

LEASEHOLD AND FREEHOLD REFORM BILL

Supplementary Memorandum from the Department for Levelling Up, Housing and Communities to the Delegated Powers and Regulatory Reform Committee

A. INTRODUCTION

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Leasehold and Freehold Reform Bill (“the Bill”). It supplements the memorandum that was submitted and published on 29 February 2024 when the Bill was introduced to the House of Lords. This supplementary memorandum addresses powers contained in Government amendments tabled at Committee Stage.
2. The Department has considered the use of powers in the Bill as set out below and is satisfied that they are necessary and justified.

B. SUMMARY OF THE BILL

3. The DPRRC is referred to the memorandum published on 29 February 2024 for a summary of the Bill.

C. DELEGATED POWERS

4. The additional powers tabled at Committee Stage are:
 - a. Clause 54 (2) (21D(2)) Power to determine the specified standards for review of financial information that qualified accountants must adhere to when preparing the written report
 - b. Clause 54 (2) (21D(2)) Power to determine the form and manner of the statement that a qualified accountant will make regarding the written report
 - c. Clause 54 (3) Power to extend the requirements that may be satisfied for a person to have the necessary qualifications to prepare the written report
 - d. Clause 81 (1A) Power to define “event fee” which will be excluded from being an administration charge.
 - e. New Schedule (4) (a) Power to specify requirements in relation to shared-ownership leases granted on or after the 2024 Act commencement day.
 - f. New Schedule (5) (a) Power to specify requirement in relation to shared-ownership leases granted on or after the 2024 Act commencement day.

D. ANALYSIS OF DELEGATED POWERS BY CLAUSE

Clause 54: Accounts and annual reports

- (2) (21D(2)) Power to determine the specified standards for review of financial information that qualified accountants must adhere to when preparing the written report

- (2) (21D(2)) Power to determine the form and manner of the statement that a qualified accountant will make regarding the written report
- (3) Power to extend the requirements that may be satisfied for a person to have the necessary qualifications to prepare the written report

Power conferred on: Secretary of State and Welsh Ministers

Power exercised by: Regulations (statutory instrument)

Parliamentary Procedure: Affirmative procedure

Context and Purpose

5. Clause 54 introduces new provisions which are designed to increase the amount of relevant information that tenants receive regarding the management, maintenance and improvement of their block. This is to provide greater transparency and enable leaseholders to hold their landlord (or managing agents acting on their behalf) to account.
6. New section 21D ensures that tenants in blocks of 4 or more dwellings receive key financial information through the provision of service charge accounts.
7. Clause 54(3) also makes consequential changes to Section 28 of the Landlord and Tenant Act 1985 over the role of the qualified accountant.

Justification for taking the power

8. The purpose of the new powers in Section 21D (2) is to enable the Secretary of State (and Welsh Ministers) to set out the reporting standards to which a qualified accountant must adhere when preparing a report on the statement of accounts. The role of the accountant is to instil confidence in the accuracy of the statement of accounts. The new powers will prescribe by regulations the detailed form and content of the statement of the qualified accountant confirming that the report prepared is a faithful representation of what it purports to represent. A delegated power is required as this will allow for amendments to be made over time as standards change and improve and the requirements of the market change to respond to new changes in the sector.
9. The overriding policy intention is to ensure that relevant and reliable financial information is provided to tenants every year. It is important that the accountant's report, which will be their opinion of the completeness and accuracy of the statement, is prepared in a manner which reflects changes to standard financial procedures as and when they occur. This process represents good governance, and it is important that it remains fit for purpose. In addition, if amendments to existing provisions are required, due to changes in accounting practice or procedure for example, the availability of a delegated power will facilitate these changes being made in an efficient manner. The level of technical detail involved is deemed too high for inclusion in primary legislation. A delegated power will also enable the Secretary of State (and Welsh Ministers) to respond at pace to any further changes which may be needed to adapt the regime to deal with emerging issues. As with other proposals, the Government intends to work with practitioners on the detail.

10. In addition to the above, the new power added to Clause 54(3) also allows the Secretary of State (and Welsh Ministers) to expand the definition of “qualified accountant” to enable the definition to include other people who are deemed capable of preparing the report to provide assurance over the statement of accounts. In addition to those who are statutory auditors, those who could be included in the expanded definition would be required to belong to a relevant professional body. The purpose of this amendment is to increase availability of staff, ensure the level of assurance is proportionate, and drive down costs. The Government intends to work with practitioners to identify the relevant professional bodies that individuals would be required to belong to and those who should be captured by the definition of “qualified accountant”.
11. The power will also enable the Secretary of State to respond quickly to changes within the sector, whilst also being able to react to a range of emerging issues which could occur when the measures come into force, such as capacity of qualified individuals or expertise to prepare the service charge accounts.

Justification for the procedure

12. The new powers under Section 21D will be subject to the affirmative procedure. We note that the DPRRC recommends existing powers in this clause should be subject to affirmative resolution powers and will make those legislative changes. The Department considers that the affirmative procedure provides an appropriate level of Parliamentary scrutiny for such a power because its use could have an impact on reporting standards. Verification of reporting standards of accounts consists of checking the accuracy of the financial information presented and verifying that the expenses are directly related to the management and maintenance of the property. Regulations made under this power will set out obligations regarding the reporting standards and content of the accountant’s statement and would be made with the aim to make them more suited to market conditions and would not be made in a vacuum. Before any instrument is laid there would be examination of current practice and we will work with practitioners and other stakeholders to identify the best approach. It is right that this level of detail for information should be scrutinised by Parliament through the affirmative procedure.
13. The new power added to Clause 54(3) to expand the definition of “qualified accountant” will also be subject to the affirmative procedure in both Houses of Parliament. It is important that Parliament has the opportunity to debate changes to the legislative framework that may have significant impacts on the operation of the regime. This will ensure that there is appropriate parliamentary scrutiny of any changes to the definition of “qualified accountant” to ensure that professionals who undertake this role have the necessary expertise to perform these tasks effectively and to uphold standards of professional conduct and ethical practice.

Clause 81: Meaning of "administration charge"

- (1A) Power to define “event fee” which will be excluded from being an administration charge.

Power conferred on: Secretary of State and Welsh ministers

Power exercised by: Regulations (statutory instrument)

Parliamentary Procedure: Affirmative procedure

Context and Purpose

14. Clause 81 sets out the definition of an "administration charge" for the purposes of this part. An administration charge is an amount that is payable by an individual homeowner, directly or indirectly, when they engage with the estate manager for a defined list of activities on matters that are not covered by an estate management charge. Clause 81(1A) seeks to clarify that an "event fee" is not be regarded as an administration charge.

Justification for taking the power

15. Clause 81(1A) sets out clear criteria of what constitutes an "event fee". This capability to change the definition allows the Government to keep the definition under periodic review and to ensure it reflects and responds to any evolution in the market arising from the behaviour of landlords, particularly in the retirement sector, who rely on event fees as part of their business model. Any changes to the definition would take place following engagement with relevant stakeholders.

Justification for the procedure

16. The power to amend the definition of an event fee will be subject to the affirmative procedure in both Houses of Parliament. This will ensure that there is appropriate parliamentary scrutiny of any changes to the definition of an event fee. Given that this is a change relating to costs incurred by individual homeowners and may have serious implications for them, the government's view is that requiring draft affirmative procedure is proportionate and appropriate to ensure the appropriate level of accountability to Parliament.

New Schedule: Part 2 Consequential Amendments to Other Legislation

- (4) (a) Power to specify requirements in relation to shared-ownership leases granted on or after the 2024 Act commencement day.
- (5) (a) Power to specify requirement in relation to shared-ownership leases granted on or after the 2024 Act commencement day.

Power conferred on: Secretary of State and Welsh Ministers

Power exercised by: Regulations (statutory instrument)

Parliamentary Procedure: Negative procedure

Context and Purpose

17. The Leasehold Reform Act 1967 and the Housing Act 1980 contain powers to make shared-ownership regulations. These regulations set out requirements that certain leases, in particular leases for the elderly, need to meet to be excluded from enfranchisement rights under the 1967 Act. These powers to make regulations are being repealed by the Bill.

18. However, there are other Acts that rely on identifying certain shared ownership leases by reference to the requirements in those regulations. Specifically, section 115 of the Housing Act 1985 and section 26 of the Landlord and Tenant Act 1985 make provision for leases terminable on death (which is a common provision in leases for the elderly). Such leases qualify as long tenancies for the purposes of these Acts only if they meet the requirements in the shared-ownership regulations created under the 1967 and 1980 Acts. To ensure that existing framework remains fit for purpose where needed, we are replacing the existing powers with the new clauses set out above in the consequential amendment schedule.

Justification for taking the power

19. The two new powers in the consequential amendment schedule are regulation-making powers that enable the Secretary of State (or Welsh Ministers) to specify requirements in regulations that certain shared ownership leases must meet to be a 'long tenancy' for the purposes of the Housing Act 1985 and the Landlord and Tenant Act 1985. The creation of the new powers is necessary for the relevant provisions in these Acts to continue to function, given the repeal of the regulation-making powers in the 1967 and 1980 Acts.

20. The new powers take the place of the powers that are being repealed. The intent is that these consequential amendments are preserving the law rather than changing it or introducing novel powers for the Secretary of State (and Welsh Ministers). The Government considers that it is appropriate to include this power so that the full effect can be given to the provisions of shared ownership in the Bill.

Justification for the procedure

21. Given the limited effect of these two new powers it is considered appropriate for the negative resolution procedure to be used, as the limited impact of such changes means that there is less need for in-depth Parliamentary scrutiny.

22. The regulations will be technical in nature, with a focus on setting out requirements that certain leases need to meet. Debating these in detail is unlikely to be an effective use of parliamentary time. The Government therefore believes that negative procedure would be the most appropriate mechanism to address the fine details of any regulations made under these powers, subject to Parliamentary scrutiny of the proposed primary legislation.

23. Additionally, as these powers are in essence replacing existing powers it is appropriate to use the same form of procedure, namely the negative procedure.

Department Name: Department for Levelling Up, Housing and Communities

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