

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO 3)

LEASEHOLD REFORM (GROUND RENT) BILL

1. This supplementary legislative consent memorandum is laid under Standing Order (“SO”) 29.2.(iii); 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 brought from the House of Lords 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>. Second Reading of the Bill in the House of Commons took place on 29 November and Committee Stage is due to take place on 7 and 9 December.

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 brought to the House of Commons)

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 leaseholders pay a peppercorn as a rent.
10. The Bill places a duty on trading standards authorities in Wales to enforce the Bill. The Bill, as brought to the House of Commons also makes provision, for leaseholders in Wales to recover unlawfully charged ground rents through the Leasehold Valuation 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 brought to the House of Commons, £500 and £30,000. 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 second Legislative Consent Memorandum

13. On the 26 May 2021, I laid a first Legislative Consent Memorandum pertaining to the Bill as introduced into Parliament on 12 May 2021. The Memorandum confirmed the Welsh Government was generally supportive of the Bill as introduced.
14. I stated in the Memorandum that I 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.
15. On 26 November 2021, I laid a Supplementary Legislative Consent Memorandum (Memorandum No.2) setting out the amendments that had been made to the Bill

during its passage through the House of Lords and before it was brought to the House of Commons. I stated in Memorandum No.2 that I continued to support the Bill as well as the amendments that had been made to it up to that point. I noted though that the Welsh Government was 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 premises in Wales.

16. On 30 November, the UK Government tabled a further nine amendments to the Bill (Amendments 1-9 in the Annex) which are to be considered at Committee Stage in the House of Commons.

17. I consider all of the proposed amendments make provision in relation to Wales and fall within the legislative competence of the Senedd. I 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.

Proposed UK Government amendments to the Bill for which consent is required.

18. Proposed amendments to **Clause 1** will dis-apply the requirement for a premium in the case of new leases that result from a deemed surrender and regrant. Without these amendments, if a leaseholder seeks a variation to the term or the demise of their post-commencement lease or their regulated lease, they would risk the new lease not being considered a regulated lease for the purposes of the Bill unless they pay a premium.

19. Proposed amendments to **Clause 6** would mean that a replacement lease for a premises, which is larger than that originally leased, will be included within the scope of clause 6 provisions (permitted rent: leases replacing pre-commencement leases). The amendment puts replacement leases of larger premises in the same position as replacement leases already covered by clause 6 (that is, replacement leases that relate only to premises, or part of a premises, that was subject to the previous lease). This may encourage freeholders to grant voluntary lease extensions of enlarged premises, where they may not otherwise have done so. A separate proposed amendment to Clause 6 will ensure that it applies to a replacement lease even if the term of that lease does not extend beyond the end of the term of the previous lease.

20. A proposed amendment would remove **Clause 8** from the Bill, on the basis that there are several drafting and practical implementation issues with this clause as drafted, including not sufficiently defining how a landlord's duty may be discharged.

21. A drafting amendment to the definition of a premium in **Clause 23** is proposed, such that only pecuniary consideration, rather than any consideration in money or money's worth, is included.

22. As is normal, an amendment has been tabled to remove **Clause 27**, which was previously inserted as a privilege amendment, routinely added to Bills that commence in the House of Lords.
23. A proposed amendment to the **Schedule** would require any proceeds of a financial penalty imposed in relation to a lease of premises in Wales (that have not gone towards legal or administrative costs of enforcement) to be paid to the Welsh Ministers, rather than the Secretary of State.

Welsh Government position on the Bill as amended

24. I note the amendments tabled by the UK Government for consideration at Committee Stage in the House of Commons.
25. I welcome the proposed amendments to Clause 1 and Clause 6 (amendments 1-5), as these will prevent certain unintended negative consequences of the Bill that might otherwise have arisen.
26. Although broadly supportive of the principle that landlords should inform leaseholders of the changes introduced by this Bill, I am content that the drafting and practical implementation of the duty set out Clause 8 would justify its removal (amendment 6). However, I will nevertheless ensure the new protections for leaseholders brought about by the legislation will be communicated widely within Wales.
27. I am content with the proposed technical amendment to the drafting in Clause 23 (amendment 7) and the procedural amendment removing Clause 27 (amendment 8).
28. Finally, I welcome the proposed amendment to the Schedule (amendment 9) that would see unused proceeds of a financial penalty imposed in relation to a lease of premises in Wales paid to the Welsh Ministers. This is an amendment we had previously requested that the UK Government make.
29. I therefore support the application of all of the proposed amendments to Wales.

Financial implications

30. 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.
31. 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

32. 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.

33. I support the Bill and the proposed amendments.

JULIE JAMES MS

MINISTER FOR CLIMATE CHANGE

3 DECEMBER 2021

ANNEX A

Amendments to the Bill tabled by the UK Government on 30 November 2021 ahead of Committee Stage in the House of Commons

- **Amendment 1** - Clause 1, page 1, line 9, at end insert — "(but see subsection (5))."

This amendment inserts a reference to the new subsection inserted by amendment 2

- **Amendment 2** - Clause 1, page 1, line 16, at end insert—

"(5) Where there is a deemed surrender and regrant by virtue of the variation of a lease which is—

(a) a regulated lease, or

(b) a lease granted before the relevant commencement day,

subsection (1) applies as if paragraph (b) were omitted/

This amendment provides that where there is a deemed surrender and regrant of a regulated lease or a pre-commencement lease, the new lease may be a regulated lease even if it is not granted for a premium

- **Amendment 3** - Clause 6, page 4, line 30, after first "of" insert "premises which consist of, or include,"

This amendment clarifies that clause 6 can apply to a replacement lease which includes some premises not demised by the pre-commencement lease

- **Amendment 4** - Clause 6, page 4, line 39, after "period" insert "(if any)"

This amendment clarifies that clause 6 can apply to a replacement lease for a term that does not extend beyond the end of the term of the pre-commencement lease.

- **Amendment 5** – Clause 6, page 5, line 7, after first "of" insert "premises which consist of, or include,

This amendment clarifies that clause 6(5) can apply to a new lease which includes some premises not demised by the lease to which subsection (2) applied.

- **Amendment 6** – Clause 8, Page 6, line 26, leave out Clause 8

This amendment leaves out Clause 8 of the Bill, which was inserted at Lords Report Stage

- **Amendment 7** - Clause 23, page 14, line 13, leave out "consideration in money or money's worth" and insert "pecuniary consideration"

This amends the definition of a premium so that only pecuniary consideration, rather than any consideration in money or money's worth, is included.

- **Amendment 8** - Clause 27, page 15, line 25, leave out subsection (2)

This amendment removes the privilege amendment inserted in the Lords

- **Amendment 9** - Schedule, page 19, line 16, leave out from "paid" to end of line 17 and insert "
(a) where the penalty was imposed in relation to a lease of premises in England, to the Secretary of State, and
(b) where the penalty was imposed in relation to a lease of premises in Wales, to the Welsh Ministers."

This amendment provides that where penalty proceeds are not used by the enforcement authority to meet the cost of its enforcement functions they are to be paid to the Secretary of State, if the penalty was imposed in respect of a lease of premises in England, and to the Welsh Ministers, if the penalty was imposed in respect of a lease of premises in Wales.