LEGISLATIVE CONSENT MEMORANDUM

Leasehold and Freehold Reform Bill

1. This legislative consent memorandum is laid under Standing Order ("SO") 29.2. Under SO29 a legislative consent memorandum must be laid, and a legislative consent motion may be tabled, before the Senedd Cymru[1] if a UK Government Bill makes provision in relation to Wales for any purpose within, or which modifies, the legislative competence of the Senedd.

2. The Leasehold and Freehold Reform Bill ("the Bill") was introduced in the House of Commons on 27 November. The Bill can be found at: Leasehold and Freehold Reform Bill publications - Parliamentary Bills - UK Parliament.

Policy Objective(s)

3. The UK Government's stated policy objectives are to:

   Amend the rights of tenants under long residential leases to acquire the freeholds of their houses, to extend the leases of their houses or flats, and to collectively enfranchise or manage the buildings containing their flats, to give such tenants the right to reduce the rent payable under their leases to a peppercorn, to regulate charges and costs payable by residential tenants, to regulate residential estate management and to regulate rent charges.

Summary of the Bill

4. The Bill is sponsored by the Department for Levelling Up, Housing and Communities.

5. The key provisions of the Bill cover:
   - Increasing the standard lease extension term for houses and flats to 990-years (up from 90 years for flats, and 50 years for houses), with ground rent reduced to a peppercorn (zero financial value) upon payment of a premium.
   - Removing the so-called 'marriage value'.
   - Removing the requirement for a new leaseholder to have owned their house or flat for 2 years before they can benefit from these changes.
   - Increasing the 25% 'non-residential' limit which applies to mixed use properties, and which may prevent leaseholders in buildings with a mixture of homes and other uses such as shops and offices, from buying their freehold or taking over management of their buildings.

[1] Please note in accordance with Welsh Government policy we refer to the legislature in Wales as "Senedd Cymru" on first use and "the Senedd" thereafter unless the context stipulates otherwise.

- Requiring transparency over leaseholders' service charges
- Replacing buildings insurance commissions for managing agents and landlords with transparent administration fees.[2]
- Scrap the presumption for leaseholders to pay their landlords' legal costs when challenging poor practice.
- Grant freehold homeowners on private and mixed tenure estates the same rights of redress as leaseholders

6. The provisions of the Bill which relate to enfranchisement and the right to manage implement the main leaseholder-benefiting reforms recommended by the Law Commission in their projects on leasehold. The Law Commission was tasked by the UK and Welsh Governments to consider how to improve these existing leaseholder rights. Terms of reference for the right to manage project were to facilitate and streamline the exercise of the right. For enfranchisement, which describes lease extension and individual and collective freehold acquisition, their remit included:
   - simplification of the legislation;
   - improving access to enfranchisement;
   - examining options to reduce the premium (price) payable to enfranchise; and
   - making enfranchisement easier, quicker and more cost effective.

7. The Law Commission was also tasked with considering how to reinvigorate commonhold, which is more akin to freehold, as an alternative to leasehold for multi-occupied buildings. However, these recommendations do not form part of the Bill as introduced.

8. The work of the Law Commission included extensive consultation across England and Wales on issues with the current law and potential solutions, before the publication of their reports on the projects in 2020.[3]

9. In January 2021, the UK Government announced its response to the Law Commission's consideration of options to reduce the premium payable to enfranchise as well as to some of the recommendations on enfranchisement more generally.[4] It announced an intention to introduce reforms to:
   - allow all leaseholders a right to extend their lease by 990 years at zero ground rent, removing inconsistencies between the regimes which currently apply to leaseholders of flats and houses;
   - cap the amount of ground rent used in the calculation of the enfranchisement premium;

[2] In this document I refer to 'landlord' to denote the freeholder or superior leaseholder in leasehold arrangements, in order to avoid any confusion with the use of freeholder to describe homeowners subject to estate management charges which are the subject of Part 4 of the bill.
[3] Residential leasehold and commonhold - Law Commission
[4] Government reforms make it easier and cheaper for leaseholders to buy their homes - GOV.UK (www.gov.uk)

- introduce an online calculator to make it easier for leaseholder to find out how much it will cost to enfranchise;
- abolish the requirement to pay marriage value as part of the premium when enfranchising a lease which is nearing the end of its' term; and
- allow leaseholders to agree a voluntary restriction on future development to reduce the 'development value' payable in the premium.

10. In January 2022, the UK Government launched a joint UK and Welsh Government consultation on recommendations made by the Law Commission which had not specifically been the subject of their own consultation. The joint response to the consultation was published on 27 November 2023.[5] The consultation asked for views on whether the UK and Welsh Governments should accept Law Commission recommendations to:
    - Raise the non-residential limit for collective enfranchisement;
    - Raise the non-residential limit for right to manage claims;
    - Introduce a non-residential limit for individual freehold acquisitions;
    - Introduce mandatory leasebacks as part of collective freehold acquisitions;
    - Change commonhold voting rights in shared ownership properties; and
    - Introduce requirements about the provision of information during the sale of a commonhold property.

11. I have been clear that, building on the work of the Law Commission which identified improvements to the law in England and Wales, and following the Senedd's consent to the earlier Leasehold Reform (Ground Rent) Act 2022, I would seek for further leasehold reforms to be made on an England and Wales basis in areas of mutual agreement, and where reforms will benefit leaseholders in Wales. Research for the Welsh Government, published in 2021, identified that the issues affecting leaseholders in Wales were the same as those affecting leaseholders in England, and that the solutions being explored by UK Government would similarly benefit leaseholders in Wales[6]. For this reason, I have asked that areas of the Bill which are not derived from the work of the Law Commission, but which represent an improvement in leaseholder rights, should also be made on an England and Wales basis. I have taken the view that it is appropriate that: changes to the legal costs regime; enhanced requirements for transparency in relation to service charges; and curbs on the taking of commissions for the arrangement of buildings insurance in leasehold blocks, represent such positive improvements for leaseholders in Wales.

12. The Bill also addresses issues affecting freeholders who are subject to estate charges for the maintenance of housing developments. This issue was the subject of a call for evidence in 2020[7]. The responses

[5] Leasehold valuation, enfranchisement and the right to manage - GOV.UK (www.gov.uk)
[6] Research into the sale and use of leaseholds in Wales | GOV.WALES
[7] Estate charges on housing developments | GOV.WALES

emphasised the strength of feeling of those who are subject to such charges, but have very little say in the level of charges or the activities which they pay for, and who currently lack legal recourse to challenge charges. My view is that provisions in this Bill introducing requirements for transparency in the administration of such charges, as well as a right to challenge their reasonableness, also address an issue of significant concern in Wales.

13. The Bill largely amends existing England and Wales leasehold legislation, most notably the Leasehold Reform Act 1967 ("LRA 1967"), the Leasehold Reform, Housing and Urban Development Act 1993 ("LRHUDA 1993), the Leasehold and Commonhold Reform Act 2002 ("CLRA 2002"), and the Landlord and Tenant Act 1985 ("LTA 1985").

14. The Bill also amends the remit of the devolved Leasehold Valuation Tribunal ("LVT").

Provisions in the Bill for which consent is required

15. In my view the entirety of the Bill makes provision in relation to Wales for a purpose within the legislative competence of the Senedd, namely housing. In this section, I provide an overview of the provisions in the Bill which I believe trigger the requirement for consent.

Part 1 – Leasehold enfranchisement and extension

16. Part 1 of the Bill makes changes to the enfranchisement regimes which apply to leaseholders of houses and flats. These changes include: making enfranchisement achievable for more leaseholders; introduce a new standard 990 year lease extension at a peppercorn ground rent; and introduce a new method of calculating the premium payable, to make the cost of enfranchisement more predictable.

Eligibility for enfranchisement and extension - clauses 1-4 and Schedule 1

17. These clauses amend LRA 1967 and LRHUDA 1993 to increase access to rights to enfranchise, by amending or removing restrictions which currently limit the number of leaseholders who may qualify. The qualifying criteria for leaseholders who wish to enfranchise is amended to remove the requirement that leaseholders of flats and houses own their property for two years before being able to extend their lease or purchase their freehold. Restrictions on repeated enfranchisement claims are also removed, and the non-residential limit for buildings to qualify for collective enfranchisement is raised from 25% to 50%. Schedule 1 details the removal of certain restrictions to qualification for enfranchisement.

Effects of enfranchisement – clauses 5-6

18. Clause 5 amends LRHUDA 1993 to simplify and clarify the process of collective enfranchisement where intermediate leases are present, by determining which leases must or may be acquired by a nominee purchaser during a claim, including the extent to which common parts and appurtenant property should be acquired. This will increase certainty over what can be included in a claim, and therefore reduce the potential for litigation with a landlord, reducing the potential costs to the leaseholders involved.

19. Clause 6 introduces a new right for leaseholders exercising collective enfranchisement rights to require that the landlord take a leaseback of non-participating units. There is a role for the appropriate tribunal (LVT in Wales) in determining the terms of the lease which the landlord must accept in such cases. This will have the effect of reducing the premium payable for collective enfranchisement, meaning that more leaseholders may be able to consider exercising the right.

Effects of extension – clauses 7-8

20. These clauses amend LRA 1967 and LRHUDA 1993 to implement a new right to a lease extension of 990 years at a peppercorn ground rent. This has the effect of standardising the lease extension available to leaseholders of flats and houses, to whom different rights are extended in current legislation. These provisions also bring extended leases of houses into line with those of flats, and also in line with new leases which, following the Leasehold Reform (Ground Rent) Act 2022, must not require ground rent in excess of a peppercorn, or zero financial value. These changes improve the value of the lease extension to a leaseholder, providing certainty around what the new lease should contain, security of tenure and long-term affordability.

Price payable on enfranchisement or extension – clauses 9-11 and schedules 2-5

21. These clauses amend LRA 1967 and LRHUDA 1993 to set out how the premium payable to enfranchise should be calculated.

22. Schedule 2 sets out how the market value of the property is to be calculated. In general, other than in some examples which are listed in the Schedule, the standard valuation method is to be used to determine the value of relevant freehold being acquired or the lease being extended. The standard valuation method consists of adding together the amounts derived from the following two calculations:
    1) Determining the ‘term value’, which is the current value of the landlord’s right to receive ground rent for the remainder of the lease. The ground rent used to determine the term value is limited to a ‘notional annual rent’ of 0.1% of the market value of the freehold of the property in most cases. This limits the impact of a high and/or escalating ground rent on the calculation of the premium. There are

some limited exceptions to this, where the actual ground rent should instead be used, which are set out in the Schedule. Calculation of the term value depends on the 'applicable capitalisation rate' which converts the future ground rent income into current value. This rate is to be prescribed in regulations by the Secretary of State, which must be reviewed every ten years.

2) Determining the 'reversion value', which is the current value of the landlord's expectation to acquire the freehold value of the property at a future date. There are different calculations to be used, depending on whether the leaseholder is exercising a freehold acquisition right or a lease extension right. The calculation of the reversion value depends on the 'applicable deferment rate', which converts the future value of the freehold reversion into current value. This rate is to be prescribed in regulations by the Secretary of State, which must be reviewed every ten years.

23. Schedule 3 sets out circumstances when other compensation is payable, and how this should be calculated. Schedule 4 provides interpretation provision for Schedules 2 and 3. Schedule 5 contains amendments of LRA 1967 and LRHUDA 1993 which are consequential on clause 11 and Schedules 2-4.

24. The new prescribed valuation method ends the use of 'marriage' and 'hope' value which are currently payable when exercising enfranchisement rights on leases with less than 80 years remaining. These values significantly increase the premium payable in such cases, and can adversely affect property value, mortgageability, and consequently the ability for homeowners to move at a time of their choice to a property which is more suitable for them.

25. The new valuation regime will simplify the complexity of the current law. It will allow leaseholders to more accurately predict what it may cost to enfranchise and reduce the likelihood that leaseholders can be 'out-gunned' by landlords' access to expensive specialist advice and representation, which can contribute to negotiating a higher premium, as well as adding to non-litigation costs.

26. Providing a reliable and objective means to calculate the premium will also reduce the potential for litigation and resulting costs. Prescription of the capitalisation and deferment rates will enable the development of an online calculator, a concept which the Law Commission considered would assist leaseholders in weighing up the relative merits of exercising enfranchisement rights.

Costs of enfranchisement and extension – clauses 12-13

27. These clauses amend LRA 1967 and LRHUDA 1993 to require that each party pays their own costs during enfranchisement claims, except in certain circumstances. This constitutes a significant reform to the current

regime where leaseholders are required to pay their landlord's reasonably incurred non-litigation costs in many circumstances. These costs can be significant and represent a barrier to exercising enfranchisement rights. The new provisions allow costs to be claimed by the landlord only in certain cases. Where the landlord can claim costs, these are limited by regulations, in Wales made by the Welsh Ministers, which prescribe maximum amounts for certain purposes. There is a role for the LVT in deciding whether costs are payable in certain circumstances.

Jurisdiction of the county court and tribunals – clause 14-17

28. These clauses amend LRA 1967 and LRHUDA 1993 to transfer jurisdiction from the county court to the tribunal for certain types of cases. Currently, some types of dispute are heard by the county court and others by the tribunal, a situation the Law Commission identified as potentially unnecessarily complex, confusing and costly. These clauses implement their recommendation that disputes and issues should be heard and resolved by the tribunal, which would improve simplicity, reduce costs and save time.

Jurisdiction of the High Court – clause 18

29. In line with the transfer of jurisdiction to the tribunal, this clause amends LRA 1967 and LRHUDA 1993 to remove involvement of the High Court in those issues now determined by the tribunal, except where the application is made to challenge the decision of the tribunal.

Enfranchisement and extension: miscellaneous and consequential amendments – clause 19 and Schedule 6

30. Clause 19 introduces Schedule 6, which sets out miscellaneous amendments to LRA 1967 and LRHUDA 1993 and other legislation that are consequential on the other amendments made in Part 1 of the Bill.

Preservation of existing law for certain purposes – clause 20

31. This clause preserves current enfranchisement rights in some circumstances (i.e. where the leaseholder chooses to rely on the earlier legislation), retaining the valuation basis for calculating some premiums under section 9(1) of the current LRA 1967.

Part 2 – Other rights of long leaseholders

32. Part 2 introduces further improvements for leaseholders including a new right for leaseholders to a variation to reduce ground rent to a peppercorn without extending the term of the lease, changes to increase access to the right to manage and the shifting of jurisdiction for leasehold cases to the tribunal.

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

33. Clause 21 introduces Schedule 7, which establishes a new right for leaseholders, who already hold a lease with at least 150 years remaining, to substitute the existing ground rent in their lease with a peppercorn or zero financial value, on the payment of a premium. This means that leaseholders who do not need to extend their lease can also take advantage of the new right to a lease with no ground rent payable. The premium payable to exercise this new right will be lower than that which would have been required to add a further 990 years to the lease. The premium payable is calculated by reference to the new standard valuation method (see above).

34. Schedule 7 outlines what the right entails, who qualifies, and the process by which they may exercise their right. The processes outlined include a role for the appropriate tribunal (LVT in Wales) where a landlord does not respond to a claim, in order that all leaseholders may exercise the right. There are also regulation-making powers for the Secretary of State to give effect to this new right.

The right to manage – clauses 22-25

35. Clause 22 amends CLRA 2002 to increase the non-residential limit for buildings to qualify for the right to manage from 25% to 50%. In line with the increase in the non-residential limit for collective enfranchisement, this increases the number of eligible buildings, and therefore the proportion of leaseholders which may qualify to exercise the right.

36. Clause 23 amends CLRA 2002 in line with the changes outlined in clauses 12-13 above (in relation to non-litigation costs of enfranchisement), so that costs will be met by each participating party, except in certain circumstances where the appropriate tribunal (LVT in Wales) may order that certain of the landlords reasonably incurred costs should be met by members of the right to manage company. This change will make the non-litigation costs of making a claim cheaper and more predictable, which may encourage more leaseholders to exercise the right to manage.

37. In line with the shifting of cases from the court to the tribunal elsewhere in the Bill, clause 24 provides for the tribunal to act in place of the county court for the purposes of section 107 of CLRA 2002 (enforcement of obligations), and clause 25 provides that cases under Chapter 1 of Part 2 of CLRA 2002 may not be taken to the High Court, other than for the purposes of challenging a decision of the tribunal. The aim of case-shifting is to make it easier to understand who has responsibility to decide claims, to improve simplicity, to reduce costs for leaseholders and to save time.

Part 3 – Regulation of leasehold

38. Part 3 includes improved protections for leaseholders subject to service charges, by improving transparency of service charge information, ending the practice of commissions being charged in the arrangement of buildings insurance paid for by leaseholders, requiring administration charges schedules to be published, and reforms to the legal costs regime to reduce the costs faced by leaseholders who challenge their service charges.

Service charges – clauses 26-30

39. Clause 26 amends the service charge provisions of the LTA 1985 to include leaseholders subject to fixed service charges in some elements of the regime outlined in that chapter of the Act, where it currently only applies to variable charges.

40. Clause 27 amends LTA 1985 to introduce a requirement for service charges demands to be issued in a specified form, with specified information, and in a specified manner. Specified matters are to be set out in regulations by the appropriate authority, which for Wales is the Welsh Ministers. Where a demand does not meet the specified requirements, terms of a lease which relate to non-payment of service charges do not apply. This change will help ensure that leaseholders have access to enhanced information about the service charges they are subject to, which will assist them in better understanding whether they are appropriate and reasonable.

41. Clause 28 amends LTA 1985 to introduce a requirement for the landlord or their representative to provide an annual written statement of account in specified form and manner. They must also provide the tenant with a report in respect of service charges arising in the period, and any other matter specified by the appropriate authority as likely to be of interest to leaseholders. Specified matters are to be set out in regulations by the appropriate authority, which for Wales is the Welsh Ministers. This change will further ensure that leaseholders are given regular updates about how their service charges are composed, and other issues which may be relevant to their consideration of whether the management activities undertaken by their landlord or representative are reasonable.

42. Clause 29 amends LTA 1985 to introduce a new right for leaseholders to obtain further certain types of specified information on request, including provisions to require landlords to request information from others where they do not hold it themselves. The appropriate authority (in Wales, the Welsh Ministers) may by regulations set out what type of information may be requested, and the process by which it must be requested and responded to, including timescales by which a response must be issued. This will ensure that leaseholders can access relevant information about their building, potentially including such details as risk assessments, maintenance plans, sinking funds etc. This, again, will help leaseholder to

better consider whether they are satisfied with the management activities being undertaken in relation to their property.

43. Clause 30 amends LTA 1985 to give the appropriate tribunal (LVT in Wales) powers to enforce the new service charge provisions, including the awarding of damages up to £5000. The damages limit may be amended by the appropriate authority (in Wales, the Welsh Ministers), to reflect changes in the value of money.

Insurance – clauses 31-32

44. Clause 31 amends LTA 1985 to limit the costs which may be reclaimed via a service charge in relation to the arrangement of insurance. Leaseholders will only be required to contribute to a 'permitted insurance payment', which may be defined in regulations by the appropriate authority (the Welsh Ministers for Wales). Leaseholders may make a claim to the tribunal (LVT in Wales) if they have been charged, and have paid, an 'excluded insurance cost', which are costs which are not attributable to a 'permitted insurance payment' or are attributable to payments made, or to be made, to arrange or manage insurance (for example, commissions and incentives). The tribunal may order that damages be paid of up to three times the amount paid. A term is implied into leases to make it clear that landlords may charge leaseholders for their share of costs of insurance.

45. Clause 32 amends the Schedule to LTA 1985 ('Rights of Tenants with Respect to Insurance'). The new paragraph 1A requires landlords to obtain and provide to leaseholders certain specified information about the insurance which they have arranged, within a specified period. The appropriate authority (the Welsh Ministers for Wales) may by regulation specify these details, along with the form and manner in which information should be provided, as well as any exceptions from these requirements. New paragraph 1B sets out new requirements for other parties to provide information to landlords when they make a request to fulfil new obligations under 1A. The appropriate authority (the Welsh Ministers for Wales) may by regulations specify the period in which information should be provided. New paragraph 1C allows the tribunal (LVT in Wales) to enforce these new provisions, and to award damages up to £5000. The damages' limit may be amended by the appropriate authority (in Wales, the Welsh Ministers), to reflect changes in the value of money.

46. These changes clarify the costs and details of insurance, and end the practice, acknowledged by the Financial Conduct Authority, of large undisclosed commissions inflating the costs of insurance for leaseholders.[8] Leaseholders will be able to challenge any instances of excluded costs being charged, and will have better access to the detail of the insurance towards which they are required to contribute.

[8] FCA sets out multi-occupancy leasehold insurance reforms | FCA

Administration charges – clause 33

47. Clause 33 amends Schedule 11 to the CLRA 2002 to introduce a new requirement for landlords to publish and provide to their tenants an administration charge schedule for any building where they have tenants, detailing what the charges are, or how they will be calculated. If charges change, they must update and publish the new schedule. The appropriate national authority (the Welsh Ministers for Wales) may make regulations in relation to this new requirement, for example to specify the form and content of the administration charge schedule. Administration charges are only payable if they are consistent with the schedule which has been published. The tribunal (LVT in Wales) can enforce these new provisions and may award damages up to £1000. The damages' limit may be amended by the appropriate authority (in Wales, Welsh Ministers), to reflect changes in the value of money.

48. These provisions will better inform leaseholders of the possible costs of administration charges, which are perceived as lacking transparency and value.[9] Requiring landlords to be open about what costs are applicable may help leaseholders to understand the costs associated with discretionary actions they may take while living in their property (e.g. permission fees for adaptations), or may form part of the considerations by a prospective buyer when deciding whether to purchase a property.

Litigation costs – clauses 34-35

49. Clause 34 amends LTA 1985 to prevent landlords from recharging litigation costs to leaseholders as part of a variable service charge or an administration charge, unless they obtain an order from the tribunal (LVT in Wales) that costs should be recharged in this way. The appropriate authority (the Welsh Ministers for Wales) may specify in regulations any matters which the tribunal should take into account when deciding whether to make an order, as well as other details about this type of application.

50. Clause 35 amends LTA 1985 to introduce a new right for leaseholders to claim their litigation costs from their landlord, when taking relevant proceedings against them. The appropriate authority (the Welsh Ministers for Wales) may specify in regulations any matters which the court or tribunal should take into account when deciding whether to make an order to award costs.

51. Currently, leaseholders may be deterred from taking action in accordance with their rights, for example to challenge the reasonableness of service charges, because their landlord can recharge litigation costs to

[9] Research for Welsh Government: Research into the Sale and Use of Leaseholds in Wales (gov.wales), see conclusions, paragraph 7.20.

leaseholders. Consequently, landlords can engage expensive, high quality legal counsel knowing the cost will likely be met by the leaseholder, which both increases their chance of winning a case, and deters leaseholders from bringing a case if they are not sure of being able to afford to meet those costs. The imbalance is identified as an issue in the Law Commission's overview of their project work on leasehold.[10]

52. These significant reforms reverse the presumption that leaseholders must pay their landlord's costs and cannot claim back their own. This will reduce the costs for leaseholders exercising their legal rights, and may deter landlords from poor practices which they felt their leaseholders would be unlikely to be able to afford to challenge.

General – clause 36-38 and Schedule 8

53. These clauses and Schedule 8 make provision consequential on this Part of the Bill.

Part 4 – Regulation of estate management

54. Part 4 introduces new legal protections for freeholders who are subject to estate management charges.

Key definitions – clause 39

55. This clause sets out the legal definitions which underpin the new regulation of estate management activities in this Part of the Bill.

Limitation of estate management charges – clauses 40-44

56. These clauses set out a new requirement that estate management charges must reflect relevant costs, must be reasonably incurred, and where incurred in relation to services or works, that these must be of a reasonable standard. Works with a cost in excess of an 'appropriate amount' must be subject to a consultation requirement, the details of which may be specified in regulations by the Secretary of State. Charges may not be made for costs incurred more than 18 months previously unless earlier notice has been given. The appropriate tribunal (LVT in Wales) is given powers to enforce the new regime.

57. This new regime gives rights to freeholders, who previously had very limited and ineffective means to challenge any charges they are subject to. The rights extended to freeholders mirror those which are currently in place for leaseholders, and are set out in LTA 1985. This represents a significant improvement in the rights of freeholders subject to estate

[10] In more detail: the future of home ownership see 1.28(6).

management charges, who will now be able to challenge charges and hold those managing their estates to account.

Rights relating to estate management charges – clauses 45-49

58. These clauses outline new requirements for estate management charges to be demanded in a specific form and manner, for annual reports to be produced and provided, and for those in charge of levying estate management charges to respond to certain requests for information. Details of the requirements may be specified in regulations by the Secretary of State. The appropriate tribunal (LVT in Wales) is given powers to enforce.

59. These provisions extend the same enhanced rights to receive and request more transparent information about charges to freeholders, as are extended to leaseholders in Part 3 of the Bill. Freeholders will have access to much more detailed information about the management of their estates. Consequently, they will be better informed when considering whether to exercise their new rights to challenge charges and works on the basis of reasonableness.

Administration charges – clauses 50-54

60. These clauses introduce requirements for those levying estate management charges to publish, and provide to the payee, a schedule of administration charges, detailing what charges are payable, together with the amount or method of calculation for each charge. If charges change, they must update and publish the new schedule. The appropriate authority (the Welsh Ministers for Wales) may make regulations in relation to this new requirement, for instance to specify the form and content of the administration charge schedule. Administration charges are only payable if they are consistent with the schedule which has been published. The tribunal (LVT in Wales) can enforce these new provisions and may award damages up to £1000. The damages limit may be amended by the appropriate authority (in Wales, the Welsh Ministers), to reflect changes in the value of money.

61. These provisions bring the new regulation of estate management charges into line with the enhanced regime which applies to leasehold service charges. This will help ensure that freehold home owners are made aware of the potential costs which they may incur in relation to, for example, requests for information on the charge required during a house sale, or in relation to permissions they are required to seek.

Codes of management practice – clause 55

62. This clause amends section 87 of LRHUDA 1993 to widen the scope of management practice for which a relevant authority (the Welsh Ministers for Wales) may approve a code of management practice, to include estate management. Although codes approved under this legislation are not

binding, any approved codes of practice are admissible in evidence in relevant court or tribunal proceedings and will be taken into account by the court or tribunal in their consideration of the case.

63. The amendment in this clause will allow the Welsh Ministers to approve codes of practice in relation to estate management, which should improve the standard of conduct in the sector, in turn improving the experience of homeowners subject to charges. The codes that are approved may be changed and updated to appropriately address changes in practices and in the industry concerned over time.

General – clauses 56-57

64. Clause 56 confirms that the new regime applies to estate management carried out by, or on behalf of government departments. Clause 57 defines terms used in this Part.

Part 5 – Rent charges – clauses 58-59

65. Part 5 makes important changes to the legal remedies available where historical rentcharges are unpaid, which currently have a detrimental impact on homeowners.

66. Clause 58 amends the definition of ‘estate rentcharge’ in the Rentcharges Act 1977 to include improvements.

67. Clause 59 amends the remedies which are available via the Law of Property Act 1925 (LPA 1925) for non-payment historical rentcharges, i.e. those which were created before the passing of the Rentcharges Act 1977, which are now to be referred to as ‘regulated rentcharges’. The new provisions added to LPA 1985 require that a notice of arrears be served before enforcement commences and specifies the details that must be included on a demand for payment. Administration charges may be limited via regulations made by the Secretary of State. The changes also remove remedies available under the LPA 1925 for recovering or compelling payment of regulated rentcharges, as well as removing the potential for creating a new rentcharge out of an existing regulated rentcharge. These last changes apply from the date of the introduction of the Bill to Parliament.

68. These changes address draconian remedies available where historical rentcharges apply to a property, which can currently lead to a homeowner losing their home for relatively small arrears of the charge, even where no demand for the payment has been made. Although I understand that such extreme action is rarely taken, the potential that action may be taken has a detrimental impact on homeowners’ ability to get a mortgage or to proceed with the sale of a property subject to such charges.

Part 6 – General – clauses 60-65

69. Part 6 of the Bill includes additional interpretation, details of powers to make consequential provision, regulation making powers, extent, commencement and short title.

Powers to make subordinate legislation

70. In my description of the provisions of the Bill, above, I have identified where powers to make subordinate legislation may be found. I have summarised the powers in the table in annex 1, below.

Requirement for consent

In my view the contents of this Bill all represent provision for a purpose within the competence of the Senedd, namely housing, and therefore require the legislative consent of the Senedd. Additionally, many provisions amend the functioning of the devolved Leasehold Valuation Tribunal, which also requires the consent of the Senedd.

71. In view of this consideration, it is my opinion that legislative consent is required for all of the clauses of the Bill.

UK Government view on the need for consent

72. There is divergence between my view, and the view of the UK Government on the need for Senedd consent for provisions in the Bill. Lee Rowley MP, Minister for Housing, has written to me to advise that in the UK Government's view, the consent of the Senedd is needed for the following clauses and schedules:

- Clauses 5, 6, 8, 42, 44 and 49, and Schedules 1, 5 and 7. This is only to the extent that these provisions relate to the procedure of the leasehold valuation tribunal, as they otherwise relate to the private law restriction.
- Clauses 12-18, 23-38 and 51-56. These provisions generally relate to costs procedure in the Leasehold Valuation Tribunal (which is a devolved tribunal), service charge regulation, banning buildings insurance commissions, and challenging administration charges for freehold estates. We consider that these provisions do not relate to any restrictions or reservations in GOWA.
- Clause 62. This sets out the procedure for regulations in the Act. It also provides that the Secretary of State in England and, where applicable, Welsh Ministers in Wales can make consequential, supplementary, incidental, transitional, or saving provision for regulations set out in the Act.

- Schedule 8. This is only to the extent that this Schedule amends the Housing (Wales) Act 2014 (which is consequential on Clause 30(2)), as the purpose of the Schedule is otherwise to amend existing law to refer to new provisions introduced by the Bill, or repeal law.

Reasons for making these provisions for Wales in the Leasehold and Freehold Reform Bill

73. I have been clear that I believe it appropriate to pursue joint England and Wales legislation to reform leasehold. In my view this approach will reduce complexity, maximise the clarity and coherence of the law and ensure the new fairer reformed system applies to all.

74. I have outlined above where there are differences between my view and the views of UK Government Ministers on the extent to which the Senedd could legislate for the provisions in this Bill. If we were to pursue a Wales only Bill to achieve the same aims, and it was challenged as not within competence, there may be a significant delay in the benefit of the changes being felt by citizens in Wales. Taking a joint approach avoids this risk.

75. Additionally, in my view, the interconnectedness and commonality of the law in this area mean that it is most effective and appropriate for provision for England and Wales to be taken forward at the same time in the same legislative instrument.

76. Similarly, given the complexity of the existing leasehold legislation, a coherent and consistent approach would be beneficial to both England and Wales, particularly given that England and Wales share a highly populated border region.

77. Finally, the First Minister's principles for recommending consent to provisions in UK Bills makes reference to it being unwise for the Welsh Government to adopt a self-denying ordinance. In my view, not taking the opportunity afforded by this Bill would represent such a policy.

78. Although in my view the provisions of this Bill represent significant positive improvements for homeowners in Wales, there is still clearly disagreement with UK Government as to the extent to which individual provisions are within the legislative competence of the Senedd, and the extent to which Welsh Ministers should be able to exercise powers to make subordinate legislation flowing from the Bill. I am actively engaging with UK Government to pursue this matter, and will update the Senedd on my progress in due course.

Financial implications

79. This Bill makes significant provision in relation to the devolved Leasehold Valuation Tribunal, which will have an impact on its powers and case load. Work is ongoing to assess the potential impact on the tribunal and to understand what the financial implications of that impact will be.

80. The UK Government have prepared an Impact Assessment for the Bill which covers the wider implications of the Bill as a whole, including the impacts on Wales. I understand that this is due to be published shortly.

Conclusion

81. In my view it is appropriate to deal with these provisions in this UK Bill as this approach will reduce complexity, maximise the clarity and coherence of the law and ensure the new fairer reformed system applies to all.

Julie James MS
Minister for Climate Change
12 December 2023

Annex 1 - Powers to make subordinate legislation

Where	Description	Exercisable by	Procedure
Cl 12	Costs of enfranchisement under LRA 1967 – prescribed costs	Secretary of State in relation to England and the Welsh Ministers in relation to Wales	Negative
Cl 13	Costs of enfranchisement under LRHUDA 1993 – prescribed costs	Secretary of State in relation to England and the Welsh Ministers in relation to Wales	Negative
Cl 27	Service charge demands – form, content, process etc	Appropriate authority (Welsh Ministers for Wales)	Negative
Cl 28	Accounts and annual reports – form, content etc	Appropriate authority (Welsh Ministers for Wales)	Negative
Cl 29	Right to obtain information on request – types of information, process etc	Appropriate authority (Welsh Ministers for Wales)	Negative
Cl 30	Enforcement of duties relating to service charges – maximum amount of damages	Appropriate authority (Welsh Ministers for Wales)	Negative
Cl 31	Permitted insurance payment – definition	Appropriate authority (Welsh Ministers for Wales)	Affirmative
Cl 32	Duty to provide information about insurance – specified information, specified period, form, manner, exceptions etc; maximum amount of damages	Appropriate authority (Welsh Ministers for Wales)	Negative
Cl 33	Administration schedules – form, content, publication etc	Appropriate authority (Welsh Ministers for Wales)	Negative
Cl 34	Litigation costs – matters to be taken into account by tribunal	Appropriate authority (Welsh	Negative

		Ministers for Wales)	
Cl 35	Right of tenants to claim litigation costs – matters to be taken into account by tribunal	Appropriate authority (Welsh Ministers for Wales)	Negative
Cl 42	Limitation of estate management charges – 'appropriate amount', consultation requirements	Secretary of State	Negative
Cl 45	Demands for payment – form, content, process etc	Secretary of State	Negative
Cl 46	Annual reports – form, content, process etc	Secretary of State	Negative
Cl 47	Right to request information – type of information, process, exceptions etc	Secretary of State	Negative
Cl 48	Requests under section 47 – specified period for responding to requests	Secretary of State	Negative
Cl 49	Enforcement of sections 45 to 48 – damages limit	Appropriate authority (Welsh Ministers for Wales)	Negative
Cl 50	Administration charges - definition	Appropriate authority (Welsh Ministers for Wales)	Affirmative
Cl 51	Duty of estate managers to publish administration charge schedules – form, content, process etc	Appropriate authority (Welsh Ministers for Wales)	Negative
Cl 52	Enforcement section 51 – damages limit	Appropriate authority (Welsh Ministers for Wales)	No procedure
Cl 59	Regulation of remedies for arrears of rentcharges – limitation of administration charges	Secretary of State	Negative
Cl 61	Power to make consequential provision	Secretary of State	Affirmative for amendments to primary legislation, negative for amendments to secondary legislation

Cl 64	Commencement, transitional or savings provision	Secretary of State	No procedure applies
Sch 1 9(e)	Consequential amendment of LRA 1967 - Power to add bodies to those within the meaning of ‘local authority’	Secretary of State	Negative
Sch 2 24(7) / 25(5)	Standard valuation method – prescription of ‘applicable deferment rate’	Secretary of State	Negative
Sch 2 36(1)	Standard valuation method – prescription of ‘applicable capitalisation rate’	Secretary of State	Negative
Sch 7 12(1)	Right to vary lease to replace rent with peppercorn rent – form, content, process etc	Secretary of State	Non procedure stated
Schedule 8	Amendment of existing regulation making powers in LTA 1985 so as to apply them to the 'appropriate authority’.	Appropriate authority (Welsh Ministers in relation to Wales)	