LEASEHOLD REFORM (REASONABLENESS OF SERVICE CHARGES) BILL [HL]

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Leasehold Reform (Reasonableness of Service Charges) Bill [HL] as introduced in the House of Lords on 13 July 2022 (HL Bill 46).

- These Explanatory Notes have been prepared by Baroness Kennedy of Cradley in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

1 There are two significant gaps in current landlord and tenant law. The first relates to fixed service charges being immune from challenge for reasonableness. The second relates to charges being made in excess of the cost of providing goods and services, often by companies associated with landlords and managing agents.

2 A fixed service charge is any charge that does not vary in accordance with the costs making up that charge. This excludes some charges that are not actually fixed. In some leases service charges vary by uprating them in line with inflation, or by a specified percentage, for example £90 plus 10% every year compounded annually.

3 A fixed service charge cannot be challenged for reasonableness under the Landlord and Tenant Act 1985 (*Anchor Trust v. Waby* (2018) UKUT 370 (LC)).

Territorial extent and application

4 This Bill extends to England and Wales.

Commentary on provisions of Bill

Clause 1: Amendment of the Landlord and Tenant Act 1985

5 Clause 1(2) of the Bill amends section 18 of the Landlord and Tenant Act 1985 to make charges that vary by fixed amounts, by an index, by a percentage or by a period of time, or by any combination of those factors, subject to an assessment for reasonableness.

6 Another common issue in residential leasehold is that landlords and managing agents often make charges for services that bear no relation to the costs incurred by the landlord or managing agent in providing the service in question. These charges are often concealed by using companies associated with the landlord or managing agent to provide the services. This makes it hard to tell what has actually been done because all leaseholders can see is an invoice from one subsidiary to another.

7 A common example is charges made for major works, for example the replacement of lifts or roofs. Often landlords and managing surveyors have in-house surveyors to manage statutory consultation processes and major works. These employees are salaried, so the costs associated with them can be calculated with precision. It is not unusual for landlords (or managing agents) to charge 5% to 20% of the cost of the major works for the services of a surveyor as a project manager. The landlord (or managing agent) is not obliged to justify this charge by reference to the time spent on the project, or the costs incurred. Very often there is significant overlap between management fees, on-site staff and the in-house surveyor appointed as a project manager.

8 Other examples include recruitment commissions, insurance commissions and other types of charges.

9 While leaseholders can challenge service charges for reasonableness, all the landlord must do to withstand the challenge is to prove that the charge is within the minimum and maximum that could be charged to a third party. That is regardless of the cost actually incurred by the landlord in providing the service in question.

10 Clause 1(3) of the Bill amends section 19 of the Landlord and Tenant Act 1985 to limit service charges to the amount actually incurred by the landlord or managing agent. Where charges are made by the landlord (or an associate of the landlord (or managing agent)), the burden of proof is reversed so that it is for the landlord making the charge to show that it is reasonable.

11 Landlords and managing agents also make fixed or variable administration charges for the giving of information and consent under the terms of the lease. For example, £462 for providing the information necessary to sell a leasehold flat or house, or £350 for permission to make a like-for-like replacement of a boiler, or for external windows and doors. These charges often involve the landlord sending out a standard form licence (permission) without significant effort.

12 Another example of a variable administration charge is where a lease provides for the landlord to recover professional costs for looking at plans for alterations. Often the landlord has in-house surveyors. Leaseholders are charged at the highest hourly rates in the market for the services of these in-house surveyors, regardless of the experience of the surveyor, the quality of the service provided, or the time actually spent by the surveyor. These costs can run to many thousands of pounds.

Clause 2: Amendment of the Commonhold and Leasehold Reform Act 2002

13 Clause 2 of the Bill makes similar changes to those in clause 1(3) to variable administration charges, so that a landlord is required to justify the charge by reference to the costs actually

incurred by the landlord. Again, the burden of proof is reversed so that the landlord has to demonstrate that the charge is reasonable.

Clause 3: Extent, commencement and short title

14 This Clause sets out the extent, commencement and short title of the Bill. The Bill extends to England and Wales. It comes into force on the day on which it is passed.

Commencement

15 The Bill comes into force on the day on which it is passed.

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