

Parliamentary Briefing

Leasehold and Freehold Reform Bill

Committee Stage, House of Commons, 18 January 2024

The Law Society of England and Wales is the independent professional body that works globally to support and represent 200,000 solicitors, promoting the highest professional standards and the rule of law.

Introduction

The Law Society broadly supports the proposals in the Leasehold and Freehold Reform Bill. The Bill will impact homeownership for millions of leaseholders in England and Wales and could make useful improvements to the homebuying and selling process.

Summary

- The Law Society support clauses 27 to 33 in the Bill which will improve the transparency of key information and enable leaseholders to scrutinise and challenge unreasonable charges. We recommend that sellers, managing agents and landlords be required to provide key information when marketing a property.
- We support measures to make it easier and cheaper for leaseholders to extend their lease of purchase the freehold, including the proposal to allow leaseholders to do so immediately on taking ownership of a property. However we believe the Government should reconsider requiring landlords to cover their own costs in transactions that are conducted below market value.
- We believe the Government should bring forward an amendment to ban the sale of new leasehold houses at the earliest opportunity. Going further, the Government should also implement the Law Commission's proposed reforms to land obligations to enable flats to be sold as freehold.
- The Government should carefully consider retrospective provisions to cap ground rents in existing leases. The use of retrospective legislation could undermine the reputation of English law, and merits further consideration.
- We support provisions to extend rights of redress to freeholders in relation to estate rent charges. We recommend that the Government clarify the definition of 'estate' for the purpose of this provision.

1. Improving transparency for leaseholders

One of the key questions surrounding leasehold is transparency and availability of information. We support clauses 27 to 33 in the Bill which aim to empower leaseholders by improving the information available to them. Better transparency around key lease information is important to enable consumers to make informed decisions when buying or selling a property, and to allow leaseholders to scrutinise and challenge unreasonable charges.

The Law Society supports clauses 27 to 33 in the Bill which aim to empower leaseholders by improving the information available to them. Clauses 27 and 28 introduce a standardised service charge demand form and a standardised statement of account respectively, which will help leaseholders to understand and challenge service charges.

These provisions will also assist solicitors in helping clients establish the costs involved in purchasing and living in a leasehold property, so that they can make a fully informed decision.

It is important that key information is provided in ways that are accessible and easily understandable for consumers. In particular, the Law Society believes sellers, managing agents and landlords should as a standard provide key information about leasehold properties at the marketing stage. This information should include the lease length, estimates of enfranchisement costs, the ground rent, and any service charges. We would support proposals to set out maximum fees for and time limits for the provision of this information to help simplify the home buying and selling process.

Recommendation

Sellers, managing agents and landlords should be required to provide key information about leasehold properties during marketing. We would support a maximum fee level and time limits for provision of information to achieve this.

2. Making enfranchisement cheaper and easier

The Law Society understands the Government's rationale for wanting to make it cheaper and easier for existing leaseholders in houses and flats to extend their lease or buy their freehold.

We support the measures in clause 1(2)(b) which remove the requirement for leaseholders to have owned their property for at least two years before they can extend their lease or buy their freehold. Allowing leaseholders to enfranchise immediately on taking ownership of a property would facilitate parts of the residential property market and allow buyers rather than sellers to make the application to extend their lease.

However, we have concerns about the wisdom of ending the current rule that leaseholders must pay the landlord's costs where leaseholders exercise their right to enfranchise (clauses 12 and 13 of the Bill) in all cases.

It is right and fair that leaseholders should not be required to pay the landlord's costs when the transaction is conducted at full market value, as the principle in all other open market transactions is that each side should pay its own costs only. This was what was recommended by the Law Commission.

However, this Bill goes further by requiring landlords to bear their own costs even in cases where, under the new proposed notional basis of valuation, the price payable may be below full open market value. We believe it would be more appropriate for the Bill to follow the Law Commission's recommendation and restrict this only to transactions at market value.

Recommendation

The Government should adopt the Law Commission's recommendation that landlords bear their own costs for enfranchisement only when the transaction is conducted at market value.

3. Ending the sale of new leasehold houses

As currently drafted, the Bill does not deliver on the Government's commitment to restrict the sale of new leasehold homes.

Houses should be sold freehold unless there are particular reasons justifying a leasehold tenure, provided that there are straightforward mechanisms for maintaining and paying for the upkeep of new-build residential estates. The Law Society would support an amendment to restrict the sale of new leasehold houses so that, other than in exceptional circumstances, every new house in England and Wales will be freehold from the outset.

We would also urge the Government to go further and enact the legal reforms to freehold law that the Law Commission proposed in its 2011 report, *Making Land Work: Easements, Covenants and Profits-à-Prendre*. In the absence of proposals to promote the use of commonhold tenure, these proposals could enable flats as well as houses to be sold freehold.

Introducing these reforms of freehold law - which the Law Commission termed "land obligations" - would enable solicitors to draft freehold sales documentation that is much more straightforward than is needed under the existing freehold law, and would reduce the need to rely on the difficult regime of commonhold. Its introduction could also facilitate digitisation of the conveyancing process by removing the need to have express Deeds of Covenant.

Recommendations

The Government should bring forward an amendment to ban the sale of new leasehold houses at the earliest opportunity.

The Government should also go further and implement the Law Commission's proposed reforms to land obligations to enable flats to be sold as freehold rather than leasehold or commonhold.

4. Retrospective legislation

Parts of this Bill contain provisions that would apply retrospectively. The principle that legislation should not be made to apply retrospectively unless there are exceptional circumstances is fundamental to the rule of law, as it can threaten legal stability and certainty. The Law Society therefore believes that any retrospective measures need to be scrutinised carefully.

Clauses 9 to 11 and schedule 2, paragraph 23(4) provide that the purchase price payable by existing leaseholders for collective enfranchisement, individual lease extensions, or just for buying out their ground rents, is to be assessed as if their ground rents were different from those actually reserved in their leases - there is to be a valuation assumption that the ground rents are subject to a notional cap. There is also to be a removal of 'marriage value'. These provisions are to apply not only to new leases, but to any lease, including those agreed and entered into long before the publication of this Bill.

These retrospective provisions effectively transfer value from all landlords to all long leaseholders, without regard to any consideration of the parties' relative financial or bargaining positions or the existence or absence of wrongdoing by one party or the other. It is far from clear that all the ground rents that would be caught by this provision could be categorised as unreasonable.

While the ground rent consultation is ongoing, we recommend that the Government and Parliament carefully consider the impact of enacting this aspect of the Bill given established conventions around retrospective legislation.

Recommendation

The Government should carefully consider the impact of legislating retrospectively to amend existing lease terms.

5. Reducing ground rents to a peppercorn

The Law Society supports clause 21 of the Bill which proposes to enable tenants to reduce their ground rent to a peppercorn (zero financial value) upon payment of a premium (subject to consideration of the issue of retrospection noted above).

This will make sure that leaseholders can enjoy secure, ground rent-free ownership of their properties for years to come, without the challenges and expense of repeated lease extensions.

6. Granting freeholders rights of redress around estate rent charges

The Law Society supports the provisions in clauses 39 to 51 of the Bill which will grant freehold homeowners on private and mixed tenure estates the same rights of redress as leaseholders in relation to management charges. The Bill does this by extending equivalent rights to transparency over estate charges and granting equivalent rights to challenge the charges freeholders pay by taking a case to the tribunal.

A long leaseholder would have statutory protection for rights of redress. A freeholder, who may have paid a similar amount to a long leaseholder for their interest, as well as paying exactly the same amount for services, should have equivalent protection.

Reference is made to this provision applying to private estates of freehold and mixed tenure estates. Detailed consideration needs to be given to the definition of 'estate' for the purpose of this provision. In particular, consideration will need to be given to whether this relates only to private developments of primarily residential homes and private infrastructure, or whether the term also relates to developments created by a single developer using a single management structure.

Recommendation

The Government should clarify the definition of 'estate' for the purpose of extending rights of redress to freeholders around estate rent charges.

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