

Following years of alarming headlines, and a revealing report by the Law Commission that highlighted a lack of fairness and transparency for leaseholders, the Leasehold and Freehold Reform Bill (Bill) has now been published, with the intention of improving leaseholder rights in England and Wales.

Following the Leasehold Reform (Ground Rent) Act 2022¹ this is another key piece of legislation for landlords and tenants, enabling tenants to extend their leases or buy their freeholds more cheaply and easily, as well as giving greater rights to tenants to take over the management of their buildings² and facilitating greater visibility in relation to service and administration charges.

Investors, too, might be considering the implications of the future reduction of ground rents, how income streams are likely to be affected and whether the current consultation on capping historic ground rents will result in further changes to the Bill.

This briefing note not only looks at highlights from a Bill intended to empower leaseholders and improve their consumer rights but also considers what is missing.

First, let's look at the mischief the Bill seeks to address.

How Have We Arrived Here?

We have a system of home ownership based on two types of tenure:

- **Freehold** – Effectively, ownership over the land and buildings forming part of the title.
- **Leasehold** – Rights to occupy for a period of time but with ultimate ownership remaining with the freeholder, who retains control of the property through the lease terms.

Abuses of the leasehold system garnered sufficient criticism for the government to task the Law Commission with a review. As a result, the Law Commission published three reports in July 2020, recommending sweeping changes to the current system, covering:

- **Leasehold enfranchisement** – The right to extend a lease, or buy the freehold.
- **The right to manage** – Supporting leaseholders to take control over the running of their buildings.
- **Commonhold** – A form of ownership allowing flats to be held on a freehold basis.

The report exposed many problems with the current system.

While a qualifying leaseholder has a statutory right to enfranchise (extend their lease or acquire the freehold), such rights are expensive and difficult to navigate. Qualifying criteria prevent certain leaseholders being able to take advantage of the legislation.

Other inequities arising from the landlord and tenant relationship include:

- Disproportionately low percentage of non-residential floor space required for collective enfranchisement rights to apply in mixed-use buildings, restricting the ability of many leaseholders to exercise the right
- Lack of transparency in relation to service charges
- Unreasonable administration costs
- Disproportionate and unjustifiable charges for insurance commission
- Lack of ability to challenge charges and quality of service delivered
- Payment of ground rents (where no service is offered in return) for pre-30 June 2022 leases³
- Automatic requirement for leaseholder to pay landlord costs

The Bill

The main elements of the Bill do deliver on many of the key criticisms of the current system. If passed in its current form, it will:

- Make it cheaper and easier for leaseholders to extend the term of their lease, or buy the freehold, including a new valuation formula that scraps the much-criticised "marriage value" and caps the treatment of ground rents in the calculation to 0.1% of the freehold value.



¹ See our previous commentary in: [Zero Value Ground Rents Hit Global Investors and Ground Rents in Long Residential Leases to Have No Financial Value](#)

² <https://www.gov.uk/guidance/guide-to-the-leasehold-and-freehold-reform-bill>

³ From 30 June 2022 the Leasehold Reform (Ground Rent) Act prohibited the charging of a financial ground rent for most new regulated leases.

- Increase the standard lease extension term to 990 years (from 90 for flats, 50 for houses). On payment of a premium, any extension will enjoy a peppercorn (nominal) ground rent.
- Remove the two-year ownership requirement before enfranchisement rights may be exercised.
- Increase the 25% non-residential limit preventing leaseholders in mixed-use buildings from buying their freehold or taking over the building management – allowing leaseholders in buildings with up to 50% non-residential floorspace to exercise those rights.
- Amend existing legislation to allow tenants participating in a collective enfranchisement claim to require the freeholder to take a leaseback of particular units in the building, enabling the tenants to reduce the price payable for taking the freehold.

Landlords will also be held to greater transparency around service charges, ensuring that leaseholders regularly receive key information to allow them to assess and challenge unreasonable costs.

In addition, the Bill:

- Removes the presumption that leaseholders should pay their landlords' legal costs when challenging poor practices
- Replaces building insurance commissions with a transparent administration fee
- Gives freehold homeowners on managed estates the same rights of redress as leaseholders in relation to rights to information transparency and to challenge charges

However, the Bill is as much about what it does not do, as what it does. The promise to ban new leasehold houses has not (yet, at any rate) come to fruition, neither is there a move towards new flats being sold on a commonhold basis.

Implications

Residential Tenants

For residential tenants, overall this is positive news, with the omissions generally likely to be of more concern than the Bill as it stands. The provisions are likely to improve the value of the leasehold interest. Conversely, commentators have suggested that the Bill, when it is finally passed, could adversely impact the value of the freehold, which will be of concern to landlords, especially when viewed alongside the reduction to a peppercorn rent. Landlords will be keen to ensure that any premium paid on enfranchisement genuinely reflects the value of their interest.

Mixed Use

It is highly significant that a building will now only be excluded from collective enfranchisement rights if more than 50% of the internal floorspace is used for non-residential purposes (previously 25%).

Landlords of mixed-use premises should be alive to the implications of this, as it opens the door to many more tenants to exercise rights to acquire the freehold or manage the buildings they live in.

Investors

Investors, too, are likely to be looking closely at the Bill, not least because an ongoing consultation might deliver future proposals affecting the value of ground rents in leases that predate the ground rent reforms of 2022 (Consultation).⁴ With almost five million leasehold homes affected, total ground rents represent a significant income stream. Although the concept of ground rents as an investment class is a relatively modern one, the impact on ground rents has been profound, requiring, as it does, an ever-increasing source of funds to meet investment requirements.

Future Change?

The Bill has its critics, and it is easy to see why. One of the key promises – banning leasehold houses in England and Wales – has not actually made it into the Bill. The intention is that the measures will be added via a government-backed amendment, but it feels significant that the provisions were, apparently, pulled at the last minute.

Campaign groups have also expressed dismay that there is no commitment to ban future leasehold flats. Commonhold (where the tenant also owns a part of the freehold) may, therefore, remain a pipe dream.

The position on existing ground rents remains uncertain, pending the outcome of the Consultation.

Not quite, then, the end of the “feudal form of tenure” we might have anticipated, but possibly more to come.

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⁴ [Modern leasehold: restricting ground rent for existing leases](#): consultation lasts for nine weeks from 9 November 2023.