further 990-year extension. Sub-paragraph (2) makes the same adjustment to the periods for exercising break rights under the LRHUDA 1993 in relation to an extended lease of a flat.

Redevelopment break rights (Schedule 6, paragraph 3)

80. Paragraph 3 of Schedule 6 amends sections 17 and 61 into the LRA 1967 and the LRHUDA 1993 making provision for redevelopment break rights to be available during the last 12 months of the original lease or the last five years of each period of 90 years of the 990-year extension. Compensation will be paid to leaseholders where break rights need to be exercised.

81. A1P1 is engaged as it concerns landlords' rights to break leases in order to redevelop. Government considers that the measure is compliant. Government's view is that landlords' interests in redevelopment are not correctly balanced against the leaseholder's enfranchisement rights. The improved redevelopment break rights provide landlords with the ability to terminate the lease on payment of compensation to affected leaseholders at regular intervals. As properties cannot be sustained forever, the right to redevelop is important and under the new rights the position of landlords is protected in a manner achieving the right balance with the rights of leaseholders to extend their leases. The measures are proportionate and in pursuit of Government's legitimate policy aim of addressing the historic imbalance between freeholders/landlords and leaseholders.

Commutation of rent under intermediate leases

82. **Schedule 6(6)** inserts new provisions into Schedule 1 of the LRA 1967 and **paragraph 7** inserts a new Part 3 into Schedule 11 of LRHUDA 1993 to make provision for the commutation of rent under intermediate leases. A right for intermediate landlords to elect to reduce their rental liability to a superior landlord (such as a freeholder or another intermediate landlord) following statutory claims for lease extension and ground rent buy outs (GRBOs) by their leaseholders. Lease extensions and GRBOs extinguish the ground rent income the intermediate landlord receives and so they have less income to service their own rental liability due to the superior intermediate landlord or freeholder. This pushes their interest into a negative value balance and may mean they are unable to cover their rent under their intermediate lease. The new commutation right allows intermediate landlords to reduce their rental liability in proportion to the reduced ground rent income. In return, the superior landlord will receive a share of the premium that the intermediate landlord received from the lease extension or GRBO

claim. Where there are multiple intermediate landlords affected and using the right, the rent will be commuted proportionally across the landlords.

83. The measures engage A1P1 as they concern the liability for rent under intermediate leases post-lease extensions and GRBO claims and its pro rata reduction. Government considers that the measures are compliant. The policy aim is to make enfranchisement processes less complex and to address the unsatisfactory position under the current law for both freeholders and intermediate landlords in lease extension claims. The measures will ameliorate the current position where a lease extension could create a negative value intermediate lease, which could then be used to gain a windfall for the intermediate landlord at the expense of the freeholder in a subsequent collective enfranchisement claim. The measures also prevent intermediate landlords being left with a shortfall in the rental income they use to pay their own rent, where that shortfall is attributable to the sublessee's lease extension claim. The majority of responses to the Law Commission's consultation on a new right to commute the rent, including freeholders and landlords, were in favour of it.

Lease extension rights for shared ownership leaseholders and exclusion from freehold acquisition rights

84. **Parts 2 and 3 of Schedule 6** extend the new 990-year lease extension right under the Bill to shared ownership leaseholders of both houses and flats, though exclude such leases from freehold acquisition rights. In the case of flats, a shared ownership lease is excluded from taking part in a collective enfranchisement claim until the lease has been staircased out to 100%.

85. **Paragraphs 12 and 21** make provision to deal with staircasing payment losses where the immediate landlord under a shared ownership lease is not the party granting the extension. This would happen if the landlord under the shared ownership lease is an intermediate landlord whose term is not sufficient to grant the 990-year extension and the claim needs to be brought against a superior landlord or, more likely, the freeholder. In such a situation, either the landlord granting the lease extension or a landlord under a relevant intermediate lease (there may be more than the one granted to the shared ownership provider) can apply to the Tribunal for an order varying each relevant intermediate lease to include a payment sharing term. A payment sharing term is a term making provision as to how staircasing payments are to be shared between the immediate landlord under the newly extended shared ownership lease and each

landlord under the relevant intermediate leases in a fair manner which reasonably reflects the staircasing losses that are incurred.

86. **Paragraph 20**, in respect of collective enfranchisement of buildings comprising any shared ownership flats, where the landlord under that lease is the former freeholder, sets a requirement for a mandatory leaseback of such flats to be granted to the former freeholder of such flats.

87. A1P1 is engaged by these measures in the same way as it is respect of the 990-year lease extension for ordinary leaseholders under **clauses 7 and 8,** discussed above. Government considers that the measures are compliant. The freeholder/landlord will be adequately compensated under the new valuation regime, which per **paragraph 25(11) of Schedule 2** can be applied in a bespoke manner to take account of the shared ownership nature of the lease. There is the ability to vary leases in scenarios where the landlord under the shared ownership lease is an intermediate landlord so as that staircasing payments can be shared fairly and in accordance with losses incurred. The measures also pursue the legitimate policy aims of addressing the historic imbalance between freeholders/landlords and shared ownership leaseholders and ensuring fairness and parity for shared ownership leaseholders as against ordinary leaseholders.

Preservation of existing law for certain purposes (clause 20)

88. **Clause 20** inserts new clause 7A into the LRA 1967 which preserves the right of leaseholders to acquire the freehold of a house using the existing basis for calculating premiums, under section 9(1) of the LRA 1967.

89. The Government considers that A1P1 is engaged by this measure (which preserves this existing law) but is compliant as it pursues a legitimate aim in the public interest (namely, righting the injustice that would be caused to occupying leaseholders of qualifying properties if the law were repealed). The retention of the section 9(1) valuation basis strikes a fair balance and is consistent with the Government's aims of reducing the premium payable by leaseholders.

New right to replace rent with peppercorn rent (clause 21 and Schedule 7)

90. **Clause 21** provides for a new right to buy out the ground rent (GRBO) for existing long leases of 150 years or more. The right is also available to shared ownership leaseholders though only in respect of the ground rent payable on the "acquired share". This right is set out in **Schedule 7**.

91. The exercise of the GRBO right involves the leaseholder serving a rent variation notice to effect a variation of the lease permanently, to replace the (or in the case of shared ownership the relevant part of the) rent with a peppercorn rent. The premium is the same as the "term" part of the premium payable on a lease extension under Part 7 of Schedule 2. The calculation of the premium for the GRBO therefore will be in accordance with the compulsory valuation method, including the application of the ground rent cap where the ground rent exceeds 0.1% of the market value of the freehold title of the property in vacant possession. This premium reflects the capital value of the landlord's right to receive a ground rent for the remainder of the lease.

92. The GRBO right applies to all long leases save for those let by CLH organisation or pursuant to home finance plans (**Schedule 7 paragraph 2(2**)). At **paragraph 4** there are provisions for the suspension of a rent variation notice where collective enfranchisement proceedings are brought before or after the service of a rent variation notice.

93. The landlord is obliged to service a counter notice admitting or denying the right to claim the GRBO (**paragraph 5**). Where the claim or proposed terms of the variation are disputed, a determination of the Tribunal may be sought per **paragraph 6**. Where the landlord admits the GRBO claim or the Tribunal determines an application in favour of the leaseholder, the rent variation notice becomes enforceable and there is an obligation to vary the lease upon payment of the premium (**paragraph 7**). Failure to vary the lease is enforceable through the Tribunal in accordance with **paragraph 9**. The right to commute the ground rent under any relevant intermediate leases which applies to lease extension claims (discussed above) also applies here via the provisions in **paragraph 8**. **Paragraph 11** provide for circumstances in which a rent variation notice ceases to have effect.

94. As with lease extensions, **paragraph 12** provides that leaseholders will generally be liable only for their own costs in respect of GRBO claims. However, provision is made at **paragraph 12** for situations where leaseholders will be obliged to meet their landlord's costs. These are essentially where the Tribunal makes an order under rule

13 of the Tribunal Rules as a result of the leaseholder's conduct, or, per **paragraph 13**, leaseholders will be liable for a prescribed sum of their landlord's non-litigation costs where a claim fails or where, in a successful GRBO claim, the premium payable is less than a prescribed amount (see **paragraph 14**). In such a case the leaseholder would need to pay the difference between the premium payable and the landlord's reasonable costs, subject to a prescribed amount.

95. The Government considers that A1P1 is engaged by this measure. This is on the basis that a landlord's rental income stream is turned, through the exercise of the GRBO right, into a fixed, one-off payment. Government considers the measure to be compliant as it is in pursuit of a legitimate policy aim of addressing the historic imbalance between freeholders/landlords and leaseholders. Some leaseholders may have a sufficiently long lease and do not need or wish to extend their lease, though have a need or wish to buy out their ground rent, particularly where this is onerous, or will become onerous in the future. Extending this right to leaseholders will create greater fairness by giving them the ability to address their rental liability without having to progress an unnecessary extension of the lease. The interests of freeholders and landlords is protected in that they will be adequately compensated for the loss of income through the premium and they will have the ability to deny a claim where it lacks merit and also have recourse to the Tribunal in respect of this. Leaseholders will have the protection of being able to bring cases to the Tribunal where there is a dispute as to the claim or the terms of the variation, or where a landlord refuses, post-admission of their claim or post-Tribunal determination, to vary the lease. The position of any intermediate landlords is protected through the right to commute the rent under intermediate leases being extended to the GRBO. These GRBO measures are rationally connect to Government's policy aim and is proportionate in pursuit of the same

PART 3: REGULATION OF LEASEHOLD

Service charges (clauses 26-31)

96. **Clause 26** extends regulation to fixed service charges. It amends existing provisions to make clear those that will apply to variable service charges, whilst new provisions concerning service charge demands (clause 28), annual reports (clause 29), rights to obtain information (clause 30), enforcement duties (clause 31), and duty to provide information about insurance (clause 33) will apply to leaseholders who pay a fixed service charge.

97. **Clause 27** provides a power for the Secretary of State to make regulations under which the form and content of a Section 20B(2) notice and how it can be provided can be prescribed. **Clause 28** requires a service charge demand to be in a prescribed form before a landlord can demand payment and **clause 29** requires service charge accounts and annual reports to be provided. **Clause 30** provides a right to require landlords to provide information to a leaseholder upon request within a certain timeframe, and **clause 31** provides that where a landlord, or a superior landlord in respect of a request for information, has failed to comply with a statutory obligation, the leaseholder can apply to the appropriate tribunal for an order requiring the landlord to comply and the appropriate tribunal shall have the power to order the landlord pay the leaseholder damages in respect of that failure.

98. The Department considers that A1P1 is engaged as the new measures together represent a limited interference with a landlord's peaceful enjoyment of their possessions. However, the measures are considered to be compatible because any interference is justified, proportionate and strikes a fair balance between the interests of landlords and leaseholders.

99. The fixed service charge measure is considered to strike a fair balance as currently leaseholders with a fixed service charge have no means of challenging landlords in relation to how their money is spent on services. The fact that a charge is "fixed" should not mean that there should not be any accountability in respect of expenditure. The remaining measures, which build on and improve transparency requirements, engage A1P1 because they impact on how landlords manage their properties and the service charges levied. They are proportionate and justified, and balance the interests of both landlords and leaseholders.

100. The Government considers that the tribunal enforcement measure will engage both Article 6 and A1P1, because the Tribunal will have the discretionary power to award damages, subject to a maximum amount, where a landlord has failed to comply with a statutory duty. However, the measure is compliant with both Article 6 and A1P1 because there will be access to an independent and impartial tribunal for the determination of whether a damages award should be made, and in what amount at the tribunal's discretion. Any decision will be subject to the tribunal's usual routes of appeal, ensuring that the proposal is compatible with Article 6.

Insurance (clauses 32-33)

101. **Clause 32** limits the ability of landlords to charge buildings insurance costs back to leaseholders through the service charge, providing them with a right to claim damages where excluded insurance costs are charged, and providing a right for landlords to obtain costs attributable to permitted insurance payments through the service charge.

102. The Government considers that, save in the rare cases where there is an express contractual right for landlords to retain any commission (discussed below), A1P1 rights are not engaged by this measure, because there is no entitlement to these monies in ordinary contractual arrangements. However, even if A1P1 were engaged by this measure, it is considered that the proposed ban is compliant as it pursues legitimate aims in the public interest (namely, to rectify an opaque and unjust system of remuneration, which is increasing all building insurance premiums, for the benefit of all leaseholders, and to provide leaseholders with adequate information to enable them to challenge the reasonableness of their buildings insurance policy cost more easily). Furthermore, the Tribunal would be required to consider the facts of any individual case, before making any award of damages, which assists in demonstrating the proportionality of the measures. Any award of damages made would also be proportionate in amount, being restricted to three times the amount of the commission received. Therefore it is considered that any interference with landlords' A1P1 rights is justified and proportionate.

103. In regard to the rare cases where there might be a contractual right to insurance commissions, there is likely to be a higher likelihood of there being an interference with an existing property right. However, it is still considered that this measure reflects a clear policy aim in preventing exploitive commissions and remains a proportionate way to address exploitive commissions, particularly considering the ability to charge an insurance handling fee which will mean landlords can continue to charge for actual work done and costs incurred.

104. **Clause 33** requires a landlord to provide specified information regarding insurance to leaseholders and provides that an application can be made to the appropriate tribunal in order to ensure compliance.

105. It is considered that A1P1 is engaged by this measure because it will arguably interfere with landlords' enjoyment of their property. However, the Government considers that this measure is compliant as any interference with A1P1 rights pursues a legitimate aim, is justified and proportionate, and strikes a fair balance between the fact that the landlord will be required to provide specified information to leaseholders concerning the

insurance of their dwelling, whilst improving the rights of leaseholders to enforce the duty by making an application to the appropriate tribunal.

106. It is also considered that Article 6 is engaged because there will be access to the appropriate tribunal for an order requiring the landlord to comply with its statutory duties. The landlord can also be required to pay the leaseholder damages for failure to comply, but this will be at the discretion of the tribunal. Any decision will be subject to the tribunal's usual routes of appeal, ensuring that the proposal is compatible with Article 6.

Administration charges (clause 34)

107. **Clause 34** requires a landlord to publish an administration charge schedule, and allows for an application to be made by the leaseholder to the appropriate tribunal in order to ensure compliance.

108. The Government considers that A1P1 rights are engaged by the transparency measures described because they will arguably interfere with landlords' enjoyment of their property.

109. However, these measures are considered to be compliant because any interference with A1P1 rights pursues a legitimate aim, is justified and proportionate, and strikes a fair balance between the fact that the landlord will be required to publish and provide an administration charge schedule whilst improving the rights of leaseholders to enforce the duty by making an application to the appropriate tribunal.

110. Article 6 is engaged because there will be access to the appropriate tribunal for an order requiring the landlord to comply with its statutory duties. The landlord can also be required to pay the leaseholder damages for failure to comply, but this will be at the discretion of the tribunal. Any decision will be subject to the tribunal's usual routes of appeal, ensuring that the proposal is compatible with Article 6.

Litigation costs (clauses 35-36)

111. **Clause 35** limits the right of landlords to claim litigation costs from leaseholders. It provides that no service charge or administration charge will be payable by a leaseholder, unless the relevant court or tribunal has made an order that the general prohibition should not apply.

112. **Clause 36** provides a right for leaseholders to claim litigation costs from landlords: a landlord must pay a leaseholder's litigation costs of relevant proceedings to which the landlord and leaseholder are a party and which are connected to the lease, if ordered to do so by the relevant court or tribunal.

113. It is considered that A1P1 rights are engaged by these measures, since the proposals affect property rights of landlords and homeowners. A1P1 is engaged by clause 35 because it will arguably interfere with landlords' enjoyment of their property (namely that they cannot pass litigation costs through the service charge, or seek to demand them as administration charge from a leaseholder to proceedings, unless they have first obtained an order from the relevant court or tribunal). A1P1 is engaged by clause 36 because the implied term represents a control of use of the existing terms of the lease.

114. However, it is the Government's position that these measures are compliant as any interference with A1P1 rights pursues a legitimate aim, is justified and proportionate, and strikes a fair balance between the fact that the landlord will be required to obtain an order from the relevant court or tribunal before it can recover its litigation costs, and the implied term requiring the landlord to pay the leaseholder's litigation costs only takes effect if the relevant court or tribunal has made an order requiring the landlord to pay the leaseholder's litigation costs. Furthermore, the relevant court or tribunal will only make a costs order in favour of either landlords or leaseholders if it is "just and equitable in the circumstances to do so".

115. Article 6 is engaged by these measures because there will be access to the relevant court or tribunal for an order:
    i. limiting the landlord's ability to recover its litigation costs through the service charge or as an administration charge; and
    ii. allowing the leaseholder to seeks its litigation costs from the landlord.

116. However, any decision will be subject to the relevant court or tribunal's usual routes of appeal that will ensure that the proposal is compatible with Article 6(1).

<u>Non-litigation costs (clause 37)</u>

117. **Clause 37** provides a restriction on recovery of non-litigation costs incurred, or to be incurred, by a landlord in connection with proceedings before a court or tribunal in connection with a relevant claim, from a non-participating leaseholder. It also provides that an application can be made by the non-participating leaseholder to the appropriate tribunal in order to ensure compliance.

118. Relevant claims include an enfranchisement or extension of a lease under the Leasehold Reform Act 1967 or Leasehold Reform, Housing and Urban Development Act 1993, or a claim to exercise the right to manage under the Commonhold and Leasehold Reform Act 2002.

119. It is considered that A1P1 rights are engaged by this measure, since the proposal affects the property rights of landlords. A1P1 is engaged by clause 37 because it will arguably interfere with landlords' enjoyment of their property, namely that they cannot demand non-litigation costs of relevant claims from non-participating leaseholders through the service charge.

120. However, it is the Government's position that the measure is compliant as any interference with A1P1 rights pursues a legitimate aim, is justified and proportionate. The recovery of non-litigation costs of relevant claims from non-participating leaseholders is not understood to be current practice, but clause 37 serves to prevent landlords from circumventing the restriction on recovery of non-litigation costs under clauses 12 and 13 from participating leaseholders save in specified circumstances. It strikes a fair balance between the fact that the landlord will not be able to recover its non-litigation costs from non-participating leaseholders, whilst encouraging leaseholders and RTM companies to bring relevant claims.

121. Article 6 is engaged by these measures because there will be access to the relevant court or tribunal for an order that any person paid a prohibited amount must return all or any part of it to the leaseholder. However, any decision will be subject to the relevant court or tribunal's usual routes of appeal that will ensure that the proposal is compatible with Article 6(1).

<u>Sales information requests (clauses 40 and 66 - 69)</u>

122. **Clauses 40** (in the leasehold context) and **66-69** (in the estate management context) will regulate the practice of providing sales information, to ensure that it is more consistent and transparent. A landlord (or estate manager, on a managed estate) will

be obliged to provide specific sales information if the leaseholder (or homeowner on a managed estate) is contemplating selling their property and requests information relevant to the contemplated sale. The clauses provide that if the landlord (or estate manager) does not hold the required information, they must request the information from whoever they consider does hold it. The clauses also provide that a maximum timeframe and maximum cost may be imposed on the landlord (or estate manager) to provide the specified sales information, and allows for a tribunal to order compliance.

123. A1P1 is engaged by these measures as they impact on how parties deal with the sale of their proprietary interests. However, it is considered that the measures are compliant as any infringement is proportionate, in the context of the legitimate policy aims of limiting the excessive costs that are being demanded by some landlords and estate managers, and imposing time limits for the provision of information.

PART 4: REGULATION OF ESTATE MANAGEMENT

Limitation of estate management charges and appointment of substitute manager (clauses 44-65)

124. **Clause 45** places general limitations on estate management charges, and **clause 46** provides that estate management charges must be reasonable. **Clause 47** provides when consultation is required, where the costs to be incurred by an estate manager on works exceed "an appropriate amount" and a homeowner is required to pay a contribution towards the costs of those works. **Clause 48** provides time limits for providing a demand for payment of an estate management charge, and **clause 49** provides that an application may be made to the appropriate tribunal for a determination as to whether an estate management charge is payable.

125. **Clause 50** provides that an estate management demand must meet requirements to be set out in regulations, and **clause 51** requires estate managers to provide annual reports. **Clause 52** requires estate managers (and any other relevant parties) to provide specified information at the request of the owner of the managed dwelling, and **clause 53** provides further detail about such requests. **Clause 54** provides for a right to enforce an estate manager's obligations under clauses 50 to 53.

126. **Clause 55** defines an "administration charge", and **clause 56** requires estate managers to produce and publish administration charge schedules, setting out the amounts payable by a homeowner when an administration charge arises. **Clause 57** provides

for a right to apply to the appropriate tribunal to enforce the obligation to publish administration charge schedules. **Clause 58** provides that administration charges must be reasonable and **clause 59** provides for a right to challenge administration charges in the appropriate tribunal.

127. **Clause 61** requires one or more homeowners who are intending to apply for a substitute manager over an estate to present their estate manager with a notice of complaint setting out the ways in which the manager has breached its estate management obligations or has levied charges that are unreasonable. **Clause 62** gives jurisdiction to the appropriate tribunal to appoint a substitute manager to carry out estate management functions in place of the estate manager.

128. **Clause 63** requires a final warning notice to be served on the estate manager after expiry of a period of 6 months following service of the complaint notice, before an application can be made to the tribunal (unless the tribunal has dispensed with the notice requirements). **Clause 64** sets out the criteria before a tribunal will make an appointment order. **Clause 65** empowers the tribunal to make other orders relating to the estate manager's functions that are ancillary to the main appointment order, and also to set conditions on variation and discharge of the order.

129. As regards A1P1 rights, these provisions do not seek to restrict or impair an estate manager's exercise of its repairing and maintenance obligations over an estate, except where there has been an omission to perform those obligations. Neither will they impair the manager's use and enjoyment of that property, except where those obligations have not been performed and the tribunal considers that an independent manager ought to be appointed to carry out those duties, up to the point in time that the omission has been rectified.

130. The estate manager, as part of its management functions, will enter into contracts with third parties and will seek to recover its own costs as part of the estate management charge. Both of these elements could be considered possessions within the scope of A1P1. The ability of a homeowner on a freehold estate to challenge the reasonableness of the costs they are required to pay in the tribunal (clauses 46, 49 and 59) could interfere with a manager's enjoyment of those possessions. Likewise, if an estate manager has failed to conduct a proper consultation process (clause 47) on major works with homeowners (or has failed to ask for dispensation from the process from the tribunal), the charge a homeowner is required to pay will be capped, resulting in an

interference with a manager's A1P1 rights. However, owners of leasehold properties are already able to challenge the reasonableness of their service charges in the tribunal under the service charge provisions of the LTA 1985. They also have the right to be consulted on any major works. These measures ensure that these provisions are compliant as any A1P1 interference is justified by providing equal rights to all homeowners, irrespective of whether they own a leasehold or a freehold property. The measures also protect homeowners from excessive costs and from works which are unreasonable in relation to the estate manager's obligations. The tribunal will be empowered to assess whether those costs and works are reasonable and will tailor its order according to the circumstances of the case.

131. It is considered that there are 3 ways in which the freehold estate provisions in the Bill engage the civil limb of Article 6:
    i. The ability of homeowners to challenge the reasonableness of estate management charges and administration charges (clauses 49 and 59).
    ii. The penalty regime that is to be established to sanction estate managers who fail to comply with an obligation to provide information/reports etc (clause 54).
    iii. The appointment of a substitute manager to perform the obligations of an estate manager (clauses 61 to 65).

132. The Government considers that these measures are compliant as they serve a public interest and are intended to rectify the imbalance between owners of leasehold properties, who enjoy rights in respect of the service charges they pay under sections 18 to 30 Landlord and Tenant Act 1985, and homeowners on freehold estates, so that all categories of homeowner can enjoy the same or similar rights to regulate the maintenance and upkeep of their estate. Furthermore, the Tribunal Procedure (First-Tier Tribunal)(Property Chamber) Rules 2013 provide the framework for estate managers to receive a fair hearing in the determination of their civil rights.

PART 5: LEASEHOLD AND ESTATE MANAGEMENT: REDRESS SCHEMES

133. **Clause 72** sets out a requirement for bodies that provide property or estate management in England (either as a landlord, or a freehold estate manager) to join an approved (or designated) redress scheme. **Clause 73** allows for such redress schemes to operate under a voluntary jurisdiction, and **clause 74** allows the Secretary of State to give financial assistance to a scheme. **Clause 75** provides for regulations to set out the conditions that are to be satisfied before a redress scheme is approved or designated, as well as further detail about the process for approval and designation.

134. **Clause 76** provides for an enforcement authority to impose a financial penalty for breaching the requirement to join a scheme, **clause 77** provides for maximum financial penalties and **Schedule 9** makes further provision about the imposition of financial penalties. **Clause 78** allows for regulations to be made that would allow for a redress scheme's decisions to be enforceable as if they were an order of the court.

135. **Clause 79** makes further provision about lead enforcement authorities, and **clause 80** allows for guidance to be issued to enforcement authorities and redress scheme administrators regarding co-operation.

136. It is considered that these clauses engage the Article 6 rights of scheme members (ie landlords or freehold estate managers, who are required by these clauses to join a redress scheme). Where a leaseholder (or homeowner on a managed estate) decides to use the redress scheme to pursue resolution of a complaint (instead of pursuing a judicial remedy) and accepts the scheme's determination, the scheme member will be bound by the determination and deprived of the opportunity for the dispute to be decided by a court.

137. Where the leaseholder (or homeowner on a managed estate) makes a complaint to the redress scheme, the scheme member may be prevented by its terms of membership of the scheme from commencing proceedings in respect of the subject matter of the complaint, as a redress scheme cannot deal with a complaint that is, or has been, the subject of court proceedings.

138. A scheme member may incur costs in complying with awards of redress, including awards which may be outside the scope of what a court might order, and a scheme member that fails to comply with a decision made under the scheme could face enforcement under the scheme and, ultimately, expulsion.

139. The Government's position is that any interference with scheme members' existing rights to have their disputes with leaseholders (or homeowners on managed estates) resolved by way of court or tribunal proceedings, as a result of the redress provisions in the Bill, pursues a legitimate aim and strikes a fair balance between the interests of scheme members and leaseholders (or homeowners on managed estates). The fundamental aim of the policy is to address the prevailing imbalance in access to justice faced by leaseholders whose landlord does not employ a managing agent, and is not

a social landlord, but carries out their own property management on their leasehold property. Similarly, there is also a gap in redress for homeowners on freehold estates where the estate management company does not employ a managing agent.

140. The following safeguards ensure compatibility with scheme members' Article 6 rights:

i. the scheme operator must act independently and impartially and ensure that any process for investigating and determining complaints is fair and transparent;

ii. the Secretary of State is required to act compatibly with Convention rights when making regulations setting conditions for approval of a scheme (which are subject to the affirmative procedure) and when exercising the approval function;

iii. in exercising the approval function the Secretary of State will need to act compatibly with ECHR rights, which will mean being satisfied that the individual appointed is suitably independent and impartial and that their terms of appointment provide for them to act independently and impartially;

iv. it is intended that the redress scheme will be a member of the Ombudsman Association, whose criteria for recognition are: independence, fairness, effectiveness, openness and transparency and accountability;

v. a redress scheme would also be expected to have a procedure for scheme members and leaseholders (or homeowners on managed estates) to complain about the scheme's handling of a complaint.

vi. although most of its complaints are expected to be resolved based solely on written evidence, it is expected that the scheme operator will be required to consider whether to hold an oral hearing in certain circumstances;

vii. determinations made by the scheme operator would be amenable to judicial review;

viii. the imposition of financial penalties is subject to the procedural safeguards in Schedule 9 to the Bill, including requirements on the enforcement authority to serve a notice of intent, allow the recipient 28 days to make written representations about the proposal to impose a penalty and issue a final notice giving reasons if the

decision is taken to impose the penalty, with the final notice being subject to a right of appeal to the First-tier Tribunal;

ix. any enforcement authority would also be required to act compatibly with Convention rights under section 6 of the Human Rights Act 1998; and

x. a decision to expel a member would be subject to procedural safeguards.

141. The following aspects of the redress provisions are considered to interfere with the peaceful enjoyment of property by a landlord (or estate manager, on a managed estate):

i. the imposition of a requirement to join a redress scheme controls the use of their property because they must become a member before providing estate management in relation to their property;

ii. the payment of membership fees will add to the cost of estate management;

iii. the cost of complying with awards of redress (especially where such awards are outside the scope of what a court might order);

iv. the possibility of being expelled from a redress scheme, which might mean that a landlord (or estate manager) would have to exit the sector or face enforcement action; and

v. non-compliance could lead to financial penalties being imposed.

142. The Government's view is that the measures are compliant as any interference with landlords' (or estate managers') A1P1 rights is justified, proportionate, and strikes a fair balance between their interests and those of leaseholders (or homeowners on managed estates). It will serve a legitimate aim in the general interest, namely to improve access to justice for leaseholders (or homeowners on managed estates) and put them on a par with consumers in other areas of the housing sector and other sectors who already benefit from access to redress schemes. It will also enable them to seek redress in circumstances where they may now often be deterred from doing so because of the potential expense and stress involved in litigating, or where court or tribunal relief is not available in relation to their complaint.

143. Article 8 is considered to be engaged by clause 75, which deals with the approval and designation of redress schemes. Clause 75(3)(f) requires the scheme rules to make provision for information to be shared with other redress schemes and enforcement authorities, including the Secretary of State, which engages the Article 8 rights of the scheme members and complainants. The requirement for a landlord (or estate manager) to be a member of the scheme means that they are obliged to provide such information to the scheme as is provided for in the legislation, which may include personal data.

144. Such information will not be available to the public but only to the redress scheme, other redress schemes (for the purposes of co-operating in the exercise of redress functions) and enforcement authorities (for the purposes of enforcement). Information may also be provided to the Secretary of State for monitoring purposes. As personal data will not be in the public domain and only used for purposes provided for in the legislation, it is not anticipated that there will be any adverse consequences for members or complainants.

145. There will be procedural safeguards in place to protect personal data. The recipients of the data must observe the data protection principles in Article 5 of the UK General Data Protection Regulation ("UK GDPR") when processing it. If there were a breach of the data protection principles, the person affected could make a complaint to the Information Commissioner's Office.

146. The redress scheme would be unable to operate without access to the necessary information, and the Government considers that these measures are compliant with Article 8. Any interference with landlords' (or estate managers') Article 8 rights is proportionate to the aim of providing leaseholders (and homeowners on managed estates) with a quicker, cheaper and more accessible means of resolving complaints against landlords (or estate managers) than is currently available.

PART 6: RENTCHARGES

147. **Clause 82** extends the definition of an estate rentcharge to also include a rentcharge created for meeting the costs of improvements to the land affected by the rentcharge.

148. **Clause 83** regulates the remedies for arrears of regulated rentcharges, which is any rentcharge that could not be created in accordance with the Rentcharges Act 1977, s. 2. This does not affect estate rentcharges.

149. The most draconian remedies under ss. 121-122 of the LPA 1925, such as the creation of rentcharge leases, will be no longer be permitted in respect of a regulated rentcharge from the date the Bill was introduced.

150. Regulations may limit, or even prohibit, the amount payable by a landowner in respect of enforcement action, and rent owners will be required to undertake certain steps before enforcement action can be commenced.

    The Government considers the A1P1 is engaged by these measures. However, they are considered to be compliant as they are clearly justified and proportionate in light of the legitimate policy aim of ensuring that landowners are no longer liable to suffer unjustified loss due to the use of disproportionate and oppressive remedies by rent owners. The rentcharge itself is not being further restricted than currently under the Rentcharges Act 1977, nor is the rent owner to be deprived of a rentcharge lease granted before the First Reading of the Bill.

151. The interference is in respect of the remedies that can be used by the rent owner under the LPA 1925 to recover or compel payment, the requirement to give notice to the landowner before enforcement action is taken and to limit, through regulations, the amount payable by a landowner where the rent owner wishes to take enforcement action or in respect of the grant and registration of a rentcharge lease.

152. Certain remedies under the 1925 Act were appropriate when rentcharges served a legitimate purpose and the amounts involved were significant. The effect of inflation means that the sums to be recovered have become insignificant and the remedies are no longer proportionate nor justified. The proposed restrictions are therefore a proportionate interference with the rent owner's Convention rights.