

HOUSING ACT 1988 (AMENDMENT) BILL [HL]

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Housing Act 1988 (Amendment) Bill [HL] as introduced in the House of Lords on 21 November 2023 (HL Bill 9).

- These Explanatory Notes have been prepared by Baroness Twycross in order to assist the reader of the Bill. They do not form part of the Bill and have not been endorsed by Parliament.
- 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 is currently uncertainty as to whether residential leasehold properties with ground rents of more than £250 a year outside Greater London (or more than £1,000 a year inside Greater London) are to be deemed assured tenancies under the Housing Act 1988.¹
- 2 If these leases are assured tenancies and the ground rents are not paid, even inadvertently, then the landlord is able to repossess the property. A court has no jurisdiction under the Housing Act 1988 to refuse to grant possession to the landlord for non-payment of rent due under an assured tenancy. That is contrary to the position where leases are forfeit and the court has discretion to grant relief from forfeiture provided the leaseholder pays the outstanding amounts due.
- 3 There is currently no known case of a landlord attempting to repossess a property on this ground. Nevertheless, mortgage lenders are reluctant to lend on any property with a ground rent exceeding the statutory limits. To sell their properties, tenants may have to pay substantial fees to landlords to vary the lease so that the ground rent falls below the statutory levels, or else pay a premium to exercise statutory lease extension rights to reduce the ground rent to a peppercorn.
- 4 Properties with increasing ground rents may find that they meet the £250 and £1,000 limits specified in the Housing Act 1988 as their ground rents increase. This is particularly problematic for ground rents doubling at intervals of more than 20 years because those rents have not been addressed by the recent Competition and Markets Authority intervention.²
- 5 The statutory limits of £250 and £1,000 have not been revised since 1990. Had the limits kept pace with Retail Price Index inflation, the limits would now be around £715 and £2,860 respectively.
- 6 The Bill resolves this issue by amending Schedule 1 of the Housing Act 1988 to make clear that any long lease of a single residential dwelling for a term of 21 years or more is never to be deemed to be an assured tenancy, regardless of the level of ground rent.

¹ <https://www.legislation.gov.uk/ukpga/1988/50/contenQnts>

² <https://www.gov.uk/government/news/thousands-more-leaseholders-freed-from-rising-ground-rents>

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