SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO 2)

Leasehold and Freehold Reform Bill

1. This legislative consent memorandum (LCM) is laid under Standing Order ("SO") 29.2. SO29 prescribes that a legislative consent memorandum must be laid, and a legislative consent motion may be tabled, before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the Senedd.

2. The Leasehold and Freehold Reform Bill ("the Bill") was introduced in the House of Commons on 27 November 2023. I laid an LCM on 12 December 2023.

3. The UK Government tabled 119 amendments on 17 January, and 5 amendments on 24 January for consideration at Commons Committee Stage which commenced on 16 January. The majority of the amendments make provision which fall within the legislative competence of the Senedd, as detailed in paragraphs 13 to 46 below.

4. The Bill as introduced can be found at: Leasehold and Freehold Reform Bill (parliament.uk). The paper which includes these amendments may be found at this link: leasehold_rm_pbc_0117.pdf (parliament.uk).

Policy Objective(s)

5. The UK Government's stated policy objectives are to:
   Amend the rights of tenants under long residential leases to acquire the freeholds of their houses, to extend the leases of their houses or flats, and to collectively enfranchise or manage the buildings containing their flats, to give such tenants the right to reduce the rent payable under their leases to a peppercorn, to regulate charges and costs payable by residential tenants, to regulate residential estate management and to regulate rent charges.

Summary of the Bill

6. The Bill is sponsored by the Department of Levelling Up, Communities and Housing.

7. The key provisions of the Bill cover:
   - Increasing the standard lease extension term for houses and flats to 990-years (up from 90 years for flats, and 50 years for houses), with ground rent reduced to a peppercorn (zero financial value) upon payment of a premium.
   - Removing the so-called 'marriage value'.

- Removing the requirement for a new leaseholder to have owned their house or flat for 2 years before they can benefit from these changes.
- Increasing the 25% 'non-residential' limit which applies to mixed use properties, and which may prevent leaseholders in buildings with a mixture of homes and other uses such as shops and offices, from buying their freehold or taking over management of their buildings.
- Requiring transparency over leaseholders' service charges
- Replacing buildings insurance commissions for managing agents and landlords with transparent administration fees.[1]
- Scrapping the presumption for leaseholders to pay their landlords' legal costs when challenging poor practice.
- Granting freehold homeowners on private and mixed tenure estates the same rights of redress as leaseholders.

8. The first LCM which I laid on 12 December includes more information on the provisions included in the Bill as introduced into Parliament on 27 November.

9. The Bill and the amendments which are the subject of this supplementary memorandum largely amend existing England and Wales leasehold legislation, most notably the Leasehold Reform Act 1967 ("LRA 1967"), the Leasehold Reform, Housing and Urban Development Act 1993 ("LRHUDA 1993), the Leasehold and Commonhold Reform Act 2002 ("CLRA 2002"), and the Landlord and Tenant Act 1985 ("LTA 1985").

10. The Bill also amends the remit of the devolved Leasehold Valuation Tribunal ("LVT").

11. Regular engagement between officials has continued as the amendments have been developed.

Update on position since the publication of the first Legislative Consent Memorandum

12. My officials have continued to liaise with counterparts in the UK Government regarding amendment of the Bill. I understand further work is ongoing towards the implementation of the UK Government's commitment to ban the use of leasehold for new houses, and as a consequence of the recent consultation, on the limitation of ground rent in existing leases. My officials will continue to work with UK Government to ensure that provisions being developed which will apply in Wales are appropriate.

Provisions tabled by the UK Government for consideration at House of Commons Committee stage for which consent is required

[1] In this document I refer to 'landlord' to denote the freeholder or superior leaseholder in leasehold arrangements, in order to avoid any confusion with the use of freeholder to describe homeowners subject to estate management charges which are the subject of Part 4 of the bill.

13. As I explained in the LCM for the Bill as introduced, it was my view the entirety of the Bill makes provision in relation to Wales for a purpose within the legislative competence of the Senedd, namely housing. In my view the amendments to the Bill also represent such provision, and therefore trigger or maintain the requirement for consent, except provisions which relate to redress requirements, which are England-only. In this section I will briefly explain the effect of the amendments and how they trigger or maintain the requirement for consent. I have grouped the major amendments, and refer to the clause numbers of the Bill as introduced, as well as the UK Government amendment numbers (eg Gov 28).

Jurisdiction of courts and tribunals

14. A group of amendments are proposed which relate to the shift in jurisdiction for leasehold cases away from the court, set out in the Bill as introduced, which aims to ensure disputes and issues are heard and resolved by the tribunal, which would improve simplicity, reduce costs and save time.
15. Gov 35 and 36 amend clause 14 which in turn amends LRA 1967 to clarify whether certain cases in relation to enfranchisement of leasehold houses should be heard by the appropriate tribunal or (more rarely) the court. Gov 41 amends clause 16 to make a similar change to applications under section 93 of LRHUA 1993. Gov 37, 38, 42 and 43 which amend clauses 14, 16 and 18 are consequential on these changes.

Notice of future service charge demands

16. New clause ‘Notice of future service charge demands’ (NC 6) proposes amendment of section 20B of LTA 1985 (time limit on making service charge demands) to require that where service charges will be demanded outside the normal 18-month timescale, they must be notified to leaseholders in a ‘future demand notice’ whose format, content and method of notification will be set out in regulations by the appropriate authority, which for Wales is the Welsh Ministers. Leaseholders will not be expected to pay service charges, when they are eventually demanded, which are in excess of the estimate provided or demanded outside the timescale envisaged, which must be included in the notice. This will increase certainty for leaseholders as to the potential service charge liability they will face, and the timescale in which they will be required to pay. Gov 46 is consequential on this amendment.

17. Gov 53 extends similar requirements in relation to estate management charges, by amending clause 43(b). The amendment adds requirements that notification should be in a certain format and contain certain information, as well as allowing further requirements to be imposed, which may be specified in regulations made by the Secretary of State.

Costs

18. New clause ‘Restriction on recovery of non-litigation costs of enfranchisement, extension and right to manage’ (NC7) amends LTA 1985 to make clear that non-participating leaseholders are not able to be billed via the service charge for non-litigation costs of the landlord in relation to enfranchisement or right to manage claims which are being made by their fellow leaseholders. This provision is in line with changes already being made in the Bill to the costs regime, and ensures that all leaseholders are prevented from being charged for their landlord’s non-litigation costs relating to dealing with claims brought against them, whether they participate in a claim or not.

19. Amendments to clause 12 (Gov 29), clause 13 (Gov 31), clause 23 (Gov 45) are consequential on this change, ensuring this provision is reflected in LRA 1967 which deals with enfranchisement for houses, in LRHUDA 1993 which deals with enfranchisement for flats, and in CLRA 2002 which deals with the right to manage. Further amendments consequential on these changes are made to clauses 30 and 31, and to schedule 8 (Gov 48-51, 121-123).

Existing right for leaseholders to apply to tribunal to appoint a manager

20. New clause ‘Appointment of a manager: power to vary or discharge orders’ (NC 8) varies the existing powers of tribunal (LVT in Wales) in relation to the appointment of a manager for management of leasehold properties. The amendment enhances the powers of the tribunal in relation to appointment of a manager. Gov 125 is consequential on this new clause.

Estate management

21. Gov 52 amends the definition of estate management in clause 39 to clarify that expenses of a commonhold association are not to be considered as estate management charges.

Estate management: appointment of a manager (NC10-14)

22. New clauses are inserted into the Bill setting out a new right for freeholders subject to estate management charges to apply to the tribunal for a new manager to be appointed in place of the current manager. This new right will allow homeowners to remove managers who are deficient, where it can be demonstrated that they are not performing as they should.

23. New clause ‘Notices of complaint’ (NC 10) introduces a new process by which homeowners subject to estate management charges can serve a notice on their estate manager setting out their complaints, and warning that if the complaints are not remedied within a certain time limit, the homeowner will apply to tribunal under the new right to appoint a substitute manager. The clause sets out what kind of complaints may qualify for the notice, including (among others) that the estate manager is

in breach of an obligation, sums payable in the charges are unreasonable or that the manager has not complied with a code of practice approved under clause 55. The Secretary of State may by regulations set out what information should be included in the notice, and when it may be used.

24. New clause ‘Appointment of substitute manager’ (NC 11) sets out a new power for the appropriate tribunal (the LVT in Wales) to appoint a person to carry out functions in place of the existing estate manager following application from an owner of a managed dwelling, in certain circumstances.

25. New clause ‘Conditions for applying for appointment order’ (NC 12) sets out the process for owners of managed dwellings to follow prior to making an application, which includes complying with the requirements on giving notice outlined in NC10, and giving a final warning notice. The required contents of a final warning notice are specified in the clause; further required information may also be specified in regulations by the Secretary of State. The tribunal is given powers to dispense with or vary notice requirements in certain circumstances.

26. New clause ‘Criteria for determining whether to make appointment order’ (NC 13) sets out how the tribunal should decide whether an appointment order should be made including the types of breach or fault the existing manager may have committed which may make it appropriate. The tribunal is also given discretion to decide that there are other circumstances that make it just and convenient for the order to be made. The Secretary of State may also make further regulations to define when an order should be made.

27. New clause ‘Appointment order: further provision’ (NC 14) sets out further details of what order the tribunal (LVT in Wales) may make, for instance what functions the substitute manager can perform, as well as circumstances in which the tribunal may vary or discharge the order.

28. Together, the clauses constitute an important new right for homeowners subject to estate management charges, giving them a process to remove a manager who engages in poor practice, and assisting them to achieve better quality services and better value for money.

Sales information

29. New clause ‘Leasehold sales information requests’ [NC 42], sets out a new right for leaseholders to request information to support a sale, and requires the landlord to respond within a set time, to request further information from other parties where they don’t hold it themselves, and allows a limited charge to be made for its provision. The appropriate authority (Welsh Ministers for Wales) may make regulation to give effect to the right, for instance by setting out the types of information which may be requested, the timescale in which it must be returned, the maximum

charge which may be made and by amending the maximum damages which may be awarded by the tribunal to reflect changes in the value of money.

30. New clauses ‘Estate management: sales information requests’, ‘Effect of sales information request’, ‘Charges for provision of information’ and ‘Enforcement of sections (*Effect of sales information request*) and (*Charges for provision of information*) [NC 43-46] provides a similar right to homeowners subject to estate management charges. These clauses set out that a homeowner may request information from their manager to support a sale, require the manager to respond within a set time, to request further information from other parties where they don’t hold it themselves, and allow a limited charge to be made for its provision. The appropriate authority (Welsh Ministers for Wales) may make regulation to give effect to the right, for instance by setting out the types of information which may be requested, the timescale in which it must be returned, the maximum charge which may be made and by amending the maximum damages which may be awarded by the tribunal to reflect changes in the value of money.

Exceptions to enfranchisement regime

31. Gov 57 adds a new section to Schedule 1 to amend LRA 1967 and LRHUDA 1993 to make an exception to the right to freehold acquisition for leaseholders of certified community housing providers. The appropriate tribunal (LVT for Wales) may certify community housing providers who are either a community land trust, or who meet a description or conditions set out in regulations by the Secretary of State. The tribunal may cancel a certificate under some circumstances. The Secretary of State may by regulations make provision to cater for circumstances where the application of a leaseholder to acquire their freehold and of a landlord to be granted a certificate of exemption overlap. Amendments Gov 30 and 32 to clauses 12 and 13 are consequential on this change.

32. Gov 58 adds a new section to Schedule 1 to amend LRA 1967 and LRHUDA 1993 to set out a new approach to enfranchisement of National Trust properties. The Law Commission considered how enfranchisement should function for National Trust properties, which prompted the National Trust and representatives of its leaseholders to negotiate a new regime, which is being set out in the Bill by this amendment. Leaseholders of inalienable National Trust property may not acquire the freehold, but this provision sets out where they may be entitled to a lease extension, and under what terms (either under existing legislation or the new provisions set out in this Bill). Where National Trust leaseholders exercise a right to an extended lease, it will be made subject to a buy-back term, such that the National Trust will have a right to buy back the lease if the current leaseholder seeks to dispose of it. The Secretary of State may make regulations in relation to these provisions, including to set out what may

be considered a ‘protected National Trust property’, and in relation to the new requirement for a ‘buy-back term’. It is my understanding that the scheme of enfranchisement which will apply to National Trust leaseholders which is being inserted by this amendment has been drawn up in conjunction with their representatives, and constitutes a welcome advancement of their rights, as well as providing clarity to existing and future National Trust leaseholders as to what rights they may exercise.

Commutation

33. Gov 73 amends schedule 6 and inserts new sections into LRA 1967 and LRHUDA 1993, making provision that the rent payable by an intermediate leaseholder superior to a leaseholder who has exercised a lease extension right should be reduced, where the ground rent under the leaseholder’s extended lease has been reduced to a peppercorn. This remedies a situation where an intermediate leaseholder will lose the ground rent income which would otherwise have allowed them to pay their own ongoing rent liability.

34. Further amendments to clause 14 (Gov 33 and 34), clause 16 (Gov 39 and 40), schedule 2 (Gov 70 and 71) and schedule 7 (Gov 95) are consequential on this change.

Shared ownership

35. Gov 74 inserts a new Part into Schedule 6 which amends LRA 1967, LRHUDA 1993 and Housing and Planning Act 1986 to set out what enfranchisement rights are available to shared ownership leaseholders in what circumstances, and their operation. Specific types of shared ownership leaseholders will have no right to enfranchisement, this is determined by specific conditions being met (and generally applies to those leases which provide a right to purchase 100% of the freehold in any event). The conditions to be met are set out in the new clauses and there is power for the Secretary of State to prescribe, by regulations, particular descriptions of shared ownership leases which will not need to meet two of the conditions. Overall, these provisions are intended to provide clarity to shared owners as to their rights to enfranchise, which have been the subject of dispute and litigation.

36. Further amendments are made to schedule 2 (Gov 60, 61, 66, 69) which clarify how the new valuation regime applies when calculating the premium payable for enfranchisement of shared ownership leases.

Ground rent buy out

37. A group of amendments is made to Schedule 7 to improve the operation of the new right to buy out ground rent of an existing lease. Amendments are made to better express what the right entails, to specify who may qualify, to clarify the process including notices which must be served and procedures of the tribunal, to clarify who is liable for costs and under what

circumstances, and for minor and technical purposes to improve the existing drafting (Gov 75-120). A related change is made to clause 21 (Gov 44).

38. Gov 105 includes a power for the appropriate authority (Welsh Ministers for Wales) to prescribe the amount of non-litigation costs which a leaseholder may be liable for in certain circumstances.

Minor, technical and further consequential amendments

39. Gov 28 amends the title of the Bill to better reflect the changed effect of its provisions.

40. Gov 59, 62, 63, 64, 65, 67 and 68 make minor amendments to schedule 2 to improve the operation of the new valuation regime.

41. Gov 72 makes minor amendment to the changes to LRHUDA 1993 under schedule 5 to provide that leaseholders may pay the premium into the tribunal in some circumstances.

42. Gov 126 clarifies that consequential amendment to the Housing (Wales) Act 2014 is made to both the English and the Welsh text.

Amendments which do not engage the requirement for consent: redress schemes

43. New clauses 15-24 form a new part of the Bill, and NS 1 a new schedule, which place requirements on leasehold and estate managers to join a redress scheme. The requirements only apply to those who provide services in relation to a property in England and so do not trigger the requirement for consent. New clause 9 provides that breach of redress requirements constitutes a breach which may be taken into account by a tribunal considering whether to appoint a manager under 24(2) of LTA 1987. Gov 47, 54, 55, 56 and 124 are consequential on these new clauses.

Powers to make subordinate legislation

44. I have outlined above where the amendments include new powers to be granted to either the Welsh Ministers or the Secretary of State. All new powers described here are subject to the negative procedure, except for powers in NC 18 and 19 and Gov 57, which are subject to the affirmative procedure. NC 18 and 19 give the Secretary of State powers in relation to redress schemes (which apply in relation to England only). The powers in Gov 57 allow the Secretary of State to dictate the tribunal processes relating to the application for and cancellation of community housing certificates, including the description or conditions to be met by community housing providers wishing to be issued a certificate.

45. In summary I believe that the requirement for Senedd consent is either triggered or maintained by the amendments proposed by the UK Government at Commons Committee stage which were tabled on 17 and 23 January. The only exception to this are those amendments which relate only to the redress requirements which apply to those managing property in England (NC 15-24 and NS 1). This is because the Bill, as it is due to be amended by the UK Government (excepting the new Part on redress), makes provision for a purpose within the legislative competence of the Senedd, namely housing, and therefore requires the legislative consent of the Senedd. Additionally, many of the amendments further amend the functioning of the devolved Leasehold Valuation Tribunal, which also requires the consent of the Senedd.

46. This maintains the view I set out in the LCM on the Bill as introduced.

UK Government view on the need for consent

47. As at introduction, there continues to be divergence between my view and the view of the UK Government on whether provisions in the Bill engage the requirement for Senedd consent. Lee Rowley MP, Minister for Housing, has written to me to advise that in the UK Government's view, the consent of the Senedd is needed for the following amendments[2]:
    - OPC 54, 22, 23, 24, 25, 7, 47, 159, 120, 121, 124, 119, 188 [NC 8, NC 11, NC12, NC 13, NC14, Gov 57, 58, 74, 88, 91, 98, 103, 105]. This is only to the extent that these provisions relate to the procedure of the leasehold valuation tribunal, as, in the UK Government's view, they otherwise relate to the private law restriction.
    - OPC 59, 183, 60, 184, 45, 146, 91, 97, 100, 99, 46, 147, 102, 104, 105, 61, 132, 130, 75, 62, 66, 68, 67, 58 [Gov 29-43, 45-51 NC6, NC 7]. These provisions generally relate to costs procedures in the leasehold valuation tribunal (which is a devolved tribunal), service charge regulation, banning buildings insurance commissions, and challenging administration charges for freehold estates. The UK Government considers that these provisions do not relate to any restrictions or reservations in the Government of Wales Act 2006.
    - OPC 172 and 173 [Gov 55, 56]. These amend clause 62, which sets out the procedure for regulations in the Act. Clause 62 provides that the Secretary of State in England and, where applicable, the Welsh Ministers in Wales can make consequential, supplementary, incidental, transitional, or saving provisions for regulations set out in the Act.
    - OPC 175 [Gov 126]. In the UK Government's view, consent is only required to the extent that this provision amends the Housing (Wales) Act 2014 (which is consequential on Clause 30(2)), as the

[2] I have added the published amendment reference numbers in square brackets which correspond to the OPC reference numbers quoted in the Minister's letter.

purpose of the Schedule is otherwise to amend existing law to refer to new provisions introduced by the Bill, or repeal law.

- OPC9, 35, 249 and 37 [NC 42-46]. In the UK Government's view these amendments do not relate to any restrictions or reservations in the Government of Wales Act 2006.

Reasons for making these provisions for Wales in the Leasehold and Freehold Reform Bill

48. I maintain 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. I restate my arguments here for ease of reference.

49. I have been clear that I believe it appropriate to pursue joint England and Wales legislation to reform leasehold. In my view this approach will reduce complexity, maximise the clarity and coherence of the law and ensure the new fairer reformed system applies to all.

50. I have outlined above where there are differences between my view and the views of UK Government Ministers on the extent to which the Senedd could legislate for the provisions in this Bill. If we were to pursue a Wales-only Bill to achieve the same aims, and it was challenged as not within competence, there may be a significant delay in the benefit of the changes being felt by citizens in Wales. Taking a joint approach avoids this risk.

51. Additionally, in my view, the interconnectedness and commonality of the law in this area mean that it is most effective and appropriate for provision for England and Wales to be taken forward at the same time in the same legislative instrument.

52. Similarly, given the complexity of the existing leasehold legislation, a coherent and consistent approach would be beneficial to both England and Wales, particularly given that England and Wales share a highly populated border region.

53. Finally, the First Minister's principles for recommending consent to provisions in UK Bills makes reference to it being unwise for the Welsh Government to adopt a self-denying ordinance. In my view, not taking the opportunity afforded by this Bill would represent such a policy.

54. As I set out in the initial LCM on this Bill as introduced, 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. I continue to actively engage with UK

Government to pursue this matter, and will update the Senedd on my progress in due course.

Financial implications

55. As I have set out before, this Bill makes significant provision in relation to the devolved Leasehold Valuation Tribunal, which will have an impact on its powers and case load. Work is ongoing to assess the potential impact on the tribunal and to understand what the financial implications of that impact will be.

56. The UK Government have prepared an Impact Assessment for the Bill which covers the wider implications of the Bill as a whole, including the impacts on Wales which may be found here.

Conclusion

57. In my view it continues to be appropriate to deal with these provisions in this UK Bill as this approach will reduce complexity, maximise the clarity and coherence of the law and ensure the new fairer reformed system applies to all.

Julie James MS
Minister for Climate Change
30 January 2024