

In fact, game, set and (almost) match to tenants in England and Wales, with the passage through parliament of the Leasehold Reform (Ground Rent) Bill (the Bill) – provided, of course, it receives Royal Assent. In what is, all things considered, a remarkably swift response to the Law Commission Report of 2020 (although arguably not to the well-publicised “fleecehold” scandal itself¹), the government is implementing its objective of putting a cap on ground rents of “a peppercorn” for all long residential leases granted after the legislation comes in.

The Problem

A ground rent is a charge under a long lease that a tenant makes to the landlord for no return. Effectively, a payment for nothing – usually because a premium has been paid for the leasehold interest even though the landlord retains the freehold (ownership of the land). Entirely separate from any relevant service charge, the landlord provides no service in return for the ground rent. Historically, such rents were very low, with upper figures around £50/£75 a year. With an increasing trend towards new houses being sold on a leasehold rather than a freehold basis, however, home “owners” have seen ground rents of up to £500 per year. These charges are expensive enough when a premium has been paid for the property but when combined with lease clauses that permit doubling ground rents every 5-10 years the result is an unmanageable cost, with homes becoming unmortgageable and unsaleable. Leaseholders who have tried to buy the freehold have found the cost prohibitive, contrary to what they may have been told when they bought the property.



Which Leases Will Be Affected?

The proposals apply to long leases of dwellings (flats and houses) granted on or after the date the relevant provisions of the Bill come into force, with the important exception of leases granted out of a contract entered into prior to the commencement date. A long lease, for the purposes of the Bill, is one that exceeds 21 years, ignoring any break or forfeiture provisions.

There are a number of exceptions, broadly:

- Business leases (with provision for an exchange of notices between the parties confirming intentions as to use)
- Lease extensions under existing statutory rights
- Community housing (where the landlord is a community land trust, or the dwelling forms part of a building controlled or managed by a co-operative society)
- Home finance plan leases (subject to conditions)

Shared ownership leases will be caught to the extent of the tenant’s interest (with the landlord able to charge rent for its share).

What Rents Are “Prohibited”?

Any rent charged in respect of a long lease will be prohibited. The only permitted rent chargeable for a long lease is a peppercorn. It is not expected that this will be collected!

The very wide definition of “rent” in the Bill, which extends to “anything in the nature of rent, whatever it is called” does give rise to concerns that payments in relation to insurance costs and service charges might inadvertently be caught. Drafting of definitions in potentially regulated leases could well come under the spotlight.

What About Existing Leases?

In a move that has been heavily criticised, the Bill does nothing for existing leaseholders who remain locked into agreements that curtail their freedom of movement and financial freedom, where they are unable to sell or remortgage.

¹ See our 2019 update: [An end to fleecehold](#)

At least one major developer has set funds aside to rectify the position voluntarily and the Competition and Markets Authority (CMA) has secured formal commitments from Aviva and Persimmon Homes to remove specific terms from its leasehold contracts that have caused ground rents to double. Persimmon Homes has committed to offer leasehold house owners the opportunity to buy the freehold at a discounted price.

The CMA's chief executive, Andrea Coscelli, has confirmed that their "work isn't done. We now expect other housing developers and investors to follow the lead of Aviva and Persimmon. If not, they can expect to face legal action."



Penalties and Enforcement

Trading Standards authorities will be responsible for enforcement. Given that they are already struggling with limited funding and resources, it is difficult to see that they will have the wherewithal to involve themselves in disputes of this nature. It is more likely that tenants will need to rely on rights under the Bill to bring a claim in the First Tier Tribunal (FTT) for a "recovery order" requiring the landlord to repay any rent paid in contravention of the provisions of the Bill. Where there are offending clauses in the lease, the FTT can also make a declaration to the effect that permitted rent (peppercorn) replaces any prohibited rent.

If enforcement proceedings are brought, fines range from £500 to £5,000 for those in breach.

Any Surprises?

There have been no real surprises in the Bill but the inclusion of retirement homes, in line with the announcement made in January of this year, is still likely to rankle in that sector. The Bill has also drawn attention due to concerns around unintended consequences of the drafting, so it will be interesting to see what, if any, changes will be made to address those.

More to Come!

If the government makes good on its promises, this is just the first piece of legislation designed to reform the leasehold system. The speed at which this Bill does, or does not, progress could well give us an indication of how serious the intent to reform really is.

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