

LEGISLATIVE CONSENT MEMORANDUM
LEASEHOLD REFORM (GROUND RENTS) BILL

1. This legislative consent memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a legislative consent memorandum must be laid, and a legislative consent motion may be tabled, before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the Senedd.
2. The Leasehold Reform (Ground Rents) Bill (“the Bill”) was introduced in the House of Lords on 12 May 2021. The Bill can be found at <https://bills.parliament.uk/bills/2864>

Policy Objectives

3. The leasehold housing sector is an important part of the national housing market. It houses an estimated 4.5 million households in England and Wales. Approximately two thirds of these properties are flats and one third houses. In Wales, leasehold accounts for around 16% of all dwellings. This equates to, very approximately, 235,000 properties.
4. Long leases (generally leases granted for more than 21 years) normally provide for the leaseholder to pay ground rent to their freeholder for renting the land that the leasehold property is on.
5. Historically, many ground rents were set at a nominal level. However, in recent years many ground rents have risen from nominal levels to more than 0.1% of the property’s value, and the practice of granting leases including terms requiring frequent rent reviews where the ground rent amount doubles has emerged. In some cases, the rights to receive ground rents from leaseholders have been bought and sold in the financial market as a long-term income stream for third party investors. Leaseholders receive no clear service in return for these ground rent payments and it is not always clear what costs leaseholders will have to pay when they purchase their home. As a result, some leaseholders may face difficulties in selling or re-mortgaging or find it costly to buy the freehold through enfranchisement.
6. The stated policy objectives of this legislation are to make leasehold ownership fairer and more affordable for leaseholders by ensuring that freeholders/landlords will no longer be able to make financial demands for ground rent. The Bill also prohibits the charging of administration charges in relation to peppercorn rents.
7. The Bill seeks to achieve this by restricting ground rents on newly established long residential leases of houses and flats to a token one peppercorn per year, effectively restricting ground rents to zero financial value. There is no obligation on a landlord to levy a peppercorn rent and it is not envisaged that landlords will request their tenants pay a peppercorn as a rent in practice.

Summary of the Bill

8. The Bill is sponsored by the Ministry of Housing, Communities and Local Government.
9. The Bill places a duty on trading standards authorities in Wales to enforce the Bill. This Bill also makes provision for leaseholders to recover unlawfully charged ground rents through the First-tier Tribunal.
10. A breach of the ground rent restrictions is a civil offence with a financial penalty of between £500 and £5,000. Local authorities will be able to retain the money raised through financial penalties with this money reserved for covering the cost of enforcement in relation to residential leasehold property.
11. The Bill applies to newly established long residential leases. The Bill makes exceptions for a small number of types of leases: business leases, statutory lease extensions of houses and flats, community led housing and home finance plan leases (either a type of equity release financial product known as a Home Reversion Plan or a rent to buy arrangement). Rent may continue to be charged on the landlord's share of shared ownership leases, and where it is agreed on leases replacing pre-commencement leases on the remaining term of the pre-commencement lease (known as voluntary lease extensions).

Provisions in respect of which consent is required

12. We consider that the Senedd's consent is required in respect of all provisions of the Bill because they relate to rent regulation and housing policy which are not reserved. The Bill therefore makes provision, in relation to Wales, that is within the legislative competence of the Senedd.

Clause 1: Regulated leases

13. Clause 1 defines those leases that will be regulated by the Bill. Generally, regulated leases will be long leases of dwellings granted on or after commencement of the relevant provision of the Bill and which are not excepted leases under clause 2. This includes leases created by virtue of a variation of a lease which results in a deemed surrender and re-grant.
14. Where, prior to commencement, buyers and sellers have entered into a legally binding contract in relation to the grant of the lease (other than an option or right of first refusal), the provisions will not apply. The provisions will additionally not be applicable to some exceptions listed in clause 2.

Clause 2: Excepted leases

15. Clause 2 sets out the types of leases that are exempt from regulation by the Bill. The exceptions are:
 - Business leases where:
 - the lease expressly permits business purposes without further consent needed of the landlord;

- the nature of the permitted business purposes is such that the use of the premises as a dwelling significantly contributes to the business purposes; and
 - the landlord and tenant exchange written notices at or before the lease is granted confirming the intention to use and continue to use the premises for the business purposes set out in the lease.
- The Secretary of State may make further provision about the form and content of the notices required to be exchanged in regulations.
 - Business includes a trade, profession or employment but not a home business under the Landlord and Tenant Act 1954.
 - Statutory lease extensions of houses, under Part 1 of the Leasehold Reform Act 1967, or of flats, under Chapter 2 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993.
 - Community housing where it is a community housing lease and where it meets any further conditions specified in regulations made by the Secretary of State. A community housing lease is where the landlord is a community land trust (as defined in section 79 of the Housing and Regeneration Act 2008), or it is a dwelling in a building controlled or managed by a co-operative society (as set out in paragraph 2B of Schedule 14 to the Housing Act 2004).
 - Home finance plan leases which also meet any conditions specified in regulations made by the Secretary of State. A home finance plan lease is:
 - A lease granted in connection with a home reversion plan under Chapter 15A of Part 2 of the Financial Services and Markets Act (Regulated Activities) Order 2001, or
 - A lease granted by a finance provider to a home buyer in connection with a 'rent to buy' arrangement. A 'rent to buy' arrangement is where a person buys a freehold or leasehold interest in land (or an undivided share of such an interest) from a finance provider over a defined period by means of payment of a rent.

Clause 3: Restrictions relating to prohibited rent

16. Clause 3(1) prohibits any landlord (or person acting on the landlord's behalf) of a regulated lease to require a tenant (or tenant's guarantor) to make a payment of a prohibited rent. A prohibited rent is defined in subsection (4) as any rent that exceeds the permitted rent as defined in clauses 4 to 6.
17. The meaning of 'require a tenant to make a payment of prohibited rent' is explained in subsection (2). A landlord requires a tenant to make a payment of a prohibited rent if they (or a person acting on their behalf) ask the tenant for payment or having received payment, fail to refund it within 28 days.

18. Those subsections taken together mean that a landlord or person acting on the landlord's behalf is prohibited from asking the tenant for a prohibited rent and must, if they receive a prohibited rent, refund it within 28 days after its receipt.
19. Clause 3(3) explains that in this clause references to landlord includes a person who has ceased to be a landlord, and references to tenant include a person who has ceased to be a tenant, a person acting on behalf of a tenant or a tenant's guarantor.

Clause 4: Permitted rent: general rule

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

Clause 5: Permitted rent: shared ownership leases

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

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

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

following the expiry date specified in the pre-commencement lease is to be a peppercorn rent.

27. Subsection (5) makes provision for a case where a lease that is itself a replacement lease is replaced by a new lease.
28. Subsections (6) and (7) makes provision for a case where the pre-commencement lease is a relevant shared ownership lease (as defined in subsection (9)).

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

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

Clause 8: Enforcement authorities

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

Clause 9: Financial penalties

36. This clause allows the enforcement authority to impose a financial penalty on a person if the authority is satisfied beyond reasonable doubt that the person has breached clause 3(1) by requiring a tenant to make a payment of a prohibited rent.

37. The amount of the financial penalty is at the discretion of the enforcement authority, subject to a minimum of £500 and a maximum of £5000 (subsection 2).
38. A landlord who commits multiple breaches in relation to the same lease is generally only liable to one financial penalty. However, they will be liable for a further penalty if, having previously had a financial penalty imposed for an earlier breach, they then commit a further breach (subsection (3)).
39. Subsection (4) clarifies that for the purpose of subsection (3) 'landlord' includes a person who has ceased to be the landlord.
40. Subsections (5), (6) and (7) deal with multiple breaches in relation to multiple leases. Where a person has committed one or more breaches in relation to two or more leases, an enforcement authority may choose to impose a single financial penalty in respect of all those breaches. If a single penalty is imposed in respect of multiple breaches, the amount of a penalty must not be less than the total minimum amount that would have been imposed or exceed the total maximum amount that could have been imposed if each breach had been penalised separately (taking into account the effect of subsection (3)).
41. Subsection (8) provides that an enforcement authority may not impose a penalty on a person if another enforcement authority has already imposed a penalty on the person for the same breach.
42. Subsection (9) enables the Secretary of State to make regulations amending the minimum and maximum penalty amounts set out in subsection (2) by way of regulations. This power may only be exercised where the Secretary of State considers it expedient to do so to reflect changes in the value of money (subsection 10).

Clause 10: Recovery of prohibited rent by enforcement authority

43. If the enforcement authority is satisfied on the balance of probabilities that a tenant under a regulated lease has made a payment of a prohibited rent and all or part of that rent has not been refunded, the enforcement authority can order the repayment of the prohibited rent by any of the following:
 - the landlord at the time the prohibited rent was paid;
 - the landlord at the time the enforcement authority makes the order; or
 - a person acting on behalf of one of the above where the payment was paid to that person.
44. However, the above does not apply if the tenant (or person acting on behalf of the tenant) has made an application to the First-tier Tribunal to recover the prohibited rent under clause 13 or an enforcement authority has previously made an order under clause 10 in relation to the payment (subsection (3)).
45. Where a tenant has made multiple payments of a prohibited rent under the same lease and these have not been refunded, the enforcement authority may

make a single order for repayment for all the prohibited rent that has not been refunded (subsection (4)).

Clause 11: Interest on amounts ordered to be paid under section 10

46. Clause 11(1) provides that where an enforcement authority is imposing a penalty under clause 10, they can also require interest on the outstanding amount to be paid.
47. Subsections (2) and (3) set out how this interest is to be calculated and subsection (4) specifies that the rate of interest is the judgment rate.
48. Subsection (5) caps the total amount of interest that can be charged. The total amount of interest paid must not exceed the amount of the rent order to be repaid under clause 10 (subsection (5)).

Clause 12: Enforcement authorities: supplementary

49. Subsection (1) requires enforcement authorities to have regard to any guidance issued by the Secretary of State about its functions under this Bill.
50. Subsection (3) makes provision for the investigatory powers available to domestic enforcers under Schedule 5 of the Consumer Rights Act 2015 to be available to enforcement authorities enforcing clause 3 of this Bill.
51. Subsection (4) introduces the Schedule to the Bill which sets out the procedure for imposing a financial penalty under clause 9 or making an order under clause 10 including the time limits, rights of appeal, recovering the financial penalty or an amount ordered to be paid and retention of sums received.

Clause 13: Recovery of prohibited rent by tenant

52. This clause allows tenants (or person acting on behalf of a tenant) under a regulated lease who have paid prohibited rent that has not been refunded to apply to the First-tier Tribunal for a recovery order.
53. A recovery order is an order requiring the repayment of any of the prohibited rent that has not already been refunded by any of the following:
 - the landlord of the lease at the time the prohibited rent was paid,
 - the landlord of the lease at the time the application is made,
 - a person acting on behalf of one of the above where the payment was paid to that person.
54. The prohibited rent must be repaid within 28 days after the order has been made (subsection (3)).
55. Subsection (5) provides that where multiple payments of prohibited rent have been made and not refunded, the enforcement authority can make a single recovery order in respect of all of those payments.

56. Subsection (6) means that the First-tier Tribunal must not make a recovery order if an enforcement authority has already ordered the recovery of the prohibited rent under clause 10.
57. Nothing in this clause prevents a person recovering monies owed under contractual remedies in the general law (subsection (7)).

Clause 14: Interest on amount ordered to be paid under section 13

58. Clause 14 allows the First-tier Tribunal to include in the recovery order (see clause 13) a requirement for interest to be paid. Interest is payable from the day on which the payment of prohibited rent was made until the day on which the amount ordered is paid.
59. Where the penalty relates to more than one payment of prohibited rent, interest is payable from the day on which each payment of prohibited rent was made until that part of the amount is paid.
60. The rate of interest is specified in section 17 of the Judgements Act 1838.
61. The total amount of interest payable must not be more than the amount ordered to be paid.

Clause 15: Application to First-tier Tribunal as to effect of this Bill

62. This clause allows either a tenant or landlord of a regulated lease to apply to the First-tier Tribunal for a declaration as to the effect of clause 7 on a term in the lease (or a contract relating to the lease).
63. Following such an application, if the First-tier Tribunal is satisfied that the lease includes a prohibited rent, it must make a declaration as to the effect of clause 7 on the terms of the lease (or related contract).
64. Where there are two or more regulated leases with the same landlord, a single application may be made in respect of those leases, by either the landlord or by a tenant of one of the leases with the consent of the tenant(s) of the other leases (subsection (3)).
65. Where the tenant is the registered proprietor of the leasehold the Tribunal can also direct the landlord to apply to the Chief Land Registrar, and pay the appropriate fee, to enter the declaration in the registered title. The tenant may apply to the Chief Land Registrar, and pay the appropriate fee, for the declaration to be entered in the registered title (subsection (5)).

Clause 16: Assistance

66. This clause allows an enforcement authority to help a tenant or former tenant, a person acting on behalf of a tenant or former tenant or the guarantor of a tenant or former tenant to apply for a recovery order (clause 13) and to recover an amount that the First-tier Tribunal orders to be paid under a recovery order.

67. This clause also allows an enforcement authority help a tenant or a person acting on behalf of a tenant to apply for an order declaring the effect of section 3 on a regulated lease (clause 15).
68. The help that an enforcement authority can provide under this section can include conducting proceedings or giving advice.

Clause 17: Interpretation of enforcement provisions

69. Clause 17 defines "tenant", for the purposes of clauses 10, 13 and 16, to include a person acting on behalf of a tenant and (except in relation to clause 16(1)(b) which relates to applications for a declaration of the effect of clause 7 on the terms of a regulated lease) a former tenant or a guarantor.

Clause 18: Administration charges for peppercorn rents

70. Clause 18 requires that no administration charge is payable in relation to the collection of any ground rent that is restricted to a peppercorn by this Bill. It does this by amending relevant provisions in the Commonhold and Leasehold Reform Act 2002. The tenant will be able to apply to the First-tier Tribunal in England or in Wales to a leasehold valuation tribunal for a determination whether an administration charge is payable or for an order varying the lease on the ground that such an administration charge is not payable.
71. The tenant may also apply (under section 24 of the Landlord and Tenant Act 1987) to the First-tier Tribunal in England or in Wales to a leasehold valuation tribunal to request that it makes an order appointing a manager where prohibited administration charges have been made. This will enable the appropriate Tribunal to take action where, for example, a landlord includes administration charges in leases on numerous occasions.

Clause 19: Amendments to Housing Act 1985

72. Clause 19 makes a consequential amendments to Part 5 of the Housing Act 1985 (right to buy).

Clause 20: Consequential amendments

73. Clause 20 enables the Secretary of State to make provision that is consequential on this Bill by regulations. Such regulations may amend an Act of Parliament including an Act passed in the same session as this Act.

Clause 21: Regulations

74. Clause 21(1) states that any power to make regulations under this Bill includes power to make consequential, supplementary, incidental, transitional or saving provision and different provision for different purposes.
75. Regulations under this Act are to be made by statutory instrument and are subject to annulment by a resolution of either House of Parliament with the exception of:

- a) regulations under clause 20 which amend an Act of Parliament which must be made in draft and laid before and approved by a resolution of each House of Parliament;
- b) commencement regulations under clause 25 in respect of which there is no procedure.

Clause 22: interpretation

76. Clause 22 provides for interpretation of defined terms within the Bill.

Clause 23: Crown application

77. This provision provides that the Act applies to “Crown land”. “Crown land” is defined by reference to land: (a) comprised in the Crown Estate, (b) belonging to Her Majesty in right of the Duchy of Lancaster, (c) belonging to the Duchy of Cornwall, or (d) belonging to a government department or held on behalf of Her Majesty for the purposes of a government department.

Clause 24: Extent

78. This clause confirms that the act extends to England and Wales.

Clause 25: Commencement

79. This clause provides for specified provisions to come into force on the day the Act is passed and the remainder are to come into force on such day as the Secretary of State appoints in regulations. The power to appoint the coming into force date includes a power to appoint different days for different purposes and a power to make transitional or savings provisions. There is one exception to the Secretary of States power which provides that the Act may not come into force in respect of leases of retirement homes before 1 April 2023.

Clause 26: Short title

80. This clause states that the short title of the Bill is the Leasehold Reform (Ground Rent) Act 2021.

Reasons for making these provisions for Wales in the Leasehold Reform (Ground Rent) Bill

81. It is the Welsh Government’s position that primary legislation within areas where there is legislative competence should be enacted by the Senedd. However, there are circumstances in which it is advantageous if provisions which could be within legislative competence are included in UK Parliamentary Bills (with the consent of the Senedd).
82. The Bill’s provisions are sensible and important: they address widely-acknowledged weaknesses in the leasehold market. The Law Commission’s projects on leasehold reform were carried out on an England and Wales basis. Following consultation, the Commission concluded that there was no evidence of a need for different provision in the law in England and Wales. The Law

Commission have been working with MHCLG to develop this legislation, therefore it is considered sensible for an England and Wales approach.

83. The UK Government have committed to further reforms, including legislating on recommendations of the Law Commission projects. Establishing a precedent, and retaining the current commonality of the law which applies in England and Wales is seen to be beneficial. Given the complexity of the existing leasehold legislation, a coherent and consistent approach would be beneficial to both England and Wales. England and Wales share legal and conveyancing professions.
84. In addition, the UK Government have been able to introduce legislation to Parliament far sooner than the Senedd's timetable would allow. A joint approach will allow reforms to be enacted earlier in Wales than would otherwise be possible.

Financial implications

85. The UK Government have prepared an Impact Assessment for the Bill which covers the implications on private sector bodies and home purchasers which derive from this Bill. The Impact Assessment illustrates a de minimis impact of less than £5m.
86. MHCLG estimates that the number of enforcement cases will be very small. The enforcement of the provisions contained in this Bill by enforcement authorities is intended to be fiscally neutral since enforcement authorities may retain the proceeds of any financial penalties for the purposes of any of their enforcement functions relating to residential leasehold property under this Bill.

Conclusion

87. It is the view of the Welsh Government that it is appropriate to deal with the majority of these provisions in this UK Bill, subject to UK Government amendments which the Welsh Government is seeking to address issues in relation to the Leasehold Valuation Tribunal as well as the provision of comparable Executive Powers to Welsh Ministers. The Bill will make important changes to Ground Rents far sooner than could be achieved by separate legislation for Wales.

JULIE JAMES MS

MINISTER FOR CLIMATE CHANGE

MAY 2021