

LEASEHOLD REFORM (DISCLOSURE AND INSURANCE COMMISSIONS) BILL [HL]

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Leasehold Reform (Disclosure and Insurance Commissions) Bill [HL] as introduced in the House of Lords on 14 July 2022 (HL Bill 47).

- These Explanatory Notes have been prepared by Lord Kennedy of Southwark 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.

Overview of the Bill

- 1 The Bill proposes to:
 - amend section 19 of the Landlord and Tenant Act 1985 to prevent landlords and managing agents who do not comply with their duties from recovering service charges, unless they have a good excuse for non-compliance;
 - commence section 21A of the Landlord and Tenant Act 1985, insofar as it is not already in force, to permit leaseholders to withhold their service charges if a landlord does not provide a summary of accounts by 6 months after the financial year end; and
 - amend Schedule 1 to the Landlord and Tenant Act 1985 to require landlords to disclose all insurance commissions (however described), including commissions paid on policies in the 6 years before the Bill becomes law.

Policy background

- 2 Residential leaseholders currently have only limited rights to receive information about service charges and insurance commissions. These rights are:
 - a. To receive an annual account of service charges under section 21 of the Landlord and Tenant Act 1985;
 - b. To inspect the documents supporting the annual statement of account under section 21 (section 22 of the Landlord and Tenant Act 1985); and
 - c. To receive details of insurance arranged by the landlord or paid for through the service charge (section 30A of and Schedule 1 to the Landlord and Tenant Act 1985).
- 3 Leaseholders' information rights are often ignored by landlords and managing agents, or their exercise made subject to onerous conditions. Common examples of such conditions include demanding leaseholders pay for staff overtime, or pay an hourly rate for the cost of having staff supervise the inspection. Such charges are already banned by sections 22(5) and 22(6) of the Landlord and Tenant Act 1985 but landlords and managing agents continue to attempt to impose such charges. It is not uncommon to see rates of £180 per hour or more quoted to leaseholders.
- 4 In most cases, the terms of leases preclude leaseholders from withholding service charges even where services are not delivered, or are delivered to a poor standard. There is a limited statutory right under section 21A of the Landlord and Tenant Act 1985 to withhold payment if a landlord does not deliver a statement of account. Section 21A has only been commenced for the purposes of making regulations and has never been brought fully into force. This imbalance of power disincentivises landlords and managing agents to comply with the law.
- 5 Most leases reserve a power for landlords to arrange insurance for the building. This policy covers the internal and external common parts. The insurance is paid for by leaseholders through the service charge. Often the insurance includes commission paid by the insurer to the landlord, managing agent or third-party investors in the building. Leaseholders have no or limited rights to know the amounts paid. These commissions typically range between 10% and 40% of the cost of the underlying insurance, sometimes more. It is unclear how much work (if any) landlords, third-party investors or managing agents do in exchange for these commissions.

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- 6 There have also been cases of landlords circumventing leaseholders' rights under sections 27A and 30A of the Landlord and Tenant Act 1985 by requiring tenants to pay insurance premiums directly to the insurance broker, or to the insurer. This means leaseholders are unable to receive information about the policy and unable to challenge the reasonableness of the costs of the policy.
- 7 Local housing authorities have the power to prosecute landlords and managing agents who do not comply, but such prosecutions are rare in practice due to lack of resources.

Territorial extent and application

- 8 The Bill extends to England and Wales.

Commencement

- 9 The Bill, apart from clause 1(2), comes into force on the day on which it is passed.
- 10 Clause 1(2) comes into force:
 - For the purposes of making regulations, on the day the Bill is passed; and
 - For remaining purposes, on a day appointed by the Secretary of State by regulations, to be no later than 1 July 2024.

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