

**SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM
(MEMORANDUM NO.2)**

LEASEHOLD REFORM (GROUND RENT) BILL

1. This supplementary 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 Rent) Bill (“the Bill”) was introduced in the House of Lords on 12 May 2021. The Bill was introduced to the House of Commons on 15 September 2021. The latest version of the Bill as amended 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 on new leases.

Summary of the Bill (as introduced)

7. The Bill is sponsored by the Department for Levelling Up, Housing and Communities (DLUHC).
8. The Bill seeks to achieve the policy objectives 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. The Bill also prohibits the charging of administration charges in relation to peppercorn rents.
9. There is no obligation on a landlord to levy a peppercorn rent and it is not envisaged that in practice landlords will request their tenants pay a peppercorn as a rent.
10. The Bill places a duty on trading standards authorities in Wales to enforce the Bill. This Bill also made provision, when introduced, for leaseholders to recover unlawfully charged ground rents through the First-tier Tribunal.
11. A breach of the ground rent restrictions is made a civil offence with a financial penalty of between, at the time the Bill was introduced, £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.
12. 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 (the latter being 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 on voluntary lease extensions (but only until the end of the remaining term of the pre-commencement lease).

Update on position since the publication of the first Legislative Consent Memorandum

13. On the 26 May 2021, I laid a Legislative Consent Memorandum pertaining to the Bill as introduced into Parliament on 12 May 2021.
14. The Memorandum confirmed the Welsh Government was generally supportive of the Bill as introduced.
15. I stated in the Memorandum that we consider that the Senedd's consent is required in respect of the Bill as it relates to rent regulation and housing policy, which are not reserved matters.
16. I also stated that the Welsh Government was working with the UK Government to secure amendments to recognise the role of the Leasehold Valuation Tribunal in

Wales, as well as the provision of relevant Executive Powers to the Welsh Ministers.

17. However, there is a small correction necessary to the information contained in paragraph 23 of the LCM. That paragraph describes a model of shared ownership that operates in Wales, with references made to caps on the levels of rent and rent increases. The caps in operation are slightly different to those set out in the LCM, with initial rent being capped at 2.75% of the unsold equity and rent increases thereafter limited to the Retail Price Index plus 1%.
18. On 13 July 2021 the UK Government tabled, and subsequently moved, a number of amendments to the Bill including, in large extent, those sought by the Welsh Government, which are detailed in Annex A (Amendments 1-3 and 5-26). A non-Government amendment (Amendment 4 in Annex A) was also passed during this stage.
19. On the 14 September, a privilege amendment (Amendment 27 in Annex A) was made on the third reading of the Bill during its passage through the House of Lords. This is a procedural amendment (see [paragraph 29.67 of Erskine May](#)).
20. On the 15 September 2021 the Bill, as amended at Lords Third Reading, passed to the House of Commons.
21. I consider all of the proposed amendments make provision in relation to Wales and fall within the legislative competence of the Senedd. We consider that the Senedd's consent is required in respect of all the amendments because they relate to rent regulation and housing policy which are not reserved.

Changes to the Bill since the publication of the first Legislative Consent Memorandum for which consent is required.

22. **Clause 1** has been amended to clarify that the Bill is intended to apply only to a lease of an individual dwelling and that it only applies to leases granted for a premium. It was considered that there was a risk the Bill could perhaps be interpreted as also applying to cases where a lease is made up of multiple dwellings, held collectively on a business model used in commercial arrangements. This amendment clarifies that the Bill is intended not to capture such leases but to protect individual leaseholders.
23. There was also a concern that the Bill could inadvertently capture long residential leases (granted for over 21 years) that are let with no premium paid, but where a market rent is payable instead. This was not the intention of the Bill, which is intended to protect the large majority of leaseholders who pay a substantial premium on the granting of a lease, often with a mortgage, from paying further rental charges.
24. The Bill as introduced into the House of Lords has been amended to give the Welsh Ministers' equivalent powers to those of the Secretary of State to make regulations in relation to Community Housing leases, financial penalties and guidance, and provides that the default procedure for regulations made under the

Bill by the Welsh Ministers is the negative procedure. In the Bill as introduced to the House of Commons on 15 September the Welsh Ministers' powers are at **clauses 2(6), 10(9) and 13(1)**. The procedure that applies to regulations made by the Welsh Ministers is in **clause 22**

25. The new **clause 8 of the Bill** has introduced a new duty on landlords to inform their tenants of the changes introduced by this Bill, if the sections of the Bill in relation to prohibited rent are not yet in force and the tenant is considering entering into a lease extension/ renegotiation. This was an opposition amendment passed during Report Stage in the House of Lords.
26. **Clause 10 of the Bill** has been amended to set the maximum financial penalty at £30,000. This will ensure that the penalties are regarded as a sufficient deterrent and will also strengthen the enforcement regime significantly.
27. **Clauses 14-18 and the Schedule** have been amended to reflect our devolved tribunal arrangements in Wales, where leasehold related applications and disputes are routinely heard by the Leasehold Valuation Tribunal (LVT).
28. **Clause 18 of the Bill** has also been amended to correct a small drafting error, to reflect that the right to apply to a tribunal for a declaration as to the effect of the Bill on the terms of a lease does not extend to a tenant's guarantor. This amendment rectifies a discrepancy in the Bill that enabled the enforcement authority to be able to assist a guarantor to make such an application, even though a guarantor does not have the right to apply for it.
29. **Clause 23 of the Bill** has been amended to clarify that payments in respect of rates, council tax, services, repairs, maintenance, insurance or other ancillary are not to be treated as rent only because they are reserved as rent in the lease. The Bill was never intended to capture these payments for services provided.
30. **Clause 27 of the Bill** has been amended to include a privilege amendment inserted by the Lords that is routinely added to Bills that commenced in the Lords. As is normal, a UK Government amendment to Clause 27 has been tabled to remove the privilege amendment.

Welsh Government position on the Bill as amended

31. I note the amendments laid at the Lords Report stage and expect further amendments to be tabled for debate during the Committee stage in the Commons. I had hoped to lay a single supplementary LCM covering all amendments made to the Bill but given the delays that have occurred to the parliamentary timetable in recent weeks, and the time that has elapsed since the amendments were tabled and passed in the House of Lords, I have decided to lay a supplementary LCM in relation to those amendments now and table a separate supplementary LCM once any further amendments have been tabled.

32. I am content with the inclusion of amendments to the Bill that the Welsh Government had requested to ensure that a) Welsh Ministers are given the appropriate equivalent executive powers to that of the Secretary of State and b) our separate tribunal arrangements are reflected appropriately, so that applications are made to the Leasehold Valuation Tribunal in Wales. The Welsh Government are also working with the UK Government to secure an amendment to the Schedule so that any surplus proceeds following enforcement action are paid to the Welsh Ministers where they apply to a premises in Wales.
33. I welcome the amendments that seek to further clarify the types of leases to which the Bill will apply. The provisions within this Bill are intended to apply to new leases, rather than existing leases. Therefore clarifications that will assist in identifying those leases to which the Bill applies are appropriate. The intention is to introduce further legislation that will apply to existing leases, in particular to implement the Law Commission's recommendations on leasehold reform, in a further Bill during the current Parliamentary term.
34. Also welcomed is the clarification that payments in respect of rates, council tax, services, repairs, maintenance, insurance or other ancillary are not treated as rent only because they are reserved as rent in the lease. The Bill was never intended to capture such payments for services provided, and this amendment clarifies that point.
35. I am generally supportive of the intention behind the new duty on landlords to inform the tenant of the changes introduced by this Bill, if the sections of the Bill in relation to prohibited rent are not yet in force. I note though that aspects of the way in which this non-government amendment has been drafted may require its reconsideration by the UK Government.
36. Finally, I welcome the maximum penalty being increased to £30,000. It is essential that any financial penalty regime is robust enough to act as a sufficient deterrent and also ensure that enforcement authorities are encouraged to undertake the necessary enforcement action to make sure the legislation is effective.
37. I support the application of these amendments to Wales.

Financial implications

38. The UK Government have prepared an Impact Assessment covering the implications of the Bill on private sector bodies and home purchasers. The Impact Assessment illustrates a de minimis impact of less than £5m.
39. DLUHC 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.

Conclusion

40. I remain committed to working in collaboration with the UK Government on the Leasehold Reform (Ground Rent) Bill. The Bill will make leasehold ownership fairer and more affordable for leaseholders by restricting ground rents on newly established long residential leases of houses and flats to a token one peppercorn per year. For the reasons set out in paragraphs 81 to 84 of the LCM, I consider a UK Government Bill that makes law for both Wales and England, the best way of approaching these reforms.

41. The Bill also paves the way for further legislation to reform leasehold home ownership, including those reforms proposed by the Law Commission. There is no space in the Welsh Government's current Legislative Programme for a Bill making provision for Wales on these matters, nor is there any Bill in the programme to which such substantial provisions could be readily included. In addition, to ensure that it comprehensively addresses all of the issues, it is possible that future legislation will relate to both devolved and non-devolved matters, so there is an additional justification for these early reforms applying also in England and Wales equally. In summary, in order to achieve in a timely way a coherent system that is in the best interests of leaseholders in Wales, I consider that legislating via a UK Government Bill is the most effective and sensible vehicle for making these legislative changes.

42. I support the Bill and the amendments already made.

JULIE JAMES MS

MINISTER FOR CLIMATE CHANGE

26 NOVEMBER 2021

ANNEX A

Amendments to the Bill as introduced to the House of Lords - Amendments 1-26 were agreed on 20 July 2021

- **Amendment 1** – Clause 1, page 1, line 5, after second “a” insert “single”

This amendment excludes leases of multiple dwellings from the definition of “regulated lease”.

- **Amendment 2** – Clause 1, page 1, line 5, at end insert—

“(aa) it is granted for a premium,”

This amendment provides that a lease will only be a regulated lease if it is granted for a premium. “Premium” is defined in the first amendment to Clause 22, page 13, line 28.

- **Amendment 3** – Clause 2, page 2, leave out line 21 and insert “relevant authority”

This amendment, with the second amendment to Clause 22, page 13, line 28, allows the Welsh Ministers to make regulations under Clause 2(6)(b) in relation to premises in Wales.

- **Amendment 4** – After Clause 7, Insert the following new Clause—

“Duty to inform the tenant

(1) Before entering a formal or informal renegotiation or extension of an existing lease, the landlord must inform the tenant of the changes introduced by this Act, if the sections of the Act in relation to prohibited rent are not yet in force.

(2) An enforcement authority may impose a financial penalty on a person if the authority is satisfied beyond reasonable doubt that the person has breached the duty in this section.

(3) The amount of the financial penalty under subsection (2) is to be such amount as the authority determines but—

- (a) is not to be less than £500, and*
- (b) is not to be more than £30,000.*

(4) This section comes into force on the day on which this Act is passed.”

This amendment would require landlords to let tenants know of the upcoming changes to ground rents legislation, in the event they are considering an imminent lease extension. This is a non-Government amendment that was passed by the House of Lords.

- **Amendment 5** – Clause 9, page 7, line 10, leave out “£5,000” and insert “£30,000”

This amendment increases the maximum penalty that an enforcement authority may impose.

- **Amendment 6** – Clause 9, page 7, line 37, leave out subsection (9) and insert— “(9) The relevant authority may by regulations amend this section so as to change the minimum amount or the maximum amount.”

This amendment, with the second amendment to Clause 22, page 13, line 28, enables the Welsh Ministers (instead of the Secretary of State) to make regulations changing the amount of the minimum and maximum penalties for breaches of Clause 3 in relation to leases of premises in Wales. However, the use of this power, by either the Secretary of State or the Welsh Ministers, is limited to reflecting changes in the value of money.

- **Amendment 7** – Clause 9, page 7, line 39, leave out “Secretary of State” and insert “relevant authority”

This amendment is consequential on the amendment to Clause 9, page 7, line 37.

- **Amendment 8** – Clause 12, Page 9, line 3, after “Act” insert “in relation to a lease of premises in England;
(b) the Welsh Ministers about the exercise of its functions under this Act in relation to a lease of premises in Wales.”

This amendment requires enforcement authorities to have regard to guidance issued by the Secretary of State in relation to enforcement action in England and by the Welsh Ministers in relation to enforcement action in Wales.

- **Amendment 9** – Clause 13, page 9, line 24, leave out “First-tier Tribunal” and insert “appropriate tribunal”

This amendment, with the amendment to Clause 17, page 11, line 17, requires applications for the recovery of prohibited rent paid under a lease of premises in Wales to be made to a leasehold valuation tribunal (instead of the First-tier Tribunal).

- **Amendment 10** – Clause 13, page 9, line 36, leave out “First-tier Tribunal” and insert “appropriate tribunal”

This amendment is consequential on the amendment to Clause 13, page 9, line 24.

- **Amendment 11** – Clause 13, page 9, line 39, leave out “First-tier Tribunal” and insert “appropriate tribunal”

This amendment is consequential on the amendment to Clause 13, page 9, line 24.

- **Amendment 12** – Clause 14, page 10, line 4, leave out “First-tier Tribunal” and insert “appropriate tribunal”
- **Amendment 13** – Clause 14, page 10, line 5, leave out “First-tier Tribunal” and insert “appropriate tribunal”

Amendments 11 and 12 are consequential on the amendments to Clause 13, and enable a leasehold valuation tribunal to order interest to be paid on amounts of prohibited rent that it orders to be repaid to the tenant under that Clause.

- **Amendment 14** – Clause 15, page 10, line 19, leave out “First-tier Tribunal” and insert “appropriate tribunal”

This amendment, with the amendment to Clause 17, page 11, line 17, requires applications as to the effect of Clause 7 on the terms of a lease of premises in Wales to be made to a leasehold valuation tribunal (instead of the First-tier Tribunal).

- **Amendment 15** – Clause 15, page 10, line 22, leave out “First-tier Tribunal” and insert “appropriate tribunal”

This amendment is consequential on the amendment to Clause 15, page 10, line 19.

- **Amendment 16** – Clause 15, page 10, line 24, leave out “Tribunal” and insert “appropriate tribunal”

This amendment is consequential on the amendment to Clause 15, page 10, line 19.

- **Amendment 17** – Clause 15, page 11, line 1, leave out “First-tier Tribunal” and insert “appropriate tribunal”

This amendment is consequential on the amendment to Clause 15, page 10, line 19.

- **Amendment 18** – Clause 16, page 11, line 12, leave out “First-tier Tribunal” and insert “appropriate tribunal”

This amendment is consequential on the amendments to Clause 13.

- **Amendment 19** – Clause 17, page 11, line 17, at beginning insert—

“(1) For the purposes of sections 13 to 16 and the Schedule, the “appropriate tribunal” is—

- (a) in relation to a lease of premises in England, the First-tier Tribunal;*
- (b) in relation to a lease of premises in Wales, a leasehold valuation tribunal.”*

This amendment defines the “appropriate tribunal” for the purposes of the amendments to Clauses 13 to 16 and the Schedule.

- **Amendment 20** – Clause 17, page 11, line 19, at beginning insert “except in relation to section 16(1)(b),”

This amendment corrects the drafting of Clause 17(b) to reflect the fact that the right to apply to a tribunal for a declaration as to the effect of the Bill on the terms of a lease does not extend to a tenant’s guarantor.

- **Amendment 21** – Clause 21, page 13, line 2, after “Parliament,” insert “if the regulations are made by the Secretary of State, or

(b) Senedd Cymru, if the regulations are made by the Welsh Ministers,”

This amendment provides that the default procedure for regulations made under the Bill by the Welsh Ministers is the negative procedure.

- **Amendment 22** – Clause 22, page 13, line 28, at end insert—

““premium” means any consideration in money or money’s worth for the grant of a lease, other than rent;”

See the explanatory statement for the second amendment to Clause 1, page 1, line 5.

- **Amendment 23** – Clause 22, page 13, line 28, at end insert—

““relevant authority” means—

- (a) in relation to a lease of premises in England, the Secretary of State;*
- (b) in relation to a lease of premises in Wales, the Welsh Ministers;”*

This amendment defines “relevant authority” for the purpose of the amendments to Clause 2, page 2, line 21 and Clause 9, page 7, lines 37 and 39.

- **Amendment 24**, Clause 22, page 13, line 29, at end insert—

“(2A) A sum expressed to be payable in respect of rates, council tax, services, repairs, maintenance, insurance or other ancillary matters is not rent for the purposes of this Act merely because it is reserved as rent in the lease.”

This amendment clarifies that service charges and similar payments are not to be treated as rent only because they are reserved as rent in the lease.

- **Amendment 25** – *The Schedule, page 16, line 37, leave out “First-tier Tribunal” and insert “appropriate tribunal”*

This amendment, with the amendment to Clause 17, page 11, line 17, requires an appeal against action taken by an enforcement authority in relation to a lease of premises in Wales to be made to a leasehold valuation tribunal (instead of the First-tier Tribunal).

- **Amendment 26** – *The Schedule, page 17, line 13, leave out “First-tier Tribunal” and insert “appropriate tribunal”*

This amendment is consequential on the amendment to the Schedule, page 16, line 37.

The following amendment was added at the Lords before the Bill was introduced to the Commons on the 15 September.

- **Amendment 27** – Procedural amendment (made under paragraph 29.67 of Erskin May) at end of Clause 27 to include

‘Nothing in this Act shall impose any charge on the people or on public funds, or vary the amount or incidence of or otherwise alter any such charge in any manner, or affect the assessment, levying, administration or application of any money raised by any such charge.’