

# LEASEHOLD REFORM (TRIBUNAL JUDGEMENTS AND LEGAL COSTS) BILL [HL]

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Leasehold Reform (Tribunal Judgements and Legal Costs) Bill [HL] as introduced in the House of Lords on 8 September 2022 (HL Bill 56).

- These Explanatory Notes have been prepared by Baroness Hayman of Ullock 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 This Bill addresses three issues that arise in landlord and tenant law. The first is that a landlord who loses legal proceedings can still recover its full costs from the tenant under the terms of the lease. The second issue is that even when tenants succeed in proceedings and obtain orders limiting landlord costs, the order only binds the leaseholders participating in proceedings, meaning the landlord can recover costs from other leaseholders. The third issue is that even where some tenants succeed in proceedings and obtain orders limiting service charges, the landlord is not obliged to account to other leaseholders for the charges in question.

## Policy background

- 2 Currently if the landlord loses proceedings in a court and a court makes a costs order against the landlord, the order only binds the landlord and the tenant in question. Although there is case law suggesting that a landlord should not pass on any costs under the service charge in such circumstances, there is nothing preventing the landlord from doing so. It is also up to leaseholders to detect that costs have been passed on and to challenge the landlord.
- 3 The First-tier Tribunal (in England) and the Leasehold Valuation Tribunal (in Wales) have the power to make an order under section 20C of the Landlord and Tenant Act 1985 reducing the amount of costs a landlord may put through the service charge. Such orders only bind leaseholders participating in the proceedings.
- 4 Tribunal proceedings may also determine that service charges are not reasonable and should be reduced. A landlord is only obliged to refund charges to leaseholders participating in the challenge. This leads to the perverse outcome of a landlord continuing to collect charges that have been found unreasonable from non-participating leaseholders whilst not being allowed to collect the same charges from the participating leaseholders.
- 5 This imbalance of power means a landlord can spend leaseholder money resisting leaseholders' challenges to service charges because it knows that it will be able to recover its legal costs under the service charges. This indemnification by leaseholders also means a landlord has no incentive to settle.
- 6 These issues arise because the terms of most leases will allow landlords to recover their legal costs through the service charge, or by administration charges against individual leaseholders, regardless of any costs order made against the landlord. The current costs regime is therefore in favour of the landlord.

## Territorial extent and application

- 7 The Bill extends to England and Wales.

# Commentary on provisions of Bill

## Clause 1: Amendment of the Landlord and Tenant Act 1985

8 Clause 1 amends the law as follows:

- a. By changing section 20C of the Landlord and Tenant Act 1985 to make costs orders against the landlord binding on the landlord and all tenants under the same landlord. This would prevent an unsuccessful landlord from recovering any of its costs from any tenant.
- b. By changing section 20C of the Landlord and Tenant Act 1985 to limit the amount a landlord can recover from service charges to the amount permitted under the Civil Procedure Rules fixed costs regime.
- c. By inserting a new section 20CA into the Landlord and Tenant Act 1985 to make any costs order made against a landlord (other than in proceedings in which a section 20C order has been made) binding against the landlord in relation to all tenants under the same landlord. This change would prevent a landlord who loses in court and is ordered to pay some or all of the successful party's costs from recovering any of its costs through the service charge.
- d. By inserting a new section 27B to the Landlord and Tenant Act 1985 to make judgments of the First-tier Tribunal or Leasehold Valuation Tribunal binding against the landlord in relation to all tenants under the same landlord. This would prevent a landlord from recovering any service charge found to be unreasonable from any tenant.

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

- 9 Clause 2 amends paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 to make equivalent changes to legal administration charges payable by individual leaseholders.

## Commencement

- 10 The Bill comes into force on the day it is passed.

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