LEASEHOLD AND FREEHOLD REFORM BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

What these notes do

These Explanatory Notes relate to the Lords Amendments to the Leasehold and Freehold Reform Bill as brought from the House of Lords on 24 May 2024 (Bill 232).

- These Explanatory Notes have been prepared by the Department for Levelling Up, Housing and Communities in order to assist the reader of the Bill and the Lords amendments. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes should be read alongside the Lords amendments. They are not, and are not intended to be, a comprehensive description of the Lords amendments.

Commentary on Lords Amendments

Lords Amendments to Clause 12: Restriction on Title

Lords Amendments 1 to 3

1. These amendments would make minor adjustments to the language of Clause 12 to resolve an operational issue presented by current drafting, by being explicit that the word 'registered' means 'completed by registration'.

Lords Amendments before Clause 24

Lords Amendment 4

2. This amendment would require the Crown to comply with Part 1 of the legislation. This amendment would bind the Crown to the provisions contained within Part 1 of the Bill, and should be read in conjunction with Lords Amendment 32.

Lords Amendments to Clause 27

Lords Amendment 5

3. This amendment would prevent a landlord and leaseholder voluntarily agreeing to a 12-month restriction on a leaseholder making a repeated enfranchisement or extension claim for a leasehold house where a previous claim had been withdrawn by the leaseholder. The amendment repeals part of section 23 of the Leasehold Reform Act 1967, removing the ability for landlords and leaseholders to agree a voluntary bar of 12 months. Landlords will not be able to stop leaseholders making a further enfranchisement claim where they wish to.

Lords Amendments to Clause 41

Lords Amendment 6

4. Amendment 6 would make a minor correction of a grammatical error in Clause 41 so that it refers to the appropriate tribunal.

Lords Amendments to Clause 45

Lords Amendment 7

5. Amendment 7 moves material from section 175 of the Housing Act 1985 into new section 7A of the 1967 Act, which deals with a number of exemptions for the valuation of a freehold acquisition under a "preserved law claim", known as a section 9(1) claim. This amendment would prevent the tenants listed from exercising the right in new section 7A of the LRA 1967 to have that Act apply without the amendments in the Bill.

Lords Amendments after Clause 45

Lords Amendment 8

6. This amendment is a paving amendment, inserting a new clause which will provide for a new Schedule (Schedule 8), which contains consequential amendments to other legislation that is affected by this Bill.

Lords Amendments to Clause 51

Lords Amendment 9 and 10

7. Amendment 9 would replace "as follows" with "in accordance with". This is a consequential amendment required due to amendment 10.

8. Amendment 10 would provide further clarification on which parts of the regulatory regime for service charges should only apply to landlords who charge and leaseholders who pay a variable service charge. The amendment would set out where measures from the Landlord and Tenant Act 1987 and the Commonhold and Leasehold Reform Act 2002 apply only to leaseholders who pay a variable service charge.

Lords Amendments to Clause 53

Lords Amendment 11

9. Amendment 11 would replace "the Landlord and Tenant Act 1987 ("the LTA 1987")" with "the LTA 1987". This would provide consistency across the Bill with reference to existing legislation.

Lords Amendments to Clause 54

Lords Amendment 12 to 16

10. Amendment 12 would clarify the process for ensuring the written statement of accounts is prepared to an appropriate standard. It implies into leases that the landlord must provide a written report to leaseholders which is prepared by a qualified accountant in line with specified standards. The report would also need to include a statement from the accountant detailing that the report is a faithful representation of what it purports to represent. Landlords must also provide relevant information on request to the qualified accountant to help prepare that report. Leaseholders are required to pay a fair and reasonable contribution to any costs incurred by the landlord in obtaining the report.

11. Amendment 13 makes it clear that any contribution by the leaseholder towards the cost of the preparation of the written report is to be regarded as a variable service charge, and payable irrespective of the terms of the lease, contract or other arrangement.

12. Amendment 14 would replace "certification of" with "report on", and is consequential on amendment 12.

13. Amendment 15 would enable the appropriate authority to expand the meaning of "the necessary qualification" in Section 28(2) of the Landlord and Tenant Act 1985, to allow for a wider range of individuals beyond a statutory auditor under Part 42 of the Companies Act 2006 to prepare the written report required under amendment 12.

14. Amendment 16 would make provisions about the making of regulations concerning the meaning of "the necessary qualification", including that any regulations made would be subject to the affirmative procedure.

Lords Amendments to Clause 60

Lords Amendment 17 to 21

15. Amendment 17 would signpost new section 20CB.

16. Amendment 18 would provide for section 20CB which would allow the "appropriate authority" to make regulations to provide for circumstances where (a) section 20CA(1) does not apply; or (b) the effect of section 20CA(1) is suspended until an event of a specified description occurs. Regulations made under section 20CB are subject to the affirmative procedure.

17. Amendment 19 would provide that regulations under paragraph 5C of Schedule 11 are subject to the affirmative procedure.

18. Amendment 20 would signpost new paragraph 5C.

19. Amendment 21 would provide for paragraph 5C which would allow the "appropriate national authority" to make regulations to provide for circumstances where (a) paragraph 5B(1) does not apply; or (b) the effect of paragraph 5B(1) is suspended until an event of a specified description occurs. Regulations made under paragraph 5C are subject to the affirmative procedure (as provided for by amendment 19).

Lords Amendments to Clause 77

Lords Amendment 22 and 23

20. Amendments 22 and 23 would replace "provides" and "provided" with "carries out" and "carried out" respectively, to align the terminology across Part 5 of the Bill.

Lords Amendments to Clause 81

Lords Amendment 24

21. Amendment 24 would provide for the definition of "administration charges" in clause 81 to expressly exclude event fees, which are commonplace in the retirement sector. This would mean that event fees should not be regarded as an administration charge for the purpose of Part 5 of the Bill.

Lords Amendments to Clause 83

Lords Amendment 25

22. Amendment 25 would clarify that any regulations under this section to be subject to the negative procedure.

Lords Amendments to Clause 87

Lords Amendment 26

23. Amendment 26 would remove "by Secretary of State". This would correct an error as Welsh Ministers may already approve a code of practice under Section 87 of the Leasehold Reform, Housing and Urban Development Act 1993.

Lords Amendments to Clause 90

Lords Amendment 27

24. Amendment 27 would remove "by Secretary of State". This would correct an error as Welsh Ministers may already approve a code of practice under Section 87 of the Leasehold Reform, Housing and Urban Development Act 1993.

Lords Amendments to Clause 109

Lords Amendment 28 and 29

25. These amendments would amend the definition of "enforcement authority" in Part 6 of the Bill to include the authorities previously captured under "local housing authority" and add "county council in England".

Lords Amendments to Schedule 1

Lords Amendment 30, 31, and 33

26. Amendment 30 would amend the definition of retirement houses to so that the 55-year minimum age requirement applies to the occupier, rather than the leaseholder. This aligns with industry practice, and would allow for example, the purchase of a property for an elderly parent.

27. Amendment 31 would clarify the scope of the exemption houses on inalienable National Trust property and ensure the definition in Part 1 of the legislation tallies with definitions elsewhere in this legislation.

28. Amendment 33 would add a further condition to the definition of shared ownership in Schedule 1, so that a tenant who has staircased their ownership to 100% of the equity would the right to acquire the freehold at no additional cost. This is in line with the definition being used for enfranchisement elsewhere in this legislation.

Lords Amendment 32

29. Amendment 32 would insert a new definition of 'Crown land' to Schedule 1, which would provide the Crown with an exemption to the ban on the grant of new leases of houses.

30. This amendment should be read in conjunction with the undertaking agreed by the Crown bodies, whereby they will only grant new leases of houses on certain excepted areas. This undertaking is available in Hansard accounts of Leasehold and Freehold Reform Bill debate, Volume 838: debated on Friday 24 May 2024, column 1368.

Lords Amendments to Schedule 3

Lords Amendment 34 to 37

31. Amendment 34 would add certain authorities established under section 9(1) of the Levelling-up and Regeneration Act 2023 to a list of public authorities preserved in sections 29 and 38 of the Leasehold Reform Act 1967.

32. Amendment 35 would remove a defunct body, the Development Board for Rural Wales, from the list of public authorities preserved in section 29 of the Leasehold Reform Act 1967.

33. Amendment 36 would add three authorities to the list of public authorities preserved in section 29 and 38 of the Leasehold Reform Act 1967.

34. Amendment 37 would replace the name of a defunct authority from a list of public authorities given in section 29 of the Leasehold Reform Act 1967.

Lords Amendments to Schedule 4

Lords Amendment 38-56

35. Amendment 38 would clarify that for a lease extension, it must be assumed that the current lease will continue on its current terms until its term date.

36. Amendment 39 clarify that the notional lease should be assumed to be granted by the person who will grant the statutory lease.

37. Amendment 40 would clarify how to value a lease extension in cases where a tenant is already holding over, or has a right to hold over, under the Local Government and Housing Act 1989. The amendment also points to a later paragraph in the schedule which makes provision about tenants who have the right to hold over (but who are not doing so at the valuation date).

38. Amendment 41 would disapply the standard valuation method from being compulsory in cases where the tenant is holding over at the valuation date under the Local Government and Housing Act 1989, or the term date of the current lease is within the period of five years beginning at the valuation date.

39. Amendment 42 would clarify that when valuing a lease comprised of a chain of leases (treated as one single lease), the market rack rent lease exception to the standard valuation method only applies if the most recent lease is a market rack rent lease.

40. Amendment 43 would require it to be assumed that an intermediate lease (owned by the enfranchising leaseholder and surrendered following the claim) does not exist at the point where the valuation methodology assumes that relevant interests are merged. It also clarifies how Assumption 1 applies in each type of enfranchisement and lease extension claim.

41. Amendment 44 would make sure that a lease extension will require a valuation of a "notional lease", rather than the valuation of a "freehold".

42. Amendment 45 would clarify that there is an order of priority to Part 4 of Schedule 4. Before turning to the "specified matters" in paragraph 20, the preceding assumptions and provisions must be followed.

43. Amendment 46 would require, in certain limited circumstances, the right to hold over under the Local Government and Housing Act 1989 to be taken into consideration in determining the market value.

44. Amendment 47 would require the value of an intermediate lease which is owned by the enfranchising leaseholders (and which is assumed to be surrendered as part of the claim) to be deducted from the price payable after the application of the other provisions of Schedule 4.

45. Amendments 48 to 54 and Amendment 56 replace "lease being valued" with "current lease" to align the terminology otherwise used in Schedule 4.

46. Amendment 55 would clarify the rules on which lease to consider when valuing a lease comprised of a chain of leases (treated as one single lease), where one of them was granted for a high rent and low or no premium. The amendment states that it is the most recent lease and premium that should be looked at. This will determine whether the ground rent cap should apply in the enfranchisement

valuation.

Lords Amendments to Schedule 6

Lords Amendment 57 to 59

47. Amendment 57 is consequential on amendment 58.

48. Amendment 58 provides that, where there is a deemed single lease, each of the constituent leases has its own separate term date (instead of there being a single term date for that deemed single lease).

49. Amendment 59 would be consequential on the amendment 58.

Lords Amendments to Schedule 8

Lords Amendment 60-63

50. Amendment 60 would exclude certain intermediate leases from the new right to commutation that are owned by the person claiming the lease extension and are required by law to be surrendered following the claim under LRHUDA 1993.

51. Amendment 61 would exclude certain intermediate leases from the new right to commutation that are owned by the person claiming the lease extension and are required by law to be surrendered following the claim under the LRA 1967.

52. Amendment 62 is consequential on the removal of the amendment to the Housing and Planning Act 1986 in paragraph 16 of Schedule 8.

53. Amendment 63 would remove consequential amendments in the Housing and Planning Act 1986, for shared ownership leaseholders, which are currently dealt with in paragraph 16 of Schedule 8. These are now addressed in a new Schedule which deals with amendments to other legislation.

Lords Amendments before Schedule 9

Lords Amendment 64

54. Amendment 64 would insert new Schedule before Schedule 9 which provides consequential amendments to other Acts.

Lords Amendment 65-66

55. Amendment 65 would clarify that it is the appropriate tribunal that may make an order to appoint a person to vary a lease on behalf of the landlord or tenant in the case of commutation following a ground rent buy out.

56. Amendment 66 would change the word “premium” to “price”.

Lords Amendments to Schedule 10

Lords Amendment 67

57. Amendment 67 is a consequential amendment to the Building Safety Act 2022 caused by the repealing of section 172(1)(a) of the CLRA 2002 under clause 67, and which was amended by section

112(7) of the 2022 Act.

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