

Report on the Supplementary Legislative Consent Memorandum (No.3) for the Leasehold and Freehold Reform Bill

May 2024

1. Background

1. On 12 December 2023 the Welsh Government laid a Legislative Consent Memorandum (“the LCM”) on the Leasehold and Freehold Reform Bill (“the Bill”) before the Senedd. A Supplementary LCM (“SLCM No.2”) was laid on 20 January 2024. We reported on the LCM and SLCM (No.2) on 15 March 2024.
2. On 4 March 2024 the then Minister for Climate Change, Julie James MS, laid a further Supplementary LCM (“SLCM No.3”). On 12 March 2024, the Business Committee referred SLCM (No.3) to the Local Government and Housing Committee (“the Committee”) and the Legislation, Justice and Constitution Committee for consideration, and set a reporting deadline of 17 May 2024. We considered SLCM (No.3) at our meeting on 18 April 2024.

2. SLCM (No.3)

3. Paragraphs 13 to 14 of SLCM (No.3) set out the Welsh Government’s updated position since the publication of SLCM (No.2).



Report on the Supplementary Legislative Consent Memorandum (No.3) for the Leasehold and Freehold Reform Bill

4. Paragraph 13 notes that further amendments may be made to the Bill at a later stage, following any decisions made by the UK Government as a result of its consultation on the limitation of ground rent in existing leases. It notes that officials will continue to work with the UK Government to ensure that provisions being developed which will apply in Wales are appropriate.

5. Paragraph 15 asserts the Welsh Government's view that:

“where this Bill makes provision in relation to Wales, it is for a purpose within the legislative competence of the Senedd, namely housing, and therefore the majority of the Bill, as amended by Government amendments at Report stage, triggers the requirement for consent.”

6. Paragraph 48 sets out the UK Government's view on the need for consent.

7. Paragraphs 17 to 47 set out the effect of the UK Government amendments proposed at Report stage.

8. The relevant amendments are summarised below.

Part 1 - Leasehold house ban

9. The most significant set of amendments made at Report stage implement a long-standing commitment to end the use of leasehold for new houses in England and Wales.

10. New Clause (“NC”) 42 introduces a ban on the grant or assignment of certain long residential leases of houses (but not flats) from the date the clause comes into force. The ban does not extend to “permitted leases”, which is defined in NC48.

11. NC43, NC44, NC45, NC46 and NC47 define the terms relevant to the ban in NC42, including what constitutes a residential lease, a long residential lease and a house.

12. NC48 and New Schedule (“NS”) 2 set out which types of leases will still be permitted to be used for new houses once the ban comes into force. Some of these would require tribunal certification as “permitted leases” (including certain community housing leases), whilst others may be self-certified (including certain agricultural leases).

- 13.** NC49 provides that a tribunal must issue a “permitted lease certificate” where it is satisfied that the lease is, or will be, a permitted lease. In Wales, the relevant tribunal would be the Leasehold Valuation Tribunal.
- 14.** NC50 and NC51 set out certain information that must be provided to prospective purchasers of permitted leasehold properties to ensure they are aware of the tenure during marketing, and ahead of the grant of a lease. The form, content and manner of the information requirements in Wales may be specified in regulations made by the Welsh Ministers.
- 15.** NC52 and NC53 relate to mandatory ‘prescribed statements’ that must be made in certain new long leases. If a lease does not contain the required statement under NC52, the Land Registry must enter a restriction on the relevant property’s title under NC53. The effect of a restriction would be to prevent disposition of the property until the breach has been rectified (i.e. until the required statement has been made).
- 16.** NC54, NC55, NC56 and NC57 set out the legal remedy for property owners who have inadvertently acquired a property in breach of the leasehold ban. NC54 provides that in such circumstances, homeowners are essentially entitled to be given the freehold (or superior leasehold) of their property for no charge. The remaining new clauses set out how the remedy regime would work in practice, and contain powers for the Secretary of State to make regulations in this regard.
- 17.** NC58, NC59, NC60, NC61, NC62, NC63 and NC64 set out the enforcement regime for the new leasehold restrictions. Enforcement would be undertaken by local weights and measure authorities (more commonly known as ‘Trading Standards’), who may impose financial penalties of between £500 and £30,000 for breaches.
- 18.** NC65 confers a power on the Secretary of State to amend certain definitions relevant to the leasehold house ban (including “long residential lease” and “house”), and the categories of permitted leases in NS2. Any such amendments would have the effect of amending the scope of the leasehold house ban.
- 19.** NC66 is an interpretation provision relevant to (new) Part 1 of the Bill.

Shared ownership

- 20.** Gov 24, 29 and 69 make amendments to existing clauses in Part 1 (Leasehold enfranchisement and extension) and to Schedule 7 (Right to vary lease to replace rent with peppercorn rent). These amendments clarify that,

Report on the Supplementary Legislative Consent Memorandum (No.3) for the Leasehold and Freehold Reform Bill

where ground rent payable in respect of a shared ownership lease is reduced to a peppercorn through a lease extension or the buying out of remaining ground rent, this does not extinguish any rent liability relating to the portion of the property still owned by the shared ownership provider. Gov 28 and Gov 52 make consequential amendments.¹

21. Gov 65 and Gov 66 amend Schedule 6 (Leasehold enfranchisement and extension: miscellaneous amendments) to apply the commutation provisions inserted at Commons committee stage to the specific requirements of shared ownership leases. Rent under leases that are superior to a shared ownership lease can be commuted only if some or all of the rent payable under the shared ownership lease is payable in respect of the tenant's share.

22. Gov 67 corrects an error in the definition of "landlord's share" in Schedule 6.

Enfranchisement under the Leasehold Reform Act 1967 ("LRA 1967")

23. Clause 20 of the Bill allows a leaseholder to choose to use the law, as it exists prior to amendment by the Bill, to acquire the freehold to a house. Gov 36 amends this clause to clarify that any restrictions on further claims set out in the preserved law, will apply only in relation to further claims under that preserved law. Gov 35 is a consequential amendment.

24. Gov 63 amends Schedule 6 (Leasehold enfranchisement and extension: miscellaneous amendments) to make clear that powers to make orders and regulations under the LRA 1967 include power to make the usual types of additional provision. Gov 31, 32, 33, 50 and 51 are all consequential on this amendment.

Crown Application

25. Several amendments are made which clarify the Bill's application to the Crown. Under a longstanding legal presumption, Acts of Parliament do not generally bind the Crown unless expressly stated to the contrary.

26. In this context, the 'Crown' is a reference to the institutions and agencies of government carried on in the Sovereign's name, rather than the Sovereign in a personal capacity.

¹ Paragraph 27 of SLCM (No. 3) refers to Gov 52 as being consequential on "Gov 24 and 25", but the reference to Gov 25 appears to be a typographical error.

27. NC26 and Gov 40, Gov 41, Gov 42, which are consequential on it, move provision about Crown application of the Landlord and Tenant Act 1985 (“LTA 1985”) from the Commonhold and Leasehold Reform Act 2002, into the LTA 1985 itself.

28. The collective effect of these clauses is to provide that sections 18 to 30P of the LTA 1985 bind the Crown, whether or not they relate to Crown land. These clauses encompass service charges, insurance and information requests by tenants.

29. NC27 and Gov 42 which is consequential on it, provide that certain provisions in Part 5 of the Bill, bind the Crown. The relevant clauses relate to ‘sales information requests’ served by owners of managed dwellings on estate managers.

Commutation

30. Schedule 2 to the Bill (Determining and sharing the market value) sets out the new valuation method. Gov 54 amends this Schedule to ensure that any reduction of rent payable by a person as a tenant where there is commutation of rent is taken into account when determining the person’s loss for the purpose of sharing the consideration payable on an enfranchisement or extension.

Ground rent buy out

31. Schedule 7 (Right to vary lease to replace rent with peppercorn rent) confers the right on certain leaseholders to buy out remaining ground rent. Gov 70, 71, 72, 73 and 76 make amendments to this Schedule to address situations where there are intermediate leases that would be impacted by the exercise of the right to buy out ground rent.

Further minor, technical and consequential amendments

32. There are further minor, technical and consequential amendments, which are summarised in paragraphs 38 to 43 of SLCM (No. 3). In particular, Gov 23 and Gov 84 amend the long title of the Bill to reflect changes made at Report stage.

Delegated powers

33. The amendments include further delegated powers in relation to the leasehold house ban, some of which are conferred on the Welsh Ministers and others on the Secretary of State. Each of these powers is subject to the negative procedure, with the exception of the powers in NC65 which allow the Secretary

of State to amend certain definitions relating to the leasehold house ban, which are subject to the affirmative procedure.

34. The Welsh Government's LCM and SLCM (No. 2) explained that there was disagreement between the Welsh and UK Governments as to the extent to which the Welsh Ministers should be able to exercise the powers to make subordinate legislation flowing from the Bill. Paragraph 55 of SLCM (No. 3) notes the then Minister for Climate Change's view:

"As I set out in the previous memoranda on this Bill, although in my view the provisions of this Bill represent significant positive improvements for homeowners in Wales, there continues to be disagreement with UK Government as to the extent to which individual provisions are within the legislative competence of the Senedd, and the extent to which the Welsh Ministers should be able to exercise powers to make subordinate legislation flowing from the Bill. This applies again in the allocation of executive functions in these amendments. I continue to actively engage with UK Government to pursue this matter, and expect amendments to be brought forward during the House of Lords stages of the Bill to address my concerns. I will update the Senedd on my progress in due course."

Reasons for making provision for Wales within the Bill

35. Paragraph 49 notes:

"The reasoning set out in the initial LCM on this Bill at introduction as to why it is appropriate for UK legislation to make provision for Wales in this Bill still stands."

36. Paragraphs 50 to 54 re-state this reasoning, and include reference to the difference of opinion between the Welsh and UK Governments as to the Senedd's competence to legislate for the provisions in the Bill, and the risk of any resulting competence challenge in the Supreme Court delaying implementation of changes to the law in relation to Wales.

3. Committee consideration

37. We considered SLCM (No.3) at our meeting on 18 April 2024.

38. We reiterate our view from our report on the LCM and SLCM (No.2), namely that we support the policies of the provisions in this Bill and note the Welsh Government's rationale for using UK legislation for making these provisions for Wales. Further, we note paragraph 51, which raises the possibility of a Wales-only Bill to achieve the same aims being challenged as not within competence, and the potential subsequent delays in implementing the changes to the law in Wales.

39. We therefore recommend that the Senedd gives its consent for the UK Government to legislate on these devolved matters.