Welsh Parliament
Local Government and Housing Committee

Report on the Legislative Consent Memoranda for the Leasehold and Freehold Reform Bill

March 2024

1. Background

1. The Leasehold and Freehold Reform Bill ("the Bill") was introduced in the House of Commons on 27 November 2023.

2. Standing Order 29 provides that the Welsh Ministers must lay a Legislative Consent Memorandum ("LCM") where a Bill makes a provision in relation to Wales:

i. for any purpose within the legislative competence of the Senedd (apart from incidental, consequential, transitional, transitory, supplementary or savings provisions relating to matters that are not within the legislative competence of the Senedd); or

ii. which modifies the legislative competence of the Senedd.

3. On 12 December 2023, Julie James MS, Minister for Climate Change ("the Minister") laid before the Senedd a LCM in respect of the Bill. The Minister laid a Supplementary LCM ("SLCM") before the Senedd on 30 January 2024.

4. On 9 January 2024, the Business Committee referred the LCM to the Local Government and Housing Committee ("the Committee") and the Legislation, Justice and Constitution Committee for consideration, with a reporting deadline of 15 March 2024. On 6 February 2024, the Business Committee referred the SLCM to both committees with the same reporting deadline of 15 March 2024.

2. The LCM

5. Paragraphs 3 to 14 of the LCM summarise the Bill and its policy objectives.

6. Paragraph 72 of the LCM sets out the UK Government's view on the need for consent, and notes that there is "divergence" between the Minister's view and that of the UK Government.

Provisions for which consent is required

7. Paragraph 15 of the LCM notes the Minister's view that "the entirety of the Bill makes provision in relation to Wales for a purpose within the legislative competence of the Senedd". Paragraphs 16 to 69 of the LCM provide an overview of the provisions within the Bill for which the Welsh Government believes consent is required.

Part 1: Leasehold enfranchisement and extension

8. The clauses in Part 1 of the Bill make amendments to existing law in relation to enfranchisement rights. Enfranchisement is the right of a leaseholder to obtain a lease extension or to acquire their freehold.

9. Clause 1 removes the requirement that a leaseholder must have owned their lease for two years before qualifying to extend the lease of their house or flat, or to acquire the freehold of their house.

10. Clause 2 removes certain restrictions on starting a new enfranchisement claim where a previous claim has been made.

11. Clause 3 provides that a building is excluded from collective enfranchisement (where leaseholders in a building act together to acquire the freehold) rights if more than 50 per cent of the internal floorspace is used for non-residential purposes.

12. Clause 4 and Schedule 1 repeal existing limitations on enfranchisement rights, including those relating to redevelopment or reoccupation by the landlord.

13. Clause 5 makes provision about the acquisition of intermediate leases during a collective enfranchisement claim, including the circumstances in which a nominee purchaser must acquire an intermediate lease, and the circumstances in which such acquisition is optional.

14. Clause 6 creates a new right for leaseholders participating in a collective enfranchisement claim to require the landlord to take a leaseback of particular units in the building (having the effect of reducing the price payable for acquiring the freehold).

15. Clauses 7 and 8 amend existing law around lease extension to ensure that the rights available are equivalent for leaseholders of houses and of flats. The effect of the clauses is that a leaseholder of either a flat or house can obtain a lease extension of 990 years at a "peppercorn" (zero financial value) ground rent, in exchange for the payment of a premium calculated in accordance with the amended valuation scheme in clauses 9 to 11 of the Bill.

16. Clauses 9 to 11 and Schedules 2 to 5 set out how the premium payable to exercise the right to enfranchisement should be calculated.

17. The premium comprises two elements: the market value calculated in accordance with Schedule 2, and any other compensation calculated in accordance with Schedule 3. In particular, for the purposes of the valuation calculation, "marriage value" and "hope value" are removed and ground rent is capped at 0.1% of the freehold value. The Secretary of State is given a power to prescribe the various rates used to calculate premiums.

18. Clauses 12 and 13 set out a general rule that each party will bear its own non-litigation costs in relation to a claim for enfranchisement. The clauses confer

regulation-making powers on the Welsh Ministers (in relation to Wales) to prescribe various matters relating to the exemptions from the general rule, including the amount a tenant is liable to pay to the landlord if an enfranchisement claim ceases for a reason other than a permitted reason.

19. Clauses 14 to 17 transfer jurisdiction for certain types of cases from the county court to the appropriate tribunal, to implement recommendations from the Law Commission to resolve issues of complexity, confusion and cost caused by the fact that some types of dispute are heard by the county courts and others by the tribunal. In relation to Wales, the appropriate tribunal is the Leasehold Valuation Tribunal ("LVT").

20. Clause 18 prevents an application being made to the High Court in the first instance in respect of an enfranchisement matter falling within the tribunal's jurisdiction. According to the Explanatory Notes, this is intended to prevent parties from using the High Court as an alternative forum to the tribunal for determining enfranchisement claims. This does not prevent parties appealing a tribunal decision at the High Court, nor alter the jurisdiction of the High Court to consider judicial review claims in relation to tribunal decisions.

21. Clause 19 and Schedule 6 make miscellaneous and consequential amendments to existing legislation in consequence of Part 1 of the Bill.

22. Clause 20 preserves the right of a leaseholder to acquire the freehold to a house using the law as it exists prior to amendment by the Bill, but only where the property would be valued using the unamended valuation basis for calculating premiums.

Part 2: Other rights of long leaseholders

23. Part 2 amends leaseholder rights relating to buying out ground rent without extending the lease and the rights of leaseholders to take over management of their building ("the right to manage").

24. Clause 21 and Schedule 7 make provision for a new enfranchisement right, to buy out the ground rent under a very long residential lease. These provisions give qualifying leaseholders with at least 150 years remaining on their lease the right to substitute the existing ground rent in their lease with a peppercorn rent,

on payment of a premium. The premium is calculated by reference to the new standard valuation method in Schedule 2. The process by which the right may be exercised includes a role for the appropriate tribunal.

25. Clause 22 provides that a building is excluded from the right to manage if more than 50 per cent of the internal floorspace is used for non-residential purposes.

26. Clause 23 establishes a new regime for non-litigation costs in right to manage claims. As elsewhere in the Bill, the general rule is that each party will bear its own costs, subject to certain exceptions including where the appropriate tribunal has made an order.

27. Clause 24 transfers jurisdiction from the county court to the tribunal in respect of the power to order compliance with obligations arising from a right to manage claim within a specified time.

28. Clause 25 prevents matters relating to a right to manage claim being considered by the High Court at first instance.

Part 3: Regulation of leasehold

29. Part 3 provides protections for leaseholders relating to service charge information, insurance and administration charges and litigation costs.

30. Clause 26 extends existing regulation for variable service charges to fixed service charges.

31. Clause 27 introduces a requirement for service charge demands to be issued in a specified form that contains specified information, and is provided in a specified manner. These matters are to be specified in regulations made by the appropriate authority. The appropriate authority is the Welsh Ministers in relation to Wales.

32. Clause 28 creates a requirement for the landlord or their representative to provide an annual written statement of account, and an annual report, in a form and manner specified in regulations made by the appropriate authority.

33. Clause 29 provides a right for leaseholders to obtain from the landlord, on request, types of information specified in regulations made by the appropriate authority. A landlord may request information from another person if certain conditions are met, and that person must provide the information requested within a time limit specified in regulations made by the appropriate authority.

34. Clause 30 creates enforcement measures for these new requirements on landlords, including giving the appropriate tribunal the power to award damages of up to £5,000. This maximum may be amended through regulations made by the appropriate authority to reflect changes in the value of money

35. Clause 31 prevents certain insurance costs from being included in a variable service charge. These "excluded insurance costs" are those linked to placing and managing insurance and which provide an incentive for those placing and managing the insurance to enter into a particular contract, for example remuneration from the broker. Leaseholders may only be charged for costs that are attributable to a "permitted insurance payment", which is a payment of a description specified in regulations made by the appropriate authority. Where excluded insurance costs are charged, the appropriate tribunal is given the power to award damages of up to three times the amount of the excluded costs paid.

36. Clause 32 imposes a duty on landlords, where a service charge includes an amount payable for insurance, to obtain and provide specified information about that insurance to leaseholders within a specified period. "Specified" means specified in regulations made by the appropriate authority. Provision is also made to require third parties to provide information to enable the landlord to comply with this duty, subject to regulations made by the appropriate authority setting out how such a request is to be made and how the information is to be provided.

37. Enforcement of the duty to provide information is by way of application to the appropriate tribunal, which can award damages of up to £5,000. The damages limit may be amended through regulations made by the appropriate authority to reflect changes in the value of money.

38. Clause 33 imposes a duty on landlords to publish an administration charge schedule in relation to a building if they are the landlord of one or more dwellings in that building. The appropriate national authority (the Welsh Ministers in relation to Wales) may make provision by regulations as to the meaning of "building" and the form, content, publication and provision of such a schedule. An administration charge is only payable if the amount appeared on, or was calculated in accordance with, a published administration charge schedule.

39. A leaseholder may apply to the appropriate tribunal where the landlord has not complied with these requirements. The tribunal's enforcement powers include the power to award damages not exceeding £1,000, and this limit may be amended by the appropriate authority to reflect changes in the value of money.

40. Clause 34 prevents landlords from recharging litigation costs to leaseholders as part of a variable service charge or an administration charge, unless the landlord obtains an order from the relevant court or tribunal to allow this. The appropriate authority may by regulations specify matters the court or tribunal must take into account when deciding whether to make such an order. The appropriate authority may also make provision in regulations about how applications for orders are to be made, and about notice requirements.

41. Clause 35 implies a term into leases giving leaseholders a right to apply to the relevant court or tribunal for an order that their landlord pay any or all of their litigation costs in connection with relevant proceedings concerning the lease. The appropriate authority may by regulations specify matters the relevant court or tribunal must take into account when deciding whether to make such an order.

42. Clauses 36 to 38 and Schedule 8 make provision consequential on Part 3 of the Bill.

Part 4: Regulation of estate management

43. Part 4 introduces legal protections for freeholder homeowners who are subject to estate management charges.

44. Clause 39 sets out the key definitions for this Part of the Bill, including the meanings of "estate management" and "estate manager".

45. Clause 40 provides that an estate charge is only payable to the extent that the amount reflects relevant costs, and only to the extent not otherwise limited by this Part of the Bill.

46. Clause 41 provides that costs are only relevant costs to the extent that they are reasonably incurred and, if incurred in the provision of services or carrying out works, only if the services or works are of a reasonable standard.

47. Clause 42 introduces a requirement for estate managers to consult managed owners if the cost of any works exceeds an appropriate amount. There are regulation-making powers for the Secretary of State to set an "appropriate amount" and to specify consultation requirements.

48. Clause 43 provides that costs are not relevant costs where the estate manager seeks to charge more than 18 months after the works take place, and where the estate manager failed to notify the managed owner within this 18-month period that they would remain liable for the costs.

49. Clause 44 sets out the circumstances under which a managed owner may seek to challenge the reasonableness of an estate management charge through an application to the appropriate tribunal.

50. Clause 45 requires that estate managers demand payment of estate management charges in a form specified in regulations made by the Secretary of State.

51. Clause 46 requires estate managers to provide an annual report to an owner of a managed dwelling. The Secretary of State may make regulations about the information to be contained in the report, the form of the report and the manner in which the report is to be provided.

52. Clauses 47 and 48 make provision for owners of managed dwellings to request and receive information from estate managers, and for estate managers to request information from another person where required. The Secretary of

State may by regulations provide for how requests for information are to be made.

53. Clause 49 provides for the enforcement of clauses 45 to 48 by the appropriate tribunal. This includes a power to award damages not exceeding £5,000, and this limit may be amended through regulations made by the appropriate authority to reflect changes in the value of money.

54. Clause 50 defines "administration charge" and provides that the appropriate authority can amend this definition by regulations.

55. Clause 51 requires an estate manager to produce and publish an administration charge schedule setting out the amount of each charge or how the amount will be determined. The appropriate authority may make regulations about the form, content, publication and provision to owners of dwellings, of the administration charge schedule.

56. Clause 52 provides for enforcement of clause 51 by the appropriate tribunal including the award of damages not exceeding £1,000. The limit may be amended by the appropriate authority to reflect changes in the value of money.

57. Clause 53 provides that an administration charge is only payable to the extent that the amount is reasonable, and in accordance with any administration charge schedule.

58. Clause 54 creates a right for managed owners to challenge the reasonableness of administration charges at the appropriate tribunal.

59. Clause 55 amends existing legislation to allow the Secretary of State, or the Welsh Ministers in relation to Wales, to approve or publish a code of management practice in relation to freehold estates. Such a code may be taken into account as evidence by a court or tribunal.

60. Clause 56 sets out that the provisions of Part 4 apply in relation to estate management carried out by, or on behalf of, a government department.

61. Clause 57 defines terms used in Part 4, including that "the appropriate authority" means the Welsh Ministers in relation to Wales and "the appropriate tribunal" means the LVT in relation to a dwelling in Wales.

Part 5: Rentcharges

62. Part 5 makes provision about rentcharges. A rentcharge is generally an annual sum of money (other than rent) which is charged on and payable out of land.

63. Clause 58 amends the definition of "estate rentcharge" in section 2(4)(b) of the Rentcharges Act 1977.

64. Clause 59 amends the remedies available via the Law of Property Act 1925 ("the 1925 Act") for non-payment of historical rentcharges ("regulated rentcharges"). This includes a requirement for a notice demanding payment of arrears to be served before enforcement commences. This is a change from the current position where a homeowner may lose their home for relatively small arrears even where no demand for the payment has been made. This clause also:

- inserts a new subsection (1A) into section 121 of the 1925 Act providing that, where a sum is charged as a regulated rentcharge, the rent owner does not have any remedies for recovering or compelling payment of the sum on and after 27 November 2023 (the date of the Bill's first reading in Parliament), and
- inserts a new subsection (1A) into section 122 of the 1925 Act prohibiting the creation on or after 27 November 2023 of a new rentcharge out of an existing regulated rentcharge.

Part 6: General

65. Clause 60 sets out the meaning of terms used throughout the Bill, specifically in relation to references to existing legislation.

66. Clause 61 provides a power for the Secretary of State to make consequential provision by regulations.

67. Clause 62 makes further provision in relation to regulations made under Bill, including defining the "affirmative" and "negative" scrutiny procedures that apply to regulations made by the Secretary of State or by the Welsh Ministers in exercise of powers in the Bill.

68. Clauses 63 to 65 set out the extent, commencement and short title of the Bill.

Reasons for making provision for Wales within the Bill

69. Paragraphs 73 to 78 of the LCM set out the reasons why provision is being made for Wales in the Bill. The Minister notes:

> *"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."*[1]

70. The Minister adds that there is still "clearly disagreement" with the UK Government as to the legislative competence relating to specific provisions. She notes:

> *"I am actively engaging with UK Government to pursue this matter, and will update the Senedd on my progress in due course."*[2]

Financial implications

71. Paragraph 79 of the LCM notes that the Bill makes "significant provision" in relation to the Leasehold Valuation Tribunal, and that:

[1] Welsh Government, Legislative Consent Memorandum on the Leasehold and Freehold Reform Bill, paragraph 73
[2] Welsh Government, Legislative Consent Memorandum on the Leasehold and Freehold Reform Bill, paragraph 78

> *"Work is ongoing to assess the potential impact on the tribunal and to understand what the financial implications of that impact will be."*[3]

3. The SLCM

72. The SLCM notes that:

> *"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."*

73. The SLCM also notes that:

> *"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."*

74. The Minister confirms that her officials "will continue to work with UK Government to ensure that provisions being developed which will apply in Wales are appropriate."[4]

75. Paragraph 13 of the SLCM reiterates the view expressed in the LCM that "the entirety of the Bill makes provision in relation to Wales for a purpose within the legislative competence of the Senedd", and adds:

> *"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"*[5]

[3] Welsh Government, Legislative Consent Memorandum on the Leasehold and Freehold Reform Bill, paragraph 79
[4] Welsh Government, Supplementary Legislative Consent Memorandum, Leasehold and Freehold Reform Bill, paragraph 12
[5] Welsh Government, Supplementary Legislative Consent Memorandum, Leasehold and Freehold Reform Bill, January 2024

76. Paragraphs 14 to 46 of the SLCM set out the effect of the amendments made at Commons Committee stage, and how they trigger or maintain the requirement for consent.

77. The SLCM notes that "there continues to be divergence" between the view of the Welsh Government and the view of the UK Government as to whether provisions in the Bill engage the requirement for Senedd consent.[6]

78. The amendments made at Commons Committee stage are summarised below.

[6] Welsh Government, Supplementary Legislative Consent Memorandum, Leasehold and Freehold Reform Bill, paragraph 47

Amendments relating to Part 1 (Leasehold enfranchisement and extension) of the Bill

Jurisdiction of courts and tribunals

79. Gov 35, 36 and 41 amend clauses 14 and 16 to make further provision about the transfer of jurisdiction from the county court to the tribunal for the majority of cases. Gov 37, 38, 42 and 43 are consequential on these amendments.

Exceptions to enfranchisement regime

80. Gov 57 amends Schedule 1 of the Bill to exclude tenants of certified community housing providers from the right to freehold acquisition. The appropriate tribunal may certify community housing providers who are either a community land trust or who meet a description or conditions set out in regulations made by the Secretary of State. The Secretary of State may also make provision about the procedure for an application for, or cancellation of, a community housing certificate, or make provision about circumstances where an application for a community housing certificate overlaps with the exercise of a right to acquire the freehold.

81. Gov 58 amends Schedule 1 to provide for tenants of National Trust properties to have the right to extension, subject to exceptions, and subject to a requirement to grant the National Trust the right to buy back the property in certain circumstances. The Secretary of State may by regulations prescribe the buy-back term and the meaning of a "protected National Trust tenancy".

Commutation

82. Gov 73 amends Schedule 6 to provide that, where a lease is extended at a peppercorn ground rent, the rent payable under an intermediate superior lease should also be reduced. Gov 33, 34, 39, 40, 70 and 71 make consequential amendments to existing clauses.

Shared ownership

83. Gov 74 amends Schedule 6 to make provision for the enfranchisement rights of shared ownership leaseholders, where certain conditions are met. The

Secretary of State may prescribe, by regulations, descriptions of shared ownership leases that do not need to meet two of the conditions.

84. Gov 60, 61, 66 and 69 amend Schedule 2 to clarify how the new valuation regime applies when calculating the premium payable for enfranchisement of shared ownership leases.

Amendments relating to Part 2 (Other rights of long leaseholders) of the Bill

Ground rent buy out

85. Gov 75 to 120 amend Schedule 7 to clarify what the new right to buy out the ground rent entails and how it may be exercised, including relevant tribunal procedures. Gov 44 makes a related amendment to clause 21, which introduces Schedule 7.

86. In particular, Gov 105 makes provision limiting a tenant's liability for costs incurred by any other person as a result of the tenant exercising the right to buy out the ground rent. The appropriate authority may prescribe the maximum amount payable in certain circumstances.

Amendments relating to Part 3 (Regulation of leasehold) and Part 4 (Regulation of Estate Management) of the Bill

Notice of future service charge demands

87. Gov NC6 inserts a new clause after clause 26 requiring notice of future service charge demands to be given in accordance with requirements set out in regulations made by the Welsh Ministers in relation to Wales.

88. Gov 53 amends clause 43 to make equivalent provision in relation to estate management charges in Part 4 of the Bill, however the regulation-making power is conferred on the Secretary of State only.

Costs

89. Gov NC7 inserts a new clause after clause 35 to prevent variable service charges being paid by a leaseholder for non-litigation costs in connection with enfranchisement or right to manage claims made by other leaseholders.

90. Gov 29, 31, 45, 48 to 51 and 121 to 123 make amendments to existing clauses and to Schedule 8, in consequence of the new clause.

Sales information

91. Gov NC42 inserts a new clause into Part 3 of the Bill to create a right for leaseholders to request information to support a sale. The appropriate authority may make regulations to give effect to this right including specifying the types of information which may be requested, relevant time periods, provision about onward request and limiting the amount that may be charged. The right may be enforced through an application to the appropriate tribunal. The tribunal's powers include a power to award damages not exceeding £5,000. The limit may be increased by the appropriate authority by way of regulations to reflect changes in the value of money.

92. Gov NC43 to NC46 create similar rights for freehold homeowners subject to estate management charges, and equivalent regulation-making powers for the appropriate authority.

Estate management

93. Gov 52 amends the definition of estate management in clause 39 to exclude charges in respect of a commonhold association from the definition of "estate management charge" for the purposes of Part 4 of the Bill.

94. Gov NC10 to NC14 insert new clauses into Part 4 which make provision for 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. The clauses provide the Secretary of State with regulation-making powers in connection with the giving of a complaint notice before such an application is made. The Secretary of State is also given the power to specify in regulations that a tribunal may not make an appointment order in respect of a specified estate manager or description of estate manager.

Minor, technical and further consequential amendments

95. In consequence of the changes made by the amendments to the Bill, Gov 28 amends the long title so that it refers to the regulation of "the relationship

between residential landlords and tenants" instead of the regulation of "charges and costs payable by residential tenants".

96. Gov 59, 62 to 65 and 67 to 68 make minor amendments to Schedule 2 to improve the operation of the new valuation regime.

97. Gov 72 makes a minor change to Schedule 5 relating to the circumstances when a tenant may be required to pay the premium into the tribunal.

98. Gov 126 clarifies that the consequential repeal, in Schedule 8 of the Bill, of section 128 of the Housing (Wales) Act 2014 applies to both the English and Welsh texts of that Act.

New clauses not within scope of Standing Order 29: redress schemes

99. Gov NC15 to NC24 and Gov NS1 insert a new Part and Schedule into the Bill to make provision for those who carry out estate management in respect of a dwelling in England to be a member of a redress scheme. Gov NC9 is a related clause.

100. These new clauses and Schedule do not amount to relevant provision for the purposes of Standing Order 29, as they apply only to estate management in respect of dwellings in England.

101. Gov 47, 54, 55 and 56 make consequential amendments to existing clauses. While the subject matter of the amendments is not within scope of Standing Order 29, the amendments do not change the position on consent in relation to the existing clauses as amended – they required consent before amendment, and continue to require consent as amended (because they relate to broader matters than just the new clauses and Schedule).

Reasons for making provision for Wales within the Bill

102. The Minister maintains the reasoning set out in the initial LCM as to why it is appropriate for UK legislation to make provision for Wales in the Bill. Paragraphs 49 to 54 of the SLCM restate the Minister's views, and paragraph 57 concludes:

> *"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."*[7]

103. The Minister notes that:

> *"there continues to be disagreement with the 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."*

104. The Minister adds that she continues to "actively engage with UK Government to pursue this matter", and that she will update the Senedd on her progress "in due course".[8]

Financial implications

105. Paragraph 56 of the SLCM notes that UK Government has prepared an Impact Assessment for the Bill, which includes the impacts on Wales.[9]

4. Committee consideration

106. We considered the Memoranda at our meeting on 29 February 2024.

107. 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. In particular, we note paragraph 74 of the LCM, which raises the possibility of Senedd legislation being challenged as not within competence, which would cause delays in implementing changes to the law in Wales. We

[7] Welsh Government, Supplementary Legislative Consent Memorandum, Leasehold and Freehold Reform Bill, paragraph 57
[8] Welsh Government, Supplementary Legislative Consent Memorandum, Leasehold and Freehold Reform Bill, paragraph 54
[9] Leasehold and Freehold Reform Bill Impact Assessment

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